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GOVERNMENT AND POLITICS IN THE UNITED STATES



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GOVERNMENT AND POLITICS IN THE United States

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Third Edition

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TO MY STUDENTS PAST AND PRESENT, PARTICULARLY TO THOSE FORMER STUDENTS WHO ARE ENGAGED IN THE TEACHING OF POLITICAL SCIENCE, GOVERNMENT RESEARCH, OR THE PUBLIC SERVICE

Preface

The author's experience in teaching American Government courses over a period of twenty years has pointed in the direction of the conventional organization based on national, state, and local levels of government. At the same time emphasis on the functional aspects of government seems highly desirable. Anyone who casually examines this text will see that it starts out with a detailed examination of the national government, proceeds to a consideration of state government, and ends with a rather brief survey of local government; less apparent may be the constant effort which has been made to indicate as clearly as possible what services are rendered by these governments and how their various branches and divisions actually operate at present.

As a result of a belief that some setting should be provided as a background for viewing American government and a strong conviction that the democratic form of government is preferable to any other, the text starts with a chapter which discusses the various kinds of government and the nature of democratic government. Not only in the first chapter but throughout the book careful consideration is given to the American type of democracy, its peculiar characteristics, and its accomplishments and shortcomings.

Attention is given throughout to the development of the various agencies and institutions of government in the United States. Separate chapters have been prepared dealing with "Pressure Groups and Pressure Politics," "The Role of Public Opinion," and "The Obligations and Responsibilities of Citizenship." The third edition includes three new chapters which discuss congressional reform, administrative reorganization, and American foreign policy. It may be added that many of the old chapters have been completely rewritten—indeed, there is hardly a page in the new edition which has not been recast in some measure.

More than in any other field in political science an author of a basic text dealing with the government of the United States is indebted to colleagues, to government offices, and to research institutes. It is not feasible to list the names of all of those who have been drawn upon for material or who have assisted in other ways; that has been done as far as possible in footnotes, bibliographies, and bylines. Among those who have contributed to one or more of the editions by offering suggestions, reading chapters, and extending encouragement at dark moments the following may be mentioned: W. W. Carson, Robert Cush-

man, Frederic Heimberger, Harvey Mansfield, John D. Millett, R. W. Pence, Elmer Plischke, William Riker, M Simon, H. M. Stout, Vernon Van Dyke, and H. W. Voltmer. The author records his warm thanks to these and others.

No reference has been made in the bibliographies to the excellent books of readings which have appeared in sizable numbers during recent years because it is assumed that these are known to teachers. Needless to say, a great deal of valuable material is here available for supplementary use.

HAROLD ZINK

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Section I

HISTORICAL AND CONSTITUTIONAL BACKGROUND OF THE GOVERNMENT OF THE UNITED STATES

1. American Government in Perspective

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 150,000,000 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 complex cultural background, the traditions of religious freedom, the striking 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 particularly 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 extreme nationalism, provincialism, fanatical overevaluation, 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 often difficult for him to appreciate certain aspects of our own because he has no standard of measurement. Of course, it is not possible within the limits of a

single volume to analyze the governments of our sister nations in detail; that is reserved for the courses which deal with comparative and foreign governments.

Forms of Government

Classification of Governments The governments which human experience has evolved during several thousand years which it covers have been so diverse that it is not an easy matter to classify them. Outward forms present 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 considerate authority without being unduly autocratic; while still other kings, for example the recent kings of England, have been the 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 a classification may be based upon the location of authority and three general types may be noted: (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

Monarchical Form 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 as commonplace as during earlier periods. As man emerged from the primitive stage of political organization which involved the clan and the tribe, frequently with a single powerful leader, a form of government which devolved around a single person: the monarch or king, was developed. In its simple manifestation this form bestows upon the ruler or king absolute authority in every sphere covered by government. 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. Some 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, for example, was long regarded by law as a lineal descendent of the Sun Goddess.

Limited Monarchy As civilization developed and men became more assertive of their own place under the sun, the monarchical form was modi-

fied after long struggle into a limited type which retained the king as the head of the government but took away some of his authority. Legislative bodies were established to enact laws; courts were set up to administer justice; and administrative departments relieved the king of many of his tasks. The absolute type of monarchy largely ceased to exist in the seventeenth and eighteenth centuries, though there have been isolated cases more recently. 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 monarchy, despite its evolution into a representative democracy. Sweden, Norway, Denmark, and Holland are among the countries that still maintain a limited type of monarchy in which a large measure of popular control is permitted.

Tyrannical Form In certain cases kings have conducted themselves in such an arbitrary and ruthless manner that they have actually been tyrants. Again usurpers have arisen to seize the throne from a legitimate ruler, only to crush the citizens with an iron heel of oppression. The tyrannical form of government represents a degenerate type of the monarchical; under such a system a single person exercises the authority of government in such a 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 and he diverts the attention of the citizens from their sufferings and his own iniquities by constructing elaborate public works, staging spectacular entertainment, and 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 belong to 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 revival which has been one of the most striking characteristics of recent decades.

Dictatorships It is the custom to designate the modern tyrannies "dictatorships," but the basic principles do not seem sufficiently different to justify setting up a separate class, though details are, of course, adapted to a twentieth-century background. In this connection it is interesting to note that the Italian dictator Mussolini relied heavily upon the advice which a celebrated political philosopher Machiavelli had offered to a tyrant several centuries earlier. In both the Italian and German dictatorships, prior to World War II, one was impressed by the gorgeous entertainments and displays held in con-

[1] Kings have 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.*

nection with party conferences and anniversaries, and the seizing of territory of sister states—the three activities which tyrants have commonly used to disguise their avarice for power. In the twentieth century the inhabitants of the earth do not relish unvarnished force or lust for power and hence the tyrants of the modern totalitarian countries have stressed their position of leadership. But this was largely pretense, for these dictators have actually followed the practices of tyrants, not those of political leaders. People become mere tools under the modern form of tyranny; they exist for the purpose 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. 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 could come to them was to give their lives blindly without question for the fatherland. The tyrant of the twentieth century, like his ancient and medieval forbears, has little or no real 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 Hitler's *Mein Kampf*, people have no minds of their own and are to be guided by propaganda which the tyrant and his aides devise for their consumption.

Government by the Few

Oligarchy and Aristocracy 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 more commonly "oligarchy" or "aristocracy," as the form has been designated, operate behind a screen. Thus the nominal form may be monarchical, democratic, or proletarian—a reading of the constitution, if there is such a thing, would lead one to believe that the government was actually one of these types. However, the king, the president, or the leaders of the proletariat take their orders from an influential group of men of wealth, military officials, or others who prefer to exercise their power from behind the scenes. 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 artistocracy 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 of the many. Better current examples of oligarchical control are to be found in certain of the Latin American governments.

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 less influential than during earlier periods because of the spectacular growth of organized labor and the current emphasis on the common man. During recent years a good deal of 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 dictators 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, but 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 being individualists more often than not do not ordinarily hold the same points of view or arrive at the same conclusions.

Government of 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] 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 which is attached to them. In the pure form of democracy the people assemble regularly for the purpose of deciding governmental policies, the amount of taxes to be levied, and the purposes for which public funds are to be spent. They may even assist in the carrying out of these decisions. Obviously a pure democracy is possible only in a country where the territory is small and the number of adult citizens not too large for group deliberation. In the ancient Greek city-state these conditions sometimes existed. 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

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

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 choose officials. In the United States, despite the necessity of employing the representative type of democracy, great stress is placed on "government by and of the people" as a primary characteristic of a truly democratic system. The leaders of the Soviet Union espouse a regime which they maintain is democratic contrary to Western contentions, but they emphasize the "for the people" characteristic, more or less ignoring direct popular participation in government.

Attacks on the Democratic Form During one period in the early twentieth century a good many people believed 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 herself 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 at least 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, the bitterness caused by defeat and the terms of the Treaty of Versailles on the part of the Germans, and the extreme nationalism 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. Certain unscrupulous men 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 practical efforts led to the temporary eclipse of democracies, such as France and Czechoslovakia. During the dark days following 1940 the future of the democratic form seemed most uncertain, even to its most devoted supporters. For a time the very existence of Great Britain, regarded by some 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.

Current Status of the Democratic Form But the experience growing out of World War II served to prove the innate soundness of the democratic 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 brilliant and daring tactical movements actually were able to bring about a complete capitulation of their enemies. 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 less stringent than in the 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. Two of the most powerful dictatorships, Germany and Japan, encountered decisive defeats at the hands of the democracies. But the events of the years following 1945 soon made it clear that totalitarianism still existed as a force to be reckoned with. Franco Spain, Peronist Argentina, and most important of all the Soviet Union and its satellites gave concrete evidence of the continued influence of antidemocratic forces at large in the world.

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 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 takes the form of the numerous interest groups which frequently seek to control public agencies for their own selfish and short-sighted 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 of their power. Under such a breakdown a second classification may be made. Under

this two common types are currently encountered: (1) the federal and (2) the unitary.

The Federal Form If a number of independent governments join together to handle certain problems, such as protection against external enemies, which they cannot take care of satisfactorily alone without surrendering their independence, it is said that a "confederation" has been formed. If the several governments go a step farther, give up their independence, and form a single integrated government, at the same time retaining certain powers, this is known as a "federal" type.[4] Under this system part of the political authority is conferred on the central government, while the remainder is reserved to the component subdivisions or to the people. The thirteen American 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 other authority was reserved to the states or to the people. Canada, Australia, Mexico, Brazil, Switzerland, Western Germany, and Argentina are current examples of federal government.[5]

The Unitary Form If all of the political 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 administrative and local government purposes. But the authority resides in the central government alone 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 her counties a considerable measure of leeway.

Federalism versus Unitary Government in the United States While the United States was without doubt originally set up as a federal government, there are those who believe that federalism has now been displaced by unitary

[4] For additional discussion of the federal form of government, see 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.

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 within its limits. 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 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 places the emphasis upon the location of supreme governmental authority. Using this scale, governments may involve: (1) separation of power or (2) union of powers.

Separation of Powers The framers of the Constitution of the United States saw fit, in 1787, 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 characteristics which they associated with unsatisfactory government. 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 to be 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 jurisdiction—and by the President as regards appointments 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 requires 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. Indeed it was believed by some that Franklin D. Roosevelt had brought about permanent co-operation between the President and Congress following his efforts of 1933. 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 in the United States 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 the 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 working at cross-purposes which is all too common an experience in the United States The executive functions under the cabinet system of government are entrusted to a cabinet, the members of which are drawn from the dominant party or coalition of parties in the legislative branch. The cabinet drafts an over-all program 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 co-operation brings immediate reconstruction of the government.

Capitalism, Socialism, and Communism

It has been commonplace during recent years to classify governments on the basis of whether they seem to adhere to the capitalist, socialist, or communist systems—indeed one might gain the impression from reading the newspapers or listening to talk on the street corner that this is the only significant method of classification. Such a division of governments into categories is

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

[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.

based primarily on the status of property, though the role of the group versus the individual, the proper scope of public activity, and the ultimate existence of the state itself also enter in at least in theory.[8]

Capitalism A capitalist government provides for the private ownership of all forms of property, whether it be real property, personal property, or intangibles such as stocks and bonds. Personal initiative and enterprise are stressed under this type of government and the individual is regarded as especially important, though the group also may be recognized as significant. The basic role of the government under capitalism is to protect private property from the threats of thieves and mob violence as well as fires and other destructive forces and some would add to this general encouragement and assistance to business enterprise. There are perhaps no actual instances of pure capitalism in the world today, since everywhere the government owns and operates the postal system together with various public works and the complex problems of the day require more or less regulation and hence limitations on private enterprises. However, several governments maintain the institution of private property in large measure and pride themselves on permitting a large degree of personal initiative in business enterprises. The United States is probably the best example of a capitalist government today; Canada, the Union of South Africa, and certain other governments also belong to this category.

Socialism It is sometimes maintained that socialism involves the abolition of private property. It is true that various utopian schemes of a socialist character have proposed to vest the ownership of all forms of property in the government or in society. Under such utopias there is supposedly enough property of all kinds to meet the actual needs of everyone and hence everything belongs to everyone and each person takes what he needs from the common store. It is difficult to find any instance of this kind of utopian or pure socialism on more than a very small scale and even such experiments have ordinarily not been able to keep going for more than brief periods. Socialism in so far as it relates to governments stands for a modification of the system of private ownership of property rather than its complete abandonment. Governments are vested with the ownership of important natural resources, such as coal deposits, iron mines, and oil wells, and own and operate utilities, such as the railroads, telephone and telegraph lines, and electric and gas generating and distributing facilities. Socialism may also extend to government ownership and operation of certain key industries, such as steel and cement, and various credit facilities, such as large central banks and insurance companies. Other property, whether it be farm land, city business and residential buildings, industrial enterprises, wholesale and retail trade, personal property, or intangibles, remains in private hands. Virtually all modern govern-

[8] For additional discussion, see J. A. Schumpeter, *Capitalism, Socialism, and Democracy*, rev. ed., Harper & Brothers, New York, 1950.

ments involve a certain amount of socialism, since it is invariably the custom at present to have public post office systems, government arsenals and naval yards, central banks, and various projects such as Tennessee Valley Authorities and Commodity Credit Corporations to maintain some degree of stability in agricultural production But some governments, such as the United States, are suspicious of socialist principles and limit socialist enterprises to only a small proportion of the field, whereas others, such as Britain, France, Italy, Western Germany, and the Scandinavian countries, take socialist programs within reason more or less for granted. Thus they provide for government ownership and operation of such enterprises as coal mines, telephone and telegraph systems, railroads, and electric utilities. It should be noted that the role of private ownership remains fairly large in most of these countries despite the socialist programs of the government. In Britain, for example, the deputy prime minister and Labor leader, Herbert Morrison, recently stated in a public address that socialization either covered or would cover approximately twenty per cent of the field, leaving eighty per cent of property under private ownership.[9]

Communism The term "communism" has been used in so many connections and with such disregard of preciseness that it is difficult to present a meaningful discussion. Few terms have as great an emotional context as this word. All too many persons apply the adjective "communist" to everything irrespective of character which they find objectionable. If one approaches the discussion from the standpoint of theory it is necessary to go back to the nineteenth century writings of such men as Karl Marx and F. Engels and then to examine the more recent commentaries of Lenin, Trotzky, and perhaps Stalin. Marx and Engels branded the state as an evil thing which was invented by a few wealthy men to exploit the rank and file of the people. They proposed a revolution of the people which would take over the government and carry on a program of acquiring the industrial property, natural resources, land, credit facilities, and indeed virtually all property in the name of the people. Another responsibility of the government would be to deal with the enemies of the people in such a manner that they would no longer constitute a threat. When these functions had been completed, then according to Marx and Engels at least there would be no further need for government and it could be permitted to "wither away." The final stage of communism would then begin and people would find life a virtual heaven on earth, with everyone taking everything which he needed out of the common store and all human beings so socially responsible that there would be no need for laws, police forces, and other governmental controls.

Long after the tenets of communism were set down by Marx and Engels

[9] See the *London Times*, September 13, 1948. For a lucid account of detailed programs in Britain by a Labor official, see Francis Williams, *Socialist Britain*, The Viking Press, New York, 1949.

there was very little practical significance attached to the system. A few more or less strange souls professed to believe in such a doctrine and there were even groups which proclaimed the principles without causing much excitement. It was not until Lenin and his associates carried through the revolution in Russia during World War I that communism came to have any considerable practical importance. Since that time it has been one of the most frequently used words in the various languages of the world. The leading example of communism is, of course, the U.S.S.R., though during the years since World War II various other countries, including China, Roumania, Bulgaria, Hungary, Czechoslovakia, and Poland, have joined the cause. Thus far there has been no "withering away" of the state in any of these countries—indeed the role of the state is far greater than it ever was under previous regimes and it is commonplace to refer to all of them as "police states" because of the all-embracing activities carried on by the government.[10] Private property has been taken over through confiscation to a greater or less degree in all cases, though even in the Soviet Union where the process has gone farthest it is still possible to own individual houses, personal objects, and savings accounts.[11]

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 three 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 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. Certainly a definite division must be made unless there is to be conflict and duplication. 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 carried out 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 exercised by either government. Having arrived at this conclusion it remained to enumerate the

[10] Those who desire further material relating to the theory of communism may consult the following: Karl Marx and Friedrich Engels, *Manifesto of the Communist Party*, International Publishers, New York, 1948, Joseph Stalin, *Foundations of Leninism*, International Publishers, New York, 1932.

[11] For additional discussion of communism as currently active in the Soviet Union, see J. Towster, *Political Power in the U S S.R, 1917–1947*, Oxford University Press, New York, 1948.

powers which were to belong to the national government and this was done under some eighteen headings in the Constitution. The difficulties of 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.

Supremacy In so far as the national government was given certain powers it is supreme in the exercise of those powers. Moreover, the states are not permitted in the carrying out of their functions to interfere with the national government. 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 surpass those of the states in importance, the supremacy of the national 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 case of *McCulloch* v. *Maryland*.[12] 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 national government 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.[13]

Limitations Although the framers of the Constitution recognized the necessity 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 except in cases of rebellion or invasion.

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

[13] 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 24.

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. These will be discussed in detail at a subsequent point.[14]

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[14] See Chap. 7.

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2. The Colonial Period and the Birth of the Republic

The Colonial Period

So much emphasis has been placed upon the historic events attending the birth of the United States and upon the developments which have taken place since that time that it is often forgotten that political experience in North America covers approximately three centuries. It is true that much of what took place during the period prior to the late eighteenth century was on a small scale when compared to more recent happenings, but nonetheless one cannot adequately comprehend later trends unless these earlier events are taken into account.

First Settlements There is some question as to when the first settlements were made on what is now the territory of the United States. Some would give credit to the Norsemen as the discoverers and place the first landings as early as the year 1000 or thereabouts. Others believe that the Spaniards coming several centuries later deserve the reputation which they have traditionally enjoyed for many years. Be that as it may, the fate of these very early settlements was such that they are hardly significant from the standpoint of political institutions. The New England town or township goes back to the early seventeenth century and the first county was established in Virginia in 1634.[1] New York City claims to be the first formally chartered municipality, having received a Dutch charter in 1652 and an English charter in 1686. Hence from the first half of the seventeenth century there has been a continuous political experience which has contributed to the development of American political institutions. Of course these early settlements along the eastern seaboard did not start empty-handed, since their inhabitants migrated to the New World from countries such as England where political institutions had been evolving for more than a thousand years. These daring men and women, frequently driven on by the desire for religious freedom which was lacking in their European homelands, brought with them at least rudimentary knowledge of governmental structure and practices. Since the greatest number came from England, the influence of English political and legal institutions

[1] For early developments in the county field, see J. A. Fairlie and C. M. Kneier, *County Government and Administration*, D. Appleton-Century Company, New York, 1930, Chaps. 1–3.

was particularly significant in the setting up of pioneer governments in Massachusetts, Virginia, and other eastern colonies. In New York the Dutch influence played some part, while in Louisiana and the Southwest the French and Spanish foundations are apparent even to this day.

The Thirteen Colonies While one ought not overlook the impact of French political ideas on Louisiana and the Spanish contribution in California, Texas, Arizona, and New Mexico, it was in the thirteen colonies stretching along the Atlantic seaboard that the most important political developments took place.[2] The culmination of the political experience in these colonies resulted in the Revolution breaking out in 1775 and the subsequent Declaration of Independence from England and in turn led to the establishment of the republic in 1789. But more than that, it was important because the settlers who crossed the Alleghany Mountains to Ohio, Kentucky, Tennessee, Michigan, Indiana, Illinois, Alabama and other western lands and eventually pushed on beyond the Mississippi across the plains to the Rocky Mountain area and then to the Pacific largely came from these thirteen original colonies or states. And they naturally took with them the knowledge arising out of their observation of and participation in the political institutions of those places. The result was that the governments set up in these western areas were patterned more or less closely on those of the thirteen states which had succeeded the thirteen colonies and whose state systems of government were the outgrowth of their colonial governments.

Character of the Colonial Governments Inasmuch as the thirteen colonies were settled by diverse groups who had different purposes in view, there was naturally a considerable variation in the provisions made for a government. Those which were granted to a proprietor, such as William Penn, obviously had a somewhat different governmental organization than royal colonies, such as Massachusetts and Virginia. The fact that some of them were situated to the north and others well to the south, that some were primarily interested in large-scale agricultural undertakings while others looked more to trade and small farming also made it necessary to diversify. Thus Massachusetts made the town the basic unit of government, while in the southern colonies built around plantation life the county came to that position. However, if there was a considerable amount of variation among the thirteen colonies, there was also a good deal of similarity. With the exception of Pennsylvania, Maryland, Connecticut, Delaware, and Rhode Island, all of the colonies became royal provinces, with governors appointed by the king of England. The non-royal provinces named above gradually became more and more like the others under charters issued by the British crown. In every case the colonies had legislatures and these increasingly sought to exercise more and more authority over local affairs. The court systems of the thirteen colonies

[2] For additional discussion, see H. C. Hockett, *The Constitutional History of the United States*, 2 vols., The Macmillan Company, New York, 1939, Vol. I, Chap. 7.

were rather similar and all recognized the common law as a legal basis. To a greater or less degree all of the colonies found themselves engaged in controversy with the authorities in London, since they saw their problems from the vantage point of the New World whereas the officials in England naturally looked upon the colonies as subordinate to the mother country. But the surprising thing is that, contrary to popular assumption, the colonies enjoyed a large measure of autonomy. The attitude of the London government may have been unsympathetic at times, but there was no effective provision made in England for colonial control—the Colonial Office did not exist at the time. With transportation and communication facilities still crude and three thousand miles of ocean separating the mother country from the colonies in North America, the colonies followed their own desires very largely. If Parliament decided to regulate their trade, the colonies usually managed to evade the rules. Perhaps most incredible of all, they paid no taxes into the English treasury. Instead of being garrisoned with British troops, the colonies ordinarily depended upon their own resources for protection.

The Revolution During the middle of the eighteenth century the British authorities sought to inaugurate a more effective system of control over the American colonies. They thought it appropriate to send military forces to serve as garrisons at various strategic points in order to protect their possessions from foreign aggression. It also seemed desirable to enforce the regulations relating to trade which had been on the statute books but rarely observed across the Atlantic. They also felt that it was only fair that the colonies should pay part of the cost arising out of their administration and therefore proposed to levy certain taxes. But the colonies had enjoyed freedom too long to appreciate these new controls. While the taxes involved were relatively light, the colonists violently objected to the principle involved, maintaining that they should be expected to pay only such taxes as they or their representatives had voted. They disputed the right of Parliament to legislate for them, though they admitted their responsibility to the crown. The presence of British redcoats seemed to them an insult rather than a measure for their protection. Thus the tension between colonies and mother country became more and more serious. Had there been a king on the throne who clearly understood matters or who displayed greater skill in dealing with a sensitive group of subjects, the final break might have been avoided or at least postponed. As it was, revolution broke out in 1775.[3]

The Declaration of Independence On July 4, 1776, the assembled representatives of the colonies adopted a Declaration of Independence from the mother country. Even as early as 1774 delegates from the various colonies had gathered in Philadelphia under the guise of a First Continental Congress to give attention to the struggle with England. A Second Continental Congress

[3] For a more detailed discussion of the events leading to the Revolution, see Carl Becker, *The Eve of the Revolution*, Yale University Press, New Haven, 1918.

convened in 1775 and this Congress in 1776 finally decided to take the final step of severing connections with the mother country. On June 7, 1776, Richard Henry Lee of Virginia moved three resolutions one of which provided for a declaration of independence, and John Adams of Massachusetts seconded the resolutions. On June 10, 1776, the Congress adopted a motion which had the effect of setting up a committee composed of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston to draft a resolution relating to independence. Thomas Jefferson was given the task by the committee of actually framing such a resolution and he brought to the assignment one of the most gifted pens which has ever been set to the writing of a state paper. Jefferson consulted Adams and Franklin on various points and inserted into his draft various suggestions which they made. On June 28, 1776, the committee reported the resolution without change and on July 2, 1776, Congress adopted Lee's first resolution and thus in the opinion of some authorities actually declared independence from England. However, the draft prepared by Jefferson was not adopted until July 4, after several changes had been made and this is of course ordinarily regarded as the birthday of the United States.[4]

Early State Constitutions and Governments

Revolutionary State Constitutions With the outbreak of war in 1774, colonial governors frequently left their posts and some provision had to be made for the conduct of the several governments. Various conventions were chosen to assume the responsibility for governmental affairs and the Continental Congress sent word to each colony that it would be desirable to take steps to reorganize their governments in such a fashion as to meet their individual requirements. As the hostilities proceeded and independence became imminent, there was increasing disposition to dislike the term "colony" which suggested intolerable dependence and it became customary to substitute the word "state" for "colony." What had been regarded in some quarters at least as temporary measures therefore came to be looked upon as permanent. With this new attitude, it was to be expected that constitutions would be drafted for the various states. Rhode Island and Connecticut, having royal charters which seemed reasonably satisfactory, simply changed a few phrases and converted their charters into constitutions. The other states preferred to start afresh and draft new constitutions. By 1780 the last of the states, Massachusetts, had taken this step. Some of these constitutions were very brief affairs which were prepared rather hastily; others were somewhat more detailed and carefully phrased. In only Massachusetts and New Hampshire were special

[4] The text of the Declaration of Independence may be found in numerous collections. A convenient source which includes a helpful explanatory note is Francis W. Coker, ed., *Democracy, Liberty, and Property*, The Macmillan Company, New York, 1942, pp. 59-64.

conventions chosen to prepare constitutions; in the other states this task was performed by assemblies that gave their attention to various problems confronting the states. In about half of the states the documents were submitted to a popular vote for approval but in the others they were put into effect by the process of legislative promulgation.

Early State Governments While the revolutionary state constitutions varied a great deal in their details, as might be expected, they presented an impressive degree of uniformity in basic matters. In every case they provided for a state government made up of three separate branches: executive, legislative, and judicial, each with certain checks over the others. Governors were everywhere authorized, but their scope was limited because of the experience which the colonies had had with their royal governors. In all except four of the states the governor was chosen during early days by the legislature and in ten of the states he was elected for only one year. Massachusetts was the only state to confer the veto power on its governor to begin with. In every case the governor was checked in making appointments by a council or by the legislature. Most of the states provided bicameral legislative bodies, though Pennsylvania and Georgia may be regarded as exceptions, since for various periods they maintained unicameral legislatures.[5] Everywhere the powers of the legislative branch were quite extensive, though except in South Carolina election to the lower house was on an annual basis. The court systems were taken over more or less intact from colonial days, with courts of three grades being authorized. Judges who had been selected by London during colonial days were made elective by the legislature in about half of the states and appointive by the governor, assisted by a council or the senate, in some instances, in the others. Local government received very little modification, with the town the basic unit in New England, the county in the southern states, and a mixed system in the middle states. In general, the new constitutions laid strong emphasis on civil rights, though not all included formal bills of rights. However, despite provisions for trial by jury, freedom of speech, religion, and the press, and the writ of habeas corpus, suffrage was limited to male property holders everywhere.

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 a central government.[6] But the several states had developed such a local

[5] Pennsylvania retained a unicameral legislature until 1790, while Georgia made such a provision during the period 1777–1789. Vermont employed a unicameral legislature from 1791 to 1836.

[6] The text of the Articles of Confederation has been frequently reproduced in various collections. One convenient source is J. M. Mathews and C. A. Berdahl, *Documents and Readings in American Government*, rev. ed., The Macmillan Company, New York, 1940, pp. 27–34.

pride and were so jealous of their individual authority that Congress found it necessary to exercise great caution in taking action, making provision only for a loose confederation of more or less independent states rather than for a federal or unitary type of government. Under the Confederation which was set up the states retained a large measure of sovereignty and reluctantly entered into an agreement to tolerate a central government only to grapple with certain vexing matters which were the source of serious difficulty. Even with the weak character of the Confederation, ratification was not completed until 1781, when Maryland was finally 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 various states, ranging from two to seven in number.[7] But the size of a state delegation mattered little, since each state had only one vote in Congress irrespective of the size of its delegation. Delegates were elected on an annual basis and paid by their own states, no delegates 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 accomplish any important action in the new government. 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 if it was desired to add amendments to the Articles of Confederation.

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, deal with 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 therefore it was forced to depend upon requisitions made upon the states and these unfortunately were all too often not met. Nor could Congress regulate interstate commerce or even commerce with foreign countries except indirectly through its treaty-making power. It can readily be seen that these were exceedingly serious weaknesses. To make matters more critical, a paralyzing depression made financial grants from the states most uncertain and was at least partially responsible for leading 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 actually ever paid in—the Confederation could obviously not exercise in any satisfactory manner even the very limited authority conferred upon it. The result was that the situation became more and more critical and the demands for some sort of change reached large proportions.

[7] For a detailed examination of the provisions of the Articles, see M. Jensen, *The Articles of Confederation*, University of Wisconsin Press, Madison, 1940.

The Alexandria and the Annapolis Conferences With the widespread domestic order threatened, the increasing disposition of the western settlers to question the authority of the states, a weak handling of relations with foreign nations, and numerous interstate commercial squabbles, various proposals were forthcoming as to possible courses of 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 commerce carried on among the various states 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 it obviously could do very little beyond discussing the underlying difficulties. However, it did prepare a report drafted by Alexander Hamilton which pointed out in an incisive manner the general 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 in regard to the method of choosing delegates to the Philadelphia convention to be held in 1787; actually they were selected in every case by the state legislatures.

The Delegates Seventy-three delegates were designated by twelve of the 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 background, characteristics and 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 American history has there been a public assemblage with as many outstandingly able men as the convention which met in Philadelphia in 1787.[8]

[8] For portrayals of the various delegates, see B. J. Hendrick, *Bulwark of the Republic: A Biography of the Constitution*, Little, Brown & Company, Boston, 1938.

Outstanding Members To begin with, there was George Washington with the immense prestige gained from his role in leading the colonies to independence. Then there was Benjamin Franklin whose many years had been filled with a variety of valuable public and private experiences, who at the time was so aged and infirm that he could hardly speak above a whisper and had to be helped to his feet when he addressed the convention, but his sage judgment proved most helpful at several critical points. The brilliant young James Madison [9] perhaps contributed more than any other delegate to the detailed provisions of the new Constitution and certainly added substantial strength to the convention. James Wilson and Gouverneur Morris, less scintillating as personalities than certain others perhaps, nevertheless performed very important services. Alexander Hamilton, though less active than those mentioned above, deserves specific mention. Thomas Jefferson, who might ordinarily have been an outstanding member, was not a delegate because of absence in Europe on important public business.

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-trained men. In general, the delegates came from the upper middle class and had somewhat conservative attitudes, especially in economic matters. Small farmers and laborers did not have sufficient political strength at the time to warrant their selection as delegates by the various state legislatures. The late Dr. Charles A. Beard once studied the property interests of the delegates and found that many owned government securities, insurance stock, and western lands.[10] On this basis some have concluded that the work performed at Philadelphia can be interpreted largely if not entirely in economic terms. One cannot doubt that some delegates were influenced by such factors, but many of the land and other property holdings were small while their owners were men of more than ordinarily broad interests. Therefore to explain the Constitution exclusively 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. On that day a meeting was held in Independence Hall and George Washington was chosen as presiding officer. For three and a half

[9] For an illuminating study of James Madison, see Irving Brant, *James Madison. Father of the Constitution*, Bobbs-Merrill Company, Indianapolis, 1950.

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

months meetings were held during one of the hottest summers on record, with rarely more than thirty or so in attendance.[11] 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 consequences of such an arrangement and hence violently opposed the plan.

The New Jersey Plan and the Compromise To counter 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 more populous 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

[11] The official proceedings of the convention have been reproduced in *Documentary History of the Constitution, 1786-1870*, Government Printing Office, Washington, 1894–1905, Vol. I, pp. 48–308. Other convenient sources of information are: Max Farrand, ed., *The Records of the Federal Convention*, 4 vols., Yale University Press, New Haven, 1937; James Madison, *The Debates in the Federal Convention of 1787*, ed. by G. Hunt and J. B. Scott, Oxford University Press, New York, 1920, Charles Warren, *Making the Constitution*, Little, Brown & Company, Boston, 1937; and A. T. Prescott, comp., *Drafting the Federal Constitution*, Louisiana State University Press, Baton Rouge, 1941.

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 he was to be designated 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 re-election. A less satisfactory solution was proposed and finally approved 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 to the President. Nevertheless, remembering the autocratic colonial governors, care was exercised lest the executive 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 in the field of 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 quite naturally favored rather extensive national control over commerce. But the latter feared the possible use of such authority against their local interests. It was not surprisingly finally agreed that trade crossing state lines and commerce with foreign nations might properly be regulated by Congress, leaving commerce within the borders of a single state by implication under state control. No taxes on exports were to be permitted, though authorization for import taxes was given to the central government. Importation of slaves could not be prohibited until 1808; nor could a head tax exceeding $10 be levied on each person imported from abroad.

Judiciary There was some difference of opinion among the delegates as to a system of courts. Certain members saw no need for any courts beyond the state level, 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 finally decided to dispose of that difficulty by giving Congress the power to establish such lower federal courts as might seem desirable, but no specific federal courts below the Supreme Court were provided. It was to be expected that the jurisdiction of the federal judiciary would be limited to federal matters, to disputes among the several states, and to cases involving diversity of citizenship.

Characteristics and Contents of The Constitution of 1787

General Characteristics In the paragraphs above attention was given to the difficult decisions which had to be reached by the convention which met in Philadelphia in 1787 in regard to the composition of Congress, the nature of the presidency, 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 only about ten pages in the Appendix of this book. It is shorter than most national constitutions and indeed is less than one tenth as voluminous as a number of the American 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 the brevity of the Constitution has been an asset rather than a liability during the more than 160 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 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. Article VII runs to but one sentence of two printed lines and has to do with the ratification of the Constitution.

Ratification and Starting of the New Government

Debate on Ratification Having finished its extended 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 farsighted 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, as one would expect. Some felt quite strongly about the complete displacement of the Articles of Confederation, 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 as was proposed. 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 which followed submission of the proposed Constitution to the states 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.[12] 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.[13] Rhode Island did not see fit to call a convention to consider the adoption of the draft constitution.

The New Government On September 13, 1788, the Congress of the Confederation called on the states to choose presidential electors, Senators, and Representatives.[14] 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. All of this required time and certain steps in this direction were delayed until 1790 or even later.

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[12] Modern students will probably find the edition by Charles A. Beard under the title *The Enduring Federalist*, Doubleday and Company, Garden City, 1948, particularly valuable.

[13] 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.

[14] For additional discussion of the events leading to the establishment of the new government, see C. B. Swisher, *American Constitutional Development*, Houghton Mifflin Company, Boston, 1943, Chap. 3.

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3. The Constitutional System

Narrow and Broad Definitions

The term "constitution" has been so loosely used by writers dealing with the United States and other governments that it has a very vague meaning to the rank and file of American citizens. There are at least two meanings attached to the term which are in common usage: (1) the narrow concept and (2) the broad concept. Both of these are so important that they should be familiar to every serious student of political institutions.

The Narrow Definition In the narrow sense a constitution is a single public document or state paper which is specifically drafted by a convention or occasionally by a single person to serve as the foundation of a given government. It is the work of a single group of men, usually elected by the voters for the purpose, and represents the thinking of a limited period of time. It is sometimes very brief, running to only a few printed pages in length, for example in the case of the early state constitutions mentioned in the preceding chapter; again it may run to several hundred closely printed pages, as in the case of the new Indian Constitution which, becoming effective in 1950, covers approximately 250 pages. It may be prepared with great care on the basis of meticulous consideration of almost every phrase or it may be rather hastily thrown together as was the case with the constitution of the Third Republic in France on the assumption that it would be supplanted by something else shortly. Such a constitution is ordinarily divided into major sections dealing with the executive, legislative, and judicial branches, administrative agencies, public finance, and so forth. It may or may not start out with a preamble which consists of a bill of rights. It is ordinarily subdivided into smaller sections which are designated "articles" and which contain the detailed provisions. It specifies the structure of government at least in a general way and may be quite detailed in this respect. It also indicates what powers may be exercised by the government and ordinarily contains provisions which prohibit the use of certain authority. The Constitution of 1787 which was drawn up in Philadelphia is an example of this sort of constitution. It is sometimes not realized that not all governments have such a constitution, though the newer ones with rare exceptions do. Britain is the classic example of a major country which has no constitution in the narrow sense, though it can boast of numerous state papers which are important not only within its own confines but throughout the Western

world. The Great Charter dating from the thirteenth century is occasionally referred to as a constitution in the narrow sense, but, despite its historic significance, this public document is not a constitution.

The Broad Definition In a broad sense a constitution is the sum total of the elements which serve as a basic foundation of a government. Here one finds major legislative acts, various significant usages and conventions, historic state papers such as the Great Charter in Britain, and, if judicial review is recognized, important decisions of the courts. Included in this group of elements there may or may not be a constitution in the narrow sense. In the United States the Constitution of 1787 is a very important part of the entirety, while in Britain such a single formal constitution is not to be found, as was pointed out above. It is sometimes assumed that the difference between a narrow sort of constitution and a broad constitutional system is that the former is in written form while the latter is unwritten in character. This is actually not the case, since even in the latter type of constitution most of the elements are in written form, i.e. legislative statutes, court decisions, and historic state papers, though usages and customs are unwritten.

Dangers Arising out of Improper Usage of Terms Either the narrow or the broad meaning of the term "constitution" may be properly used *if* one is clear exactly which meaning is intended. However, great difficulty can be encountered if the two meanings are employed more or less interchangeably. It is particularly dangerous to compare a narrow constitution, such as the American Constitution of 1787, with a broad constitution, such as the British Constitution, for the results are likely to be misleading and even grotesque. Yet many persons who might be expected to know better actually do fall into such an error. Hence they conclude that the British Constitution has almost no limitations and gives the fullest freedom to the government to meet every problem which confronts it, whereas the Constitution of the United States is filled with restrictions which make it difficult if not impossible for the United States government to deal with pressing issues. If one is making comparisons one should compare narrow constitutions with narrow constitutions and broad constitutions with broad constitutions. Because Britain has no constitution in the narrow sense, it is justifiable to compare her constitution only with the broad constitution of the United States or other countries. If this is done, it is discovered that there is not a great deal of difference in the actual authority conferred on the governments of Britain and the United States. Both find it difficult at times to deal with current problems because of powerful traditions and both have been given substantial authority to take care of most of the major matters of state.

Narrow and Broad Constitutions in the United States While it is quite profitable to study the various sections of the Constitution of 1787, the narrow constitution of the United States, primary emphasis should be placed on the broad constitutional system if one desires an adequate understanding of

American government today. The Constitution of 1787 is a remarkable document which ranks high among state papers of all nations. Few comparable documents equal the Constitution of 1787 in fine phraseology. Considering the time when it was drafted, its provisions strike one as exceptionally far-sighted. But the Constitution of 1787 was prepared at a time when the United States was inhabited by only a few million people residing along the Atlantic seaboard. The economy of the country was largely of the hand-operated variety and transportation had not even reached the horse and buggy days that President Franklin D. Roosevelt was fond of talking about. A nation which is the most highly industrialized in the world, covering an area of some three million square miles stretching from the Atlantic to the Pacific, with a population of 150,000,000, and with problems so complex that they were undreamed of only two or three decades ago, could not possibly handle its many affairs on the basis of the Constitution of 1787 alone. It is the broad constitutional system which serves as the foundation of government in the United States today and makes it possible to meet the problems that arise.

Elements of the American Constitutional System

The constitutional system of the United States in its broad sense is made up of five major elements which should be kept well in mind by all of those who seek an adequate knowledge of American government.[1] These are as follows: (1) the Constitution of 1787, (2) the formal amendments which have been added to this Constitution since 1789, (3) decisions of the Supreme Court and other courts which interpret the provisions of the formal constitution and the amendments which have been added, (4) major laws which have been passed by Congress for the purpose of developing the constitutional system, and (5) numerous customs, traditions, conventions, and usages which have grown up around the political institutions of the United States during the course of more than a century and a half. In the previous chapter attention was given to the Constitution of 1787 and it is therefore not necessary to repeat that discussion here. In the remainder of this chapter an examination will be undertaken of the other four elements.

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. Amend-

[1] A number of very satisfactory treatises dealing with the broader constitution and its development are available Among these may be mentioned C. B. Swisher, *American Constitutional Development*, Houghton Mifflin Company, Boston, 1943; B. F. Wright, *Growth of American Constitutional Law*, Reynal and Hitchock, New York, 1942; and P. T. Fenn, *The Development of the Constitution*, Appleton-Century-Crofts, Inc , New York, 1948.

ments 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 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. There are thus four possible methods of amending the Constitution: (1) proposal by Congress and ratification by the legislatures of three fourths of the states, (2) proposal by Congress and ratification by conventions in three fourths of the states, (3) proposal by a national convention called by Congress on the request of the legislatures of two thirds of the states, and ratification by the legislatures of three fourths of the states, and (4) proposal by a national convention called by Congress on the request of the legislatures of two thirds of the states and ratification by conventions in three fourths of the states. 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 and consequently made such a stipulation.

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 under a democratic system with 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 four thousand joint resolutions introduced in Congress since 1789 calling for amendment proposals only twenty-seven have been endorsed by both houses.[3] Of these, twenty-one have, of course, been ratified by the

[2] See *Hollingsworth et al* v *Virginia*, 3 Dallas 378 (1798).

[3] See M. A Musmanno, "Proposed Amendments to the Constitution," *United States Senate Document 93*, 69th Congress, 1st session, Government Printing Office, Washington, 1926; J. Tanger, "Recent Proposals to Amend the Constitution of the United States," *Temple Law Quarterly*, November, 1936, E. A. Halsey, comp., *Proposed Amendments to the Constitution of the United States Introduced in Congress December 6, 1926 January 3, 1941*, Public Affairs Press, Washington, 1941. There were 740 proposals to amend introduced during the years 1926 1941. During the first century 1964 proposals to amend were introduced and between the years 1889 and 1941 an additional 2056. Fifty or more proposals are regularly made each year.

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, even considering that these figures include duplications.

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 one of the most rigid constitutions in the modern world. If the formal process were the only means of changing the constitutional system of the United States, the situation would be 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 was forced to get along without highly desirable changes. Considerable credit for the fact that the latter is not true in any large measure must be given to the framers for their 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. However, even after this explanation has been noted, the number of amendments remains very small. Nevertheless, the actual situation is far less serious than it seems on its face. Many important changes in the constitutional system have been made by judicial decisions; others have been brought about by statute. Despite this, it is probably fair to state that the process of formal amendment in the United States is unnecessarily cumbersome. It has made it essential to develop certain roundabout methods which have been reasonably effective but which at the same time may have encouraged the growth of lack of respect for law, the prevalence of political manipulation, and kindred political evils.

American and British Constitutions Compared The British Constitution is often characterized as one of the most flexible of all such instruments. Yet a careful comparison of the British and the American constitutional systems fails to reveal any great difference in amount of actual 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: nationalization and the regulation of business, social security perhaps, and the application of the merit principle to the public service. In certain other respects the United States has taken first place in changing its constitution to meet new conditions.

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 system 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

[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.

[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.

into considerable prominence during the recent years because of the very important series of cases decided by the Supreme Court involving Negroes and dealing with such matters as equal educational opportunities, right to adequate counsel, Pullman accommodations, 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 the United States nor a state shall deny the voting privilege on "account of race, color, or previous condition of servitude."

Sixteenth Amendment 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.

Seventeenth Amendment 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. In that period this amendment was considered as of far-reaching importance; promises were made that it would do away with the senatorial seats of political bosses, such as Matt Quay and Tom Platt, as well as with the unsavory connections which had been revealed by the "muckrakers" between certain Senators and "big business." However, the experience of more than a third of a century has indicated that direct election has probably not greatly changed senatorial character.[13]

Eighteenth and Twenty-first Amendments While there are several sections of the formal Constitution which, as has been pointed out, are not at present

[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), *Smith* v *Allwright*, 321 U S 649 (1944).

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

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

[13] The late Senator James E Watson believed that the quality has been reduced by direct election. See his *As I Knew Them*, The Bobbs-Merrill Company, Indianapolis, 1936.

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 virtually 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 that 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 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 and hence are largely of historical interest at present. The remaining amendments are responsible for moderate and on the whole necessary changes. However, it is quite clear that the most important changes which have taken place 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, Congress has specified a time limit of seven years for ratification.[14] The Supreme Court in *Dillon* v. *Gloss* [15] (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.[16] 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.[17] On the other hand,

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

no state may withdraw a favorable action after the Secretary of State has been notified.[18] In *Hawke* v. *Smith* (1920) [19] 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 Constituion and therefore could not be allowed.

Judicial Interpretation

Marbury v. Madison [20] Although the Supreme Court did not play an outstanding role during the first years of its operation, during the early years of the nineteenth century it began 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 was not disposed to be friendly; indeed he made no bones of resenting the last-minute action of his predecessor in filling vacancies on the bench of the court. Hence 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 [21] 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, 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

[18] 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).

[19] 253 U.S. 221 (1920).

[20] 1 Cranch 137 (1803).

[21] 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.

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 exercised 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.[22]

What Is Involved in Judicial Interpretation In lecturing at the Law School of Columbia University, the late 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."[23] 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. 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. In examining the clause which gives Congress the power to regulate interstate and foreign commerce, the Supreme Court has had to decide hundreds of points which are based on that clause. Thus until 1944 insurance policies of various sorts had been held not to be included under it, while transportation of goods and persons, including even stolen automobiles and white slaves, the Supreme Court declared to be interstate commerce.[24] Taking the decisions relating to the commerce clause alone, one has a very extensive body of interpretations which constitute a substantial part of the constitutional system of the United States.

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

[22] 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.

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

[24] On insurance the definitive case was long *Paul* v. *Virginia*, 8 Wall. 168 (1869). However, in 1944 a sharply divided court reversed this long line of cases in the Southeastern Underwriters' Association case. On stolen automobiles, see *Brooks* v. *United States*, 267 U.S. 432 (1925). On white slaves, see *Hoke* v. *United States*, 227 U.S. 308 (1913).

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 at times made progress difficult. On the other hand, unless considerable attention were paid to past interpretations, there would be little or no relation between interpretations of yesterday, today, and tomorrow. In reality it is impossible to conceive of a situation in which reasonable attention would not be given to previous interpretations. Most of those who condemn the principle of precedent really do not want its abandonment but rather its modification—they would have the Supreme Court follow precedent less closely.

Examples of Judicial Contributions to the Constitutional System Perhaps the most important element of the American constitutional system which has been contributed by the Supreme Court is judicial interpretation itself. 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 single 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 interpretation. The scope of congressional powers is defined in such general terms in the formal Constitution that it is very difficult to gain a clear picture. By studying the numerous cases in which the Supreme Court has examined in some detail these congressional powers, a much more satisfactory understanding may be obtained. 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 increasing 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

Diversity Among Statutes During the course of a single year Congress transacts an enormous amount of business in the form of statutes, joint reso-

lutions, and other types of acts. By no means all of these have any constitutional significance; as a matter of fact only a comparatively small proportion have to do with such important matters as to be ranked in the constitutional system of the United States. 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. Hence the composition, organization, rules, and appellate jurisdiction of the Supreme Court have been provided for by congressional action. 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 stem from such a source rather than from the Constitution. It may be seen, therefore, that the judicial aspect of the American constitutional system is as largely the result of statutes passed from time to time by Congress as of the Constitution itself. 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 major administrative departments of the national government have been set up by statute. In addition, most 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. The Foreign Service of the United States, the Army, the Navy, and the Marine Corps are very largely based on the statutes which Congress has passed under the broad terms of the Constitution relating to diplomatic and military affairs. Large numbers of other statutes which have had a great deal to do with the structure and functions of American government might be cited, but it will suffice here to say that their total import is considerably beyond that of the formal amendments.

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 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 significantly 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 groups. Yet the Constitution makes no provision for political parties. The framers were wont to look upon such organizations with great suspicion and believed that they would ruin the young government if given any leeway. 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 specific 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. Some chief executives lean more heavily on the cabinet than others, but they all recognize it to some extent, although aside from custom and usage they might abolish it at any time.

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 well known that electors are at present mere figureheads who cast their votes for the nominee of the political party which honored them. This revolutionary change has been accomplished without a formal amendment and is a clear indication that custom and usage may 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 respon-

sibility 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 the Senator from the state where the appointment is to be made the Senate will refuse its confirmation.

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4. Federalism—Intergovernmental Relations

The United States operates under a federal system of government rather than under the unitary type which is characteristic of Great Britain, France, and many under countries.[1] After the experience during the colonial period and the consequent strong feeling of pride and self-importance which grew up in New York, Virginia, Massachusetts, Pennsylvania, and the other colonies it was more or less inevitable that federalism be adopted as a basic principle for the new American government provided for in the Constitution of 1787. In this chapter it is desirable to examine the various relationships which characterize federalism in the United States. First of all, the responsibilities of the national government to the states will be canvassed; then it will be appropriate to look at the techniques which are employed to bring about some degree of federal control over the state governments. Finally, it is essential to consider the relations of the states to each other.

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." [2] Although the states support state police forces and National Guard units to which they have access during ordinary times, in periods of emergency these may not suffice to maintain law and order. Hence there is the constitutional charge on the national government to protect state territory against foreign invasion. This is, of course, a more or less obvious responsibility which would be exercised whether there were the stated obligation or not—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 disruptions through-

[1] For further discussion of the differences characterizing federal and unitary government, see Chap. 1.

[2] Art. IV, sec. 4.

out 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.

Federal Action without State Request 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. Because of prolonged labor difficulties President Cleveland sent federal troops to Illinois although Governor John P. Altgeld not only did not ask but openly resented such action. The explanation offered for such an unwelcome step was the necessity of protecting the mails. Acting under his military powers President F. D. Roosevelt, in 1941, without waiting for a state request sent in troops to bring order in the California plant of the North American Aviation Company. Thus it would seem that federal assistance is available not only in those rare instances when a state desires it, but also under certain circumstances when it does not ask for and even opposes such intervention. Military forces may not be sent into a state frequently in these days, but the "G-men" are regularly stationed in sizable cities throughout the country and are likely to congregate in cities or states in which the local authorities fail to keep crime within reasonable limits. The local police may resent the presence of the federal agents—as has been the case at times; yet there is very little that they can do about it beyond refusing to co-operate. Even that course may be dangerous, for the "G-men" may bring pressure to have those local officials responsible removed.[3]

A Republican Form of Government Under the terms of the Constitution the national government guarantees a republican form of government to the states.[4] This clause reads very well, but an examination of the facts reveals that it does not always have significant 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.[5] 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

[3] It was alleged that such pressure from the F.B.I. resulted in the ousting of the chief of the state police force in Indiana

[4] Art IV, sec 4.

[5] 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).

occupy his attention; moreover, it would frequently be 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 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, an excellent example of which is found in the hesitancy with which Congress acts to guarantee republican government. If seats were refused or appropriations withheld, a great hue and cry would doubtless be raised—a situation rarely if ever relished by that body. 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 relatively free hand in scuttling the republican institutions of the states in which they operate. There may be widespread notoriety; the press may bring charges; occasionally a member of Congress will have the temerity to arise from his seat and castigate these arch enemies of popular government; but Congress does not find it expedient to take any action. Of course, if Hitler's "fifth columnists" had succeeded in taking over several state governments, Congress would certainly have acted; but this guarantee has done very little to ward off the attacks of the conventional type of political boss.

Territorial Integrity The framers of the Constitution were fearful that territory of their states might be taken away by the national government. Therefore, they inserted clauses which they believed would serve to prevent such action. Territory may not be separated from a state without its specific consent;[6] 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. Inasmuch as states are quite sensitive in these matters and since the prohibitions are absolute, there has been none of the manipulation which certain states have indulged in with counties. Indeed, such an effective barrier is set up that some maintain that even desirable changes are ruled out. Thus, despite all of the discussion about creating separate states in the metropolitan areas of New York and Chicago and despite the impressive arguments advanced for such action, no progress has been made in that direction. New York and Illinois, New Jersey and Indiana, Connecticut and Wisconsin would have to agree to such a course and it is almost inconceivable that their consent could be obtained. Nevertheless, under stress even these prohibitions can be stretched somewhat, as was done in dividing Virginia during the Civil War. The "consent" which Virginia gave was obtained from a group of Union supporters who were drawn almost entirely from what is now West Virginia—the section of Virginia which desired separate statehood.

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

Techniques of Federal Control over States

While some of the relations of the national government to the states are prescribed in the Constitution of 1787, as has been pointed out in the preceding paragraphs, many of the current relations are the result of more recent developments. There are five techniques which have been employed during the years to increase the degree of federal control beyond that specified in the Constitution of 1787. These are as follows: (1) actual assumption of state functions, (2) grants-in-aid, (3) use of state officials, (4) federal research, and (5) state-federal collaboration. These are significant enough to deserve discussion in the following paragraphs.

1. Actual Assumption of State Functions The most obvious method which the national government has employed in increasing its control over the states has been the actual taking over of state functions. Many 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. Therefore, the national government has quite naturally taken jurisdiction in matters once left to the states. Cases involving such federal exercise of power have invariably been brought to the Supreme Court, which has declared such a transfer of authority valid.

Extent of Assumption of State Functions The extent to which the national government has actually taken over the exercise of state functions is frequently exaggerated. It is true that there have been a number of instances over a period of 160 years, but they have not been commonplace. The expansion of the Federal Bureau of Investigation in the early thirties represents an action of this type. State and local police forces found themselves more or less helpless in the face of the gangsters who, making use of the latest weapons of crime, were literally terrorizing large sections of the country. Appeals were lodged in Washington even during the Hoover administration for federal assistance, but the reply was made that the national government had no authority to enter such a field. Finally, the situation became so critical that the F.B.I. was reconstructed and given the authority to root out the most powerful of these public enemies. But, even here, it should be noted that the efforts of the national government supplemented rather than supplanted state police activities. Likewise, the establishment of a nation-wide old-age annuity system represents an invasion of an area once associated with the states, though few of them had done much in exercising such a power. 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.

2. 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. Because states lack financial resources and breadth of vision, their efforts have fallen short of desired standards in certain instances. Consequently, pressure has been brought to bear on Washington to take a hand. Congress has not seen fit for various reasons to substitute direct federal responsibility for state control;[7] rather it has preferred to set up certain standards and policies which it regards as desirable. Then, it has appropriated, under its authority to spend money, large sums of money which might be granted to states that saw fit to meet the specified standards. 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.

Examples of Grants-in-Aid In the 1920's it became apparent that a national system of highways was needed not only for the convenience of motorists and truckers but for purposes of national defense. It is probable that Congress, acting under its war powers and the post-offices and post-roads clause [8] of the Constitution, might have been justified in building a highway network by using only federal funds and relying solely upon federal administrative agencies, but that did not seem the wise course. States already had the beginnings of such a road system; public opinion would not have favored direct federal activity; and the expense would have been enormous. The chief need was not for something new, but for the co-ordination and improvement of what had already been begun. Hence Congress has over a period of years provided substantial funds which might be granted to states that desired to improve certain highways designated by the federal roads agency. The grants-in-aid have been available provided the state paid half the cost and observed minimum standards of construction. No state has been compelled to participate in the program, but the provisions have been so attractive that all of the states without exception have taken advantage of the funds. The result has been the construction of the most elaborate system of highways in the world.[9] Likewise in payments to aged dependents, aid to dependent children, pensions for the blind, vocational education, and in a number of other fields,[10] 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.

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 police and other powers by the national government. Such a method

[7] 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.

[8] Art. I, sec. 8.

[9] The German *Autobahnen* have received considerable publicity. They may be more elaborate than any single highway in the United States, but in their totality they are modest in comparison with our own network

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

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 very effectiveness of the technique has probably heightened the bitterness of the criticism. 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 sometimes been criticized by prosperous states because they contend that the federal taxes which their citizens pay are used in poorer states for what they call "local" purposes. Largely on these grounds Massachusetts challenged the constitutionality of the Maternity Act of 1921, which provided grants-in-aid to those states drafting approved programs for dependent children.[11] 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." These opponents contend that the states have no real choice in meeting the standards set by Washington because of the irresistible pressure exerted by their voters to take advantage of the federal grants of money involved.

Future of Grants-in-Aid The effectiveness of grants-in-aid has been so clearly demonstrated that it seems altogether probable that this technique will continue in frequent use. The federal government can lay down policies and set up standards without the immense burden of actual administration. Moreover, the same end can be attained without arousing the storm of criticism that ordinarily follows a direct invasion of the state domain. In view of the widespread interest in more uniform standards of public education [12] throughout the United States and the heightened consciousness of the importance of good health on the part of the general population,[13] it will not be surprising if grant-in-aid programs related to these problems are set up by the national government.

3. Use of State Officials Occasionally the national government has used either the states or state officials as agents. In the case of grants-in-aid this is invariably the course pursued, but even in the absence of financial assistance such use may be made. In the Selective Service Act of 1940 state governors were authorized to name the local boards which passed on the individual cases of those who were called for military training. These state officials not only sent out the calls, but exercised considerable discretion in classifying those within the legal ages, thereby determining whether they should be exempted or sent to active service. State election officials are charged with certain responsibilities in connection with the choice of presidential electors, Senators,

[11] *Massachusetts* v *Mellon*, 262 U S. 447 (1923). The Supreme Court refused to accept the Massachusetts point of view.

[12] Standards vary widely from state to state on the basis of length of term, equipment, training of teachers, etc.

[13] More than a third of those called for military service during World War II were found so defective in health as to be rejected.

and Representatives, and may be held to account in federal courts for violations of the requirements laid down by the national government.[14] A recent decision of the Supreme Court has extended the national government control to state officials who are responsible for primary elections.[15] State health employees have duties in connection with the federal food and drug acts; state game wardens are responsible for enforcing the Migratory Bird Act of 1918.

4. 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. Proponents of the studies carried on by the United States Office of Education, the United States Public Health Service, the Bureau of Standards, the Department of Agriculture, and many other federal departments in Washington believe that much good is accomplished by familiarizing state and local officials with what federal research uncovers. Critics point to the comparatively large expenditure of public funds for such purposes and deny that any one reads or pays attention to the reports. 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. It is common knowledge that state and local police officials make large use of the fingerprint file which is maintained by the Department of Justice. This, of course, serves in many instances to identify criminals who are wanted for serious crimes by several governments and thus brings the national government into the state police function.

5. State-Federal Collaboration Finally, the role of the national government has been extended in a minor degree by collaboration which the states themselves 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. State colleges solicit the aid of the Department of Agriculture in educating farmers and other rural workers along lines of general public affairs.[16] Somewhat different but falling into the same category was Secretary of State Cordell Hull's communication to the state governors in 1940 in which he appealed for state collaboration in doing away with state practices which constitute barriers against unfettered interstate trade.[17]

[14] See *Ex Parte Siebold*, 100 U S 371 (1880).

[15] In *Newberry* v *U S*, 256 U S. 232 (1920) primary elections were held not under federal control, but this was reversed in 1941 in *United States* v *Patrick B Classic et al*, 85 L. Ed 467 The Supreme Court divided four to three in this case

[16] The Department of Agriculture has furnished speakers, sometimes as many as twenty at a time, for more than one hundred such schools

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

Obligation 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." [18] In a governmental system which includes numerous states there is almost bound to be a great deal of variation, especially in matters of detail. Thus one state will require two witnesses to a will, while another will specify three; one state will recognize common-law marriages, while another will regard only civil marriages as valid. 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.[19] To require the states to enforce the laws relating to misdemeanors and felonies passed by sister states might cause hardship; moreover, the fact that the Constitution makes arrangement for extradition of fugitives from justice would seem to imply that the framers did not intend the "full-faith-and-credit" clause to apply to penal proceedings and acts.

Examples of What Is Included in Full Faith and Credit 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. Thus a will which was made by Henry Smith when he resided in Florida and which complied with Florida laws must be regarded as valid by Ohio where he lived at his death, even if the Ohio regulations in regard to witnesses, form, and so forth, are not the same. The judgments of courts relating to civil matters must be accepted and enforced by the courts of sister states. If Mary Jones secures a judgment from the circuit court of Indiana against Betty Davis to the amount of $5,000 and then discovers that Betty Davis has moved to Tennessee, she may take a certified copy of the court record to the latter state with the expectation that the courts of that state will give it full value and as far as possible carry it out.

Hardship Resulting from Full Faith and Credit Although the full-faith-and-credit clause operates in general for the best interests of the public, there are instances where it would seem to work a hardship. Kansas does not recognize the validity of gambling debts and specifically forbids its courts to assist in their collection. Yet if Henry Little, a citizen of Kansas, gives an I O U to a professional gambler in whose clutches he falls while on vacation

[18] Art IV, sec. 1.
[19] See *Wisconsin* v *Pelican Insurance Co.*, 127 U.S. 265 (1888).

in New Orleans, Kansas courts are compelled to enforce a court judgment which the gambler obtains from a Louisiana court. The Little family may even be dispossessed of their home in Kansas if there are no other resources for satisfying the Louisiana judgment.

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. Some states grant divorce under almost any circumstances, while others are very strict and refuse such decrees except in cases in which unfaithfulness can be proved. It is to be expected that New York, which has very strict laws on the subject, would object to accepting at full value the divorce decrees of Nevada, which is most liberal. Particularly is the New York moral sense aroused when its residents go to Nevada temporarily and solely for the purpose of obtaining a divorce and then return to take up their New York abode. In order to stave off a complete refusal on the part of New York to follow the full-faith-and-credit clause, the Supreme Court has sought a middle ground in such cases. Where the state of the married domicile [20] or the state where both parties reside as *bona fide* residents grants a divorce, every other state must accept that divorce without a question. However, if the state which dissolves the contract of marriage is not the actual married domicile or residence but a state to which one of the parties has 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.[21]

Extradition or Rendition To assist in the apprehension of criminals the framers of the Constitution inserted a declaration that states should surrender fugitives from justice to sister states. 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." [22]

Refusals to Extradite Actually, there is no effective means of forcing recalcitrant states to obey such a mandate. Consequently every now and then a state will refuse to turn over a fugitive from justice.[23] New Jersey did not see fit to surrender a fugitive from Georgia because public opinion had become

[20] 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.

[21] *Haddock* v. *Haddock*, 201 U.S. 562 (1906) was overruled by the Supreme Court in *Williams* v. *North Carolina*, 317 U.S. 287 (1942). This caused a considerable amount of confusion since it seemed to necessitate the recognition of virtually all divorces granted by state courts. In the second Williams case, *Williams* v. *North Carolina*, 325 U.S. 226 (1945), the Supreme Court retreated more or less to its earlier position in *Haddock* v. *Haddock*.

[22] Art. IV, sec. 2

[23] These cases receive a considerable amount of publicity at times, but they are relatively rare when compared with the number of successful extraditions

aroused to the alleged inhumanity of chain-gang punishment which was at the time employed and the lack of any adequate relationship between the offense committed and the punishment meted out. In another case New York would not honor an extradition request of Massachusetts for a labor organizer who had been connected with strikes in Fall River, Massachusetts. The hearing conducted by the New York governor revealed that the labor organizer had not left Massachusetts in any particular hurry, that he had returned to Massachusetts on several occasions after the strike which formed the basis for the charge, and that Massachusetts had taken no steps to accuse the labor organizer of violations of its laws for several months afterward. It did not seem to New York, therefore, that there were sufficient grounds for granting the request. The fact that the categorical command of the Constitution is sometimes violated should not, however, cause great alarm. In almost all cases of refusal the governor has had valid reasons and has been supported by public sentiment of the country at large.

The Extradition Process The extradition process is important enough to be explained in some detail. If the police authorities of Lincoln, Nebraska, for example, learn that Alex Brown, alias Dick Finch, alias Downey Moe, a criminal whom they want, is temporarily residing in Kansas City, Missouri, they at once get in touch with the police of Kansas City, often by long-distance telephone, and request that Brown be apprehended and held pending extradition. The Lincoln police then call upon the governor of Nebraska, or his secretary who handles such matters, for formal extradition papers addressed to the governor of Missouri and naming the said Alex Brown as a fugitive from justice in Nebraska. These papers must specify the exact crime for which Brown is wanted and must ordinarily offer a grand jury indictment, a process of information, or some other evidence that Brown has committed such an offense. The Lincoln police representative will in person take the papers furnished by the Nebraska governor to the governor's office in Missouri. The request may be granted as a matter of routine, especially if Brown does not raise an objection. However, if Brown alleges that he is being "framed" or that a fair trial cannot be expected in Nebraska, it is quite possible that the governor of Missouri will conduct a hearing during which he will examine the accused as well as hear the evidence and arguments of the representative of Nebraska. If the extradition request is granted, the accused is turned over to the Lincoln policeman who proceeds to return him to the jail at Lincoln, Nebraska, to await trial. If, as occasionally happens, extradition is refused, Brown is ordinarily set free.

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." [24] The framers realized that there might be a

[24] Art. IV, sec. 2.

disposition on the part of some states to discriminate against the citizens of other states. Such license would have led to internecine strife and in turn would have weakened the whole fabric of the republic. This requirement is not so clear and definite as it might be and during recent years has been juggled about at times 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 movement is permitted, although several states have under one guise and another attempted to circumscribe this. California has a statute under which an elaborate system of inspection has been set up on the highways leading into the state; motorists must surrender any citrus fruits that they may have, lest the orchards of California be contaminated. Twenty-seven states had enacted statutes prior to 1941 prohibiting the entry of migrants from other states who lacked sufficient money or resources to prevent their becoming public charges. However, in a far-reaching decision announced in the fall of 1941 the Supreme Court unanimously declared that such laws violated the provisions of the commerce clause and consequently were null and void.[25] Several states have whittled down the right of citizens of other states to move about by setting up ingenious rules and regulations in regard to the use of commercial vehicles with out-of-state licenses.[26] Nevertheless, it cannot be denied that this obligation which the states are asked to shoulder serves even today a very useful purpose; without such a limitation the situation might be far more serious than it is.

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. However, Professor Graves points out that of some eighty interstate agreements drawn up prior to 1932 approximately twenty were not brought to Congress.[27] As state relations become more complicated, the necessity for interstate compacts becomes greater—thus a large part of the more than one hundred compacts approved by Congress are fairly recent.[28]

[25] 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.

[26] A New Mexico law taxing caravans at $7.50 and $5.00 was upheld by the Supreme Court in *Morf* v. *Bingamon*, 298 U.S. 407 (1936). On the other hand, when California attempted to place a prohibitive tax, under the guise of an inspection fee, on caravans of new cars entering the state, the Supreme Court refused to uphold it and ordered that the fee be no more than the cost of inspection, *Ingels* v. *Morf*, 300 U.S. 290 (1937).

[27] See W. Brooke Graves, *American State Government*, D. C. Heath & Company, Boston, 1936, pp. 650–651. Sixty-two were brought to Congress and about twenty were not.

[28] From 1789 to 1900 Congress authorized only some seventeen pacts; during the period 1900–1950 no less than 104 authorizations and consents were given. During the years 1935–1950 more than fifty pacts were authorized. See *Book of the States, 1950–1951*, Council of State Governments, Chicago, 1950, p. 22.

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, regional educational facilities, and large-scale pollution.[29] Some of the most important recent compacts have related to commercial fishing on the Great Lakes by the states abutting thereon; pollution control of the Ohio River Valley; flood control; oil production; minimum wages; the use of the waters of the Colorado River and the construction of Boulder Dam; Atlantic states marine fisheries; interstate supervision of parolees and probationers; and the setting up of regional institutions of higher learning, particularly in the very expensive professional fields of medicine and dentistry, in the South and the West.[30]

Council of State Governments and 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. Several states, for example Kentucky,[31] have made existing agencies of government responsible for such work, but the more common practice has been to create new agencies. These commissions on interstate co-operation represent their states on the Council of State Governments [32] which has headquarters in Chicago and also on regional bodies such as the Western Commission on Interstate Co-operation. They also undertake to conduct direct negotiations with other states. As members of the Council of State Governments or the regional associations 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 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.

Interstate Administrative Agencies In a few instances states have found it desirable to join with sister states in setting up administrative agencies to handle certain matters that could not be easily dealt with on a unilateral basis. The best example of such a joint enterprise is probably the Port Authority of New York which is the result of an agreement on the part of New York and New Jersey. This agency which is headed by a non-salaried board whose members are chosen in equal numbers by the governors of New York and New Jersey performs functions which are literally indispensable to the inhabitants of the metropolitan area of New York which spreads over parts of

[29] Professor Graves classifies the sixty-two compacts accepted by Congress prior to 1932 as follows. twenty-three with boundary disputes, ten with jurisdiction over rivers, harbors, and boundary waters, five with criminal jurisdiction, and the remainder miscellaneous. See his *American State Government*, pp. 650–651.

[30] For a recent list, see *Book of the States*. The parolee compact had been ratified by forty-five states in 1950.

[31] The legislative council has been given this responsibility in Kentucky

[32] A part of the Public Administration Clearing House and supported by the state governments.

New York and New Jersey. The George Washington Bridge over the Hudson River, the Holland Vehicular Tunnel under the Hudson, the great airports such as Idlewild International, LaGuardia, and Newark, and a gigantic bus terminal in New York City are examples of projects which are administered by the New York Port Authority. This Authority owns property valued at many millions of dollars, has borrowed tens of millions of dollars at very favorable interest rates to finance needed improvements in facilities, and employs large numbers of persons to handle its far-flung operations.

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5. The Role of the States

General Status Today It has been said that the states have less exclusive power at present than ever before in their history, yet that they are more active than at any previous time. On its face this statement may seem quite inconsistent, for diminution of power would ordinarily be accompanied by general lack of vigor. However, in the case of the states the rule has been broken. There has been an increase in activity in spite of a severe loss of exclusive domain. It should be pointed out, though, that the former has not necessarily stemmed from the latter; in other words the present tempo of state operation is by no means entirely the result of the gradual assumption of authority by the national government. To a considerable 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. At any rate, 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.

Early Position of the States It is difficult for students of the middle twentieth century to appreciate the enormous loyalty and distinctive pride which citizens displayed toward their states during the early years of the republic. The national government was new and struggling; the states, while recently freed from colonial relations with England, could, in certain cases look back upon almost two centuries of history. Consequently it was not especially strange that those who had been long established in Virginia should think of themselves as primarily Virginians and only incidentally as citizens of the United States. Had it not been for the depressed economic conditions and the involved conflicts among the states, it is possible that the confederation, which the states entered into after their declaration of independence from England, might have continued in existence for some years.[1] The adoption of the Constitution in 1789, which substituted a federation for a confederation and provided for a central government endowed with fairly extensive powers over commerce, national defense, foreign relations, and finance, necessarily changed the position of the states.[2] However, it required time for the rank and file of the people to adjust to the new status. Indeed for

[1] One school of historians goes so far as to declare that a delay of a few months would have changed the entire picture. The economic situation was rapidly improving in 1787. With greater prosperity the demand for change would have waned, it is asserted.

[2] A confederation is a loose union of independent states; a federation involves the establishment of a central government with considerable authority.

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.

Trend of Authority from the States to the National Government As the national government displayed more and more vigor and proved that 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. Nevertheless, there were large numbers of persons who clung to the old concept of state sovereignty and who looked with pronounced displeasure upon the growing role of the national government. Students of American history are familiar with the states' rights debate which raged so furiously for more than a half a century prior to the Civil War. Although tradition and sentiment supported the right of the states to sovereign authority, even their refusal to accept the decisions of the national government and their alleged right to secede, still during this period the states were slowly but surely surrendering their position of primacy. The increasing complexity of the social and economic life of the nation, the ramifications of foreign relations, and the rapid movement of the population westward 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.

Acceleration of the Trend Although the states steadily lost power after the Civil War, the process was comparatively gradual. During the closing years of the century, there was even somewhat of a halt, largely because the Supreme Court declared that the clause in the Constitution conferring the power over interstate and foreign commerce on the national government did not extend to manufacturing, agriculture, mining, or lumbering.[3] The beginning years of the new century witnessed a renewal of national government expansion into the state domain, but the decision of the Supreme Court in the Knight case hung constantly as a Damocles sword over such transfer. Then came the worst depression in the history of the country in the years following 1929. The demand for vigorous action by the national government increased in intensity until it attained Gargantuan proportions. The New Deal drafted an elaborate program which carried the activities of the national government into almost every phase of human endeavor, irrespective of state claims. Although the Supreme Court attempted to protect the states against the flood, the pressure became too great even for it to withstand.

Current Role of the States During the 1930's, when the Supreme Court was reformed by the appointments of President Roosevelt and the national government seemed to engage in virtually any function that it desired to undertake, it seemed to some students of government that the states had lost their very reason for existence. Professor W. Y. Elliott prepared an impressive list of reasons why the states should be abandoned entirely and a new system of regions set up to handle those affairs the national government

[3] See *United States* v. *E C Knight Co.*, 156 U S 1 (1895).

found it inconvenient to undertake.[4] He pointed to the fact that states vary widely in population area, and wealth, that their boundaries are often artificial, and that in certain cases they are too small to be satisfactory units for the administration of public business. Even a casual consideration of his arguments reveals an imposing array of support. A variation in population from Nevada, with approximately one hundred thousand inhabitants, to New York, with some thirteen million, is, to say the least, striking. Rhode Island's area when compared with that of Texas is very small indeed. In providing for the federal reserve banking system, the federal deposit insurance plan, and the social security program state lines were either ignored when it was found desirable or several states were grouped together into areas more suitable for administration. A glance at the metropolitan regions of New York or Chicago will indicate the artificial character of state boundaries. From a logical standpoint the people who constitute Greater New York should be under a single jurisdiction; actually they reside in three states: New York, New Jersey, and Connecticut. Similarly the people who make up metropolitan Chicago have common economic and social problems which would point to their inclusion in one political area, but they are also distributed at present among three states: Illinois, Indiana, and Wisconsin.

Yet illogically enough, the states still 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 reconstruction. Despite all of the arguments that have been advanced in favor of their liquidation, almost no serious consideration has been given to the problem by any considerable number of people.

Future of the States It is possible that some disaster, such as led to the temporary reorganization of the departments in France, might cause far-reaching changes in the state system in the United States.[5] The supplanting of republican forms by a totalitarian type of government might accomplish such an end, although it is only fair to note that *Länder* in Germany have displayed surprising persistence.[6] Short of such cataclysmic experiences in the United States there does not seem to be any immediate likelihood of extensive rearrangements in the number or the boundaries of the states. The national government will doubtless continue to exercise many powers which were once definitely associated with the states, despite pleas for a return to the "good old days" of local control of industry, labor, and public welfare. It is even probable

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

[5] After the defeat of France by Hitler the Vichy government reduced the number of departments by combining some of the small ones into areas more suited to administration. But after the liberation the old system was restored.

[6] Some of the *Lander* were joined together prior to World War II and during the Allied occupation a rather drastic change took place in boundaries and indeed in identities.

that the national government will further invade the domain of the states because of an increasing sentiment for federal activity in the fields of public education and public health. Nevertheless, the states will in all probability continue to carry on ambitious programs of local public works, control local government, and provide police protection. Every indication points to their continued expenditure of vast sums of money and the employment of large numbers of persons. The national government may 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 many of the programs. Hence, despite the disappearance of claims to exclusive power, the states will remain very busy indeed in the actual conduct of government.

The Process of Admitting New States

The Original States The thirteen states which had been colonies of England and which carried on a war to gain their independence became states of the United States by joining together into a federal union. They considered themselves independent, sovereign states and only reluctantly bestowed certain powers relating to foreign relations, commerce, and defense upon a central government. But they went through no formal process of being admitted as states, other than ratifying the Constitution.

Formal Requirements In the case of the other states certain formal requirements had to be met before admission to the Union. Under the Constitution Congress is given wide latitude in admitting new states so long as it does not disregard the prohibitions referred to concerning the dividing or combining of existing states. The first step toward acquiring statehood is normally 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 political considerations are favorable it is likely that prompt action will be taken by Congress, as for example in the case of Nevada which was admitted despite its tiny population. On the other hand, if the political party then in control would not benefit from the step and there are elements which actively oppose it, statehood may be held up for years, as was the case with New Mexico and Arizona. 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.[7] After this constitution has been accepted by a majority of the voters in the territory it goes to Congress

[7] However, a number of territories, for various reasons, have proceeded to elect constitutional conventions and draft constitutions without an enabling act. Hawaii decided to follow this course after Congress failed to act in 1949 and a convention to draft a constitution was elected in 1950.

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. While, of course, it is always possible to wait until a new political party has a majority in Congress or until the political heads of those who were responsible for the rejection have fallen, still territories frequently waive their desires and meet the congressional stipulations. After Congress has acted favorably 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.[8] And Arizona could not be restrained from setting up a system of recalling judges, although a similar device had been dropped from the original constitution to meet congressional desires. 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.[9]

Equality and Inequality of the States It has often been stated that the states are equal irrespective of the date of their admission. In other words, newly admitted states have the same rights and powers that the original thirteen states enjoy. 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 various states are equal in influence, in wealth, in population, in area, or in many other respects. New York sends more than forty persons to the national House of Representatives, whereas Nevada, Wyoming, and several other states must content themselves with only one. It is obvious to anyone that New York's

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

influence in at least the lower house of Congress is far greater than that of most of the other states. Texas has an area of more than a quarter of a million square miles which makes it larger than many foreign countries, while Rhode Island, with 1,250 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 and highly industrialized states have proportionately more power and influence than the small ones which depend largely on agriculture.

The Question of Additional States Now that the entire continental United States except the District of Columbia is included within the boundaries of the states, it might seem quite improbable that additional states would be admitted. And indeed the day of large-scale admission is over. Nevertheless, there are indications that the number of states may sometime in the future increase to fifty and possibly 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 several others, 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. Presidents of the United States and national platforms of political parties have taken stands in favor of such statehood and it only remains for Congress to take final action. Despite its smaller population, Alaska also seems a promising candidate for statehood. Here again Presidents and platforms of major political parties have taken favorable stands and Congress has made some headway in establishing the foundations for the necessary legislation. In the case of Puerto Rico a pledge of eventual statehood has been given.

Proposed New Continental States There has been some discussion from time to time of a further increase in the number of states within the continental United States, though at present less is probably to be heard along this line than at earlier periods. The spectacular growth of Southern California has fostered an intense rivalry between the older north and the booming south and this has led to some talk of a possible division into two separate states. Likewise, there is the movement on the part of several metropolitan areas toward separate statehood—St. Louis has gone so far as to advertise itself as the forty-ninth state. On logical grounds there is a good reason for conferring statehood particularly on the metropolitan areas of New York and Chicago. The long-standing and deep-seated conflict between those cities and their states could be obviated. Certain problems, such as transportation, water, and sewage, could be more easily handled by a unified political system. Both

of these cities, even without the population and area enlargements that would result from separate statehood, have larger budgets and employ more public servants than their states. But the obstacles in the path of any such practical steps are very great indeed. Most important of all the reasons that make separate statehood for these cities doubtful is the constitutional requirement necessitating the consent of the states involved. Thus far there has been very little which would indicate that the several states concerned would give any serious consideration to the matter. While the states may regard the cities as sinks of iniquity, centers of crime, and the playthings of political bosses, still they do not forget the heavy taxes paid by the enormous wealth centered there.

Limitations Imposed Upon the States by the Constitution

In general, the states have all the 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.[10]

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. This situation was, of course, intolerable and entered to a considerable extent into the demand for a revision of the Articles. The new Constitution remedied the weakness by giving the national government the direct authority to levy its own 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 upon the use of this authority by the various states. With the irritating experiences involving levies on commerce fresh in mind, 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." [11] Congress does not consent to such an imposition, with the result that states have left that field entirely to the national government. In this same category may also be mentioned a prohibition relating to the levying of tonnage duties.[12] 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. However, during recent years the general attitude of the federal courts as far as state taxation is concerned has been distinctly sympathetic—so much so that some competent persons feel that too much leeway has been permitted.

[10] See Chap 7 for a discussion of some of these limitations.
[11] Art. I, sec. 10.
[12] Art. I, sec 10 The consent of Congress may justify tonnage duties, but this is not given.

It has been popular during recent years for the states to pass laws which tax chain stores at a very much higher rate than independent mercantile establishments—in certain cases the rate may be fifty or more times higher for chains. In Louisiana the chain-store tax law provided that the number of stores throughout the United States should be used as a base for computing the tax on outlets in that state owned by a chain.[13] These state taxes impose heavy burdens upon chain stores, but the Supreme Court has refused to interfere.[14] 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 in certain respects.

Taxation of Federal Salaries and Securities 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.[15] The court declared that it would cause endless trouble if the states were permitted to hamper the national government by levying taxes. This general rule continues to apply, but it has been modified and may perhaps undergo additional modification in the future. Fearful that any taxation even remotely involving the national government might be an entering wedge having serious consequences, the Supreme Court ruled that states could not tax the salaries of federal officials.[16] After many years had elapsed, Congress decided that there was no adequate basis for exempting state officials from federal taxation or, conversely, federal officials from state taxes. No burden would be imposed on the governments themselves by such taxation; indeed such action would merely put public officials on the same basis as private citizens in bearing their fair share of government costs. The Supreme Court upheld this departure from established practice;[17] and now, as a result, states which have income taxes uniformly include federal officials and employees. Going further, the Roosevelt administration indicated that it saw no reason why the holders of state and local securities should not pay federal taxes on their securities but the local officials have opposed this extension of the taxing power on the ground that it would make local financing more difficult and thus far have succeeded in preventing such a step.

Taxation of Federal Property States are, of course, not permitted to tax the property of the national government, unless specific consent is given. In the case of national banks, which are in reality private property, Congress has waived exemption, but in general this limitation remains in effect and seems

[13] See *Great Atlantic and Pacific Tea Co.* v. *Grosjean*, 301 U.S. 412 (1937). Where two stores were operated, an annual tax of $10 was imposed by the Louisiana law; where more than five hundred outlets are run by a chain, the tax was $550 on each

[14] See *State Board of Tax Commissioners* v. *Jackson*, 283 U.S. 527 (1931), for a good statement of the attitude of the Supreme Court.

[15] See *McCulloch* v. *Maryland*, 4 Wheaton 313 (1819) and *Collector* v. *Day*, 11 Wallace 113 (1871).

[16] See *Dobbins* v *The Commissioners of Erie County*, 16 Peters 435 (1842).

[17] See *Graves* v. *New York, ex rel O'Keefe*, 306 U.S 466 (1939).

likely to continue. Attempts have been made by the states to tax the property of the Reconstruction Finance Corporation, but Congress has specifically declared that the R.F.C. could not be so burdened. Those states in which T.V.A. holdings are situated have raised a hue and cry because such large amounts of T.V.A. property have been withdrawn from state tax lists. To meet this situation the T.V.A. makes certain voluntary payments to state and local governments in lieu of taxes, but no actual taxes are paid.[18]

Restrictions upon the Power to Regulate Commerce The authority to regulate interstate and foreign commerce is expressly given to the national government, leaving the regulation of commerce carried on within a single state to the states. Since the definition of the latter has been whittled down until it is but a remnant of what it once was, the states have found themselves more and more restricted in dealing with business practices. 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. To some extent the use of the police power may permit state action; also, the recent liberal attitude on the part of the Supreme Court in the matter of the taxing by the states of businesses, even when engaged in interstate commerce, has served as a consolation prize.[19]

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."[20] This constitutional provision has effectively eliminated treaties between the states and foreign countries and concentrated such authority in the national 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. Large numbers of laws are passed by every state legislature that have some effect upon neighboring states. Many of these issues are comparatively minor and may be adjusted by correspondence or personal conferences between officials of two states. In such instances it is not the custom to seek the consent of Congress, although a strict interpretation of the word "agreement" might call for such approval. 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.[21]

[18] Tennessee still maintains that these payments fall far short of taxes lost as a result of the T.V.A. acquisitions of property.

[19] *Fox* v. *Standard Oil Co*, 294 U.S. 87 (1935); *Great Atlantic and Pacific Tea Co.* v. *Grosjean*, 301 U.S. 412 (1937).

[20] Art. I, sec. 10.

[21] For additional discussion of this topic, see the preceding chapter.

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." [22] 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; consequently this limitation is not too onerous. 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." [23] In the early days of the republic these prohibitions were unpopular in some quarters because the states had had their own currencies and their citizens wanted cheap money. 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 notes issued by state banks out of existence.[24] Since that time these constitutional limitations have continued in full force.

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." [25] As far back as 1819 the Supreme Court examined this limitation in deciding the famous Dartmouth College case.[26] New Hampshire attempted to make a state university out of Dartmouth College, which had been chartered by the English crown as a school for Indians, with a trust fund for that purpose. After the agents of New Hampshire had already seized the property of Dartmouth, the original trustees sought to have their charter recognized by resort to judicial process. The case finally reached the Supreme Court of the United States, where it was argued in part by Daniel Webster and the majority opinion was prepared by Chief Justice John Marshall. Citing the contract clause the Supreme Court decided that New Hampshire could not legally take over the college, for the donors of the original funds had 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—some students regard the *Charles River Bridge* v. *Warren Bridge* [27] case as an actual reversal. This case,

[22] Art. I, sec. 10.
[23] Art. I, sec. 10.
[24] Upheld by the Supreme Court in *Veazie Bank* v. *Fenno*, 8 Wallace 533 (1869).
[25] Art. I, sec. 10.
[26] *Dartmouth College* v. *Woodward* is reported in 4 Wheaton 518 (1819).
[27] Reported in 11 Peters 420 (1837). According to Chief Justice Cooley of the Michigan Supreme Court, "It is under the protection of the decision in the Dartmouth College Case that the most enormous and threatening powers in our country have been created; some of the great and wealthy corporations actually having greater influence in the country at large, and upon the

which involved a state charter for the construction of a bridge to be free after a maximum of six years close to a toll bridge which had been built under a charter granted in perpetuity, led the court to lay down the principle that states are not bound by implied terms of a contract. So far as specific provisions are concerned, a state cannot lawfully impair items, but nothing that was not clearly mentioned in the contract could be claimed against a state. As the Supreme Court pointed out in its opinion in the latter case, progress would be impossible under any other interpretation: "We [would] be thrown back to the improvements of the last century, and obliged to stand still." [28]

Practical Effect of the Contract Clause Although the contract clause is still used by the courts to prevent state action, it is a less serious hindrance than might be imagined. Acting upon the suggestion of Justice Joseph Story in his opinion in the Dartmouth College case, the states ordinarily now protect themselves by inserting provisions in charters for revocation. If states have safeguarded the future by providing that charters may be modified and disregarded for cause, or if compensation is awarded, or in the event that the public interest demands, they have little to fear in the contract clause. Another mitigating fact has been the severe reduction in the period of time covered by charters; in the old days they sometimes ran perpetually and very commonly extended over anywhere from ninety-nine to one thousand years. At present they are more likely to be granted for a period not to exceed twenty-five years.

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legislation of the country, than the States to which they owe their corporate existence. Every privilege granted or right conferred—no matter by what means or on what pretense—being made inviolable by the Constitution, the government is frequently found stripped of its authority in very important particulars, by unwise, careless, or corrupt legislation; and a clause in the Federal Constitution, whose purpose was to preclude the repudiation of debts and just contracts, protects and perpetuates the evil." See T. M. Cooley, *Constitutional Limitations,* rev. ed., Little, Brown & Company, Boston, 1927, p. 335.

[28] Quoted from C. G. Fenwick, ed., *Evans' Cases on American Constitutional Law,* rev. ed., Callaghan & Company, Chicago, 1938, p. 951.

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Section II

FOUNDATIONS OF THE COMMONWEALTH

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 the American political system makes citizenship more than ordinarily 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 is not very 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 evil machine practices. Aliens, too, have responsibilities in the United States. They may engage in subversive activities that are aimed at undermining the foundations of the American system. The crime rate, the literacy record, and the financial solvency of the various governmental units in the United States may be affected in no small measure by the behavior of the alien population. But the alien role is largely passive and negative, whereas the role of citizens must be active and constructive if government in the United States is to maintain standards of efficiency, honesty, and progressiveness.

A Definition of Citizenship Considering the unusual importance of citizenship in the United States, it might be expected that the forefathers would have

[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 considerate.

[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 during World War II did not permit any aliens to be employed in specified defense industries.

given careful attention to its definition. Strangely enough, the men who drafted the original Constitution apparently did not regard it as part of their duty to provide that definition or indeed even to specify exactly who were citizens, although they used the term no less than seven times. In reading the original Constitution one gets the impression that the framers had more than one citizenship in mind, for they refer both to citizens of the United States and to citizens of states. However, it was not until the Fourteenth Amendment was added that any authoritative definition of citizenship was made and then 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. And even to this day there persists this dual citizenship in the United States, despite the fact that the former is far more important than the latter. 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 conferred. While voting, office-holding, and jury service depend largely upon state citizenship, still such citizenship is currently held in 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 a distinct majority of cases it is national citizenship which is thought of when the term is mentioned. As a matter of fact, national citizenship is the only type which is recognized outside of the United States, for international law gives no weight to state citizenship.

The Acquisition of Citizenship

Out of approximately 150,000,000 people who reside in the United States more than 145,000,000 are citizens. This includes babes in arms, the youth of the country, the middle-aged, and the elderly—all of whom, regardless of age, are equally citizens of the United States. These teeming millions of people of varied racial backgrounds, different economic status, and diverse cultural patterns obtained their citizenship in one of three ways: (1) birth in the United States subject to the jurisdiction thereof, (2) birth to American citizens residing abroad, and (3) through the process of naturalization. The great majority of them came into possession of a heritage, envied by countless millions condemned to be inhabitants of tyrant-ridden or backward countries, largely as a fortune of birth.

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

1. 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 other lands no longer pour 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 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 in foreign countries from citizenship in the country of birth. With minor exceptions, all of those born within the continental United States are citizens: [4] it does not matter whether their parents could ever qualify or not. Thus even the American-born children of certain racial groups who are themselves ordinarily excluded from citizenship are just as much citizens as those whose ancestors came over on the Mayflower. Birth in a territory of the United States, however, may or may not carry with it United States citizenship—at least as far as our own laws are concerned; under international law no distinction usually is made between territorial and full 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—before the establishment of the Philippine Republic, Filipinos were nationals of the United States and citizens of the Philippines, but not citizens of the United States.

2. 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 the United States, but they cannot transmit citizenship to their children unless they spend some time here.

Conflicts of Ius Sanguinis and Ius Soli This method of acquiring citizenship conflicts, however, with the laws of some foreign countries and causes a

[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.

certain amount of trouble at times. For example, Argentina claims as citizens all persons who are born within her boundaries, regardless of foreign parentage, and will permit them, even if they are minors, to leave Argentina only on an Argentinian passport. Therefore when citizens of the United States who represent business firms in Buenos Aires return to their American home for a visit they find it necessary to take out Argentinian passports for their small children born abroad.[5] The conflict between *ius sanguinis* (the law which bases citizenship on parentage) and *ius soli* (the law which bases citizenship on place of birth) also causes difficulty in the cases of certain Europeans who migrate to the United States. Some of their mother countries will not recognize the acquisition of another citizenship. France, for example, has followed the *ius sanguinis* even to the third generation. This means that she can legally claim as her own a person born in the United States whose father was born in the United States of a French father, despite the fact that neither of the two native Americans ever resided in France. Ordinarily this strange state of affairs causes no complications, unless an American citizen with a French grandfather visits France and is investigated by the police, in which case he may be lodged in prison for failure to undergo military training and so forth.[6]

3. Citizenship through Naturalization The third method of obtaining citizenship in the United States is that of 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 numerous citizens. Even in more recent years, especially during and since World War II, naturalization has been reasonably important as a means of transferring the citizenship of those born in foreign countries. Although many think of naturalization as a single method of obtaining citizenship, there are actually 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 When the United States acquires 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 unless they as

[5] While in general the United States follows the same rule as Argentina, still in cases of foreign parentage we allow a choice to be made.

[6] It is only fair to state that such cases of imprisonment are unusual. Nevertheless, in the years following 1919, when large numbers of tourists from the United States visited France, there were some twenty cases of this sort. The American State Department would lodge a protest in such cases, but France would point to her laws which were quite definite on the subject. Ordinarily a compromise would be reached, under which France would maintain her legal position but would permit the man of two countries to escape prison and leave the country.

individuals register another intention or, on the other hand, it may make no reference to that matter. If such a provision is made it has the effect of bringing the population of the new territory *en masse* into possession of United States citizenship. 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 aliens who had honorably served in the military forces of the United States might claim citizenship if they liked.[7] In those instances in which territories have been acquired without conferring citizenship on the inhabitants, it may later seem wise to Congress to grant citizenship. This can be accomplished by an ordinary statute, which has the effect of bringing all of the people involved into the citizen class without any action on their part. The residents of the Virgin Islands and Puerto Rico and noncitizen 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. Since it is a custom for judges to wait until a number of candidates have met all requirements before holding the ceremony in which the final papers are given, sometimes there is the impression that groups of fifty or more persons are made citizens at one fell swoop. However, this does not mean that the individual character of naturalization by judicial process has been abandoned, for actually the final step at the end of the process is largely formal.

Haphazard Character of Judicial Naturalization Prior to 1906 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 of the United States was very small and the policy was to recruit as many new citizens as possible, the regulations covering the process were naturally not very strict. However, although many irregularities were to be 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 haphazard character of the process during the years prior to 1906 was sometimes almost shocking. Regularly, just before election, Tammany henchmen rounded up the loafers on the streets and in saloons, promising all the beer they could drink in return for their services during the day.

[7] The Second War Powers Act which became effective on March 27, 1942, contained a provision which waived the five-year residence requirement for servicemen aliens who joined the United States military forces prior to December 28, 1945. Over 110,000 aliens became citizens under this provision, including 13,500 in theaters overseas.

Each member of these motley groups would be handed a ticket which Tammany had purchased for a nominal sum from a benevolent court clerk and which entitled its holder to naturalization. All of the little army would then be marshaled before a friendly judge who would in a very few minutes muster them into citizenship, regardless of their literacy, ability to speak English, racial background, or anything else. The mockery of this process was such that some of those who were naturalized did not realize what had taken place and hence there were cases of a single person going through the experience several times. 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. The entire process is supervised by the Bureau of Immigration and Naturalization which, though long in the Department of Labor, at present is a subdivision of the Department of Justice. But the system is directly administered by some 260 federal and 1700 state courts.[8]

Declaration of Intention Those persons who are eligible for citizenship may go to a federal court or to a state court of record[9] 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 when they take the initial step; 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. Hence after this first step has been completed the applicant is sometimes considered a "man without a country." But inasmuch as the United States treats citizens and aliens with more or less equal consideration, this condition will ordinarily not bother him unduly. As long as he remains in the United States, he will usually encounter no difficulty, although his legal status is somewhat uncertain. However, if he decides to go abroad, he may find that he is in an embarrassing sit-

[8] Naturalization statistics have fluctuated considerably during recent years In 1933, 113,363 certificates were issued, but by 1935 the number had increased to 188,945. The war years showed a sharp increase to 270,364 in 1942, 318,933 in 1943, and 441,979 in 1944. Since 1944 there has been a falling off, at first gradual and more recently drastic. Naturalization certificates fell below 100,000 for the first time in many years in 1947 (93,904 certificates were given); in 1948, only 70,150 naturalizations were reported.

[9] 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.

uation. He cannot claim an American passport, nor may the obligation of his mother country always be relied upon if it is known that he intends to renounce his allegiance to that country. The United States warns these people that they travel outside of her confines at their own risk; nevertheless, on occasions when they have become enmeshed in trouble she has sought to assist them, even to the extent of sending vessels of war.[10]

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 by the federal Bureau of Immigration and Naturalization—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 furnishes certain information on blanks which are provided. He has to show that he has had at least five years of residence, that he is not a polygamist, a Communist, or an anarchist, that he is self-supporting, and that he expects to remain permanently in the United States. It is contrary to the policy of the United States to grant citizenship to those who desire to reside abroad and even after citizenship is granted it may be canceled if that turns out to be the case. The candidate must 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 his moral character. Also, another fee must be paid.[11]

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. At one time the staff of the Bureau was so inadequate that such inquiry frequently was purely routine, but during recent years there has been considerable stiffening of standards. 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

[10] President Theodore Roosevelt did this in the case of two declarants who were held in the old Austria-Hungary.

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

conducting the hearing, for no set form is prescribed by law. If there is any doubt 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 perfunctory.

Ceremonies in Granting Citizenship Some judges like to stage an elaborate ceremony in conection with the granting of citizenship papers. They ask for the singing of the *Star Spangled Banner,* require the flag salute, and deliver a stirring address of patriotic character. They may call for a recitation of the Declaration of Independence, Lincoln's Gettysburg Address, or some other well-known public document. Not infrequently questions which produce strange answers are asked involving the history of the United States. If the judge is 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. It may be that more definite evidence is desired on the matter of residence or political views; again the judge may admonish the applicant to refresh his memory or to put in more time on studying the provisions of the Constitution or the contents of American history.[12]

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 current 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 great care, but political judges at times treat the process as more or less of a routine matter. 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 many proceedings at present are so lacking in impressiveness that newly made citizens go away without the deep sense of loyalty and responsibility which they should have. When the emphasis is placed upon superficial technicalities rather than upon basic principles, it is obvious that serious shortcomings are involved. One wonders what difference it makes whether or not a candidate can quote verbatim the Declaration of

[12] 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. Recent modifications are reflected in A. E. Reitzel, "The Immigration Laws of the United States—An Outline," *Virginia Law Review,* Vol. XXXII, pp. 1099–1162, November, 1946.

Independence or the words of the national anthem. Certainly, far more significant is his understanding of the fundamentals of the American system of government. Yet it may be doubted whether the average examination ascertains with any reasonable accuracy how much the candidate can offer as a prospective American citizen.

Bar against Pacifists Glaring examples of shortsighted, technical emphasis are to be found in such cases as those involving Rosika Schwimmer, the well-known advocate of world peace, and Professor MacIntosh, a professor of theology at Yale. Both applicants for citizenship were asked in their examinations whether they would be willing to "take up arms in defense of the United States." Rosika Schwimmer pointed to the fact that she was a woman, that she was over fifty years of age, and that she could scarcely conceive of herself as other than a liability in the armed forces, but stated that she would gladly serve in a Red Cross unit or an industrial plant during a period of national emergency. Professor MacIntosh, also well past the age of military effectiveness, found it impossible to say categorically that he would take up arms regardless of the occasion, although he had served as a chaplain in World War I. He declared, however, that he would vigorously "support and defend the Constitution and laws of the United States" in every possible way. In both instances the Supreme Court, after the cases had been carried from lower courts, denied citizenship, although by less than unanimous vote.[13] Considering the importance of loyalty to the American system of government during recent world-wide attacks on democracy, there is a serious question whether the United States has been wise in stressing military service from elderly women and clergymen who would hardly be called. It may be right in most cases to insist upon a pledge to bear arms, but it seems far more important to require positive support of and loyalty to the American system of government. In deciding the case of *Girouard* v. *United States*[14] in 1946, the Supreme Court finally reversed its earlier stand, though it added that Congress might if it saw fit require an oath to bear arms from prospective citizens.

Loss of Citizenship Unlike some countries which refuse to sanction the discard of one citizenship to acquire another, the United States definitely permits such a course. No formal steps have to be taken to abandon citizenship in the United States, for under the law 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.[15] The Nationality Act

[13] *United States* v. *Schwimmer*, 279 U.S. 644 (1929); and *United States* v. *MacIntosh*, 283 U.S. 605 (1931). See also J. H. Wigmore, *et al.*, "United States vs. MacIntosh—A Symposium," *Illinois Law Review*, Vol. XXVI, pp. 375–396, December, 1931.

[14] 328 U.S. 61.

[15] 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.

of 1940 provided that naturalized citizens may remain in a foreign country only for a specified time unless they enjoy special status.[16] A number of persons have been de-naturalized on the basis of fraud in obtaining citizenship. Followers of the Communist and the Nazi cults 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 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 in case they chose to marry citizens of foreign countries.

Unsatisfactory Character of Early Legislation The legislation on the subject of the citizenship of married women passed in 1922 was a compromise which made for such confusion that it was apparent to both proponents and opponents that either the concession must be withdrawn or extended. Under that law American women retained their citizenship after marriage to foreigners only by constant vigilance and with frequent embarrassment, especially if they resided outside of the United States. One American girl who married an English engineer stationed in China had experiences so varied that they were related in the *Atlantic Monthly*. To begin with, she had to go through three marriage ceremonies. Then she found that both the British and American consular officials displayed scant sympathy for such independence on the part of women, while the foreign communities in which she lived regarded her as peculiar. Every two years it was necessary for her to make a visit to the United States, unless she wished her citizenship to lapse, which meant great expense in time as well as money for one who had to journey from the Orient. Traveling under a separate passport made out in her given name rather than as "Mrs.," she discovered that foreign officials and citizens found it difficult to comprehend that she was legally married. When foreign hotels posted her name among other guests on the bulletin board, as is the custom in some countries, they did so in such a way that fellow guests ostracized her socially. In the Soviet Union the immigration officials apparently concluded that her husband

[16] A period of one year was provided as grace during which naturalized citizens could return to the United States without forfeiting their citizenship. In October, 1941, when this period came to an end, about five thousand naturalized citizens faced loss of citizenship. An amendment to the act of 1940 was passed to permit approximately three thousand of these, mainly wives and children of employees of American business concerns abroad, to retain their citizenship.

was a white slave agent who had kidnapped an American woman and after removing both from the train, jailed her husband until the British consular representatives could straighten the matter out.[17] Modifications in 1930 and 1931 ironed out the most unreasonable of these requirements, while the act of 1934 finally made both sexes equal in citizenship.

Problem of Dual Citizenship and Statelessness At the present time American women who marry foreigners may find themselves in the confusing position of having two citizenships. The law of their husband's country frequently 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 perhaps even greater worries than American women in the converse situation, for they are literally without a country; their native land often no longer will claim them nor does the United States recognize them as citizens. Their wisest course is to proceed with judicial naturalization, which, although shortened in their cases, still requires some delay.[18]

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 persons for the high crime rate, political corruption, and other unpleasant aspects of American life. There is, however, considerable doubt whether these aspersions have been well founded;[19] 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. No one can visualize what would be the present weakness of the country if it had had to depend for its future only upon the some four million inhabitants of 1789 and their descendents. Millions of immigrants have poured in—first from England, Germany, Ireland, and the Scandinavian countries and then from Italy and the southern and eastern European countries. Sometimes more than a million have entered our harbors within a single year.[20] Some of these aliens have established themselves in Little Italies, Little Polands, and Little Russias in the congested areas of large cities, where they have to a surprising

[17] M. H Porritt, "Woman without a Country," *Atlantic Monthly*, Vol. CXLIV, pp. 457-459, October, 1929.

[18] 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.

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

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

degree 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. In 1950 the Commissioner of Immigration and Naturalization told a congressional committee that the alien population approximated three million.

Alien Registration After long discussion it was finally decided that it would be desirable to require aliens in the United States to register in 1940 and several months were designated for this purpose. 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 in 1940 that approximately 4,000,000 would register. Surprisingly enough the 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 increasingly apparent during the nineteenth century that some of those who elected to come were hardly 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.[21] 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 [22] who, although they do not deserve to be classed with the above groups, 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 in the United States no longer justified the bringing in of great numbers of unskilled workers, since the crime rate was the highest in the world, 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 satisfactory. The first act set up a quota

[21] 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.

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

which permitted 3 per cent of the number of foreign-born already in the United States 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 to get to the various United States ports before the quotas were exhausted. Several ships would leave Europe about the same time, but only the ones arriving first could land their passengers; the rest had to carry them back to Europe. 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 fixed the 1920 numbers of foreign-born residents in the United States as the basis for determining the number to be admitted from each country, it favored the southern Europeans who had formed the heaviest streams of recent immigration. Yet many supporters of the act regarded the northern European countries as more desirable sources. The act of 1924 took cognizance of these defects by setting up a plan which allowed American consuls to examine prospective immigrants in the countries where they were stationed and to grant permits that would, except in rare cases,[23] 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. Since a great part of the southern European immigration came after the turn of the century, more of the supposedly desirable northern European racial stock were thus admitted.

National Origins Act Realizing that the whole problem of immigration needed serious investigation, 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 subsequent legislation has provided small Chinese, Indian, and Philippine quotas 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 quota immigrants from European countries for each year and divided that among the various European countries on the basis of the number of people in the United States in 1920 stemming from these countries either directly by birth or as descendents of those so born. Thus England and Northern Ireland received an annual quota of slightly over 65,000, Germany about 25,000, the Irish Free State some 18,000, Italy approximately 6,000, and so forth; no country received a quota of less than 100.[24] 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. Economic conditions were such in the United States that fairly large numbers

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

[24] For a much more detailed discussion of recent immigration regulations, see W. S. Bernard, C. Zeleny, and H. Miller, eds., *American Immigration Policy*, Harper & Brothers, New York, 1950.

of people left for their former homes. Only a very few of those exceptional ones who desired to come to the United States during the period of the depression could meet the high financial requirements which were set up by executive order. Actually for a year or so during the depth of the depression more people were leaving the United States than were entering. Even in the comparatively prosperous year ending June 30, 1937, the small total of 50,244 immigrants arrived, of which number only 27,762 were from quota countries.[25]

The rise of the dictators in Europe, however, added to the attractiveness of the United States as a place of residence and large numbers of German Jews, Poles, Austrians, and others sought to be admitted. In the case of Germany the demand was several times the annual quota, so that many people made application for consideration several years in the future. Such persons were required to have sufficient means that they would not become public charges after arrival in the United States. From 1941–1945 entrance was made even more difficult by providing that visas could be granted to Europeans only after submitting applications to Washington and by excluding those who had near relatives in Germany and Italy.

Immigration Following World War II The end of World War II saw one of the most complicated immigration problems which had confronted the United States in many years. To begin with, there were the thousands of American boys in uniform who had married girls in the countries in which they were stationed and who were anxious to get their wives and not infrequently their children to the United States as soon as possible. Congress felt disposed to deal generously with these cases and legislation was enacted without difficulty which permitted the wives of American servicemen to enter the United States with a minimum of effort. The story of the program set up to bring these wives into the United States by ship and plane has attained an epic status.

Much more difficult was the situation presented by hundreds of thousands of displaced persons who looked upon the United States as a promised land after the misery of concentration camps, persecution, and war hardships. Many of these persons absolutely refused to return to their former homes because of the suffering which they had endured and the unfavorable prospects for the future. In the meantime they usually had to be supported at the expense of the United States and other countries in various camps and centers located in Germany and elsewhere. An international agency known as the International Refugee Organization was set up under the United Nations in 1946 to deal with the general problem and a vigorous effort was made to persuade various countries to offer a haven to the approximately 1,500,000 of these unfortunate

[25] By 1939 the total number of immigrants, both quota and non-quota, had increased to 82,998; the number then began to drop until in 1943 only 23,725 were reported. The last year of the war, 1945, saw 38,119 coming. In 1946 the number increased sharply, as was to be expected, to 108,721 and in 1948 it reached 170,570, still far short of earlier years. As recently as 1921, 805,228 immigrants had been admitted.

victims of the war. Though the President of the United States and many other officials and private individuals displayed a sympathetic attitude toward the admission of a fair share of these people, Congress found itself badly divided on the matter. There were a good many congressmen who favored the necessary legislation to admit the American share of these displaced persons, but there were others who felt that such a step would be dangerous because of the communist contamination and other undesirable features.

A third aspect of the postwar immigration problem involved the quota immigrants under the National Origins Act of 1929. There was naturally a great backlog of those arising out of the war years and the routine of processing applications together with the acute shipping situation combined to bring about lengthy delays. In some countries it was estimated that it would require ten years to secure the necessary quota passport visa from American consular officials because of the large number of those who wished to apply in relation to the quota of the particular country.[26]

Acts of 1948 and 1950 After considerable delay Congress finally in 1948 agreed on legislation which authorized the entry of 205,000 displaced persons from Europe during a two-year period expiring in 1950. But so many conditions were imposed that the act was difficult to administer in practice and the number actually entering the United States during the two years was much smaller than was anticipated. A large proportion of those qualifying for admission under the terms of the act had to be farmers; Poles and others from Eastern Europe who had left their homes after the end of hostilities were discriminated against. After much debate and uncertainty Congress decided in June, 1950, shortly before the Displaced Persons Act of 1948 was scheduled to expire, to extend the time limit to June 30, 1951, and to liberalize the original provisions to some extent, at the same time retaining the strict requirements for screening. Under the 1950 act a total 415,744 persons were included, of whom 341,000 belonged to the displaced persons category. Expellees of German ethnic origin forced to leave their homes in Poland, Czechoslovakia, and elsewhere were to be admitted to the number of 54,744 along with 10,000 orphans, of whom half were to be displaced. Other provisions of the 1950 act provided for the reception of 18,000 Polish war veterans from the British Isles, 10,000 Greeks, 2000 displaced persons from Trieste, 4000 White Russians formerly resident in Shanghai, and 500 from behind the "iron curtain" upon the recommendation of either the Secretary of State or the Secretary of Defense.

The Immigration Service The regulation of immigration was for some years supervised by a Bureau of Immigration in the Department of Labor. As immigration became a less pressing problem, Congress set up a joint bureau

[26] In the first fiscal year after the end of hostilities only about 40,000 out of 153,879 authorized by the National Origins Act actually were admitted to the United States because of various complications. Greece with an annual quota of 307, for example, had some 30,000 desiring entry into the United States.

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 the Immigration and Naturalization Service 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 of immigrants, and tracks down some of those who are in the United States without authorization. Obviously its assignment is far from a sinecure.

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.[27] During the drive against so-called "reds" in 1920 large numbers of persons were rounded up and jailed and a smaller number were deported 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 victims of the great 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. During the years 1937–1944 the number ranged from 3709 to 9275. Since 1945 there has been a sharp increase, with more than twenty thousand aliens regarded as undesirable deported in a single year.[28]

Pros and Cons of Deportation Deportation has been diversely viewed by the American people. Some feel that undue caution has been used and advocate getting rid of all foreign-born lawbreakers, recipients of relief, undesirables, and Communists. They say that these elements are a menace to the country and ought by all means to be ejected. Others are inclined to believe that the United States has gone too far. They point to the seizure of innocent persons in 1920,[29] to the ruthlessness of exploiting cheap labor in boom days and then ejecting it when hard times come, and finally to the fact that returning political prisoners to such countries as Germany, Italy, and the Soviet Union was frequently tantamount to sending them to a living if not an actual death.

[27] In 1950 there were approximately 3500 deportables, whom no country would accept, at large on bond in the United States. These were mainly from the countries behind the "Iron Curtain."

[28] In 1933, 19,865 persons were deported at government expense. In 1943 deportations numbered 4207. Following World War II the number increased somewhat, with 14,375 in 1946, 18,663 in 1947, and 20,371 in 1948.

[29] For a spirited book on this subject, see L. F. Post, *The Deportation Delirium of 1920*, Charles H. Kerr & Company, Chicago, 1923.

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7. Popular 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 police; 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. Even before the wave of totalitarianism swept over Europe, the rights of Americans were such that the United States was popularly known as the "land of the free." Perhaps at that time only British subjects could boast of consideration from their government equal to that associated with the United States, although the French nominally enjoyed more extensive rights and even in practice fared quite well. It goes almost without saying that the modicum of personal rights permitted the people of many European countries almost disappeared during the war years. England managed to cling tenaciously to her heritage in this field and, considering the critical character of the times, succeeded amazingly well in maintaining them intact.[2] Since 1945 the situation in certain foreign countries has improved materially but in others there has been a sad deterioration in this respect. In many places the United States is currently looked upon as the haven of personal freedom and property security.

Source of Rights There is no single source from which liberties conferred in the United States 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 intimate 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.[3]

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

[2] Despite the difficult character of the times, England maintained far-reaching freedom of the press, even to permitting until the spring of 1941 the *Daily Worker*, the Communist paper, to appear regularly.

[3] 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.

Certain important rights have grown out of decisions made by the Supreme Court.[4] 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 has no single basis for her popular liberties. Certain rights are granted by the national government, while others come from the various states. In general, the rights which are granted by the national 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 state constitutions. Conversely there are in a few instances state liberties which are not enumerated in the federal Constitution. Obviously this situation makes for a lack of clarity, since it is impossible to state categorically all of the rights which prevail throughout the United States. The question may present itself 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. Thus the national government stipulates a jury trial in its own courts, but the states have to declare what principles shall be observed by their officials in the conduct of duties.

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 an entirely adequate safeguard. In the last analysis these rights depend in very large measure upon public opinion—at least for their vigorous enforcement. It is, of course, one thing to have rights specified in a constitution or in law and quite another thing to have such rights actually observed, as even the experience of the United States indicates. Under machine dictatorship, for instance, rights have a disposition to vanish. No informed person would imagine for a moment that the people who lived under the domination of a Huey Long or a D. C. Stephenson enjoyed many of the rights expressly guaranteed to them by the Constitution and laws of the federal and state governments. 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. An examination of the constitutions of certain of the European and Latin-American countries gives one the impression that far-reaching rights are conferred upon the people of those countries, but unfortunately very little in the way of rights is to be observed in practice.

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

A Listing of Rights Difficult 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 categories: (1) those relating to personal conduct, (2) those regulating the judicial process, and (3) those which safeguard property. The remainder of this chapter will deal in some detail with these three types of rights as they are exercised by citizens of the United States today.

Personal Rights

Slavery and Involuntary Servitude The Thirteenth Amendment of the federal Constitution prohibits slavery and involuntary servitude within the borders of the United States and consequently grants to citizens and noncitizens 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 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 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? Some 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? Here again the most vitriolic charges have been hurled. Do the company, plantation, and ranch stores which sell to employees on credit at high prices and the laws of some states that make 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, Does the worker on such specialized jobs have the same reaction? There is evidence that some people not only like sameness but even find it preferable to successive shifting of work.

Apparent Violations Be that as it may, however, 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 if he finds such work unpleasant, 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, which we today have inherited 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 seriously 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. The last decades have seen several attempts to reduce the scope of freedom of the press. Minnesota passed a law in 1925 which provided for the suppression of a "malicious, scandalous and defamatory newspaper, magazine or other periodical," apparently with the intention of closing up newspapers which had the temerity to criticize certain politicians.[5] The Supreme Court, while admitting that penalties could be enforced against newspapers which violated the accepted canons of propriety, declared that the Minnesota statute went too far toward destroying freedom of the press.

[5] See *Near* v. *Minnesota*, 283 U.S. 697 (1931).

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 passed during World War II [6] 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. One of the encouraging aspects of the picture is that the courts, especially the Supreme Court, have remained somewhat above the clamor of certain public officials and "superpatriots" for large-scale curtailment of these rights.[7] 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 Rule of Effect An interesting but somewhat criticized rule has been applied by the courts in connection with freedom of speech. Under this rule not what is said but rather the possible effect of it determines guilt. "Clear and present danger" is the determining factor under the decisions in a series of cases decided by the Supreme Court and lower courts. A prominent Unitarian clergyman of a fashionable Boston church uttered from his pulpit substantially the same words that were spoken by a soapbox orator in the congested South End of Boston. Both were arrested under charges of violating the sedition laws and convicted in local courts. The Supreme Court reversed the conviction of the clergyman on the ground that what he had said to his sophisticated parishioners could not conceivably have resulted in insurrection against the government; at the same time it upheld the conviction of the soapbox orator on the ground that such words delivered in a section inhabited by large numbers of the poor might lead to undesirable consequences.[8] However, in deciding a case involving Rev. Terminiello in 1949, the Supreme Court departed from this doctrine to some extent, holding that even speech that stirs up unrest may not be curbed.

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.

[6] For an account of censorship during World War II, see B. K. Price, "Governmental Censorship in Wartime," *American Political Science Review*, Vol. XXXVI, pp. 837–849, October, 1942.

[7] See, for example, *Grosjean* v *American Press Co.*, 297 U.S. 233 (1936); *Herndon* v. *Lowry*, 301 U.S. 242 (1937); *Pennekamp, et al* v. *Florida*, 328 U.S. 331 (1946).

[8] In *Schenck* v. *United States*, 249 U.S. 47 (1919), Justice Holmes, speaking for the court, said: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger."

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 many 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 other 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.[9] The current situation relating to freedom of speech and freedom of the press is not without defect, but, despite various pressures, it remains one of the best in the world.

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 almost like a prairie fire through the South and Midwest during the 1920's indicates how far religious intolerance can be carried even in this day and age. Treatment accorded the Jehovah's Witnesses was once regarded by some as a denial of religious freedom, but in 1943 the Supreme Court in considering the case of *West Virginia State Board of Education* v. *Barnette*,[10] upheld their refusal to salute the American flag on religious grounds. The Supreme Court has recently reiterated the basic principle of the separation of church and state in the United States, refusing to uphold the use of public school buildings for the giving of religious instruction even on a voluntary basis.[11] Some interested persons have found it difficult to reconcile the position of the Supreme Court in the McCollum case referred to above with that expressed slightly earlier (1947) in a New Jersey case which involved the use of public funds to pay for the transportation of children to both public and church-supported schools.[12]

Limitations on Religious Liberty It should be noted that religious freedom does not carry with it the right to engage in practices that violate the

[9] For a more detailed discussion of this subject, see President's Committee on Civil Rights, *To Secure These Rights*, Government Printing Office, Washington, 1947.

[10] 319 U S. 624.

[11] See *People of Illinois ex. rel. Vashti McCollum* v. *Board of Education of School District No 71 Champaign County, Illinois*, 68 S. Ct. 461 (1948).

[12] This was in the case of *Everson* v. *Board of Education*, 67 S. Ct. 504. The Supreme Court was divided five to four in this case and upheld a decision of the highest court in New Jersey. The position of the court was that there was no contravention of the doctrine of separation of church and state involved in this case but that the New Jersey law prevented discrimination between those attending public and church-supported schools. It is interesting to note that the New Jersey constitution adopted in 1947 authorized school-bus transportation without cost to all children whether attending public, private, or church-supported schools.

criminal laws or the regulations relating to public nuisances. Members of a sect which stresses the importance of a practical display of faith killed their two children one night, with the expectation that their faith in the power of God would restore them to life before the morning dawned. Of course, they were not permitted to escape the clutches of the law when their faith failed although they had had unblemished reputations in the community in which they lived.[13] Congregations of Holy Rollers sometimes are summoned into court for disturbing the peace with their loud singing, speaking in tongues, and noisy conduct during the late evening hours; freedom of religion does not justify such practices.

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." [14] 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.[15] Some states have sought to limit this right in the cases of those likely to become a public charge; [16] others impose fees that in a measure may be interpreted as having the effect of a hindrance to free movement; [17] but in general the United States has a good record. In contrast to those countries, such as Peru and some of the eastern European countries, in which one is not permitted to leave home without a police permit and in which one must be examined every few miles before proceeding, the American practice is most liberal.[18]

During labor disputes and strikes there has occasionally been a disposition on the part of certain states to deny the right to assemble—thus in Terre Haute, Indiana, a few years ago citizens were not allowed to meet together in groups for some seven months during labor troubles and one visiting professor was lodged in jail because he persisted in waiting for his wife on a street corner. The right to petition has, however, usually been accorded, provided the petitioners contented themselves with presenting their cases in writing. But when the bonus marchers descended on Washington during the Hoover administration and when various relief organizations attempted to put pressure on Congress and the President by sending large numbers of representatives to

[13] They were finally sent to an institution for the criminally insane because no other appropriate place was available.

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

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

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

[17] 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. 4.

[18] However, as a wartime measure second generation Japanese American citizens by virtue of birth were seriously restricted in their movements during World War II.

Washington during the Franklin D. Roosevelt administration, precautionary steps were taken by the authorities to handle the problems resulting. 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 tens of thousands of persons, are sent to Washington every year. Of course, some may receive serious attention from members of Congress, but a great many are regarded as of slight consequence.

Right to Keep and Bear Arms The Second Amendment of 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 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. The acquisition by the veterans of World War II of many thousands of revolvers and pistols has made this a serious problem.

Freedom from Unreasonable Searches and Seizures The Fourth Amendment of 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 people only after long effort and which was brought to the colonies by the early settlers. Unlike certain other rights which have lost their meaning to a greater or less extent, this continues to be of considerable importance in both federal and state jurisdictions. As crime has become highly organized, the police have been increasingly 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. However, 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.[19]

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.[20] 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,[21] 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 does not go into such matters beyond the point involved in a given case, the process of interpretation has been a long-drawn out one, even as yet uncompleted.[22] On the surface, this guarantee might seem to 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, distinctly 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 the estate increases in amount. 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 hardly seem "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.[23] On the other hand, the Supreme Court has displayed a considerable amount of concern for the equal treatment of Negroes. Recently this court has held that Negroes

[19] 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, in *Harris* v. *United States*, 67 S. Ct. 1098 (1947), the Supreme Court by a five-to-four vote upheld a conviction based on evidence obtained by the F.B.I. without a search warrant. F.B.I had a search warrant for stolen checks, but seized draft registration certificates without a warrant and conviction was based on the latter.

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

[21] Enemy aliens during World War II 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.

[22] 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).

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

must be given equal facilities when traveling by train, equal educational opportunities, and adequate judicial safeguards.[24] In 1950, segregation of Negro students in universities in Texas and Oklahoma was held to be a denial of equal protection. In the same year Congress passed a Subversive Control Act over the veto of the President which required Communists and Communist-front organizations to register with the Department of Justice. The relation of such a measure to the equal-protection clause will doubtless be interpreted by the courts.

Freedom from Bills of Attainder Prior to the seventeenth century Englishmen often had to put up with tyrannical treatment from their government. Among the practices which they bitterly resented were the passing of bills by Parliament which ordered 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 suffered. To protect themselves against such iniquitous practices the freemen of England finally made such legislative acts, known as bills of attainder, illegal. The 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 formal bill of rights.[25] 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 the ban on bills of attainder, for there is still a disposition on the part of some 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 legally 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.[26] Consequently Congress and the state legislatures have the authority to enact retroactive tax and other civil laws and even to make retroactive laws in the criminal field as long as they do not make more difficult the lot of any persons involved. As the

[24] *Missouri ex. rel. Gaines* v. *Canada, Registrar,* 305 U.S. 337 (1938); *Morgan* v. *Virginia,* 328 U.S., 373 (1946).

[25] Art. I, sec. 9.

[26] See *Calder* v. *Bull,* 3 Dallas 386 (1798).

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." [27]

Definition of Treason At previous periods in the history of the world treason has included almost every conceivable offense; even in the Germany of the Third Reich a long list of acts were branded as treasonable—a Catholic nun who carried funds in and out of Germany for the benefit of her order might on such a charge have her head chopped off by the formally dressed public executioner with the gleaming Hitler axe. The framers were mindful of the onerous and frequently intolerable 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, giving them aid and comfort." [28] 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." [29] Finally, relatives of traitors cannot be tortured by a Gestapo or M.V.D. and/or sent to a concentration camp, 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; [30] state constitutions also deal with this process, though they do not always coincide with the federal provisions. Having examined some of the rights having to do 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.[31] The latter portion of the requirement is invariably met by American courts; indeed it is taken for granted. It may be added that such was not always the case, for in a certain period of English history it was not

[27] *Ibid.*

[28] Art. III, sec. 3.

[29] 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 *Cramer* v. *United States*, 325 U.S. 1 (1945).

[30] These are Amendments V–VIII.

[31] Amendment VI.

uncommon to hold secret and "star-chamber" sessions at which the accused was at a distinct disadvantage. 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. And the judge may occasionally order the courtroom cleared of minors and certain other classes on the ground that the nature of the testimony is such that moral contamination might result. 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 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; even in England, where safeguards similar to those in the United States are to be found, important criminal cases rarely are pending for more than a few months. American courts are in general the busiest in the entire world and that makes for crowded dockets. But more than that there is the emphasis placed upon legal technicalities in most courts. Almost countless motions of a dilatory and frequently time-consuming character having little to do with the guilt or innocence of the accused will be resorted to by shrewd attorneys—in the trial of certain Communists in 1949 in New York City charged with a conspiracy to overthrow the government some weeks were consumed by such motions. In defending such procedure lawyers maintain that a long-drawn-out 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 under the law often have no authority to sweep away such technicalities, even if they are irritated by the unnecessary consumption of time and effort.[32] It is probable that general delay could be drastically reduced if lawyers desired to complete their cases at an early date. Monte Lehman, a distinguished member of the bar in New Orleans, once stated that in Louisiana, where the courts were at the time some three years behind with their work, lawyers could, if they wished, finish cases in less than a year.[33]

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 [34] in the ancient form used by the English. When persons were

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

[33] At a meeting of the American Political Science Association and Association of American Law Schools held in New Orleans in 1929.

[34] 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

arrested and detained 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.[35] Hence persons held in jail may instruct their lawyers to sue out such a writ unless they have been indicted by a grand jury, named in a process of information, or are otherwise held to face definite charges. A writ of habeas corpus has the 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. As a result of this safeguard persons in the United States cannot be imprisoned for an indefinite period without trial; nor can they be held to await trial without adequate reason.

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.[36] In certain instances this right permits those who commit serious crimes to go unpunished, with the result that the public safety may be endangered. On the other hand, if public 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 remembered, however, that this prohibition does not extend to cases where the jury has been unable to agree.[37] Nor is an appeal by a convicted person to a higher court considered double jeopardy but rather the continuation of the one trial.[38] 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 on its surface to be 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." Finally, it should be noted that 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.

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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.

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

[36] Amendment V.

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

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

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 such 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 at public expense, particularly if the charges are more than minor ones. In such 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. Where a judge indefinitely assigns all of the local bar to assist accused persons and permits only a day or so for preparing the defense, the Supreme Court has ruled that there has been a denial of constitutional rights, with consequent necessity for a new trial.[39]

Witnesses In criminal proceedings an accused person cannot be compelled "to be a witness against himself." [40] Refusal to take the witness stand may, of course, be interpreted by the jury as an admission of guilt, but the accused can at any rate refrain from giving direct testimony in open court. 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. Some observers contend that the right to refuse to be a witness against oneself means relatively little in many jurisdictions because police make use of "third-degree" methods to extract signed confessions before the trial begins.[41] 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.[42] Nevertheless, one cannot deny that third-degree techniques employed in modern American police administration constitute a modification of this right.

Another guarantee to an accused person stipulates that he must "be confronted with the witnesses against him." [43] 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. Therefore now, if a prisoner is not present in court during everything which is said by witnesses, appellate courts will ordinarily declare a trial invalid and order new proceedings. 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 them—even his attorney might find that difficult both because of the cost and the reluctance of some people to appear

[39] *Powell* v. *Alabama*, 287 U.S. 45 (1932).
[40] Amendment V.
[41] See E. H. Lavine, *Third Degree Methods*, Garden City Publishing Company, Garden City, 1934.
[42] *Chambers, et al.* v. *Florida*, 309 U.S. 227 (1940).
[43] Amendment VI.

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.[44] Needless to say, this is a most important right.

Uses of Juries In federal cases persons charged with a "capital or otherwise infamous crime" until recently had to be indicted by 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," [45] but the Supreme Court has now interpreted this to include the bringing of charges by process of information. Some of the states have also 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.[46] 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." [47] This carries out the historic mandate of the common law that accused persons shall be tried by juries of their peers composed of "twelve good men and true."

Excessive Bail and Cruel and Unusual Punishment 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." [48] 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.[49] 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 punishment" was inserted.

Punishment meted out in the United States is more conventional today, although the conditions in some of the prisons cannot be regarded as humane.

[44] Amendment VI.
[45] Amendment V.
[46] *Hurtado* v. *California*, 110 U.S. 516 (1884).
[47] Amendment VI.
[48] Amendment VIII.
[49] Amendment VIII.

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 safeguards placed around the judicial process thus far examined are more or less self-explanatory, although they cannot always be taken at their face value. 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. Indeed it was not until almost a century had elapsed that *substantive* due process received much attention. Inasmuch as we are here dealing with rights which are related to the judicial process, attention will largely be confined to procedural due process for the time being.

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." [50] With hundreds of cases coming under this

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

classification, it would be possible to devote lengthy attention to the details of what has been declared to be procedural due process. In a book which has to include many topics such detailed treatment is not feasible. 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.[51]

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.[52] 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, the Supreme Court departed from its long-held policy and inquired what counsel had been assigned and how long a time had been permitted that counsel for preparation of the defense. When it was revealed that the judge had made a blanket assignment of several members of the local bar, that very little if any effort had been exerted on their part toward serious preparation for defending the eight Negro youths, and that the court did not even permit time for such steps, the Supreme Court invalidated the first trial and ordered the case retried.[53]

[51] 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. For a briefer but more recent study, see R. J. Harris, "Due Process of Law," *American Political Science Review*, Vol. XLII, pp. 32-42, February, 1948.

[52] *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.

[53] See *Powell* v. *Alabama*, 287 U.S. 45 (1932). Similarly, in an Arkansas case in which five Negroes were sentenced to death under pressure of a mob the counsel alleged before the Supreme Court: "The Court and the neighborhood thronged with an adverse crowd. . . . The counsel did not venture to demand delay or change of venue, to challenge a juryman or to ask for separate trials. He had no preliminary consultation with the accused, called no witnesses for the defense although they could have been produced, and did not put the defendants on the stand. . . . The trial lasted about three quarters of an hour . . . no juryman could

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 court or quasi-judicial commission. Nor does it necessarily mean that the period set aside for such a purpose shall be unlimited. But it does necessitate a reasonable provision 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. The query is sometimes made as to whether the right to be heard implies any particular attitude on the part of the judge or presiding officer. May a judge write letters while testimony is being given? May he take a nap while sitting on the bench during the course of a trial? May he absent himself entirely from the courtroom while evidence is being produced? May he show by his general remarks that he is without interest in anything that the parties could possibly bring forward? Generally speaking, this right seems to have more to do with the opportunity to present a case than with the attention which the presiding official gives to it. Of course, if it could be shown that the judge had left the courtroom during the trial without proper adjournment or that he was actually oblivious to what was going on because of inebriation or sleep, it is probable that a denial of due process would be declared by an appellate court. But the mere fact that the judge or administrative officer seems inattentive, bored, indifferent, somewhat unsympathetic, disposed to read a newspaper or write a letter, has thus far not usually been sufficient to invoke successfully procedural due process. Considering the greater attention which appellate courts are currently giving to the spirit of the Constitution, it is possible that a more rigid code of judicial conduct will be required in the future.

Public Assistance Finally, procedural due process demands that a reasonable amount of public assistance be given to accused persons in major criminal 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

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have voted for acquittal and continued to live in Phillips County and if any prisoner had by any chance been acquitted by the jury he could not have escaped the mob." The Supreme Court ordered the district court to examine the facts to determine the truth of the allegations and commented that a mere "mask" of legality was not enough to fulfill the requirement of due process. See *Moore* v. *Dempsay*, 261 U.S. 86 (1923), quoted from C. G. Fenwick, ed., *Evans' Cases in Constitutional Law*, Callaghan & Company, Chicago, 1938, p. 1016.

of the public authorities are provided for the subpoenaing of witnesses, but due process would again go further to inquire whether an honest attempt has been 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 demands 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 the 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 reasonably exact. They must contain an ascertainable standard of conduct.[54] 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 had 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 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. Not only is the term "socialist" in poor repute in many American circles, but its very mention is the cause of great perturbation. 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 possible 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 France, Germany, and in Italy the Socialists have long been influential. Even in England there has been nothing like the disapprobation America has exhibited. The Labor party includes many of them in its mem-

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

bership, while even the Conservatives have at times at least accorded them respect.

Property Ownership The general American philosophy is that virtually all forms of property should be privately owned. Exceptions would, of course, be made in the case of warships, public buildings, highways, and related property, but natural resources, industrial holdings, banking and insurance, utilities, distribution facilities, and most other forms of property are closely identified with private ownership. Legally no titles to property are absolute, but most Americans consider the legal rule purely formal. Beyond levying taxes they do not concede to the government any control over property; indeed many would say that the primary purpose of government is the protection of private property against thieves, firebugs, and all others who would threaten its safety. During the present century there has been some movement away from this laissez faire concept—for a few years following 1933 the trend was accelerated to such an extent that it seemed to many citizens to threaten the very existence of the commonwealth. The government has made forays by setting up T.V.A. and Pacific Northwest public-power projects, acquiring national forest lands, entering the housing field, assisting rural electricity and telephone co-operatives, putting municipal water plants on a public basis, insuring private deposits in commercial banks, and creating federal reserve banks, but the broad expanse of the field has been left unimpaired. The most significant 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 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 as to how they will use property, 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, telephone, credit, insurance, amusement, hotel accommodations, and related services. Standards are set up which regulate charges, financial dealings, safety, convenience, and so forth.[55] No longer can a bank or brokerage firm unload on its clients the worthless securities of some foreign government without assuming 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 under certain circumstances

[55] In not all of these cases are charges regulated or financial dealings limited.

when it declares: "nor shall private property be taken for public use without just compensation." [56] States are given corresponding rights by their constitutions. The term "public use" is vague and has been variously interpreted by the courts, but as a rule the government has displayed restraint in seeking to expand the meaning beyond land 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 impossible the condemnation is put through a court, which, after hearing testimony from both sides, renders a decision as to the price to be paid the owners by the government.

Substantive Due Process During an earlier period the development by the Supreme Court of substantive due process in connection with property rights was very important. Thus the court 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 constituted a denial of substantive due process in the holding of property.[57] 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 [58] 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.

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[56] Amendment V.

[57] *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.

[58] *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 Lawyers 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.

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8. Obligations and Responsibilities of Citizens

The Relation of Obligations to Rights There has been a great deal of emphasis placed on the *rights* of citizenship in the United States; indeed one of the favorite pastimes of public orators and commentators has long been that of pointing out how superior Americans are to other peoples in this respect. It is, of course, always pleasant to recite the many guarantees of person and property which are given to our citizens. Recently when such rights had almost ceased to exist in many countries of the world, it was particularly reassuring to enumerate the freedom of speech and of the press, the right to hold property and to move freely about, and the many safeguards placed around the judicial process by the United States. It is perhaps not strange that much less attention has been paid to the *obligations* and the *responsibilities* of citizenship, for the very words suggest burdens, sacrifice, and unpalatable duties. 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 responsibilities. In the days when international problems were comparatively simple or quiescent and domestic problems were such as not to tax the resources of the country, it was perhaps possible to emphasize the rights and shirk the obligations; but during these years of emergency it is not too much to say that the very continuance of the rights depends upon the extent to which the rank and file of citizens accept their responsibilities. 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. The two should go hand in hand, for they are intimately linked together.

A Catalogue of Obligations Difficult As in the case of the rights and liberties of citizenship, it is not a simple matter to make a complete list of the obligations and responsibilities. The number may be somewhat fewer than that of rights and 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 and responsibilities"; indeed the Constitution has little to say about these matters directly. One must read between the lines and make use of the technique of implication to discover their nature. It is not the

intention in this chapter to attempt a full listing of obligations and responsibilities, but in the succeeding paragraph a number of the most significant ones will be examined.

Acceptance of the Basic System of Government

What It Implies One of the basic obligations which citizenship would seem to involve is that of belief in the underlying principles of the American system of government. Aliens who sojourn in the United States may be excused perhaps when they view our governmental institutions with lack of enthusiasm and display fondness for the various fascist or communist ideologies of government. But the very nature of citizenship implies general acceptance of the government of which that citizenship is a part. It is as illogical for a citizen of the United States to believe in the tenets of fascism as it would be for an Eskimo to advocate the introduction of steam heat in the igloo. It is, of course, true that the majority of the citizens of the United States have not exercised any direct choice in becoming citizens, a fact which undoubtedly adds to the difficulty. Nevertheless, it is not too much to assert that those who are convinced that the American system of government is basically wrong can scarcely be regarded as more than nominal citizens of the country. The reasonable course under such circumstances would be to transfer residence to the country whose governmental system one favors, but that is impractical in many cases. The very least that can be expected of such misplaced persons is neutrality: they are bound to the United States by economic ties and in return for a livelihood and other advantages which they receive they should not seek to further the overthrow of that government. The acts of citizens who advocate communism or fascism may be fully as menacing to the body politic as offenses, such as stealing from the public funds, bribery, and intimidation at the polls, which are punishable by heavy prison sentences.

Support Does Not Mean Jingoism There is always a danger, especially in times of crisis, that insistence upon acceptance of basic principles will be carried too far. It is one thing to ask that all citizens display loyalty to the underlying principles; it is quite another to demand that they accept every weakness without question. To ban criticism of the American system would be as inexcusable as to justify activities that are aimed at its overthrow. One may rightfully be proud of the achievements of the United States, but that does not imply that the government is perfect. Not only should the freedom to criticize weaknesses be preserved, but such a course might itself well be regarded as an obligation of citizens. In other words, the best friends of the American political system are not those who display their jingoism at every opportunity, particularly when publicity is to be obtained, and cry from the housetops that everything is as it should be. The future of the United States

depends in large measure upon its success in ridding itself of graft, both "honest" and "dishonest," favoritism, class hatred, inefficiency, and incompetence. These perversions thrive on jingoistic patriotism and need constant denunciation on the part of the citizens if they are to be kept in check. Of course, criticism as far as possible should be constructive rather than destructive, although in certain cases vigorous denunciation may be the only means of cleaning house.

Observance of Laws Closely related to the acceptance of the fundamental principles of American government is the obligation to observe the laws which have been enacted by that 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.[1] Certainly it is the duty of those charged with law-making to perform their task with care and wisdom; periodically it may be reasonably 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 his responsibility 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 which in general exceeds the records of other countries. 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. A survey conducted by the National Opinion Research Center at the University of Denver a few years ago indicated that seven out of ten voters would not want to see a son enter politics as a lifework and that five

[1] 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.

out of ten think that it is practically impossible for a man to remain honest if he enters politics as a career. Such an attitude indicates that something is radically wrong. Anyone who has observed the attitude of the Communists in the U.S.S.R. and its satellites has doubtless been impressed by the almost fanatical zeal of those who take part in the activities of the party or of the government. Apparently even the members of the secret police who engage in the torture of suspected enemies perform their duties with a glow of righteousness. Such an excess of zealousness has its limitations and would not be desirable in the United States. However, there is room in the United States for substantial movement in that general direction without danger of menace. As long as large numbers of American citizens view political activity as dishonorable, and hence remain aloof themselves, they leave 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 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. Given a church with ambitious clergy, venal officials and indifferent members and there will be scheming for personal advantage, dishonor, and incompetence—and again it may be added that such religious congregations have not been unknown in the American scene. If citizens 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 many of 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 because he finished his reign in such obscurity that no one could remember what he had tried to do. 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 reasonably strong 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; yet it apparently characterizes numerous Americans, judging from what they say and write. A belief that a reasonably

strong government is unnecessary in this day and age is not one that an intelligent citizen can fairly hold. That is not to say, of course, that government should be permitted to exceed its proper sphere, meddle in affairs that can best be left under private auspices, and reach a point of "statism" where authority over all human activities is concentrated in a highly centralized political system, for government as a goal in itself has little to recommend it. Government should always be a tool, not an end in itself. But under modern civilization, with its emphasis on a good life for as large a part of the people as possible, government, if kept under proper control, must be regarded as an essential tool rather than as a necessary evil. Extravagance, duplication of effort, irresponsible public officials are evils, though not necessary evils, that may be associated with government and they obviously are entitled to no defence.

An Understanding of the Role of Government Not only is it a responsibility of citizens to rid themselves of the dirty-hand and government-a-necessary-evil attitudes; there is a more positive obligation to acquire some understanding of the role of government in the United States in the twentieth century. It is probable that most American 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 synonymous 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. It is not enough, as some people assume, merely to be able to recite the expenditures of governmental agencies. Of course, there is no reason why a citizen should not know the cost of these enterprises, but such information alone means little unless it is related to what is being done and to the effects produced by a particular program. Finally, such political consciousness on the part of the citizen should extend to a realization of the dangers which governments face from various evil forces from within and without.

Information Concerning 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 current structure and activities of govern-

ment in the United States on national, state, and local levels. 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, for they have their livelihoods to earn and their social relations to consider. Nevertheless, it is possible to acquire a reasonably good understanding of governmental machinery and programs without neglecting other demands. If a part of the time devoted at present to petty matters of minor consequence were set aside for such a purpose, it would make a considerable difference in the general adequacy of citizenship. 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 decisions of fundamental policy on which representative government rests.

Sources of Information When asked to assume this obligation, many citizens may ask where they are to secure such knowledge. Of course, 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 in many instances, there is a considerable amount to be learned from the press, 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 leads to a good many broadcasts which are at least of some 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 decades ago there was scarcely a government department that maintained even the simplest of press bureaus, but at present almost all of the sizable agencies of the federal government include such a subdivision. 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 give space to items 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 departments of the national government 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; 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 in many cases did not read them. During the last twenty-five years encouraging progress has been made by some government units or departments in issuing reports.[2] Instead of pages and pages of uninterpreted, uncorrelated, and more or less 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. An attempt has been made to get the reports into the hands of the citizens. The Senate Appropriations Committee collected 83,000 federal publications in 1948 and reported that the Government Printing Office had sent out 133,582,867,587 copies during a ten-year period.

Variation in Reports The records of cities such as Milwaukee and Cincinnati have been impressive: circulation of their city reports has been wide and there is evidence that large numbers of citizens have familiarized themselves with the contents. States have not done so well, although it is only fair to give them credit for improvement.[3] The record of the federal government is uneven in this respect. Certain departments continue to issue the old type of report, which, whatever else may be said about it, certainly makes little contribution to an informed citizenry. On the other hand, some of the reports recently issued by federal agencies are excellent in every respect and serve a very useful purpose in acquainting the citizen with certain aspects of the national government.[4]

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 major problems.[5] Several agencies have prepared exhibits which have been sent on tour. In a number of instances charts have been printed in considerable numbers for circulation among interested persons. The military departments have given special emphasis to the use of films, film strips, slides, charts, and other visual aids as a result of expe-

[2] 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; J. L. McCamy, *Government Publicity*, University of Chicago Press, Chicago, 1939.

[3] The *Indiana Yearbook* is one of the better state reports. It is issued annually and has made important improvements recently, although many of its reports are of the old statistical variety.

[4] See the recent reports of the State Deparment, for example.

[5] *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.

rience derived from World War II. Most of their visual aids are intended for official purposes but some are available for general use.

Criticisms of Public Reporting There are those who maintain that the government has no business attempting to inform the people of its objectives because such efforts fall within the category of propaganda.[6] To what extent this charge is borne out by the facts is somewhat difficult to determine. There can be little doubt that some of the material has been prepared for the purpose of influencing large numbers of people—the soil-erosion movie and photographs would seem definitely to belong to such a class. On the other hand, many formal reports cover such a wide scope and appear so long after issues are immediately vital that there seems little basis for the assertion that they have an ulterior purpose. Inasmuch as the officials who oversee the preparation of the reports are human, it is natural that they should wish to have their departments appear in as favorable light as possible. Altogether there is not nearly enough evidence to justify a conclusion that the reporting is not useful. Even where there is a definite end in view which involves action, as in the case of soil erosion, there may be unquestioned justification.[7]

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. Whether this calls for service outside of the borders of the United States has been variously argued. Some place the dividing line on whether the armed forces are used for defensive or offensive purposes, but in these days it is difficult, if not impossible, to determine such questions objectively. If the recent world conflict has demonstrated anything, it is that taking the offensive against an enemy may be the best defense. To wait for actual invasion may mean that successful defense is out of the picture. 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.[8]

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,

[6] Particularly has this accusation fallen upon the publications of the T.V.A., in part because their tone justified it, but largely because of antagonism to the program itself.

[7] See Chap. 9 for additional discussion of this problem.

[8] 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 permitted partial objectors to be assigned to the quartermaster and related corps, but even allowed 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.

especially at the rates of pay which are in force, 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 insisting on a "fair profit." A serious objection to any general drafting of industrial plants is that the government has so many duties to perform in wartime that it would in all probability be less capable of running the plants than the private owners. In the case of service in the armed forces there is, of course, no such argument. The very least that may be expected is that industry should put itself at the service of government during periods of national emergency, with no more than a normal rate of profit required, and that labor should then satisfy itself with a normal wage. Strikes in munitions plants during wartime place organized labor in an unenviable light as far as meeting its obligations as citizens is concerned.

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 of citizens to pay the various taxes which are levied on them. Since taxes are compulsory, it might seem that such a responsibility 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 duty. Influential politicians have sometimes made use of their positions to secure low assessments and in other 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, especially during these difficult times, 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.[9] Consequently

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

citizens are prone to ask their congressmen to keep the tax rate down within reasonable limits and to borrow the remainder of the money necessary to operate the government. There are several schools of thought in the matter of the justification for borrowing and the extent to which such a practice may safely be carried. For that reason it is difficult to lay down the absolute rule that citizens should shoulder backbreaking taxes rather than have the government finance a part of its expenditures through borrowing. Nevertheless, 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 earlier times public securities could usually be absorbed by banks, life insurance companies, and other large investors and consequently the rank and file of citizens were not obligated to purchase government savings bonds, national defense stamps, and other types of securities except during periods of war. However, during recent years, when the need for borrowing has been great, such an obligation presents itself. This is not always because the government cannot raise funds from other sources but 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.

The "Gimme" Concept of Government

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. How much truth there is in these assertions, it is difficult to ascertain. With the lack of confidence which is generally exhibited toward anything which originates from critics, Americans like to disregard these charges entirely. Yet even the most carping complainer may have a keen vision in matters of public shortcoming and consequently may wisely be given a hearing. 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.

The Situation in Washington A study of the pressures which are exerted more or less constantly on various agencies in Washington reveals a depressing situation.[10] 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.

The Problem in the States In the state capitals the scenes are similar. The speaker of the house of representatives of a midwestern state at the conclusion of a recent legislative session publicly denounced the menace to his state of the armies of special privilege seekers. He declared that the legislature was seriously handicapped in its functioning by these groups and suggested that a rule be adopted which would reduce the number of bills to be introduced biennially in his legislature to two hundred.

Summary The situation may be less serious than it appears on the surface, but it is a major problem. Fortunately, some of the desires of the interest groups although selfish are still not direct threats to the public weal; otherwise the country might have been ruined before this. There was some indication during the middle thirties that these pressures had diminished, but they have shown renewed vitality more recently. The most promising method of attack on the problem would seem to be that of correcting as far as possible the notion which so many of the citizens have of the purpose of government. As long as they hold the "gimme" concept, it will be exceedingly difficult for the government to act for the best interests of the country as a whole.

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, whites against blacks, 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

[10] See Chap. 13 for a detailed discussion of pressure groups.

strength. It is not always an easy matter for citizens to display tolerance toward the aspirations and beliefs of fellow citizens. At times the fury of class struggle has reached a high degree of intensity and the country has been badly split. A century ago there raged the controversy over slavery, which threatened the very existence of the nation and from which the southern states scarcely recovered in fifty years. More recently there has been the wildfire of the Ku Klux Klan which swept over the country with cataclysmic speed and force, leaving in its wake blasted churches, divided communities, and corrupted governments. It is easy for Americans to point with horror to the inhuman Jew-baiting of the Germans and the savage stamping out of the kulaks, or property-owning peasants, by the Soviet Union; 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. Almost every citizen of the United States can prate of the atrocities against the Jews in Germany or the activities of the secret police in the U.S.S.R; it is interesting to note that the Germans and Russians can reel off statistics in turn relating to the lynching of Negroes in the United States. Much as we might like to assume that tolerance can be taken for granted in the United States, a careful examination of the facts indicates that it is an obligation which citizens must constantly strive to achieve.

Tolerance not 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. In those instances in which the activities of groups in our midst are aimed at the destruction of the United States, there is no obligation to close one's eyes. Indeed in such cases the obligation is the very reverse. 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 in the United States 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 heavily 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.

It is related that Andrew Jackson as a youth presented himself at the polls to vote, only to be informed by the officials that the age of seventeen years did not entitle even male citizens to exercise that privilege. Whereupon Jackson returned to his home, seized a gun, returned to the polls, and compelled the election officials to permit him to vote. Apparently he acted on the supposition that he had a right to wield the franchise regardless of age. Citizens under twenty-one (eighteen in Georgia) do not 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 states rather than by the national government and consequently voting qualifications are not uniform throughout the United States. In every state American citizenship is at present required for voting, though a number of the states at an earlier period permitted specified aliens to participate in their 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 given state is required, with one year regarded as satisfactory 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 received criticism during recent years, several of the states continue to insist that those who take part in their elections must present a poll-tax receipt. Literacy tests of various sorts 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 but are not absolute requirements.[11] The Bureau of the Census estimates that there are more than ninety million potential voters in the United States.

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 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

[11] Perhaps the most convenient source of information relating to the requirements imposed by the various states upon those who wish to vote is the *Book of the States*, published by the Council of State Governments every two years. The states themselves publish their election laws periodically and these may be consulted for the detailed provisions stipulated in a given state.

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. Some of those who possessed the age qualification lacked residence and other necessary requirements and of course could not vote. However, after making allowance for all of these, the record remains poor indeed, with less than half of those qualified actually taking the trouble to cast ballots. It is only fair to note that this election reached the low-water mark and that there has been substantial improvement since that time.[12] 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.[13] 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 substantially during the two decades.[14]

Compulsory Voting Despite the fairly widespread interest now exhibited by adult citizens in voting, the record in the United States is by no means equal to that of the totalitarian governments, where anything under 90 per cent is considered very humiliating indeed and voting records of 99 per cent have actually been established. However, comparison between voting in the United States and these countries means little because of the force exerted on the citizenry of the latter by various instrumentalities of government; moreover, after a vote has been cast by a person, it has little significance both because of the unimportant character of the matters voted on and because of the daring required to refrain from a favorable vote. Nevertheless, there are those who believe that it might be well to introduce compulsory voting in the United States. People have to pay taxes or incur a penalty, the argument goes,

[12] The Bureau of the Census reports that 59.5 per cent of those eligible voted in 1940, 56.4 per cent in 1944, and 51 2 per cent in 1948.

[13] The 1944 vote approximated forty-eight million and 1948 votes numbered 48,836,579.

[14] 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. Another valuable source of information has been prepared by the Bureau of the Census under the title *Votes Cast in Presidential and Congressional Elections, 1928–1944*, Government Printing Office, Washington, 1946 Other informing studies are: J. K. Pollock, *Voting Behavior; A Case Study*, University of Michigan, Ann Arbor, 1940; E. H. Litchfield, *Voting Behavior in a Metropolitan Area* [Detroit], University of Michigan, Ann Arbor, 1941, G. M. Connelly and H. H. Field, "The Non-Voter—Who He Is, What He Thinks," *Public Opinion Quarterly*, Vol. VIII, pp. 175–187, 1944.

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," so to speak. 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.[15] 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 government, 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.[16] 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.[17] 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,[18] 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

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

[16] 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.

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

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

purely a formality, there is little incentive on the part of voters to turn out. Consequently, there are the amazing voting records which sometimes show more than 90 per cent of those qualified in the nonvoting class. Then, too, it has been the custom of certain southern states to put up such barriers that large numbers of Negroes are disfranchised. In states in which Negroes account for something like half of the entire population this, of course, has a very noticeable effect upon the voting record.[19]

Public Officeholding

Importance of Attitude Naturally, not all citizens can expect to hold public offices or official positions, for even with the rapid expansion of public pay rolls to a point where some 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.*[20] 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 and in many periods.

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

[19] See Paul Lewinson, *Race, Class, and Party*, Oxford University Press, New York, 1932, for a detailed study of the status of Negro voting. The recent cases decided by the Supreme Court involving Negroes point in the direction of wider Negro participation. For a more recent study dealing with this subject, see M. R. Davie, *Negroes in American Society*, McGraw-Hill Book Company, New York, 1949. V. O. Key's *Southern Politics in State and Nation*, Alfred A. Knopf, New York, 1949, deals with the problem along with others in an unusually informing manner.

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

take over responsibilities of a public character sometimes even to the extent of becoming dollar-a-year men. But this obligation likewise 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.

Particular Obligation of University People There has been a disposition on the part of certain people to maintain that university staff members, students, and graduates have a peculiar responsibility in connection with the holding of offices in political parties and in various governments. A national foundation has been set up under the leadership of Judge Vanderbilt, the chief justice of the New Jersey Supreme Court, to promote the cause of greater recognition of such an obligation on the part of university people. Institutes of Practical Politics have been organized on various campuses, such as Ohio Wesleyan University, and regional conferences have been scheduled to bring together academic, political, and civic leaders for the discussion of the problems involved in more active participation. A number of university students have recently been successful in receiving election or appointment to seats in state legislatures, city councils, planning commissions, and so forth; others have held administrative posts; and a larger number have served in various capacities with political organizations. More important is the stimulating of a lasting interest in students which will have the result of bringing them to political and public positions after they leave the university campus. University people should have an understanding of fundamental problems of American government beyond that of the rank and file of citizens and therefore have an unusually great contribution to make as public servants.[21]

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-

[21] For an interesting monograph on the efforts being made on university campuses to increase such responsibility, see T. H. Reed and D. D. Reed, *Evaluation of Citizenship Training and Incentive in American Colleges and Universities*, Citizenship Clearing House, New York, 1950

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.

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9. The Role of Public Opinion

There has been a lively interest in public opinion as an object of speculation and discussion for many years. Students of law, including Austin, Esmein, Willoughby, and Dicey, have explored the legal and institutional ramifications of public opinion; Tarde, Wallas, and Lippmann have been interested in the sociological and psychological backgrounds; Lord Bryce and President Lowell have dealt with public opinion from the standpoint of political science. During recent years practitioners in applied public opinion, such as Edward Bernays and George Gallup, have contributed illuminating discussions of the practical application of the principles. While a careful study of the various schools of thought offers more than ordinary returns, an introductory book dealing with American government can do little more than touch the high points of the theory and must content itself with a summary of the techniques and results. But such consideration is essential because of the important place which public opinion occupies as a basis of American government.

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." [1] 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, one of the more recent writers on this subject, 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." [2] 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 many questions there was no majority opinion. As political parties have fallen into the habit of straddling

[1] James Bryce, *Modern Democracies*, 2 vols., The Macmillan Company, New York, 1927, Vol. I, p. 154.

[2] Harwood L. Childs, *An Introduction to Public Opinion*, John Wiley & Sons, New York, 1940, p. 48.

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, the aged person, 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 growers, 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. It is sometimes stated that the social sciences lag behind the physical and biological sciences and as far as careful examination and analysis of all the myriad of details of human life and beliefs goes that seems to be the case. If our political, social, and economic institutions are to keep pace with the discoveries of chemistry, applied engineering, physics, and the biological sciences it will be necessary to pay more attention to such matters as the thousands of collective opinions that finally go to make up general public opinion in the United States.

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 beginning 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 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. A few thousand Negroes were able, by threatening to march on Washington, to persuade President Roosevelt in 1941 to issue an order requiring Negroes to be given equal status with whites in the federal civil service. The success of the veterans in getting bonuses and pension legislation is another striking example of the effectiveness of well-organized public opinion on the part of a minority of the entire population. The emphatic belief of the workers and elderly persons that the government owes them a minimum pension of $100 per month may not

have had so much to do with certain political decisions as some assert; but, nevertheless, it cannot be ignored. The efforts of various organized groups have been quite significant in determining foreign policy in the United States. The groups of individuals who hold inchoate and passive beliefs are important from a sociological and psychological standpoint and cannot be ignored by political scientists, but these groups are usually not sufficiently united and expressive to make their influence of direct effect on political action. On the other hand, the groups that hold definite opinions and believe so strongly in them that they are willing to take concerted action to influence the government are of the greatest interest to those who want to know what is behind the formal processes of government.

Role of Public Opinion in a Democracy and Dictatorship Compared Public opinion is sometimes associated exclusively with the democratic form of government, but in actuality it is not restricted to any system. One cannot read Hitler's *Mein Kampf* without realizing how important a role he assigned to this factor; he ascribed the defeat in 1918 very largely to an unfavorable public opinion among the German people built up by the Jews and based his own hopes on a more positive attitude which he believed could be brought about, irrespective of the truth, by divers sorts of propaganda and repressive techniques.

In the Totalitarian Countries The section of the 1936 constitution of the Soviet Union dealing with human rights and liberties and the system of permitting individual members of collective farms to have small plots of an acre or two for their private use may be cited as examples of the influence of public opinion in the U.S.S.R. The elaborate party conferences of the National Socialists at Nuremberg as well as the somewhat similar fascist gatherings arranged by Mussolini in Italy were intended to build, control, and bolster public opinion as well as to stir up the enthusiasm of the party workers. Perhaps the weakest spot in the totalitarian picture is this dependence in the last analysis upon public opinion, since it indicates that, when a dictator loses the support of the people, no amount of force, bluster, or showmanship will prevent the system from collapsing. Nevertheless, it is true that it is comparatively difficult for public opinion to have free expression in a totalitarian government, since concentration camps are ready to discipline nonconformists, propaganda machines grind out tons of lies that becloud the issue, and freedom of speech, the press, religion, assemblage, and elections are carefully suppressed as far as possible.

In the Democracies In the democratic form of government public opinion is given more or less free rein and hence it is constantly playing a basic role in public affairs. Elections are held regularly; meetings of one kind and another for the discussion of problems relating to government are scheduled by the thousand; the press is comparatively untrammeled; and the avenues of approach to the executive and the legislative officials are well marked. Except

in very rare instances even the most unconventional groups find it possible to utter their views and seek to have them put into effect by the government without danger of prison sentences. Coercive measures are sometimes taken by economic, patriotic, and social groups to limit the free expression of public opinion, but in general the United States has been fortunate in this respect. Unless public opinion is alert, intelligent, and vigorously expressed, democratic institutions fall prey to all sorts of maladies: inefficiency, corruption, bossism, and bureaucracy.

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.[3] 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. At this point it is advisable to examine some of the means by which public opinion is translated into governmental policy and action.

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 constitutional amendments or proposed legislation are referred to the voters, there is an even more direct means of expressing opinion. The failure of the major political parties to take stands on current issues[4] during recent elections has doubtless done something to reduce the importance of the ballot as an expression of public opinion; on the other hand, the increased emphasis placed upon the personal element in politics may counterbalance this loss to some extent. In other words, by voting for or against the officeholders who have been so long in the public eye that they represent definite social, economic, international, and political concepts, groups of citizens express their likes and dis-

[3] 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; Milton Wright, *Public Relations for Business*, McGraw-Hill Book Company, New York, 1939; Charles W. Smith, *Public Opinion in a Democracy*, Prentice-Hall, Inc., New York, 1939; Douglas Waples, ed., *Print, Radio, and Film in a Democracy*, University of Chicago Press, Chicago, 1942; F. C. Irion, *Public Opinion and Propaganda*, Thomas Y. Crowell Company, New York, 1950.

[4] For additional discussion of this point, see Chap. 10.

likes in regard to regulation of business, American participation in world affairs, and the maintenance of social security. 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 effective 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 [5] 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. In general, approved statistical techniques were not employed, though very large random samples were often taken—in the case of the *Literary Digest* millions of post cards were sent to people whose names were ordinarily taken from telephone directories. 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. The *Literary Digest* poll of 1932 missed the mark by a wide margin, despite the reasonably good reputation of this periodical in taking samples going back as early as 1916.[6] More recently the American Institute of Public Opinion (Gallup polls), *Fortune* magazine, and the National Opinion Research Center of the University of Denver have been particularly active in surveying public opinion, making use of selected samples which are supposedly 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 A study of American life during the years immediately preceding 1948 would reveal the prominence given to public-opinion polls for several years. Large numbers of newspapers gave space to the frequent reports of the Gallup, Crossley, and other polls; many of the periodicals added to the publicity by making mention of the findings and *Fortune* featured the direct reporting of the Roper polls; the results of recent polls were a common topic of conversation wherever people gathered together. While certain of the polls had taken a cautious position in elections such as that of 1940—the Gallup poll for example after making a number of reports

[5] The *Cincinnati Enquirer*, the *Chicago Journal*, and the *Columbus Dispatch* were among the newspapers which conducted successful polls.

[6] The *Literary Digest* carried on some nine nation-wide polls on prohibition, the presidential primary, the New Deal, and the outcome of a national election.

on the Roosevelt and Willkie support refused to take a stand on the day before election, maintaining that the margin was too narrow to permit a valid conclusion—in 1948 there was virtually unanimous prediction favoring Dewey as against Truman. When the election returns came in, the revulsion against public-opinion polls in general attained striking proportions. Many of the newspapers which had been ardent supporters cancelled their subscriptions and ceased to run reports of any character; various prominent public figures made devastating comments relating to the entire field of public-opinion reporting; and it became popular to discredit public-opinion polls without exception. Looking back it is apparent that too much faith had been placed in the predictions of the pollsters prior to 1948, considering their imperfect techniques. On the other hand, there is considerable evidence that the almost complete reversal of attitude following the presidential election of 1948 was almost if not quite as illogical as the unlimited credence of an earlier period. In this day and age of complicated social, political, and economic problems it is highly desirable that as much knowledge as possible be available in regard to public attitudes toward various questions. Indeed the effective handling of many of these problems depends in no small measure—at least in the United States where public opinion plays such an important role—upon the attitude of the people as measured by individual and group judgments. No one familiar with the current techniques available for public-opinion sampling can be entirely satisfied, but that does not discredit polls. Improvement has been made in the techniques since the disastrous experience of 1948 and additional improvement is desirable and can doubtless be achieved if public opinion polls continue to be made. Predicting election results is considered by the professional pollsters to involve greater risks and more uncertainty than sampling public opinion relating to public issues. While there may be more momentary interest in the election polls, it can be argued that the primary importance of public-opinion polls is in connection with the determining of public attitudes relating to major problems of the day. The pithy remark of Professor Childs, concluding that "It is very difficult if not impossible to establish their accuracy," [7] will doubtless apply to public-opinion polls for a long time, but that does not discredit them as one method of throwing additional light on major issues. If the results of polls are taken with due regard for their shortcomings they can still serve a very useful purpose.[8]

[7] See Harwood L. Childs, *An Introduction to Public Opinion*, John Wiley & Sons, New York, 1940, p. 59.

[8] For an incisive discussion of the shortcomings of polls, see Lindsay Rogers, *The Pollsters*, Alfred A. Knopf, New York, 1949. Another side of the case is presented by George Gallup in *A Guide to Public Opinion Polls*, American Institute of Public Opinion, Princeton, 1944. For a middle position, see E. L. Bernays, "Attitude Polls—Servants or Masters," *Public Opinion Quarterly*, Vol. IX, p. 2, 1945–46. A particularly valuable examination of polls was made after the sensational experience in the 1948 election by the Committee on Analysis of Pre-election Polls and Forecasts of the Social Science Research Council. Its findings may be found in "Report on Analysis of the Pre-election Polls and Forecasts," *Public Opinion Quarterly*, Vol. XII, pp. 599 622, 1949.

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 their congressmen, 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. Some of those who send in their communications content themselves with a few words, sometimes of the form variety supplied by a pressure group; others take the pains to write long letters which set forth in detail what they have in mind. How much attention should be paid to these letters, telegrams, and telephone messages by the public officials who receive them? 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, it should be kept in mind that only a comparatively small proportion of the whole number of inhabitants of the United States is represented. Here again there is no way to determine the representative character of the expressions submitted. However, many legislators pay very careful attention to them, at least if they are not of the "form" type, even to the point of voting solely on such considerations; almost all public officials give the communications which are received some weight if they seem to show any wisdom at all. Elected officials may be unduly sensitive to the wishes of their constituents, but they are generally reputed to be shrewd judges of the direction the political wind is blowing. 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 In another chapter the activities of the pressure groups in Washington and the state capitals are outlined.[9] 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. They also can judge with some accuracy how vigorously a given pressure group is pushing for a bill or a policy, and by combining these they are able to estimate how much public opinion is in the background. 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

[9] See Chap. 13.

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. The recipients of resolutions have to evaluate the source; if the organization is one which resolves regularly and without much thought the resolution may be thrown into the wastebasket, but if it is sizable and resorts to such a device only rarely and then after discussion and deliberation a wise public official will give heed. 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. General suspicion 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.[10] 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 expression, 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,

[10] See Chap. 8.

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 the various means of creating public opinion, controlling it after it has been created, and focusing it in so far as it already exists will be discussed in some detail.

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, hearing their desires and carrying their wishes into practical application in the government. Under a simpler socio-economic system it might be possible for this concept to be put into effect, but the United States has long since become so large and so complicated that the leader in public life does not wait to be told what to do. That is not to say that he ignores the desires of his constituents when they are transmitted to him or that he goes ahead on his own initiative without keeping the people in mind at all. 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.[11] 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. As a result they have delivered addresses, prepared radio scripts, written articles, given interviews, and otherwise been active in calling the attention of the people to exigencies of the day, pointing out what action needed to be taken, and urging widespread expression of public opinion at the polls, through communications to members of legislative bodies, and by every other legitimate means. The fireside chats of Franklin D. Roosevelt are examples of attempts on the part of a political leader to create, control, and focus public opinion. The messages of governors to state legislatures often fall into this category, though they are intended on their face for members of the general assembly. Interviews given the press frequently have this same purpose.

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 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 hope-

[11] 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.

lessness it may be difficult for even a gifted leader to arouse the people out of their depression. The efforts of certain Presidents and governors have been discussed in other chapters and may be referred to by those who are interested.[12]

Public-relations Agencies of the Government One does not have to go back many years to find a situation where governmental public-relations agencies were unknown, but now virtually every federal administrative department of any consequence finds it essential to maintain an information service, a press division, or some other variety of public-relations subdivision.[13] State governments have not moved as far in this direction as the national government and local governments are even less likely to have formal provision of this character, but even at these levels the recognition of the importance of public-relations programs is to be noted. Even a federal department such as the State Department which a few years ago had the reputation of being more or less unaware of the people now makes elaborate provision for such activity. The Secretary of State at present holds frequent press conferences at which he discusses major problems; there is a special assistant to the Secretary who handles press relations; one of the Assistant Secretaries of State devotes his full time to various public-relations programs intended to acquaint the people of other countries with American cultural patterns and policies through the media of radio, magazines, exchanges of persons, and many other devices. A recent report of the Joint Committee of Congress on Reduction of Nonessential Federal Expenditures noted more than 23,000 persons working on a full-time basis in the fields of educational, informational, promotional, and publicity activities for the national government and approximately an equal number devoting part of their time to such work.[14] The Bureau of the Budget has estimated that the national government employs 45,700 persons in various types of information programs at a cost of some $75,000,000 per year.

Effectiveness of Administrative Efforts The question naturally arises as to how effective this public relations work on the part of government agencies is in producing, controlling, and focusing public opinion. The amounts of money involved are quite large; the number of supposed experts employed is sizable; the quantity of mimeographed and printed releases runs into many tons. One managing editor of a metropolitan paper in the Middle West recently reported that he finds on his desk every morning, a foot-high stack of materials sent out by national government public-relations and press agencies and that they are so worthless that they can be consigned to the wastepaper basket without examination—and it may be added that this editor professes to be a supporter of most of the government program. He maintained that all of

[12] See Chaps. 15 and 42.

[13] For additional information on this subject, see J. L. McCamy, *Government Publicity*, Public Administration Service, Chicago, 1939

[14] See the *New York Times*, October 27, 1941.

the releases and reports are poorly written, obviously intended for propaganda purposes, and include a minimum of factual material that would really inform the people of what the national government is doing. Another urban newspaper, less hostile though Republican in background, comments editorially: "Much of the information goes out in routine reports and enlightening answers to questions, but a considerable part of it is raw propaganda." [15] The task of the federal agencies is not too easy, since they must translate rather stodgy statistical data into interesting articles that the average citizen can understand. Considering the conclusion of the journalism department of Ohio State University that approximately 72 per cent of the newspaper readers in the United States cannot be reached by anything beyond the sixth-grade common-school level, this presents difficulties which are increased by the insistence of some of the top hats in the national government that the primary purpose of the public-relations and press agencies is to furnish personal publicity. But while the metropolitan press may make little use of the releases, the situation appears to be quite different in the case of the town and rural newspapers which stress advertising and local news items as far as their own efforts go and are often glad to use the articles supplied them by various governmental and pressure agencies as filler. The speakers sent out to address various meetings, the radio broadcasts of the Office of Education and other bureaus, and the films and exhibits sent about over the country perhaps make a more definite impress on the public mind.[16] Anyone who has observed at firsthand the efforts of the Department of Agriculture in stirring up the farmers to an awareness of their problems will not dismiss as futile the federal program of public relations and information.

Demagogues If one is inclined to criticize the government for its 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

[15] *Indianapolis News*, November 19, 1941.
[16] For further discussion of the informational activities of government agencies, see Chap 8.

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. Even though he behaves atrociously and violates every canon held by his disciples, he is often able to maintain himself because he has carefully inculcated into the minds of his followers that he is a martyr whom enemies charge with all manner of evil. At times the demagogue is a crank whose ideas are so absurd that no particular menace is created, but all too often he is an unscrupulous rogue who doesn't believe what he preaches and only builds up a personal following to gratify his own desire for power and perchance produce a handsome monetary profit in addition. At his worst the demagogue seems to deserve classification as a serious menace to American political institutions.

Propaganda The demagogue is oftentimes a past master at propaganda, preying ruthlessly upon the fears, the hopes, and the emotions of the aged, the mothers, the credulously patriotic, the poor, the taxridden, and other classes of the population. But he is by no means the only purveyor of propaganda in the United States to capitalize on public opinion.[17] The term "propaganda" is frequently associated with that which is untrue or half true, though strictly speaking it refers to the spreading of concepts rather than to the concepts themselves. Until World War I the term was in good repute, being used by certain religious sects to designate their foreign missionary societies.[18] At that time the various governments, including the United States, organized elaborate agencies for the dissemination of information aimed at stirring up loyalty to themselves and hatred for the enemy.[19] Atrocity stories were manufactured out of the whole cloth so to speak, or at most of very flimsy material. For example, a news story relating that a Belgian priest ordered the bells of his church rung to warn his parishioners of the approach of the German armies was doctored up to read that the Germans used the priest as a human clapper to a church bell, ringing the bell until the father was dead.

A great deal was said and written in the United States about making the world safe for democracy and other somewhat idealistic matters which subsequent events seemed to prove as so much balderdash in the eyes of many. The shock produced by the debunkers after the Treaty of Versailles brought to propaganda an invidious meaning which has remained through the years. 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,

[17] For an illuminating discussion of the nature and importance of propaganda in the United States, see H. L. Childs, *op cit.*, pp. 75-128.

[18] The Catholics designate their society "The Sacred Congregation for the Propagation of the Faith", the high-church Anglicans maintain The Society for the Propagation of the Gospel in Foreign Parts.

[19] For a detailed discussion of propaganda efforts during World War I, see Harold D. Lasswell, *Propaganda Technique in the World War*, Alfred A. Knopf, New York, 1927.

overimpress, or accomplish an end through ulterior motives.[20] The result is that large numbers of people manifest a certain cynicism, claiming that everything is propaganda and consequently unreliable. Even the efforts of Presidents and cabinet members to call the attention of the American people to the menace of Nazism and fascism were branded by some as propaganda aimed at building up personal power for the chief executive.

Propaganda and Public Opinion From the preceding discussion it should be apparent that 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 which are examined in another chapter; 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. 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, of course, 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. The attitude that everything is propaganda and hence to be thrust aside is not one which a thoughtful citizen can hold even today when it is frequently difficult to know what to believe.

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

[20] For additional information in regard to propaganda, see L. W. Doob, *Propaganda—Its Psychology and Technique*, Henry Holt & Company, New York, 1935; H. L. Childs, ed., "Pressure Groups and Propaganda," *Annals of the American Academy of Political and Social Science*, Vol. CLXXIX, entire issue, May, 1935; H. L. Childs, ed., *Propaganda and Dictatorship*, Princeton University Press, Princeton, 1936; F. E. Lumley, *The Propaganda Menace*, D. Appleton-Century Company, New York, 1933; George Gallup, *Public Opinion and Propaganda*, Henry Holt & Company, New York, 1948; F. C. Irion, *Public Opinion and Propaganda*, Thomas Y. Crowell Company, New York, 1950.

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 these 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 who have regularized and brought into the very inner sanctum of the government the principles once advocated by reformers.

Citizens' Organizations Though reformers have more or less passed from the scene and reform has been given official recognition in high places, there is still need for community groups which are organized to stir up and maintain at an effective pitch an alert public opinion relating to local government. 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 to this end.[21] 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 the people than either the state or the national governments, but the fact remains that the indifference, ignorance, and inertia of

[21] 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."

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 which are primarily interested in their own selfish aggrandizement.

Functions of Citizens' Groups To meet this situation citizens' organizations have been formed.[22] 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 achievements forthcoming in cities such as Milwaukee and Cincinnati deserve great praise. 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 the seats on the city council and employ experts to direct the administrative departments. Milwaukee and Cincinnati have improved old services and added new ones, constructed expensive public works, established national records in the fields of public health, traffic control, and fire loss, and all without adding to the aggregate debt or raising the tax rate above that of cities much less well off.[23] Able leaders have contributed to this record, but the most important factor has been widespread 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, sports 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 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

[22] See Bessie Pierce, *Citizens' Organizations and the Civic Training of Youth*, Charles Scribner's Sons, New York, 1933.

[23] For additional information relating to these cities, see D. W. Hoan, *City Government—The Milwaukee Experiment*, Harcourt, Brace & Company, New York, 1936; Murray Seasongood, *Local Government in the United States*, Harvard University Press, Cambridge, 1933; and Charles P. Taft, *City Management: The Cincinnati Experiment*, Farrar & Rinehart, New York, 1933.

of the press in the field of public affairs, but it still remains one of the more effective forces. The radio, television, 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 available in an introductory text prevents detailed consideration of their specific activities.[24]

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[24] 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; and Douglas Waples, ed., *Print, Radio, and Film in a Democracy*, University of Chicago Press, Chicago, 1942.

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10. 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 favorably regarded or indeed formally recognized by the men who framed the Constitution. This 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 they gave no approval to such weakening influences as they considered political parties to be.

The Constitution itself makes no mention of parties. However, 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 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. The very name applied to the minority parties in England today indicates the early stress that was placed on the validity of a division among the citizens—they are still referred to as "His Majesty's Loyal Opposition." 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. But, separated by an ocean in a time when communication facilities were poor, they heard mainly of the sensational iniquities and little of the usefulness involved in these organized groups of citizens.

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 warning 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. At times 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 the modern groups, 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. The claims of Democratic orators of spiritual descent from Thomas Jefferson may sound impressive, but they are perhaps no more sound than the similar arguments of their opponents who cite Alexander Hamilton, Abraham Lincoln, and others. 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. While the stability of English parties approximates that to be observed in the United States, in France, Italy, Germany, and Japan the shifting has been far more evident.[1]

Two-party Character of the American Party System Although on several occasions it has seemed that there might develop more than two major

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

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, the U.S.S.R., Germany, and Italy, with their multiple- or single-party systems, have been strikingly diverse.[2]

Minor Parties However, along with the two major political parties there has always been a varying number of minor parties in the United States. 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 thirty years. 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 particularly prominent in 1924; the American Labor and Liberal parties which appeared during the Franklin D. Roosevelt administrations; the Wallace Progressive Party organized in 1948; and the Dixiecrats or State Righters who withdrew from the Democratic Party in 1948.

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 given state.[3] It may be doubted whether some of these political groups have exerted any appreciable influence at all; however, certain 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 almost half a century, has 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 such a program through themselves, but they have exerted sufficient influence to cause the two major parties to take over these planks. Likewise, the Prohibition party has never achieved even moderate success at the polls, but

[2] The number of parties in certain of these countries has varied from time to time. Italy and Germany prior to 1945 tolerated a single party, while France and Japan tried to get along without any parties at all for a period. At present all of these countries have half a dozen or more fairly influential political parties which are active.

[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 a number of years, but in 1946 they returned to the Republican fold.

its efforts together with the activities of the Anti-Saloon League led in large measure to the Eighteenth Amendment and its supporting legislation.

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 at all 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. Nevertheless, in light of the great publicity achieved and the large amounts of money spent by the major parties, a reasonable idea of their role might be expected. Certainly no informed student of American government can afford to be negligent on this point.

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 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 work 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 should be 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 always be possible, at any rate they should be selected 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 reasonably 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 receive the votes of a majority, but except in the southern states where final elections are regarded as mere formalities,[4] they will usually be able to claim 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; indeed it sometimes seems that their sole concern is selecting candidates for office and pressing vigorously for their election. Their frequently publicized weakness is not the failure to put up candidates, but rather the poor quality of the candidates selected. Candidates whose primary aim is their own aggrandizement, candidates who have no compelling interest in the problems of government but only represent selfish interest groups, candidates who lack common decency and honesty, and candidates who have neither the intelligence nor the training to perform their public duties, are all too commonplace. At times it might seem that the parties have gone out of their way to pick inferior candidates, but ordinarily it is doubtless 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 for time 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. Hotel-room sessions of party leaders get away from the unwieldiness of conventions and may be disposed to spend considerable time, even to all-night meetings on deliberations. But they are frequently irresponsible, motivated by a desire for power or financial profit, and characterized by the tactics of horse-trading.

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

[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.

efficient working. For instance, state laws in many places provide for the nomination of candidates. Likewise, the problem of finance is often 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 frequently indifferent and permit the party machinery to be taken over by political bosses and machines. Not uncommonly, local pride is such that geographical representation has to determine selections irrespective of other qualifications. The popular bias against city dwellers is often so pronounced that only those who have been connected with farming can be elected, thus effectively barring able aspirants with urban background. Men of means or those 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 unnecessary 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 choosing able candidates 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 improper 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 often 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. Individuals may write letters or send telegrams to their congressmen or legislators, often with considerable effect; however this piecemeal technique plays into the hands of vociferous groups that may not be too sizable in actual numbers. Occasionally, measures are referred on the ballot to voters for a "yes" or "no" answer. Individual candidates promise to work for certain programs if elected to office, but they may actually be able to accomplish very little, even if they attempt to carry out their commitments. However, if political parties take stands on significant 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 then 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 second 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 and is regarded as a serious threat by many students of government. Some critics have charged that there has been no actual difference as far as fundamental issues go between the Republican and the Democratic parties since 1912. This assertion may be exaggerated, but it has some basis because of the noticeable reluctance of the political parties to commit themselves to a definite course. The lack has been met somewhat by a more direct leadership on the part of the President; never before had a President taken the people into his confidence through fireside chats or messages or invited them to send letters relative to their desires to the extent of President Franklin D. Roosevelt. Pressure groups have also in some measure assumed the responsibility of presenting issues to the people. However important 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 between 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 possibly be divided into two sides. The substitution of three or four powerful parties for the present two would, according to these advo-

cates, make it feasible and probable that clear positions would again be taken by political parties on important public questions. Others declare that governmental policies have become too involved for the ordinary citizen to understand and that consequently voters must pick out the leaders that seem to promise most, leaving them a free hand to do as they think best after election. President F. D. Roosevelt made several public statements which might be interpreted as indicating that he held such a concept.[5] Then it is alleged that the people are no longer interested in public questions 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. Needless to say, both play into the hands of advocates of a totalitarian form of government for the United States. 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 fair-minded person 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 what policy the government shall pursue in regulating 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 fair amount of government action, others desiring quite a good deal of 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 reason-

[5] See the files of the *New York Times* for July–October, 1936.

ably 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, though far from simple, seem 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, such questions as American aid to foreign countries, national defense, and public expenditures are perhaps 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 increased taxes or suffer the consequences which may eventually arise out of decisions on such questions. Who is better fitted to determine the policies, then, than the people?

Technical Questions On the other hand, some problems are highly complex and do not easily lend themselves to popular decision. After the people have decided that they want a certain policy in regard to foreign aid, national defense, or public expenditures, it will probably be necessary for the experts to work out definite plans for carrying the policies into effect, for the average man is not sufficiently informed on the details to say exactly what the programs shall be. 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 over the offices in the executive and the legislative branches and proceeds through its representatives to carry on the work of government. Since large numbers of individuals hold public positions, it is essential that some unifying influence be provided, lest chaos ensue. The most effective agencies for bringing about co-ordination over a period of years have probably 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 legislative branches into harmony, and the mere existence of a common party allegiance on the part of the executive and of the legislators is an important factor in diminishing the effect of the separation of powers in both state and national governments. 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 control more or less all agencies of government, but they have been able to bring coercive pressure on certain individual officials who have proved derelict in their duties. After the voters have elected an official to public office, they no longer have a very complete 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; [6] 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 sometimes find it difficult also 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 boycott.

The record of political parties in this respect, it must be admitted, leaves something to be desired. Few major governments in the modern world have had more sensational cases of corruption and incompetence in office than the United States. We accord to ourselves the dubious and not deserved honor of having a monopoly on political bosses and political machines.[7] "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.[8] 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 has been achieved in this field belongs to political parties, but they have contributed appreciably in certain instances.

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 of candidates. No political party is interested in large numbers of voters as an abstract principle; the big thing is to win 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 frequently has difficulty in obtaining fuel to keep the fires burning until the next election; its task of enlisting popular support is

[6] Various states, Indiana and Pennsylvania, for example, do not permit their governors to succeed themselves in office immediately. There are cases where local officeholders are not eligible to succeed themselves.

[7] 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.

[8] Now and then a state or a city will be controlled by a boss or group which 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.

usually a difficult one. In the last analysis there is never a really 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 of winning elections and thus be charged with the running of the government, political parties make use of all sorts of techniques. Meetings of one kind and another are scheduled throughout the land in enormous numbers. 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 alongside of local political bigwigs. Finally, there are the almost countless neighborhood meetings in which the party workers and the voters can meet 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 field-workers of the party carry on so vigorously. Personal house-to-house 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 at the polls. Automobiles furnished by the party are ordinarily available to transport aged and infirm voters and even able-bodied persons 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 defence 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 jaded voters. Many, it is alleged, 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 Substitutes for Political Parties In view of the failure of political parties in many instances to put up superior candidates, 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, for there is no machinery available for nominating candidates for the presidency, other than that provided by the political parties. 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 political parties goes. Something like half of the cities of the United States nominally conduct their elections on a nonpartisan basis;[9] 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

[9] For a discussion of such a system in cities, see Harold Zink, *Government of Cities in the United States*, rev. ed., The Macmillan Company, New York, 1948, p. 172. In 1946 43.6 per cent of 1266 mayor-council cities elected councilmen on at least a nominal nonpartisan basis.

of Buffalo has depicted the results in that city in glowing terms; [10] 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 too impressive. Reports from Boston and Omaha leave little room for doubt that political parties have continued in control despite the formal provisions.[11] 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. If political parties are to control, it would seem preferable to have them operate in the limelight rather than behind the scenes.

Party Membership

Formal Requirements Inasmuch as political parties in the United States exist to a large extent outside of the Constitution and laws, the rules relating to membership are ordinarily formulated by the parties themselves. 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. Unlike the Communist party of the Soviet Union and the old National Socialist and Fascist parties of Germany and Italy, which restrict membership to a comparatively select group of those who have proved their worth to the one-party, or the France of the Third Republic where only the most active political workers and newspapers held membership in a political party, the Democratic and Republican parties in the United States extend the privilege of membership to one and all. The steps which have to be taken in order to acquire that membership are usually quite simple; nor is the payment of dues essential. A declaration in connection with registration for voting is a common method of indicating membership in a political party. Party workers frequently take house-to-house polls to determine party affiliation. An age of twenty-one years is ordinarily specified; it is usually 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

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

[11] 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.

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 impossible to state the exact number of members that a party has.[12]

Factors that Determine Party Affiliation Logical as such a course might seem to be, comparatively few Americans select their political party after a careful weighing of 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 enters as a major factor into the party stands of a majority of people. Residence also plays a determining role in relatively large numbers of cases. The late Senator Royal S. Copeland was an ardent Republican when he resided in Ann Arbor, Michigan, but when he moved to Democratic New York City he decided to transfer his political allegiance—it may be added with appropriate reward therefor. 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.[13]

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; whereas the holders of union cards 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; or they may frequently split their voting, favoring

[12] The most exhaustive study of party membership is that of Clarence A. Berdahl, "Party Membership in the United States," *American Political Science Review*, Vol. XXXVI, pp. 15–50, 241–262, February, April, 1942.

[13] 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.

certain candidates of each party. If one acted on Kant's categorical imperative, which calls for such action by the individual as might become the universal standard, political independence would be more or less out of the question. However, it is maintained that a large number of the people will remain party adherents, thus providing sufficient raw material for continued party existence. To this justification may be added the assertion that a sizable independent vote puts the parties on their good behavior—they know that the independent vote will swing the election and hence woo that vote. Even in the more conservative states the number of independent voters is now large enough to be considered an important factor in election results.

Action from Within Against such a point of view must be placed the declarations 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 much attention to their opinions. Moreover, it is objected that 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. One definite statement can be made at present and that is that the independent is less likely to be the result of irrational factors such as birth than is the case with the rank and file of party members.

The Biparty versus the Multiple- or Single-Party System

Two-Party and Multiple-party Arrangements The United States and England have traditionally been supporters of the two-party system, while the European countries prior to the fascist era and now again since World War II, except for the Soviet Union and its satellites, have followed the multiple-party plan. For a time during the 1920's it seemed that England was abandoning the two-party setup in favor of three parties, but this trend proved temporary and the two-party system is again characteristic.[14] In the United States, also,

[14] The Conservative and the Liberal parties long dominated the English political scene. Then

there was a move away from the two-party system in 1912, but this did not continue long either. 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 recent years has often been identified with the maintenance of democratic institutions by those countries. Conversely the multiple-party system has been 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. The substantial history of the biparty system in the United States and England cannot, of course, be ignored, although at the same time it is only proper to take cognizance of its weaknesses in both countries. The failure of the two parties in the United States to take a stand on public questions during recent years has already been noted; there is a difference of opinion as to how serious this defect has been, but most thoughtful persons have regarded such a development with alarm. Whether it might eventually lead to a breakdown in our democratic institutions is the big question.

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 establishing political parties. Three or four parties are one thing; a dozen or twenty parties are quite another. In the European countries the multiple-party arrangement has frequently been carried to extremes: France of the Third Republic ordinarily had a dozen or so parties that were fairly active and influential; Germany of the Weimar Republic had about the same number; while little Czechoslovakia found herself burdened with more than twenty. There can be no doubt that an excessive number of separate political parties constitutes a weakness.

European Experience To what extent the multiple-party system contributed to the downfall of the Third Republic of France and the Weimar Republic of Germany it is difficult to ascertain. In both countries there were undesirable results: instability, lack of majorities in legislative chambers, and undue party strife. Yet the instability, particularly in France, was less real than it appeared to be on the surface. In both Germany and France the strength of such parties as the Social Democrats, the Radical Socialists, and the Socialists was such that there was a substantial working basis if not a majority in the legislative branch. Whether party strife was bitter enough to tear down vital elements is a controversial question—after the National Socialists became a potent force, the situation in Germany, of course, became intolerable. The multiple-party system

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.

may have entered into the weakness of European governments, but it has thus far not been conclusively proved, despite all of the accusations, that it was a major cause in the recent cataclysm of destruction. Germany was gripped by a paralyzing economic depression and haunted by the bogey of communism, both of which played into the hand of Adolf Hitler. France was the victim of a Hitlerized Germany which was armed to the teeth.

The Biparty and the One-party System In the thirties 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 [15] during the decade; under a totalitarian type of government such a step followed more or less automatically. Totalitarianism is so diametrically opposed to our political traditions that it is unpalatable to so much as consider its achievements. However, one may point out certain characteristics of the one-party arrangement. 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. The dictator and his immediate henchmen usually hold the top posts in both party and government and, of course, dominate each to the most minute detail. Under a one-party arrangement party membership even in a country with a large population is restricted to five or six million of the most ardent and unquestioning supporters of totalitarianism. Supplementing such a central organism are youth groups intended to train the young for the service of the party and the government, labor fronts serving to integrate labor into the system, professional and occupational associations which bring in industry and the professions. In contrast to the comparatively modest headquarters of political parties in the United States, monopolistic parties often have dozens of office buildings in the larger cities as well as elaborate suites in smaller cities given over to party activities, with full-time paid employees running into the hundreds of thousands and annual budgets totaling several hundred million dollars.[16] Instead of limiting party approval to political positions, more or less all holders of government positions have to have party backing under such a system. Local government is ordinarily in the hands of the men who hold official positions in the party rather than in the hands of elected officials.[17]

[15] 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.

[16] In the United States it is not easy to ascertain what the parties spend. The Hatch Act limits national party expenditures to $3,000,000 in each case, but this amount was undoubtedly exceeded in 1944 by taking advantage of loopholes. The total expenditures of both parties in national, state, and local areas has been estimated at not less than $25,000,000 every fourth year, perhaps $35,000,000 or even $50,000,000. By way of contrast the National Socialist party was scheduled to spend 70,000,000 reichmarks (about $28,000,000) on its annual gathering at Nuremberg in 1939 alone. The total expenditures of the National Socialist, Fascist, and Communist parties run to many times the amount spent by both parties in the United States.

[17] For a more detailed treatment of the role of the single parties in the totalitarian governments, see J. K. Pollock, *Government of Greater Germany*, rev. ed., D. Van Nostrand Com-

No one can doubt that a one-party system is much more pervasive in its influence, ruthless in its operations, and more costly than a two-party setup. Its positive contributions are at best uncertain. According to the communist or the fascist logic, the advantage of the one-party system is that it eliminates "needless and destructive" argument, concentrates the interests and the energy of the people on one goal, and hence makes for the efficient accomplishment of that chosen end. The position of the biparty advocates is that opposition and discussion are productive of a wise governmental policy and that the lack of them leads, eventually, to a sterile and retrogressive state.

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11. The Organization of Political Parties

Hierarchical Character Political parties in the United States are organized in such a fashion 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 are built the local party organizations.

"Grass Roots" Base Finally, the entire structure leads from the bottom to the top as far as the formal selective process goes. The party members are responsible for choosing the local party officials; these latter select the state officials; and the state party organization in turn designates 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. But even if this is occasionally the situation, it may be pointed out that the usurpation rarely if ever goes beyond the state level—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 rarely if ever the national committee which picks out the state and local officers of a political party.

The Levels of Organization Political parties are generally organized on three levels: local, state, and national. The organization varies somewhat from state to state, depending upon local tradition, state law, and degree of urbani-

zation, but the general outline is the same. We shall now proceed to a more or less detailed examination of the elements of these three important subdivisions.

Local Organizations

The Precinct The unit which may be considered most basic in the whole organizational structure 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, a precinct 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 succintly and accurately summarized as follows: "getting out the vote for his party." No matter how badly he fails by every other canon, regardless of 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 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 in the selection of holders by the party members, with the result that the actual choice may be made by a political boss. For example, a survey in Indiana showed that less than half of the precinct committeemen had had any opposition at the polls and that many party members had not troubled to vote at all for this position.[2]

Importance of Precinct Committeemen Nevertheless, despite the lack of honor or 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 the state or on

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

[2] Reported in Harold Zink, *Government of Cities in the United States*, rev. ed., The Macmillan Company, New York, 1948, Chap. 11.

the mayor of the city on the supposition that, if competent and high-minded persons can be placed in those positions, great improvement will result. Actually it is exceedingly difficult for even the best governor or mayor to give a good account of himself unless he has the proper backing, for without that he has little foundation or fulcrum from which to work. At times this foundation may be the people—for example in Milwaukee Mayor Daniel W. Hoan depended very largely upon popular support. But in the states as well as in most cities it is the party to which the governor or the mayor must look. If the precinct committeemen are bad, the entire system will probably be eminently unsatisfactory. This is true either if a boss has named them or if the voters have been so indifferent that unworthy persons have worked their way in. Any basic reform either in American local or state government and indirectly in the national government depends in large measure upon the caliber of the people who hold the position of precinct committeeman. That has been demonstrated again and again; it is one of the most important pieces of knowledge to be derived from a study of American government.[3]

Work of Precinct Committeemen The exact activities of a precinct committeeman will, of course, depend in large measure on the particular precinct he has to cultivate. However, in every case his chief goal, as has already been pointed out, is to carry his precinct by a sizable plurality for his party. The means which will bring about that end naturally vary a great deal from place to place.

Rural Precincts In rural areas the committeeman usually goes around from farm to farm before election day, though he may be able to contact his voters at a farm meeting or at the grain elevator. Since the rural vote is not normally controlled by social diversions or personal assistance, the committeeman is not expected to put on an elaborate program of this character. It is probable, however, that there will be some 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 low-income people, or located in a section where numerous persons of foreign birth or extraction have their homes. 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 and his assistants make a door-to-door canvass of the voters, concentrating 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

[3] For some very vivid characterizations of precinct committeemen, 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. The section on Rosie Popovits is especially interesting.

it on election day. Social affairs are not ordinarily 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 someone for a public job. This type of precinct committeeman usually holds a full-time job with some business concern, has his own business, or is engaged in a profession. He probably has no expectation, indeed no desire, for a 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 colorful and by far the busiest precinct official is found in the congested sections of cities inhabited by low-income groups 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.[4] 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 are frequently full-time workers on the job—at least the representative of the party in power gives this work his entire 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. He may be too poor to have an automobile, but he is likely to afford an extension telephone at his bedside so that he can take calls that come in during the early morning hours.

Friend of the People The people of such a precinct are in and out of the precinct leader's 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, coal, and especially by getting adequate and prompt relief from the public welfare department.[5] 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 this type of 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 is expected to go 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 will be provided, and finally the judge who tries the case may be

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

[5] 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.

approached with the urgent 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 often 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, such a precinct committeeman, if of the 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 on his part 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 ordinarily 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 significance so far as the activities of political organizations are concerned, but in the largest cities they are usually distinctly important. The ward leader co-ordinates 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 or thereabouts 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 out 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 finally have to be acted upon there. Extensive files of these applications are often maintained in his office, for the number of job seekers is usually far larger than the number of 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 a particular bearer will not in the end get a job, since only in those cases in which the local leaders go personally to the city chairman and implement their 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 commonplace to provide one for a man and one for a woman, a pattern which carries through right on up to the state and national levels. 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 official 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 instances 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 elaborate 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.[6] In very large cities a special provision has to be made for integrat-

[6] Indiana makes such a provision. Hence the precinct committeemen in Indianapolis serve in a

ing 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,[7] for example, is the Democratic organization of 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 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.

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 varying political importance, so that very populous counties receive several seats while small counties are assigned only one or two. Districts are supposedly equal in population [8] 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 county or district chairmen. In any event the members of the state committee are for the most

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.

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

[8] Actually congressional districts vary considerably in population, although the Constitution commands that they shall be equal in that respect. Certain congressional districts in Cook County have recently had four or five times the population that downstate Illinois districts sometimes can claim.

part influential working 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 considerable diversity. Fairly populous states may have small committees of a dozen or so, while smaller states may provide for thirty 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, several vice-chairmen, a secretary, a treasurer, and, if the committee is sizable, an executive committee. They hold stated meetings every year or oftener, but are, of course, especially active during 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 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 much 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. A state headquarters is set up; policies are discussed and adopted; 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.[9] 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, where there are eating and drinking provisions, and where there are other facilities not ordinarily found in an office building. Although the state chairman is in and out of these headquarters at frequent intervals, he is often a man of affairs with other demands on his time and hence unable to devote full attention to political duties. The secretary is ordinarily expected to give all of his time 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

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

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 the headquarters of a state political organization.

During Campaigns The atmosphere of these headquarters is literally charged with activity and tension as election day draws near. Visiting politicians come in from the local organizations in hordes; conferences are going on more or less constantly; long distance telephone calls and telegrams pour in and out; immense volumes of mail are received and dispatched; printed material is being prepared in quantity; radio scripts and manuscripts for rallies are being produced; elaborate files of clippings, reports, and correspondence are maintained. On election night a battery of telephone operators will be kept busy receiving election returns.

Between Elections After the election is over, the turmoil at state headquarters settles down somewhat, the exact degree of relapse depending upon whether the party has triumphed or lost. If a political party loses an important election, its headquarters is likely to surrender much of its space, retain only the skeleton of an office force, and go into mourning until the time for another campaign arrives. Nothing is more like a deserted village in its somber silence than a state headquarters after a crushing defeat at the polls; even the party leaders are inclined to stay away. On the other hand, the headquarters of the winning party will maintain vigorous activity even after the election is over. There will be thousands of applicants for jobs, contracts and other favors.[10] Local officials will come in for numerous conferences; representatives of the press will call regularly because headquarters is a good source of news. Considerable amounts of correspondence will be coming in and going out, although there will not be the heavy movement of second-class mail which accompanies a campaign.

The State Conventions At two-year intervals most states witness the holding of state conventions by the major parties. Delegates, elected by the party members at primaries or indirectly by caucus or committee, pour into the state capital or some other designated city [11] 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 may overflow the largest 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 credentials, organization, order of business, platform, and sometimes other matters are set up, with each district or county being represented thereon.

[10] After a partial victory in 1940 the Republican headquarters in Indianapolis found itself inundated with more than twenty thousand applications.

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

Convention Activities The state committee usually 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 and violently denounces the shortcomings of the opposing party. These state conventions adopt a platform, already tentatively worked out by the state committee and prominent party leaders. Inasmuch as there may be comparatively little practical importance attached to the platform, which can always be expected to devote space to self-congratulation and castigation of rivals and which is often characterized by its vague commitments albeit phrased with a flourish, there is frequently not too much genuine 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.[12] At one time state conventions nominated the various party candidates for public office at the state level; 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; hence in those states in which the primary has been carried furthest conventions now have little or nothing to do in this field. However, some states reserve to the party conventions a share of the work, while in a few instances there has been a disposition to reinvest party assemblages with this exciting duty.[13]

Role of Individual Delegates Where state conventions continue to exercise the right to nominate, it cannot be asserted that the rank and file of the delegates always have a great deal to do with the actual decisions. The leaders of the party meet together before and during the convention to discuss the slate. Usually there are several factions which have their own likes and dislikes, with the result that a considerable amount of compromise and trading occurs. When negotiations have been completed, word is passed on to the delegates by the leaders and the nominations are quickly made. This system sometimes produces good results; but more frequently it is responsible for mediocre or wretched choices. The fact that various factions have to be placated unless a party split is to ensue makes for a certain balance in the slate of candidates, but it also accounts for some strange nominations. While the delegates wait for the word to be passed out as to how they are to vote, they amuse themselves with all sorts of noisy antics, usually associated with schoolboys. In order to give delegates more of a voice in selecting party nominees, Indiana inaugurated the use of voting machines at state party conventions in 1948. While this did not eliminate agreements among various leaders, it did result

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

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

in some unexpected nominations and at any rate during its first year achieved an almost 100 per cent turn out of delegates in contrast to the many vacant seats of earlier 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.[14] National committeemen are nominally elected by the national conventions of the parties, but they are actually chosen by the various 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 prestige 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 in Washington 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 committees of widely scattered membership at frequent intervals, executive committes 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 of such a committee 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 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 national committee as a matter of form.

Other Subcommittees In addition to the executive committee the national committee maintains other subcommittees which include both national com-

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

mitteemen and influential party leaders drawn from the outside. The finance committee is one of the most publicized of these and is given careful attention, for the problem of finance is always important. 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 three or more 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; rather that privilege is through courtesy normally 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. There is considerable diversity among the men who hold the position—M. A. Hanna was certainly not made in the same mold as Joseph W. Martin; James A. Farley was quite unlike John Hamilton. An aggressive national chairman, such as Farley, will take much more initiative than a rather cautious one. Nevertheless, even a rather colorless and diffident national chairman cuts a considerable figure in national politics. Both parties have recently employed an executive director who has received a good deal of publicity and occupies a place of importance in connection with the day-to-day program of his particular party. 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 several vice-chairmen, one of whom is a woman, who may or may not be particularly outstanding in party affairs.

National Headquarters Both parties maintain permanent headquarters in Washington as well as branches during a campaign in two or more other large cities. The Democrats have occupied a suite of rooms during recent years in the well known Mayflower Hotel in Washington, while the Republicans have taken over for their headquarters the building of a defunct bank on Connecticut Avenue. 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, women's department, young voters' division, special activities department, congressional aid department, 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.

Republican Organization After the election of 1936 Republican Chairman John D. Hamilton made a trip to England to study methods of the political parties in that country. He was particularly impressed by the permanent organization of the Conservative party and returned home to attempt a similar setup for his own party. During the years immediately preceding 1940 the Republican party leased several floors of a building located near the White House. Here it housed what it claimed to be the best political library ever assembled in the United States, elaborate records and files, a research agency directed by several highly trained persons, a very active publicity department, a well-organized accounting department, and so forth. Under standards which Chairman Hamilton claimed to be equal to those set up by the Civil Service Commission of the United States in preparing eligible lists for public employment,[15] a staff was gradually recruited to man this elaborate headquarters on a full-time basis. Though there seemed some likelihood that this organization might prove permanent in the case of the Republicans and indeed even be used by both parties, it was allowed to disintegrate after a new chairman took over, and finally was abandoned. Apparently it is the opinion of American politicians that political parties in the United States do not need the British type of national political headquarters.

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 may 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

[15] In a statement to a group of members of the Institute of Government in April, 1940.

the committee. Both parties also have senatorial committees, which correspond to the congressional campaign committees, except that they are composed of Senators and primarily concern themselves with the election of Senators.

The National Convention

Preliminary Preparations When the national committee holds its regular meeting in December or January before the beginning of a presidential campaign, it makes preliminary arrangements for holding a national party convention. A set of temporary national 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.

Time National conventions are usually scheduled for June or July, with the latter half of June and early July being favored. During the period that the Republicans enjoyed a lion's share of power the custom grew up of having the Republican convention first and the Democratic following, so that the Democrats might have the advantage of knowing whom their rivals had nominated for the presidency and what stands they had taken in their platform. After their long dominance came to an end, the Republicans were at first too proud to modify the arrangement, and when in 1940 they decided that it would be wise to make such an alteration, they discovered that the Democratic National Committee refused to co-operate. Hence the Republicans continue to hold their national convention first and the Democrats then follow a little later.

Place National 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 several hundred thousand dollars, send their bids to the secretary of the national committee who brings them to the attention of the committee. Occasionally a committee will decide on Houston, San Francisco or Denver,[16] but in general there is a disinclination to go beyond the Mississippi River or the Mason and Dixon Line. Chicago is a favorite because of its central location, convenient transportation facilities, and extensive hotel accommodations. New York City, Philadelphia, Cleveland, St. Louis, Detroit and Boston are also able to make more or less strong claims. There is usually sufficient interest among cities in acting as host to a national convention to produce a substantial contribution toward convention expenses.[17] Agreements to keep hotel rates within reasonable limit are also required.

Apportionment of Delegates For many years both the Democrats and the Republicans permitted each state to send to a national convention twice as

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

[17] This amount is subscribed by hotels and businesses that expect to profit from the convention.

many delegates, together with an equal number of alternates, as the state had Senators and Representatives in Congress. This method of appointment led to considerable dissatisfaction, 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 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,[18] but had only seventy-six delegates.

Republican Plan The experience of 1912 led the Republicans to make changes which would prevent a recurrence in 1916. 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. A bonus of three delegates has been given to those states which can show Republican pluralities in the last presidential election—the national convention voted in 1948 to increase this to six in 1952. 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 unfair apportionment 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 in 1940 two additional delegates in 1944. But this provision failed to satisfy various elements, particularly in the southern states. After considering various proposals, the Democratic National Committee in 1947 recommended a plan giving a bonus of four seats to those states supporting the Democratic candidates in the last presidential election. And this arrangement was approved by the Democratic National Convention in 1948 and used as a basis for selecting delegates to that body. The Democrats have been plagued by a disposition on the part of certain southern states to split up their seats in a national convention into fractions, thus enabling them to send a larger number of delegates. In the 1940 Democratic National Convention Texas actually divided each seat assigned to it into six parts, thus sending six times as many delegates as its large apportionment authorized. The leaders have frowned on such a practice because it seriously complicates the problem of space, the taking of votes, and other matters and

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

have sought to have the unauthorized device abandoned, but it is not easy to control the state organizations.

Examples Under the Republican plan, a state which has supported the party and which has fifteen seats in the House is now apportioned forty seats in the Republican National Convention. If it has not backed the party enough for victory but if it 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 new Democratic plan will receive thirty-eight seats if appropriately Democratic and thirty-four seats even if it gives no support. The Democratic National Convention of 1948 had 1234 delegates, the Republican National Convention 1094.

Temporary Organization When the delegates and their alternates reach the convention city, they first of all presumably settle themselves in hotel rooms, which have been reserved long beforehand for their use. As far as possible, delegates from a single state like to be together and consequently take adjoining rooms, sometimes several floors of a hotel. 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.[19] Committee assignments have already been worked out by the various state delegations 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. 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. Inasmuch as the temporary chairman is ordinarily selected not only on the basis of his outstanding party record but also because of his reputation as a political orator, this address reaches a high level of eloquence and emotionalism. 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.[20]

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

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

[20] 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.

candidates chosen as permanent chairman, secretary, sergeant at arms, and other officers of the convention, for the control of these officials is supposed to confer a considerable advantage. 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.[21] The 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 and television 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. The inhibitions and restraints of years of maturity are cast to the winds. Almost every type of prank and trick associated with schoolboys and college fraternities is to be observed. The most pompous and conservative men of affairs surrender their dignity and display the exuberance and enthusiasm of callow youth.[22]

Explanations of Convention Behavior Foreign observers often express surprise at the spectacle of substantial citizens who are middle aged or even elderly 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

[21] Ordinarily only delegates and alternates are permitted on the floor. Friends of each faction are supposed to content themselves with the galleries.

[22] In 1944 the Democratic convention drank 125,000 bottles of "pop," 300 quarts of whisky, and some 200,000 bottles of beer along with eating 100,000 hot dogs.

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. 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 and Television During recent years there has been considerable emphasis placed upon the broadcasting and televising of national convention proceedings. This has required certain marked changes in the conduct of conventions. Whereas under the earlier system conventions had followed a very loose 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. Television has, of course, been able to meet this problem by having a number of cameras at strategic points as well as one or more portable cameras which can be moved about. Incidentally the heat generated by the brilliant light required by television adds a good many degrees to the already soaring temperature of a convention hall.

Problem of a Time Schedule Radio broadcasting and television have also made it necessary to schedule the more striking features of the proceedings during the evening hours, when large numbers of citizens are free. Moreover, inasmuch as national hookups have to be planned well in advance, it is essential that such matters as the keynote address, the speech of the permanent chairman, the report of the Committee on Platform and Resolutions, and the nominating speeches be set for specific hours, irrespective of whether the convention is ready or not. At times, schedules have produced embarrassment—for example, the case of the report on the Democratic platform in 1936 which had not been finally completed when the time for the broadcast had arrived.[23] Most of the speeches have had to be severely reduced in length in order to meet broadcasting requirements. Whether too drastic

[23] After announcements to eager radio listeners that the platform was to be revealed, it was necessary for the committee to read only a preliminary report.

modifications have been made in convention procedure in order to meet the demands of the radio and television networks may be a question. Nevertheless, there has been great interest on the part of millions of people scattered throughout the length and breadth of the land in the broadcasts and video from the national conventions. This has undoubtedly had the effect of heightening the general interest in public affairs and may have contributed appreciably to the record votes of recent elections.

The Platform Despite the fact that platforms are no longer taken too seriously in most circles, 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 for sonorous reading. However, a careful dissection of the contents will reveal that the underlying philosophy is frequently one of evasiveness. Clear-cut stands on vital questions may be avoided with the greatest skill; an effort is made to please every type of citizen by inserting cleverly worded provisions which may be interpreted 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.[24]

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

[24] For a compilation of party platforms, see K. H. Porter, *National Party Platforms*, The Macmillan Company, New York, 1924. More recent platforms will be found in *Official Reports of the Proceedings of the Democratic and Republican National Conventions* which are published every four years. Another source is the *Campaign Textbooks* also issued at four-year intervals by both parties.

presidency. For months the newspapers have given generous space to the ambitions and claims of those party sons who aspire to the chief magistracy of their country. The question of who will be chosen by the two major parties has long before the convention been a popular topic of dinner-table, office, factory, farmyard, and golf-course conversation. Hence, it is not strange that the delegates have become very excited at the prospects of their favorite candidate and are eager to move to a decision. 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, and praise the accomplishments of the favored candidate. Until very 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 almost everyone on the floor knew beforehand which candidate the speaker was eulogizing. The most recent conventions have witnessed a somewhat more realistic technique, since some of the nominating speakers name their candidates at the beginning. Moreover, the necessities incident to radio broadcasting and television have cut down on the length, particularly in the case of the speeches seconding nominations. There is now 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 as clearly as possible 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. Needless to say, such polling requires a considerable amount of time when a state with a large delegation is involved; therefore the permanent chairman may urge the members to exert themselves further in arriving at a decision while the secretary proceeds down the alphabet to other states. However, if a member of a state delegation persists in demanding a poll on the floor on the ground that the vote as announced by the chairman of the delegation does not represent the facts, the convention has no choice other than to accede. In the case of Texas, which had divided each of its votes into sixths in the 1940 Democratic convention, the polling occasioned considerable criticism and expressions of disgust on the part of many delegates because of the interminable delay resulting.

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. The delegates have by this time exhausted their energy; pocketbooks are running low; the weather is more than likely oppressive; and finally any business after the choice of a presidential nominee is anticlimatic. 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 F. D. Roosevelt was 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. Although some very able persons have been nominated as Vice-Presidents, the haste, the indifference, and the com-

promising tendency incident to the selective process have frequently resulted in mediocrity.[25]

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 many 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 in the past 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 ended their recent conventions with a personal appearance and speech of acceptance by their candidate. And the Republicans have now apparently followed suit, deciding that the old formal notification ceremonies which featured Calvin Coolidge on his front porch and Wendell Willkie on his farm are obsolete.

Political Bosses and Machines

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, no 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 state of Pennsylvania supported a dynasty of these bosses over a period of more than half a century; first the two Camerons managed the political affairs of that state as if it were their private property; then Boss Quay took over even to the extent of using the public funds in the state treasury for his speculations on the stock market. Boies Penrose inherited Quay's mantle and dictated until he in turn yielded control to W. S. Vare. 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 other 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

[25] In 1904 the Democrats displayed this indifference and tendency to compromise when they nominated a rich but not particularly outstanding Senator who was eighty-one years old.

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 and Boss Crump of Memphis, are but a few of the overlords who have fastened on cities like leeches.[26]

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—for example the late Mayor La Guardia of New York City—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 leader 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 or to his machine. 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 it be 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 and it is not uncommon to designate their most active member a boss. 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 co-operation 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. As in the case of political bosses, no clear case of a national machine can be pointed out. On the state level one may note the Pendergast machine in Missouri, the Crump machine

[26] For studies of some of these bosses, see Harold Zink, *City Bosses in the United States*, Duke University Press, Durham, 1930.

in Tennessee, and the Long machine in Louisiana. The best known recent municipal examples have been the Kelly-Nash Machine in Chicago and the Hague Machine in Jersey City.

The Spoils System

Its Origin No fixed date can be set as the birthday of the spoils system. The term in its present form is ordinarily traced back to the oft-repeated words, "To the victor belong the spoils." [27] But it would scarcely be accurate to assert that practices classified at present as falling within the spoils category did not exist long before the presidency of Andrew Jackson. Nevertheless, during the past century the spoils system has been more or less firmly entrenched in American government on the national, state, and local levels, albeit with variations and ups and downs.

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 more notorious 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 certain 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 weakening in effect.

Peculiar Position of the Spoils System in the United States No person who is familiar with the operation of foreign governments will deny the existence in those countries of practices similar to those associated with the American spoils system. Nevertheless, it is probably true that this system is as firmly entrenched in the government of the United States as in any of the major countries in the world.[28] This is not because Americans are necessarily more dishonest than residents of foreign countries; nor is it to be explained entirely on the basis of popular indifference or general prosperity. It is, of course, true that the spoils system is encouraged when the citizens do not care what kind of a government they have or when economic prosperity is such that public expenditures and governmental efficiency can be relegated to minor

[27] These words were perhaps uttered by William Marcy, but they have been associated with the administration of Andrew Jackson.

[28] It is not so outright as in certain Latin-American and Asiatic countries.

importance. Some of the strength and persistence of the spoils system in the United States is probably attributable to the type of government which we have. Since the executive and the legislative branches are only loosely tied together by law, there arises the necessity of an extralegal integration of the two. The President may contribute toward this end by the strength of his own personality; he may, upon occasion, call upon the people for the exertion of pressure on Congress which will temporarily lead to co-operation. But perhaps the most effective agency of solidarity has been and is the spoils system. The President is charged with the disposal of public offices and other public favors. The members of Congress are anxious to secure such morsels for their political followers. Under the principle of the separation of powers in our constitutional system, what is more natural than that the President should bestow public positions and other patronage on those congressmen who will follow his leadership? Since the separation of power in the states is very similar to that in the national government, the spoils system has the same solidifying and unifying effect on the state level. In the English government the legislative and the executive branches must by their very nature work together, for the executive, the cabinet, falls when it loses the support of Parliament.[29] It may be seen that under such a system the use of patronage is far less necessary than in the United States. It is probable that the comparatively slow progress in substituting merit for spoils in public employment at the state and local levels goes back in a large measure to the lack of co-ordination between the executive and the legislative branches.

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 direct 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. The amounts required for such purposes are far less than similar amounts paid out by the single parties in the totalitarian governments of Europe—the National Socialist party of Germany once spent as much on a single annual party gathering as both parties in the United States will spend on a presidential

[29] The alternative is calling a general election to determine whether or not the people support the cabinet policies and oppose those of Parliament.

campaign. Nevertheless, substantial campaign chests are regarded as essential if victory is to be won.[30]

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 businesses 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. Nor is the system of exacting dues from party members, as found in the single parties of totalitarian countries, in use here. 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 purchased 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.[31] 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 is tremendous—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. In general, however, most of the party

[30] It might seem from the figures subsequently given that such tremendous amounts could only be used for illegal purposes Actually, however, when one considers the salaries of thousands of office workers needed to send out millions of pamphlets and letters, the cost of the printed matter itself, and the cost of office space, billboards, and radio time the necessity for large treasuries is readily apparent.

[31] 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.

funds accumulate from relatively large contributions, the great majority of which are not made altruistically.[32]

Recent 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 somewhat secretive in regard to such matters and they consider the queries of newspaper men and students of government as impertinent. 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. In 1937 a committee of the United States Senate reported the party expenditures during the calendar year 1936, the last national campaign year prior to the Hatch Act, as follows:[33]

Republican National Committee	$8,892,971.53	
Republican State Committees	4,969,129.16	
Miscellaneous Republican Organizations	336,102.23	
Republican Total (or 85 cents per vote)		$14,198,202.92
Democratic National Committee	$5,651,118.40	
Democratic State Committees	2,757,236.38	
Miscellaneous Democratic Organizations	820,052.05	
Democratic Total (or 33 cents per vote)		9,228,406.85
Socialist Total (or 20 cents per vote)		37,635.00
Communist Total (or $3.37 per vote)		270,489.40
Union Party Total (or 11 cents per vote)		94,742.07
Grand Total		$23,973,329.82

These amounts, however large they may seem to some readers, do not tell the whole story, for they omit the expenditures of local party organizations. No reliable statistics are available in regard to expenditures of local political organizations, but it was the opinion of the committee of the United States Senate that they probably equaled the expenditures of the national and the

[32] For an analysis of sources of funds in recent presidential campaigns, see the articles by Louise Overacker, appearing at four-year intervals in the *American Political Science Review.*

[33] *Senate Report 171*, Seventy-fifth Congress, first session, "Investigation of Campaign Expenditures in 1936," Government Printing Office, Washington.

state organizations.[34] If this estimate is accepted as reliable the total expenditures for 1936 did not fall far short of $50,000,000.

The Hatch Act Public opinion became sufficiently aroused following 1937 to demand more rigid federal restrictions on expenditures 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 that the Hatch Act did not limit party expenditures in 1940 to $3,000,000 or less—indeed Senator Guy M. Gillette, chairman of the Senate committee investigating the 1940 election, stated that "close to $35,000,000" was spent on the two candidates.[35] Loopholes in the act and the short notice that the parties received of such a limitation account for expenditures in excess of the legal maximum, although it may be noted that the totals, particularly in the case of the Republican party, were below those of 1936.[36] 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.[37]

The Senate's Campaign Investigating Committee concluded in 1947 that the provisions of the Hatch Act had failed and recommended that the act be repealed and new legislation substituted before the 1948 election. It maintained that the three-million-dollar limitation "has demonstrably failed in its purpose to limit over-all expenditures on behalf of a particular party's ticket. Since $3,000,000 is an inadequate sum with which to conduct a national campaign, the main responsibility for raising and expending funds has drifted away from the official national party committees and gotten in

[34] *Senate Report, op. cit.*

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

[36] The "Willkie for President" Club, although supporting the Republican nominee, was not connected financially with the party and hence its expense was not covered by the Hatch Act. It might be said in connection with that organization that, when Mr. Oren Root, Jr., announced the return of many contributions that came to it too late for use in the campaign, he broke all precedent in political financing.

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

the hands of a plethora of independent, state, and local committees." [38] The committee favored an elimination of an over-all limitation and substitution of effective publicity requirements, revision upward of the "unrealistic ceiling limitations" upon candidates for Senator and Representative, extension of the law to cover primary elections and party conventions as well as general elections, and redefinition of the term "political committee" to include all committees which receive contributions or expend funds to influence, directly or indirectly, the nomination or election of candidates for federal office. The corresponding committee of the House of Representatives reported that it had found evidence of violations of the Corrupt Practices Act by about sixty labor unions and eleven corporations and also urged a drastic revision of the law. However, Congress did not get around to a revision despite the recommendations of the two committees.[39]

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[38] See the *New York Times*, February 1, 1947. The committee added: "This proliferation of fund-raising and fund-expending effort has served to confuse the public and defeat the existing publicity features of the law. Racketeering and corruption flourish amid this artificially encouraged confusion."

[39] According to the reports filed in Washington and in those states where reports are required, 1948 expenditures amounted to $13,563,878, but this amount does not, of course, represent total expenditures. Among the expenditures in 1948 were the following: Republican National Committee $2,736,334; Democratic National Committee $2,256,778, Republican Finance Committee of Pennsylvania $1,067,317; United Republican Finance Committee of Metropolitan New York $1,016,063; National Wallace for President Committee $813,352; Progressive Party $535,050, C.I.O. Political Action Committee $513,003; Republican Senatorial Campaign Committee $500,254; Democratic Senatorial Campaign Committee $49,273, National Republican Congressional Campaign Committee $426,117; Democratic Congressional Campaign Committee $9,278, International Ladies Garment Workers Union $240.532; Labor's League for Political Education $312,196. See the *Congressional Quarterly*, Vol. VII, no. 3, pp. 69–76, January 21, 1949.

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12. 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 the nominations to the national Senate and House of Representatives are handled by the states rather than by the national government. 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.

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. The caucus system which was employed at an earlier period has been dropped as a formal method, while nomination by petition, though encountered in certain important cities, such as Boston, has not been widely adopted.

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

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

[2] *United States* v. *Classic* 313 U.S. 299. The court divided four to three in this case. 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.

political bosses, that nominations were "sold," [3] and that the ablest candidates were frequently passed over in favor of machine yes-men.[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 continues 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.[5]

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 usually 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.[6] As used on the state or local levels the system is much the same, although, of course, it is organized on a less elaborate 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 they 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 behind the scenes in a hotel room who leave only the formal, perfunctory balloting to the delegates. The very

[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 often interpreted as "sales."

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

[5] Rhode Island provided for direct primaries as recently as 1947. In 1950 Connecticut gave some attention to substituting direct primaries for conventions.

[6] See Chap. 11.

secrecy and informality of these sessions makes for a certain irresponsibility and manipulation and at times permits noxious influences to creep in.

The Direct Primary In order to escape the machine 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 non-partisan"—have been used more or less extensively by the various states, but in every case nominations are supposed to be made directly by the voters.[7]

The Open Primary During the early years of experimentation with the direct primary, the open form was frequently used. Eight states, including Michigan, Wisconsin, Montana, and Washington, continue to employ this type of primary formally,[8] 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 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 easily defeated. 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 between these primaries and those in the open-primary states. 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-

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

[8] Arizona, Colorado, Massachusetts, Missouri, Nebraska, and Vermont have used the open primary at various times but have now abandoned this type of primary. In California and Oregon the courts have ruled that the open primary is unconstitutional.

primary states.[9] 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 prevents 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 such 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, Minnesota and Nebraska for example, provision must be made for a harmonizing type of direct primary; for it would obviously be absurd to have nominations made on a partisan basis and party designation not permitted on the election ballots. To meet such a need the nonpartisan primary which extends no formal recognition to the existence of political parties has been developed. Under the nonpartisan primary only a single primary ballot is used and voters are permitted to indicate a choice of any candidate for a given office. 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 in 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 one half of one 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. The candidate who has a plurality if not a majority of the vote 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 ordinarily needed to secure the nomination. If no single candidate receives a majority to begin with, a "run-off" primary is held for the two who had the highest number of votes.[10] 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 transpires. 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.[11] Even when political machines

[9] Some nineteen states have fairly adequate laws which control participation in their direct primaries by requiring recording of party affiliation.

[10] 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.

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

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. When such manipulation exists direct primaries display the same boss control, the same irresponsibility, and the same incompetent candidates that are frequently associated with convention nominations.

Record of the Direct-primary Method Proponents of direct primaries long advanced the most eloquent arguments, promising that such a device would eliminate most of the evils connected with the election process. The results have actually fallen far short of expectations with many jurisdictions evidencing little or no improvement. It is surprising to note the bitter opposition to the direct primary of such political worthies as Boss Murphy of Tammany Hall in light of the subsequent highly successful career of Boss Murphy under the primary system—his control over New York City reached heights never attained under the convention plan. However, although the achievements of the direct primary have often been disappointing, it is fair to say that they have been at least equal to and probably superior to those of the ordinary 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 local governments. In cities as widely separated as Boston, Pittsburgh, Cleveland, and San Francisco, municipal officeholders are or have been nominated by petition. The plan provides for only a single election, authorizing the inclusion on the ballot of those candidates who have filed a petition bearing the signatures of a stipulated number of qualified voters with the proper public officials. The number of signatures that must be attached to such petitions 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 requisite number of bona fide signatures has been verified, the name is forthwith placed on the ballot. This system has the obvious 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 sometimes leads to the election of candidates supported only by a minority. In Boston, for example, it is not uncommon for ballots to list six or eight candidates for mayor, together with a generous array

of aspirants for seats on the city council. Some of these have little or no support, but even so majority elections are not the rule. Moreover, nomination by petition does not always 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. Ideally, any person who possesses the qualifications of citizenship, age, and residence should be permitted a ballot on election day.[12] But experience has proved that it is not feasible to depend upon the applicant's own statement regarding such matters. Nor is there sufficient time amid all the confusion which characterizes most polling places to check on such qualifications during the few hours that the voting takes place. In some countries such as Japan, official identification cards are furnished each qualified person, and these may be proffered as proof of the privilege to vote. But the United States has made no provision for such identification, apparently preferring to rely on the safeguard of registration. In those rural areas in which every voter is personally known to the election officials, there is, of course, 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. In the absence of some adequate means of ascertaining the qualifications of voters, whole trainloads of bums have been imported from a near-by city by a desperate political boss in order to control an election. At the present time, therefore, virtually all states require personal registration of voters, at least in urban areas.[13]

Periodic Registration The older system of registration requires every qualified voter who expects to participate in elections 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 such 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.

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

[13] For a study of registration provisions now somewhat out-dated, see J. P. Harris, *Registration of Voters in the United States*, Brookings Institution, Washington, 1929. Current provisions in the various states will be found in the most recent *Book of the States*.

Permanent Registration During recent years 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 argument for this substitution. At present approximately half of the states provide state-wide registration on a permanent basis and a number of others specify permanent registration in certain localities.[14] Where permanent registration is provided, the qualified voter finds it necessary to register only once, unless he changes his place of residence or allows his name to be dropped from the voting lists by failure to vote in two successive elections.[15] There can be little doubt that permanent registration has made the exercise of the suffrage distinctly more convenient to the average voter. Moreover, after such a system has been set up, registration costs ordinarily drop sharply.[16] The chief defect thus far apparent in permanent registration is the tendency of the lists to become filled 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 adequate facilities to accomplish this duty. Where failure to vote in two successive elections automatically results in cancelling registration, large numbers of names are, of course, periodically 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 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 or dishonest candidate for office attempts to make use of the names of those who have transferred their residence as a basis for "impersonation" and "repeating." [17]

Essentials of an Adequate Registration System Considering the fact that the American voter is the most heavily burdened of any of the voters in the world both in number of elections and in the number of offices to be filled, it is certainly not inappropriate to place reasonable emphasis on this 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 for registration should be

[14] Twenty-nine states provided statewide permanent registration in 1950 and an additional eleven authorized it for certain areas.

[15] Not all states include such a provision in their permanent registration laws.

[16] For comparative figures see Harold Zink, *Government of Cities in the United States*, rev. ed., The Macmillan Company, New York, 1948, p. 195.

[17] For definitions of "impersonation" and "repeating," see the following page.

allowed. On the other hand, one must not lose sight of the fact that the main purpose of registration is not the convenience of the voter but rather the safeguarding of elections; otherwise registration could be abandoned entirely. Since the protection of the purity of elections is uppermost in importance, it is particularly essential 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 to hire agents to cast a number of votes by pretending that they are the holders of such names. This is known as "impersonation" and "repeating." 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 not 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 added that only in exceptional instances have such facilities been made available.

Election Procedure

Wherever totalitarianism flourishes, elections are likely to play an unimportant role. Under such regimes some countries, such as Italy, have dispensed with elections entirely; in others, notably Germany, elections became rather meaningless affairs. Even now elections seem artificial rather than genuinely significant in the Soviet Union and its satellites. However, in the United States elections not only continue to display a good deal of vigor but they 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 are held 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 complicated indeed.[18]

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

[18] For a discussion of election procedure now somewhat out of date, see J. P. Harris, *Election Administration in the United States*, Brookings Institution, Washington, 1934.

in the case of Maine, scheduled on the first Tuesday after the first Monday in November of the even years. 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 divide themselves into voting precincts [19] 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. Occasionally in cities in which there has been a shift in population the number of voters in a precinct may be small; for example, New York City for several years maintained a polling place to serve a single voter who was the sole night-time inhabitant of a business section formerly populous.[20] It is clear that 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 an election 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 spend the entire day 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 work 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 places, such as Columbus, Ohio, have experimented with portable buildings which are set in place temporarily for election purposes, 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 tabulate the votes.[21] In certain states, such as Ohio, a second set of officials,

[19] These are identical with the precincts discussed in connection with the organization of political parties. See Chap. 10.

[20] A voting machine and a full complement of election officials were provided for the convenience of this one voter—at a cost to the public of more than $100, but this is a very exceptional case.

[21] 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.

popularly known as the "night shift," take over after the polls close and tabulate the votes. 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 a distinctly modest honorarium of a few dollars 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.[22] 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 or a bed sheet in size. Some are printed on white paper,[23] 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 twenty-nine of the states, places the names of candidates 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.[24] 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 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.

A second type, adopted by eighteen of the states, is known as the "Massachusetts ballot." States that use this variety of ballot group the names of candidates according to the offices which they seek. Thus all candidates for governor are listed together and this holds true for the other offices as well. 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,

[22] 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.

[23] Six states use colored paper; thirty-nine states use white paper; and two use paper watermarked with a secret device.

[24] Twenty-seven states make provision for straight party voting.

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.

Voting Machines Approximately half of the states make at least some provision for the use of voting machines.[25] Although the larger cities account for most of the voting machines in the United States, less populous areas are increasingly purchasing 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 voting machine is based on the Australian system and may use the basic 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 shows his intention to vote for a straight party ticket, or after indicating his respective choices of candidates, he pulls a lever or levers which will register a vote for these candidates. The actual vote is frequently not recorded until he opens the curtain of the voting booth, preparatory to leaving. When paper ballots are employed, there is the considerable problem of ballots which are spoiled because the voters have mutilated them, voted for two candidates for the same office, or marked them with extraneous writing. At times as many as 15 to 30 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 nervously inclined persons, but they obviate the possibility of spoiled ballots because no remarks may be registered on them and a mechanical contrivance usually makes it impossible to indicate choices of two candidates for the same office.

Absentee Voting Most states make some provision for absentee voting,[26] though in a number of instances restrictions of one kind and another seriously limit the use of this device. The 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

[25] 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. Thirty-two states have voting machine legislation, but in only twenty-three states are the laws currently in operation. Three other states have authorized such devices.

[26] In 1950 Mississippi, Pennsylvania, and South Carolina were listed as making no provision for absentee voting by the *Book of the States* (p. 101). Maryland, New Jersey, and New Mexico provided absentee voting only for persons in military service.

uniform in their detailed practices, but they ordinarily agree on general principles.[27] 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 day.[28] 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 often stipulated that the absentee voter must go before a notary or some 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, perhaps 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 bonds to pay the costs involved in case the retabulation indicates the same results. Occasionally a very irregular 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 sensational 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

[27] 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.

[28] The minimum time specified varies from state to state, but it is often anywhere from two weeks to a month.

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 not 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 a political machine, it is probable that no serious 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.[29] 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, sometimes arrogantly giving orders to the election officials as to what they are to do and threatening various ills to those who attempt to thwart their desires.

Recent Progress While the situation in the United States is by no means without blemish at present, extreme cases of fraud are now definitely the exception rather than the rule. In almost any election there are likely to be minor irregularities, for dishonest or perhaps irresponsible persons manage to squeeze themselves in as polling officials, but one should not conclude from this that election frauds are currently 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.[30]

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

[29] For examples of such practices, see Harold Zink, *City Bosses in the United States*, Duke University Press, Durham, N. C., 1930, pp. 302 *ff.*

[30] However, dishonesty and fraud in elections have been serious problems in such cities as Kansas City, Missouri, during recent years.

the major parties in connection with presidential elections.[31] In addition, the national government has in the same Hatch Act prohibited holders of positions paid in whole or in part out of federal funds from occupying offices in party organizations, delivering political addresses, or otherwise actively engaging in political activities. 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.[32] Another rule forbids the soliciting of federal employees for campaign contributions by other officials of government.[33]

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. Under the Taft-Hartley Act labor unions are not permitted to make contributions to political parties. 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.[34]

State Corrupt-practices Legislation The state regulations on this subject vary widely, with some states going rather far in imposing adequate limitations and others permitting considerable laxity to exist.[35] In addition to setting up

[31] See Chap. 11.

[32] The original desire of many proponents of the Hatch Act was to include W.P.A. workers within its provisions, largely because of the publicity given to the revelation of the use of the W.P.A. to bring pressure on voters in the Kentucky senatorial election of 1938. However, the act as finally passed did not include the workers themselves but merely W P.A. officials.

[33] In some of the states public employees are expected to pay from 2 to 5 per cent of their salaries into the party campaign fund. The "Two Per Cent Club" of Indiana created by Governor Paul V. McNutt and his Democratic colleagues in 1933 collected several hundred thousand dollars in this manner.

[34] For additional discussion of federal regulations, see E. R. Sikes, *State and Federal Corrupt Practices Legislation*, Duke University Press, Durham, N. C., 1928.

[35] 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.

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. Certain 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 at times 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 seem to have evaded the spirit of the Hatch Act. 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 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 without regard to the name of the candidate. 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 be able to 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 burden 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 are some who 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.[36] 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 any 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 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

[36] California has asked the voters to pass on even more measures

majority support.[37] Proportional representation is applied to the election of members of city councils and other bodies where several choices are to be made.[38] Various European countries, including France and Germany now employ the "list" type of proportional representation. In the United States a modified form, known as the Hare system, has been used by such cities as Cincinnati, New York, Cleveland, and Toledo, but of those enumerated only Cincinnati now retains the system.[39]

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.[40] 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 unsatisfactory, 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 secretary of state, 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 candidates who have been nominated by petition along with the incumbent. If the person holding the office receives

[37] 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.

[38] For additional discussion of "P.R.," see Chap. 43.

[39] For a favorable evaluation, see C. G. Hoag and G. H. Hallett, *Proportional Representation*, rev. ed., National Municipal League, New York, 1940. The other side of the picture has been presented by F. A. Hermens in *Democracy and Anarchy?; A Study of Proportional Representation*, Notre Dame University, Notre Dame, 1941.

[40] 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.

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.[41]

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.[42] A definitive study of the use of the recall has thus far not been made except in California 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 some years ago. However, there have been numerous attempts to apply the recall to local officials—more than two hundred in California alone.[43] 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 simply 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 municipal 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 some 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 more than forty years 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.

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[41] However, some recall systems provide two elections: one to determine whether the incumbent shall be removed; a second to elect his successor.

[42] These states are as follows: Oregon (1908), California (1911), Washington, Colorado, Idaho, Nevada, and Arizona (1912), Michigan (1913), Louisiana and Kansas (1914), North Dakota (1920), and Wisconsin (1926).

[43] The California cases are dealt with in F. L. Bird and F. M. Ryan, *The Recall of Public Officers,* The Macmillan Company, New York, 1930.

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13. Pressure Groups and Pressure Politics

It has sometimes 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 in importance 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. Inasmuch as pressure groups now control both the legislative process and the administrative agencies to a considerable extent, it becomes essential to give them careful attention.[1]

Pressure Groups not a New Feature It is sometimes supposed that pressure groups have suddenly appeared on the American political scene, much as mushrooms do in a field or wood lot, but this does not represent the facts of the case. Influences akin to pressure groups, although they may not have carried that label, 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 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 tends to increase at a more than arithmetical rate. If these groups remain more or less quiescent and under the surface they may exert some influence, but they do not attain the status of organized pressure groups.

[1] The best 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.

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, social, 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 writers at full value, he might conclude that pressure groups are important in a political sense only in the United States. Some of these deluded people delight in declamations that describe the impressive unity of purpose which characterizes the totalitarian countries and seem to take even greater pleasure in charging that the United States is at the mercy of numerous bands of rapacious scoundrels who regard government agencies only as a means of realizing their selfish ends. However, no responsible person who is familiar with foreign governments would assign to the United States any monopoly on pressure politics, for he knows that every government operates to some extent as a result of such influences. The Weimar Republic in Germany had many of these organized groups, as Adolf Hitler himself, the leader of one of them, had to admit; moreover, despite all of the efforts of Hitler and his Gestapo the Third Reich had also to contend with a modicum of these pressures. For example, in the early summer of 1941, the Catholic clergy, speaking through their bishop, issued a letter in which they set forth their objectives and complaints in so far as the government was concerned. Organized labor being banned in Germany was integrated into the National Socialist system under the label "Labor Front," but this did not remove it entirely from the scene as a pressure group, as the reluctant modifications in wage scales and regulations as to the buying of government defense securities in the spring of 1941 indicated. In the democratic countries of the world pressure groups naturally operate more freely and more in the open than in the Soviet Union and in the fascist governments.

Nevertheless, though not unique in the United States, it is probable that pressure groups are more numerous, better organized, more vociferous, and more influential in the day-to-day operations of political processes 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 measured, pressure groups find a more fertile field than in countries where there is greater uniformity of

[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.

population and less wealth. Add to that the indifference of large numbers of citizens toward 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 the general philosophy of "bigger and better every day," have thrived in the United States beyond the point to be observed in Britain and other sister democracies.

Pressure Groups and Political Parties The relationship between pressure groups and political parties is of more than passing importance. To begin with, the rise of pressure groups has, to some extent at least, been synchronized with the deterioration of party platforms as a positive force. 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 political questions; indeed there is some basis for arguing that political parties have reduced 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 a considerable extent to present citizens an opportunity to express themselves on public questions. Some organizations of this character find it expedient to concentrate on a single project, on the principle that bending every ounce of energy toward one goal will produce practical results, while a diffusion of interest will lead to little or no concrete accomplishments. This policy means that citizens may be able to find expression for only one of their major interests, at least in so far as they belong to a single pressure group. However, this drawback is probably more apparent than real in the majority of cases, for it is to be noted that many pressure groups take fairly consistent stands on a variety of 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 political party campaign chests to the extent of many thousands of dollars. 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 by a pressure group to individual candidates, or official endorsement of an entire 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]

[3] For an elaboration of this relationship, see E. P. Herring, *op. cit.*, pp. 47 *ff.*

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 breakdown 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 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, at least in more than a very minor fashion. 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 certain 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 breakdown: [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 perhaps be added the war veterans, the aged, the real estate lobby, and the recipients of public relief. This plan of classification 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. Moreover, such a classification does not tell one too much about

[4] See E. P. Herring, *op. cit.*, table of contents.

the legitimacy of the goals which the pressure groups prosecute and consequently is disappointing to those who are primarily concerned with the effect exerted by such groups on the public welfare.

Effect of Pressure Politics upon Government There has been some fondness on the part of those who discuss pressure 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. Such an attitude is at best unsophisticated and at worst contributes to the gloomy picture which large numbers of people seem to hold of American government. An objective examination of the actual situation will 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. 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 may unconsciously exert themselves to bring about the weakening of the American system of government. As a rule, the programs of such groups are not wholly bad in themselves and under certain circumstances might be admirable, but their supporters have such single-track minds that they often seem to 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 find much to do along these lines. Some of them pride themselves on high standards and display a considerable degree of responsibility in advising legislators on a pending bill. Then, too, it is probable that there is more incentive on the part of the employees of these organizations to dig out the latest and most pertinent facts than there is for the staff members of libraries and legislative bureaus—the very jobs of the former may depend upon their ability to convince a legislative body that a certain course is or is not desirable. 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 contend, a

[5] It may be added that this is not the case with Professor Herring and others who have studied pressure groups with great care.

more feasible method to arrive at a reasonably tenable conclusion than is the mere digesting of reports based on the contents of legislative reference libraries, particularly under a democratic system where public opinion plays a significant role. 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 some of the more responsible pressure groups may be very helpful if not in keeping with an ideal setup.

Techniques of Pressure Groups

There is, of course, 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. And, naturally, a pressure group which spreads its efforts over a large territory will necessarily have to employ various methods. 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. Because of their importance in understanding the entire process and because of the probability that any citizen will sometime find himself in a position in which he will need to use such methods, some of the more common techniques will be examined.

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 occasionally this may actually be done by some 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. The more suave of these gentlemen never for a moment 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. As a matter of record, some of them are so powerful that congressmen actually vie for their favor instead of vice versa. One representative of an outstanding pressure group was heard to complain because several congressmen competing for his support carried a measure beyond the point that he desired.

The less well-to-do pressure groups cannot afford to retain agents who expect as much as $25,000 or even $50,000 per year as salary,[6] together with generous expense accounts. But even so, some of these less prosperous groups have representatives who have been so long in the business that they make up in experience what they lack in finesse.[7]

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-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. It is even alleged that some legislators keep communications from constituents in two piles until the time comes for a vote; then they look to see which pile is higher and vote accordingly. When a very controversial

[6] The top salary reported by any congressional lobbyist in 1949 was $65,000 and this did not include the expense account. A number of lobbyists fell in the $25,000–$40,000 category in 1949.

[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 lobbyists 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.

measure is nearing a vote, telegrams may pour in by the thousand, so that the telegraph offices are several hours behind with deliveries.

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 eventually focuses on Congress. Only well-to-do or exceptionally ingenious organizations can resort to national hookups because of the cost involved; however when that method can be managed, the results may be striking. One of the best examples of radio pressure saw Father Coughlin, a Michigan clergyman, as the chief actor and the bill providing for the reorganization of the administrative departments sent to Congress by President F. D. Roosevelt during his second term as the victim.[8] Virtually every commentator and newspaper writer predicted the passage of the bill by a safe margin, while informal polls of congressional opinion pointed in the same direction. But on the Sunday before the vote was to be taken, Father Coughlin delivered a stirring "radioration." The reorganization bill, he said, would result in almost every conceivable iniquity. It would substitute dictatorship for democracy. All patriotic citizens must immediately rally to the defense of their country. They must flood Washington with telegrams denouncing the measure. On Monday almost one hundred thousand telegrams poured in. The combination of these telegrams, bitterness stirred up by the court reorganization plan, and the opposition of certain lobbying agencies, killed the bill.

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 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.[9] 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,

[8] This was in 1938. Father Coughlin, a Catholic priest with a parish at Royal Oak, Michigan, received widespread attention during the 1930's because of his weekly broadcasts over a national hookup. Though unpopular with numerous Catholics, both clergy and laymen, Father Coughlin managed to maintain his broadcasts for several years, appealing particularly to those who feared social injustice and government regimentation.

[9] 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.

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. They may not have a very immediate influence; indeed they are not often aimed at any specific project. One pressure group went so far several years ago as to 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 on occasion. 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.[12] 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 for a single vote. Laws in both the nation and the states now make such action a felony, while public opinion today 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 of 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 widely as to how extensive the purchasing of votes really is, and it is, of course, impossible to make a statistical study of the subject.

Intimidation and the Use of Physical Force Intimidation and the use of physical force also reveal themselves in state capitals as they ordinarily do not in Washington. The chairman of one of the most important committees of the Indiana General Assembly testified that he no longer had possession of one of

[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.

[12] One prominent lobbyist remarked recently: "I never had to bribe anyone. It's a bad practice. I just show them how to make a little money." This same gentleman added: "I expect I have more friends on Capitol Hill than anyone else in town." On one occasion he gave a dinner for two hundred Senators and Representatives.

his committee's bills because, after threatening him with bodily violence if he did not "loan" the bill to an agent of a powerful pressure group, the lobbyist refused to return it.[13] In this same state a pressure group came in for notoriety because one of its members openly attacked an administrative official in a corridor of the Statehouse, using brass knuckles and gouging out one of his eyes. About ten years earlier, the Ku Klux Klan boss, Grand Dragon Stephenson, openly boasted of parading through the aisles of the legislative chambers of Indiana with a revolver strapped to his side while giving his instructions. "D—n them," he said, "we elected them. Now let them follow our orders." [14] It might be supposed that these crude tactics would have long since passed into oblivion, but apparently there is even today more use of brute force than might be expected. Much more commonplace, however, is the verbal brand of intimidation which threatens defeat at the next election, unless assistance to the lobbyist is forthcoming. The law usually 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 had been made.

Miscellaneous In addition to the techniques already listed, several others are often encountered which do not submit to 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 of general interest, yet which present the opportunity to create favorable public attitudes toward the pressure group's policies.[15] 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; display 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.

[13] This occurred during the session of 1937.
[14] Such testimony was given under oath before a court.
[15] The Pennsylvania Railroad may be cited as an example.

National Pressure Groups

At this point it may be profitable to look at some of the pressure groups which are active in influencing the operations of the national government. Professor Herring found the Washington addresses of 530 of these groups in 1928 and the number has increased since that time.[16] 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 added that if secretaries, publicity aides, statisticians, and other members of office forces be included something like five thousand persons would be involved.[17] In 1949 approximately two thousand organizations and individuals had registered under the Lobby Registration Act, as actively engaged in bringing pressure on Congress, with gross available funds for carrying on their programs amounting to some $47,000,000.[18] It is, of course, impossible to deal in any detailed fashion with even the most outstanding of these groups, but a few examples may serve to throw light on the subject.

Agricultural Groups The number of agricultural pressure groups is not especially large, but their influence is almost always impressive and frequently exceeds that of any other organization. Indeed Professor A. N. Holcombe has concluded that over a period of years the farm lobby has enjoyed greater success than any other interest group.[19] Several agricultural organizations have nation-wide membership and bring to focus on Washington the desires of the farmers in general. Of these the American Farm Bureau Federation and the National Grange of the Patrons of Husbandry are probably the best known, but a third group, the National Farmers Union, with some 400,000 members in thirty-two states, also wields considerable influence.

The Grange The Grange can look back to the nineteenth century, but it has been particularly active in Washington during the last three or four decades. It is based on some eight thousand local granges and has a total membership of some 815,000 farmers. The Washington office serves as a clearinghouse for the state and local granges and cannot act until a program has been adopted by the national convention. While, as a rule, it has not been outstandingly aggressive in policy or tactics, preferring to lay before Congress and the Department of Agriculture the information which it has gathered, still its very size and the extent of its membership commands a respectful hearing for its sentiments.

The Farm Bureau The American Farm Bureau Federation is a younger pressure group, but it has been more energetic in urging its program on Congress. The Farm Bureau is organized into local, county, and state units, with

[16] *Op. cit.*, p. 19.
[17] F. J. Haskin in the *Washington Star*, May 30, 1926.
[18] Between 1947 and 1950 152 corporations spent $32,124,800.
[19] In an address delivered at Northwestern University in 1939.

more than fifteen thousand local bureaus and approximately one and one half million farm families as members.[20] Starting out under the leadership of county agents and state colleges of agriculture, the Farm Bureau has always attracted the more progressive farmers and consequently has enjoyed intimate relations with the federal Department of Agriculture. An elaborate program aimed at putting the farmer on an equal plane with business and labor has been drafted and vigorously prosecuted. Much of the agricultural legislation passed by Congress during recent years has been traceable in large measure to the effective efforts of the Farm Bureau.

Miscellaneous Agricultural Groups In addition to the three organizations which represent farmers in general, there are several reasonably powerful groups which include in their membership only certain classes of farmers. The National Live Stock Producers' Association, as its name implies, rules out certain classes of rural dwellers; but, nevertheless, with its more than quarter of a million members, it covers a large portion of the farm population. The influence of this pressure group is strikingly evident in connection with the embargo on Argentine beef. Since the allegation that all Argentine beef is diseased has no adequate basis in fact, since the Argentinians look upon the embargo as highly insulting, and since, therefore, the barrier is in conflict with the "good-neighbor" policy, the President, Secretary of State, and many other persons in the government have pointed out the importance of carrying out the commitment to remove the embargo which we made several years ago. However, the National Live Stock Producers have been so aggressive in their opposition that after some years have elapsed the embargo remains. Even during the national war emergency, when additional supplies of beef, especially corned beef, were need for the army, the National Live Stock Producers were able to bring enough pressure on Congress to hold up the purchase of foreign meat.[21] The American Dairy Federation, the National Milk Producers' Association, the Apple Growers' Association, the Burley Tobacco Growers' Cooperative Association, the Dark Tobacco Growers' Cooperative Association, and the American Sugar Cane League are among other agricultural pressure groups that deserve attention.

Industrial and Business Pressure Groups Professor Herring writes: "Of the many organized groups maintaining offices in the capital, there are no interests more fully, more comprehensively, and more efficiently represented than those of American industry." [22] For a time after these words were written the situation perhaps changed somewhat because of the suspicious attitude the New Deal had toward business. But even so, one could not doubt the far-

[20] Its membership in 1949 was reported as 1,409,795 farm families. See the *New York Times*, December 11, 1949.

[21] This was in 1941. The War Department requested such permission, but the Live Stock Producers were able to hold the matter up and finally arrange a compromise under which no foreign beef was to be purchased so long as American supplies and prices were satisfactory.

[22] *Op. cit.*, p. 78.

reaching influence of business lobbies and during recent years this group has probably regained any ground lost earlier. President Roosevelt may have castigated the "economic royalists" in his public statements; Congress may turn a cold shoulder when it follows the executive leadership in passing certain regulatory legislation; but despite all of these denunciations and defeats the industrial groups have always had a great deal to say about how the government is run. If business loses the first battle in Congress, it invariably girds itself for a second battle with the administrative agency charged with carrying out the provisions of the law. It may not win a victory even in the second battle; yet the terms imposed ordinarily permit it some concessions.

Chamber of Commerce of the United States Business is represented in Washington both generally and through trade associations. The Chamber of Commerce of the United States has the task of watching the whole gamut of government agencies in Washington in the interests of all varieties of business and industry. Based on more than three thousand local chambers of commerce and trade associations, the Chamber of Commerce of the United States also has some 20,000 firms and corporations as members. The Washington office occupies a large number of rooms in a prominently located and handsome building. An elaborate internal organization provides major subdivisions which have to do with manufacture, finance, construction and civic development, foreign commerce, domestic distribution, insurance, national resources, transportation and communication, commercial organizations, trade associations, and agriculture, as well as more than twenty committees dealing with such fields as labor, education, social security, and federal finance. The Chamber of Commerce of the United States maintains that as a rule it does not concentrate its attention on current legislation, despite the great interest that may be attached to such matters; instead it seeks to build up a favorable attitude toward business on the part of Congress, the general public, and the administrative departments. It usually prefers to work through its local chambers of commerce and trade associations rather than directly. Its general influence in Washington is undoubtedly outstanding.

Trade Associations The trade associations ordinarily limit themselves to a single type of business enterprise and normally are active in relation to current legislation and administrative orders. Nevertheless, there is wide variation in scope—for example, the National Association of Manufacturers is far more extensive than the National Fertilizer Association. Indeed, the National Association of Manufacturers covers such a wide field and has at its command such resources that it is sometimes classed with the Chamber of Commerce of the United States rather than with the trade associations. It differs from the latter in that it is more militant in attitude, more aggressive in tactics, and more concerned with current happenings. Another organization somewhat similar in method and power is the Railroad Owners' Association. Among the more strictly trade associations may be mentioned the National Coal Association,

the American Petroleum Institute, the American Iron and Steel Institute, the American Bottlers of Carbonated Beverages, the American Cotton Manufacturers' Association, the American Wholesale Grocers' Association, the Hardwood Lumbermen's Association, the Portland Cement Association, and the National Varnish Manufacturers' Association. The mere listing of the names of the trade associations would require several printed pages.[23]

Organized Labor Organized labor has been a very active pressure group for many years, but it has come into its present prominence only since 1933. There are the two giant associations, the American Federation of Labor and the Congress of Industrial Organizations, which bring together the tremendous strength and resources of organized labor.[24] The rivalry, and even antipathy, which characterize the relations of the "big two" militate to some extent against their effectiveness as pressure groups and cause repeated attempts to bring them together again into a single fighting force. Yet after due allowance has been made for the weakening effect of the split, the weight of the influence exerted by the two associations is very great indeed. Congress, the President, the Department of Labor, the National Labor Relations Board, together with numerous other agencies of government, are very sensitive to labor sentiment and treat labor itself with distinct respect.

Flanking the A.F.L. and the C.I.O. in their Washington efforts are a number of more specialized labor unions. Perhaps the most powerful—certainly the most vociferous of these—is the United Mine Workers headed by John L. Lewis. The railway brotherhoods, sometimes called the "Big Four," have able Washington staffs which can draw on the ample financial resources which have been amassed by these organizations.[25] When it comes to railroad legislation, these brotherhoods frequently speak with decisive authority. The Amalgamated Clothing Workers of America, the United Automobile Workers, the Steel Workers of America, the United Electrical and Radio Workers, the Amalgamated Association of Street and Electric Railway Employees, and the several unions of government employees may or may not be affiliated with the A.F.L. or the C.I.O., but they each bear substantial weight as pressure groups in their own name.

Political Committees One of the most effective pressure groups—the Political Action Committee—first came into prominence in the campaign of 1944. Originally set up by the C.I.O. under the personal leadership of Sidney Hillman this committee announced an intention to back the welfare of labor and promote progressive movements as vigorously as possible. It raised a fund exceeding half a million dollars in 1944 which it expended to aid in the elec-

[23] For additional discussion of business pressure groups, see V. O. Key, Jr., *Politics, Parties, and Pressure Groups*, rev. ed., The Thomas Y. Crowell Company, New York, 1947, Chap 5.

[24] The 1949 membership of the A.F.L. and the C.I.O. totaled 14,000,000—an increase of 5,000,000 since 1941. In 1935 the total membership of organized labor was only 3,648,100

[25] These include the Brotherhoods of Locomotive Engineers, Firemen, Conductors, and Brakemen. Members of eighteen railway labor unions approximate 1,250,000.

tion of national and state candidates favorable to labor. Its powerful influence in the election results was widely recognized.[26] In 1945 the P.A.C. decided to sponsor a National Citizens' Political Action Committee. The program of this affiliate was intended in the words of its chairman, former Governor Elmer A. Benson of Minnesota, to: "Mobilize people outside the labor movement, such as farmers, business and professional people, regardless of party, whose real interests lie in co-operating with the labor movement." The N.C.P.A.C. favored wage increases, a minimum wage of 65 cents per hour, enlarged unemployment compensation, adequate support for the Fair Employment Practices Commission, more adequate social security legislation, and a just and durable system of international relations. N.C.P.A.C. was more or less absorbed into the Wallace Progressive Party in 1948, but both the C.I.O. and the A.F. of L. continue to maintain aggressive political committees, the C.I.O. retaining the title "Political Action Committee" and the A.F. of L. using the designation "Labor's League for Political Education."

Reform Organizations During the second and third decades of the century the most striking pressure in Washington was probably wielded by the Anti-Saloon League and related temperance organizations. Even in this day when pressure groups are more numerous and vociferous than ever before, it is not easy to duplicate the record of the Anti-Saloon League, which employed a most inconsistent yet effective combination of whipcracking techniques and oral persuasion to get what it wanted out of Congress.[27] At present, however, the strength of reform organizations is not to be compared with that of organized labor, the farmers, or business. Several associations have been reasonably active in promoting the extension of the merit system in federal employment; others are primarily interested in the tax system. Various groups are interested in health programs supported by public funds, in venereal-disease control, and in civil rights and fair employment practices. Conservation organizations press for more attention to timber, oil, and other natural resources. One of the best known reform agencies at present is the National League of Women Voters, which displays wide interest in civil service, administrative organization, government research and planning, and international relations.

Professional Associations Many of the professional associations take an active interest in certain phases of the government and let it be known what their judgment is on controversial measures. A few of these have substantial treasuries and maintain fairly sizable staffs in Washington, but the great majority do little more than send delegations, pass resolutions, and perhaps maintain a reporting service. If the American Bankers' Association be included among the professional rather than the trade associations, it constitutes an exception to the rule, for its branch office in Washington is adequately housed

[26] For an extended account of P.A.C., see Joseph Baer, *The First Round; the Story of the C.I.O. Political Action Committee*, Duell, Sloan and Pearce, New York, 1944.

[27] For a vivid account of the pressure activities of the Anti-Saloon League, see Peter Odegard, *Pressure Politics*, Columbia University Press, New York, 1928.

and staffed and its activities are rather varied. The American Bar Association is one of the leading professional associations, but its Washington efforts are comparatively minor. The American Medical Association has recently been increasingly active in Washington, seeking to limit and forestall any large scale expansion of the public health program of the federal government, particularly in so far as it might encourage socialized medicine. The National Education Association has not been outstanding in the past, but there is some reason to believe that it may expand its pressure program in order to urge on the national government an ambitious program which would bring up educational standards in certain backward states. Academic groups, such as the American Political Science Association, occasionally pass resolutions relating to government publications or some other nonpolitical matter and appoint delegates to wait on the proper authorities, but they have few formal lobbyists in Washington. The American Association of Social Workers maintains an interest in the public welfare program of the national government. The physical scientists have carried on a vigorous effort since 1946 relating to atomic energy and its control.

Government Employees With such large numbers of civil employees [28] on the payroll of the national government, it might seem that government employees would constitute one of the most powerful of pressure groups. If there were a single gigantic organization which could speak for all of these persons and promote their interests, it might well be that enormous pressure would be exerted. If each of these employees accounts for five votes, as is sometimes asserted, an imposing number of votes could be mustered by this group. Needless to say, very few politicians would desire to risk the displeasure of so large an element. Actually the federal employees are divided into a number of associations which may or may not work together toward a common end. If the pension system is up for consideration or if a revised salary scale is being considered, considerable co-operation may be expected. However, the mere fact that some of the workers are under A.F.L., others affiliated with C.I.O., and still others in independent organizations, prevents anything like the cohesive pressure that is manifest by the agriculturalists, industrialists, and laborers.

Veterans It is probable that at times the veterans have constituted the most powerful single pressure group in Washington. Professional staff members have been supplemented by large numbers of veterans from various parts of the country, until a well-nigh invincible battering ram has been placed in action. When the local posts of the American Legion [29] and the Veterans of Foreign Wars bombarded them with letters and telegrams, Senators and Representatives were very reluctant during the fifteen years following World

[28] The number of federal employees approximated three million in 1945 but by 1949 had dropped to some two million.

[29] In 1941 the American Legion reported 608,579 members. By 1949 membership had increased to some 3,091,810. Veterans of Foreign Wars reported 1,250,000 members in 1949.

War I to refuse any request for veteran benefit. Presidents Coolidge, Hoover, and Roosevelt all courageously opposed certain demands made by the veterans and even vetoed veteran-backed bills, but the force directed against Congress was so great that the veterans carried the day. During the late 1930's the veterans' organizations deteriorated somewhat; a difference of opinion was displayed; and world events served to eclipse veteran claims. However, with so many million men and women in the armed forces during World War II, it is not surprising that the influence of the veterans became very important even before the fighting was over. It is to be expected that the role of the veterans will remain outstanding for many years into the future. By 1946 pressure from the older groups such as the Legion and new ones such as Amvets had resulted in so much legislation that the House of Representatives set up a new standing committee on World War Veterans' Legislation.

Miscellaneous Pressure Groups Space does not permit a detailed examination of all of the important pressure groups, to say nothing of the large number of those of more or less secondary status. However, mention should be made of two other groups which have been particularly active and on occasion have exerted far-reaching influence in Washington: the real estate lobby and the aged persons organizations. Not content with a single instrument, the real estate lobby maintains several highly efficient organizations to make its desires known to Congress and other federal agencies. The one thousand local real estate boards are gathered together in the National Association of Real Estate Boards; the 3700 building and loan associations have another powerful agency, the United States Savings and Loan League; the building and construction people have the National Association of Home Builders, the Producers Council, and the Building Products Institute. The detailed interests of these groups vary to some extent, but they are ordinarily to be found in full co-operation on basic issues which relate to government programs in the housing field. While they were not able to stave off housing legislation completely, their influence during the period following World War II can hardly be appreciated by those not directly familiar with their activities in Washington. When they failed to stem the rising tide of sentiment on the part of the American people in favor of government action in dealing with the housing shortage, they at least had a big voice in determining the provisions included in the various housing acts. The rapidly increasing number of persons over sixty-five years of age in the population of the United States naturally results in various pressure groups intended to promote the interests of the aged. Everyone has heard of the Townsend Clubs, but it is probable that few realize the full impact of this type of pressure group. The decision to grant a $1200 exemption in income tax reporting to persons of sixty-five years or over in contrast to the $600 exemption permitted to others is but one example of the influence of such groups. As the proportion of aged persons increases, as it is scheduled to do during the remainder of the century, it is altogether probable that the role of this variety

of pressure group will become even greater than at present. Particularly in the pension, old-age assistance, and annuity field is this to be expected.

State and Local Pressure Groups

The picture presented by the various state capitals and several thousand cities and counties is even more complicated than that centered on 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.[30] Wyoming, for example, could not 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 Wyoming. Even in the same state there may be a 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 a recent session of the Indiana General Assembly. In that particular state pressure groups maintaining paid lobbyists [31] in the legislature are required to register with the secretary of state, to list their agents, and to describe briefly and in general what they seek. In 1941 the 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, a special session limited to public welfare problems saw only some twenty-five pressure groups registered and less than one hundred lobbyists. It should 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.

Agricultural Organizations The same farm pressure groups that exert influence on the national government are active in the state capitals, although their programs are of course pitched on a different level. In many states the farmers enjoy even greater dominance than in Washington, while in highly industrialized states they may be less powerful than organized labor or trade

[30] 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.

[31] 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.

associations. While in Washington the farm lobby is primarily concerned with legislation aimed at improving farm prices, the program in a state will usually be somewhat broader in character. Keeping the tax rate down almost always receives instant attention, while anything that would hike the general property tax rate is almost automatically opposed. Good roads, generous state subsidies to local schools, and an adequate share of state jobs and patronage also frequently command support.

Business and Professional Associations Both the state and local chambers of commerce in large cities may be well represented when a state legislature is in session. In addition, there will invariably be associations of retailers, liquor dealers, and wholesalers with favors to ask or axes to grind. The chief goal of these business groups is frequently to keep public expenditures within reasonable limits and consequently prevent increases in the tax rate. By combining with the farmers it is ordinarly possible to achieve these ends, unless there is disagreement about what expenditures shall be cut and how the taxes shall be levied. Business groups often seem to pay more attention to defeating proposed legislation than to sponsoring bills of their own, but they by no means confine themselves to a negative attitude. The bankers, the lawyers, the doctors, and the teachers are all quite active in state government, not only in connection with legislative sessions but also in administrative agencies. Relations between bankers' associations and state banking departments are usually intimate; doctors want the department of public health run according to their ideas; while teachers expect to have a good deal to say about the state department of education. Schoolbook companies turn heaven and earth to get contracts in those states in which uniform text adoptions are made by a state board.

Public Utilities An example of a pressure group which is usually more active in a state capital than in Washington is that of the public utilities. Electric, gas, telephone, and transportation utilities are all represented at state legislative sessions with an imposing array of lobbyists. They usually want certain bills enacted, but they are especially desirous of killing bills which would increase their taxes, add to their pay rolls, reduce their profits, or otherwise be to their disadvantage. In the old days railroads had such a powerful grip on some states that political machines were known by their names—for example the Southern Pacific machine in California—but their influence is far less at present. On the other hand, electric utilities are perhaps more powerful than before and at times find it possible to control state action. While the public utilities are watchful when the legislature convenes, their chief concern is the administrative agency which has been set up to fix their rates, regulate their financial practices, and otherwise supervise their operations. And in this endeavor they very frequently enjoy the most striking success. It is alleged in most states that the utilities "own" the public-service commission lock, stock, and barrel, but this is difficult to prove. They do seem to persuade the commis-

sion more frequently than does the counsel for the public. But considering the care with which they select their lawyers and the large fees which they pay in comparison with the modest fees afforded by consumer groups, perhaps this is to be expected.

Public Officials and Employees State employees are less permanent than federal employees because of the spoils system under which they hold their jobs in most states. This lack of tenure might seem to remove them as a pressure group, but they are much more active in politics than their federal colleagues and this serves to counteract their apparent disadvantage. Ordinarily state employees are not very effectively organized and hence cannot bring concerted pressure to bear. Public officials, particularly local officials, are a different proposition entirely. In many states local officials on the county, city, and township levels have wonderfully constructed machines for opposing state action. They will pay out large sums of money and resort to almost any tactics in order to maintain the lucrative fee system, prevent their patronage from being reduced, and safeguard their own authority. Especially when proposals looking to local government reform or consolidation are up for consideration, these local officials constitute a stone wall against which all efforts beat helplessly.

Organized Labor Organized labor is now represented at all sessions of state legislatures; and, if there is a department of labor, this pressure group ordinarily has a good deal to say about its operation. However, there is much variation in the exact role of organized labor from state to state. In some of the sparsely populated states there is comparatively little opportunity to build up sizable unions, for there are no large bodies of workers. In these states labor may not essay elaborate programs, since they would receive little consideration from the farmers and business men who constitute the legislature. Even where the population is large, the role of labor may not be outstanding if agriculture is the prevailing activity. But in the highly industrialized states of the East and Midwest organized labor has made determined efforts during recent years to write on the statute books large numbers of laws in regard to working conditions and treatment. Although the chambers of commerce and trade associations have often fought these proposed statutes and sometimes have succeeded in killing them, labor's general record of accomplishment is distinctly good, even in states inclined to be conservative.[32]

Control of Pressure Groups

Regulation of Lobbies As pressure groups have grown in size and influence and as they have sometimes assumed virtually direct control of the process of government, there has been considerable apprehension on the part

[32] In a single year organized labor sponsored approximately twenty bills in the Indiana General Assembly. Despite the opposition of business fifteen of these were passed and became law.

of 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 at times led to excesses and have wanted to reduce that possibility.

Most of the proposals to regulate the activities of pressure groups have centered about one phase of their work, that is, the lobby. Historically, this was the first phase to become nationally important and it has since remained one of the most spectacular of their endeavors. 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 claim to be very annoyed by the activities of what Senator Caraway called the "third house." [33] Unquestionably there is considerable justification for this attitude, particularly on the part of state legislators, because many of the lobbies continue to use what are merely subtle and skillful refinements of the tactics common in the seventies and eighties. 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.

National Legislation In 1913 and in 1928 bills introduced by Senators William S. Kenyon and T. H. Caraway respectively were in a fair way of becoming law. But, in spite of the fact that some reputable lobbyists supported them in the hope that their dishonest competitors would be weeded out, the farm and the labor groups were opposed because such legislation seemed to be one step toward complete outlawry of pressure groups' activities in connection with Congress and their opposition was sufficient to kill the bills. Likewise, some congressmen opposed the bills because they maintained that they applied to good as well as bad lobbies. In 1935, however, the proponents of lobby control succeeded in obtaining partial satisfaction. Largely because of the widespread publicity given to power propaganda and power lobbies 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. Part of the act passed in 1946 to reorganize Congress provided that all congressional lobbyists must register their names and their sponsors, report expenditures, and indicate the nature of their programs.[34]

[33] See for congressional attitude, Herring, *op. cit*, Chap. 14 and T. H. Caraway, "Third House," *Saturday Evening Post*, Vol. CCI, p. 21, July 7, 1928.

[34] For additional discussion of this legislation, see Belle Zeller, "The Federal Regulation of Lobbying Act," *American Political Science Review*, Vol. XLII, pp. 239–271, April, 1948.

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 will prove very 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 considering the illustrations given earlier in the chapter it would be hard to prove that lobbies in those states are not fully so strong and frequently so disreputable as in states which attempt no regulation. Mere registration of lobbies and lobbyists cannot be expected to accomplish really effective regulation. It is based on the premise that bringing the activities of pressure groups and their lobby subdivisions into the light of day will automatically discourage their efforts. Some groups, such as the Anti-Saloon League, the Grange, and labor organizations, have had considerable publicity and have not been the least inhibited by it. Many of the supporters of registration regulations expected also 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 diminished by restraints on this one portion. When pressure groups are carried by their single-mindedness to the point of distributing propaganda instead of information and half-truths in the guise of facts in order to control public opinion and indirectly to influence legislation, laws restricting a rather unconnected phase of their work, the lobby, cannot be expected to operate effectively on their publicity activities also. More successful in keeping pressure groups within bounds are such methods as the revelation of the public-utility propaganda in the investigation by the Federal Trade Commission in 1928. Nor can laws aimed at the lobby be of any particular use when pressure groups "buy" the members of a regulatory commission, as they are sometimes alleged to do. Although registration laws may perhaps be helpful in restraining some of the unashamed lobbies and lobbyists, they do not touch many of the other excesses of pressure groups which, if the interests of the people as a whole are to be protected, need regulation. Nevertheless, the fact that some two thousand organizations and individuals had registered as active in Congress in 1949 is not without significance.

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Section III

THE NATIONAL GOVERNMENT: EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCHES

EXECUTIVE BRANCH OF THE GOVERNMENT OF THE UNITED STATES

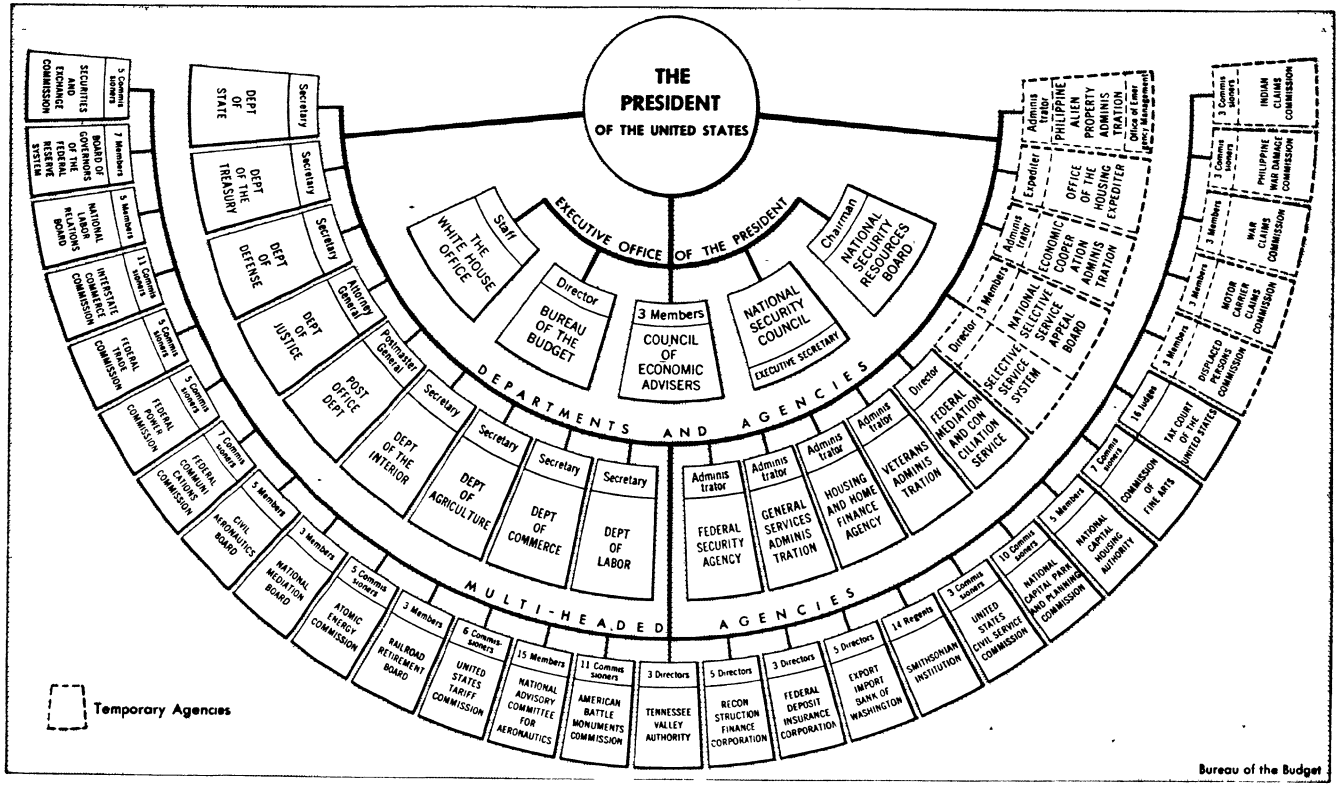


Figure 1

14. The Presidency

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. There may be Rip Van Winkles who could not name the holder of the office at any particular time, but it would require a Diogenes to find many residents who are so cut off from the world in which they live that they could not name the incumbent President and tell a good deal about his personal background. 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 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

[1] Article II of the Constitution deals with the executive branch and is largely devoted to the office of President.

exemplars of mediocrity as Tyler, Fillmore, and Pierce whose names are associated with little more than mere occupancy of the highest office in the land.

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. Sidney and Beatrice Webb, the distinguished English writers on public affairs, were so impressed by the enlargement of its role achieved by Franklin D. Roosevelt after he took office in 1933 that they classed the American presidency with the European dictatorships of Hitler, Mussolini, and Stalin.[2]

General Status of the Expanded Office No matter whether the presidency is ranked above, with, or below the dictatorships 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 some 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 as particularly outstanding or indeed arduous. While the presidency was not surrounded by the divine aura with which the Japanese long endowed their Son of Heaven emperor, nevertheless, there was a concept on the part of the framers which would have placed its incumbent above the everyday operation of government.[3]

The striking development which has made the President the actual as well as the titular leader of the country is variously regarded 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."[4] 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

[2] See Sidney and Beatrice Webb, *Soviet Communism*, 2 vols, Charles Scribner's Sons, New York, 1936, Vol. I, p. 431.

[3] The Japanese emperor was informed of what transpired but he acted himself only on rare occasions when he issued an imperial rescript.

[4] See his *The Government of the United States*, rev. ed., The Macmillan Company, New York, 1937, p. 156.

same strong position as they once enjoyed would be quite impossible to maintain." [5] 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. Some of them cannot refer to the enlarged role of the presidency without becoming wrought up emotionally, either displaying unmistakable anger or genuine regret. Modern Jeremiahs and Amoses go about predicting the most dire consequences, even to the complete downfall of the republic and the disappearance of democracy.

What of the Future? Thus far, the results of the "new presidency"—to use Professor Corwin's designation [6]—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 rise of the dictators has revealed that in a single man is an almost unlimited capacity to assume power over the daily lives and destinies of millions of people. Furthermore, the record of Franklin D. Roosevelt during years of unsurpassed domestic and international difficulties seems to refute such an assumption.

The Immediate Result Looking at the immediate situation, one may assert that the expanded powers attached to the office have permitted the President to give vigorous attention to matters which at an earlier date were left in the hands of private business, the states, or fate. To what extent such positive steps have contributed to the general welfare of the country is a moot question. Some citizens declare that these presidential measures have hindered rather than helped; that they have prevented normalcy because business confidence has been destroyed; that they have plunged the country into a morass of debt which will eventually lead to the most widespread misery. On the other hand, there are others who are equally sure that the country has been saved from revolution and disintegration by the President's strong leadership in dealing with credit and finance and in providing public assistance to the millions of needy.

Recent election results seem to indicate without much doubt that the rank and file of the people favor the more prominent role of the President. 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,[7] and comparatively little diminution of

[5] See his *The President: Office and Powers*, New York University Press, New York, 1940, p. 316

[6] *Ibid.*

[7] The entry of the United States into World War II led to the establishment of camps for

freedom of speech and of the press. Property rights have, of course, been curtailed both by the passage of regulatory legislation and by the imposition of heavy corporation and individual taxes. 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.[8] But it is difficult to perceive how the United States could deal at all effectively with the immensely complicated international and domestic problems of the mid-twentieth century without a strong office of President. It is too early to see clearly what the final outcome may be.

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 cumbersome system of indirect election.[9] 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 [10] 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.[11] 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.

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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.

[8] *Op. cit.*, p. 316.

[9] 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.

[10] See Chaps. 10 and 11.

[11] See Chap. 11.

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 expansion 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.[12] 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 presidential 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 mandatory presidential primaries, while a substantial proportion of those which had already put them into effect before that time have abandoned them.[13] Therefore, at the present time presidential primaries do not play a 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. If a certain candidate runs strongly in a presidential primary, that fact is supposed to enhance his general popularity on the ground that nothing succeeds like success and that everyone wants to be on the band wagon.

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.[14] Each state is apportioned as many electors as it has seats in Congress. Inasmuch as the positions are largely formal in importance, 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 expense of holding the election without serving any useful purpose.[15] In casting his ballot the average voter doubtless thinks of himself as directly supporting the presidential nominee whom he

[12] In 1916 more than half of the delegates to the national conventions were chosen in this manner.

[13] Iowa, Minnesota, Vermont, Montana, North Carolina, Indiana, Michigan, and North Dakota have all abandoned presidential primaries. However, in Alabama, Florida, and Georgia state laws permit state committees of a party to prescribe such primaries.

[14] In some states this is done before the national conventions are held.

[15] Some twenty-four states omit names of electors from the ballot and substitute names of the presidential and vice-presidential candidates. In three of these states the presidential short ballot is limited to voting machines; where paper ballots are used the names of the electors are printed.

favors—it is questionable whether in most instances he could even name the electors for whom he has voted.

While it was the intent of the Constitution to confer wide discretion on the electors in the choice of a President, custom has ordained that 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.[16] 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 in their respective state capitals, not as a body in the national capital to vote for a President and a Vice-President. A 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,[17] 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 Senate President or President *pro tempore* 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 for President 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 were set up and charged with

[16] This actually was the situation in 1948, when one of the electors from Tennessee refused to cast his vote for President Truman.

[17] Actually all votes are cast for one person under the system now used by all states, for all electors are of one party.

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 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 was 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 national 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, and consequently there has been no occasion to make use of the states.

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,[18] 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, Woodrow Wilson received a majority of the electoral votes although by no means a majority of the popular vote.[19] 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 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 only a plurality of the popular votes

[18] See Amendment XII.

[19] 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.

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.

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.[20]

Taking of Office The traditional time for the President to take office was long March 4, a date that offers some advantages 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. Not one of the inauguration days since the new date became operative has been very clement and in fact some fear was expressed lest President Roosevelt suffer from the exposure incident to his inauguration.

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-

[20] A constitutional amendment, sponsored by Senator Henry Cabot Lodge of Massachusetts, which provided for a distribution of state electoral votes on the basis of the popular vote in the various states, was approved by the Senate in 1950, but later defeated in the House of Representatives. If no candidate received 40 per cent of the electoral votes, election would be transferred to the House of Representatives.

elect died before taking office.[21] 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. Carrying out a recommendation submitted by President Truman, Congress agreed in 1947 to make the Speaker of the House and the President *pro tempore* of the Senate respectively the immediate successors in precedence to cabinet members.[22] The Twentieth Amendment further clarified the situation 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."

Factors That Enter into the Choice of a President

Geography Despite their positions of legal equality, the 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.[23] The southern states, with the exception of Virginia which sometimes claims to be the "mother of Presidents,"[24] 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

[21] The Constitution authorizes Congress to provide for the filling of the office in cases of removal, death, resignation, or inability.

[22] This proposal was passed by one house in 1945, but shelved by the other. It finally became law in 1947.

[23] Herbert Hoover was a native of Iowa but had held legal residence for many years in California.

[24] Virginia contributed an imposing number of the earlier Presidents, but has not been frequently honored during recent decades.

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 seen regarded as outstanding examples of pivotal states, and hence they can display very impressive records as far as occupants of the White House constitute a criterion. On the other hand, Indiana, which the Gallup poll declared to be the most perfect election barometer among the states during the years 1860–1940, furnished only a single President during the period.[25] Although it may be argued that Indiana does not have a large enough electoral vote to entitle it to an unchallenged position among the pivotal states, still Ohio, which has been adjudged to be pivotal more frequently than any others since the turn of the century, accounts for fewer electoral votes than New York or even California and Illinois.

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 designated. Possibly the man of richest 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 impressed by a candidate who has not had much public acclaim or much experience in handling important affairs.[26] 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 an easy-going 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.[27] Thus after Theodore Roosevelt, William Howard Taft was selected; after Woodrow Wilson came W. G. Harding.

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

[25] Benjamin Harrison. Wendell Willkie claimed Indiana as his state, although he had not actually lived there for some years. The Gallup study during October, 1940, showed that Indiana has varied approximately 1 per cent from the national vote in presidential years.

[26] There were many who considered the lack of previous political experience as a serious handicap in the case of Wendell Willkie.

[27] 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.

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. Truman, after an early misfortune in private business, has held local, state, or federal office almost continuously during his mature years. 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,[28] and even they had not gone directly from education 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 and an additional one 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.[29] Only Truman, Harding, and

[28] 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.

[29] 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.

Hoover can be even remotely connected with business careers and in not one case has the association been too impressive.[30] Just why there has 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 surpassed if indeed 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.

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 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 in the case of a few among many. The mere fact that certain men of great merit and wide reputation have been passed by 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, a well known British authority on American political institutions, concluded that the Presidents of the United States have been on the whole distinctly 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." [31] A fellow countryman, Professor H. L. 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.[32] It is probable that these two men are fairly typical of foreign observers, although when they deliver lectures or write for consumption in the United States a more complimentary tone may be adopted. Even the brilliant professor of political science at the University of London underwent somewhat of a "conversion" when he lectured on the presidency of the United States at an American university and subsequently arranged his material for publication as a "Book

[30] Harding was the principal officer of a newspaper in Marion, Ohio. Hoover as a mining engineer made a rather large amount of money by extracting precious metals from low-grade ores. Truman ran a men's clothing store which failed.

[31] See his *The American Commonwealth*, 2 vols., The Macmillan Company, Vol. I, New York, 1910, Chap. 8.

[32] See his *Parliamentary Government of England*, The Viking Press, New York, 1938 p. 243.

of the Month." [33] Admitting that eleven of the Presidents have been "extraordinary men" [34] Professor Laski confessed that his countrymen "are tempted to remark on the fact that many of the Presidents of the United States have been very ordinary men," [35] adding that "there is no foreign institution with which, in any basic sense, it can be compared," [36] thus necessitating its analysis in "American terms." [37]

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 and Coolidge 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 even so 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. Setting off a Winston Churchill there is a Neville Chamberlain; neutralizing the record of Lloyd George, there are the Bonar Laws and the Ramsay MacDonalds. 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 distinctly superior to that of the nineteenth. Although we are too near most of the recent holders of the office to measure their virtues objectively, at least three out of the nine would seem to deserve a high rating in contrast to one or two who were almost totally lacking in strength of character and marked capacity.[38]

Qualifications, Terms, and Perquisites

Qualifications The formal qualifications for the office of President 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 re-

[33] Under the title *The American Presidency*, Harper & Brothers, New York, 1940.
[34] *Ibid.*, p. 8.
[35] *Ibid.*, p. 8.
[36] *Ibid.*, p. 11.
[37] *Ibid.*, p. 11.
[38] Woodrow Wilson and the two Roosevelts, irrespective of their political views, will probably be given outstanding places by future historians. Harding is certainly not likely to fare well, while McKinley is sometimes regarded as scarcely more able.

quired to have resided in the United States for at least fourteen years, although such residence does not necessarily have to be consecutive.[39] Before assuming office a President-elect 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." [40]

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 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 defeated for the presidency because he was a Roman Catholic.[41] 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, when the Klan fires still blazed in many sections. 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 a distinct 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 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,

[39] 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.

[40] Art. I, sec. 7 of the Constitution.

[41] See his *Up to Now*, The Viking Press, New York, 1929, p. 412.

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*,[42] 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 submitted to the states for ratification an amendment limiting a President to two full four-year terms.[43]

Financial Allowances The office of President carries with it a salary of $100,000 per year, though for many years prior to 1949 the amount was $75,000. This is subject to federal income tax. In addition, Congress has appropriated $90,000 as an expense allowance which is tax free. The salary is, of course, regarded as a personal item and may be spent by the President as he pleases. Various 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. In addition, the chief executive and his family are given the White House as a residence, a sumptuously appointed plane for travel, and may make use of a presidential yacht and naval vessels for cruising purposes, official visits, and even fishing. To set a value on these privileges in order to compare the income of a President with those of corporation officials and owners of private business is an almost impossible task. For instance, the latter do not visit tropical waters on vessels that are even comparable in value and upkeep expense to ships of the United States Navy. However, even if the various allowances and per-

[42] Columbia University Press, New York, 1916, p. 4

[43] In May, 1950, twenty-four states had ratified this proposed amendment.

quisites should be valued at $700,000 or $800,000 or even a million dollars the President receives less than several foreign chiefs of state [44] and has at his disposal smaller amounts than the wealthiest industrialists of the United States.[45]

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; indeed they do not admit that the President is justified in using naval vessels for relaxation. On the reverse side, others, more interested in social prestige than expense, point to the limited facilities of the White House in comparison with even one of the some eight palaces and castles of the English king, 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.[46] Contempt-of-court charges are never aimed at the chief executive. Even in criminal cases it would be out of the question while he remains President 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.[47] President Jefferson was summoned by the United States Circuit Court at Richmond to appear in the Aaron Burr treason trial, but he refused on the ground that to accept such a summons would be tantamount to admitting the dependence of the executive on the judicial branch.

Social Status Great honor is attached to the office of President. He is accorded military salutes when he reviews the land, air 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 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

[44] On the income of the English king, see F. A. Ogg and Harold Zink, *Modern Foreign Governments*, The Macmillan Company, New York, 1949, p. 60.

[45] Representative R. O. Woodruff maintained in 1950 that a private citizen would have to have an income of $3,000,000 per year to maintain a standard of living equal to that of the President. He placed the cost of the presidential yacht at $190,000 per year and its accompanying escort destroyer $876,000. The private plane cost $1,133,000; the private railway car $250,000; and other facilities almost thirty million dollars.

[46] See *Mississippi* v. *Johnson*, 4 Wallace 475 (1867).

[47] See *Kendall* v. *United States*, 12 Peters 524 (1838).

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 as a rule appear at social functions outside the White House,[48] 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.

Duties Inasmuch as it was thought desirable to give the Vice-President something to do besides awaiting the death or incapacity 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.[49] 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.[50] It has already been pointed out that the Vice-President

[48] President Truman has departed from this tradition more than other recent Presidents.

[49] Vice-President Dawes may be cited as an example when he sought to change the Senate rules.

[50] Vice-President Garner was generally credited with exercising great influence.

and his wife are the social leaders of Washington.[51] 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.[52]

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." [53] 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 promotion of the Vice-President although that has at times seemed desirable. President Wilson during his second term was out of touch with even the most important affairs of the government for a considerable time; yet he did not make any move to permit the Vice-President to assume responsibility. 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.[54]

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[51] 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.

[52] Vice-President Coolidge was the first twentieth-century Vice-President to sit with the cabinet, though John Adams really started the precedent.

[53] Art. II, sec. 1.

[54] See Corwin, *op. cit.*, pp. 333–339.

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15. 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. Instead of 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 national government and to some extent for the entire political system of the United States.

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 handled. 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 suite 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 have taken over space in the adjacent State and War building, while the Bureau of the Budget and other sections of the office of the President are scattered all over Washington. 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, national planning, economic 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 dealing with the President and Con-

gress, national finance, conservation, and planning;[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—letters average more than 5000 per day or almost two million in a single year. All of it, whether it comes from fools, serious-minded but deluded citizens, men of affairs, or politicians, is examined with some care and sorted out into piles for attention. This currently requires a staff of twenty clerks, though as recently as the Coolidge Administration a single person handled the mail. The general policy of the recent Presidents has been to accord at least some attention to virtually all letters which are addressed to them—Franklin D. Roosevelt went so far as to invite people in his fireside chats to write him about their relief difficulties. 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—currently more than a thousand each year—feel so close to the President that they want to share with him their culinary triumphs, wild game, fruit, handwork, artistic efforts, and almost every other conceivable possession. Mr. Truman has received two baseballs, thirty-two quarts of strawberries, a set of ship models, and an album of records in a single day. 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 should be done with cherry pies six feet across, fancy turkeys, and laboriously executed fancywork is no mean one. Some of the food products can be used in the White House kitchens; gifts may find a place in the hobby collections of the President or his family; other items may be sent to various eleemosynary institutions located in Washington. But they all demand the attention of someone and receive the official thanks of the executive office.

Public Relations One of the principal secretaries of the President manages public relations.[2] He goes over with the chief executive statements which

[1] See Chaps. 17, 29, and 35.

[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. F. D. Roosevelt, quite aware of that shortcoming, maintained a system whereby not only he was accessible to reporters at stated periods, but also that 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 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. Much of Mr. Roosevelt's phenomenal success in cultivating such press relations was due to his press sec-

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] Any newspaper, periodical, radio chain or press service which is duly accredited by the Senate or the House of Representatives may send a reporter to a presidential press conference.[4] On such occasions the President ordinarily replies to such questions as he feels it desirable to answer. Franklin D. Roosevelt apparently thoroughly enjoyed most of these sessions with the press, despite the critical attitude which he often displayed toward newspaper owners. He joked with the reporters, jibed at some of their new stories, branded some of the questions as "lousy," and parried pertinent queries which he did not want to throw out yet which required careful handling. Not infrequently he would take them into his confidence and tell them the inside facts off the record, stipulating that these stories must not be used.[5]

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 two decades there has been a 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. Nor is it in this latter day always easy for committees of civic organizations to

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retary, Stephen Early. For a short, but informing sketch of Mr. Early and the White House press relations, see Delbert Clark, "'Steve' Takes Care of It," *New York Times*, July 27, 1941. For an informing account of President Truman and the press, see Tris Coffin, *Missouri Compromise*, Little, Brown & Company, Boston, 1947

[3] President F. 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 little room for questions. By 1950, the press conferences had grown so large that President Truman moved them from his office to a sizable room in the old State-War building.

[4] The press galleries of the Senate and the House are limited in space. Hence, to avoid crowding yet to meet the most legitimate demands, only daily newspapers, press services, newreels, and a few widely circulated periodicals are allowed representatives there That basis for discrimination is carried over to the presidential conferences which are likewise held in a comparatively small room.

[5] It may be added that some representatives of the press resent this technique. They are pledged at the pain of future exclusion not to make use of the material; yet they feel that the public is entitled to know the situation.

secure interviews in order to urge their claims. Even politicians may now find that the President is sometimes beyond their reach, at least as far as a personal conversation is concerned. Curiously enough, Franklin D. Roosevelt attempted to cultivate the rank and file of American people through radio broadcasts and messages to the press as no other President has done, and at the same time he removed the office from personal contact far more than would have been dreamed of a few years ago. His predecessors often complained about the hardship of endless handshaking and receiving all sorts of delegations, but they feared to brook tradition. Mr. Roosevelt took the step which, while perhaps not ideal under the principles of pure democracy, should have been taken years ago. It may be that Mr. Roosevelt went somewhat too far in cutting himself off from the rank and file of callers. At any rate President Truman has found it desirable to devote more time to this purpose and frequently receives not only delegations from the two houses of Congress but numerous politicians and private citizens not directly connected with the government. He has seen four hundred people in the course of a single day—in groups of course.

The Little Presidents One of the 1937 proposals for administrative 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. The so-called "little Presidents" are actually not little Presidents at all but rather assistants to the President. It is their task to aid their chief in any manner which may seem desirable to the particular incumbent in office, since their duties are not fixed by law. The result is that their responsibilities vary somewhat from time to time, depending upon the problems to be confronted and even more upon the particular person who holds the office of President. In 1950 the ranking position in this category carried with it the title "The Assistant to the President," while next in order was the "Special Counsel to the President." There were four Administrative Assistants to the President and one Administrative Assistant in the President's Office. The Assistant to the President and the Special Counsel to the President were depended upon by President Truman in large measure to assist in the general conduct of the responsibilities attached to his position as chief executive. The other assistants usually attended to more specialized matters, though they might be called upon to write speeches at times. One devoted himself more or less entirely to relations with Congress; another concentrated on minority and foreign-origin groups. At times one of the assistants has spent most of his time dealing with personnel problems, not only in so far as appointive positions are involved but also to the integra-

tion of the Civil Service Commission with the departments which perform the daily work of the government. Under Franklin D. Roosevelt one of the assistants had charge of co-ordinating all government publications and publicity, while another dealt with the defense program. All of these assistants irrespective of assignment report to the President on various aspects of the far-flung activities of the national government and therefore serve to keep him more closely in touch with what is going on. This obviously has a significant bearing on his ability to supervise the administrative agencies.[6]

Other Presidential Aides In addition to the presidential secretaries and the administrative assistants noted above, the President has a number of other aides who should be mentioned. A social secretary gives attention to the various matters which relate to the social side of the White House. Military, naval, and air force aides keep the President in touch with the three service departments and also provide a personal staff for ceremonial purposes. A physician to the President, detailed from the Medical Corps of one of the services, has the responsibility of keeping the President in fit physical condition as far as possible.[7] An executive clerk is in charge of the sizable clerical force employed in the White House Office. Finally, there is the chief usher who may hold his position under several Presidents if he becomes expert at the job of handling callers.[8] No mention has been made of the secret service operatives, but they are constantly on duty guarding the President and his family both in the White House and while they are attending functions outside or traveling about.[9]

Council of Economics Advisers In addition to the staff of the White House Office, the Executive Office of the President includes several agencies such as the Bureau of the Budget, the Council of Economic Advisers, the National Security Council, the Central Intelligence Agency, and the National Security Resources Board. Most of these will be discussed at later points,[10] but it seems appropriate to consider the Council of Economic Advisers here. Authorized by an Act of Congress in 1946, this body is made up of three members appointed by the President with the consent of the Senate. Unlike many of the other agencies of the national government, it maintains a relatively small staff made up mostly of highly trained professional experts. For much

[6] For additional information relating to the presidential staff, see F. M. Marx, *The President and His Staff Services*, Public Administration Service, Chicago, 1947, and Louis Brownlow and others, "The Executive Office of the President: A Symposium," *Public Administration Review*, Vol. I, pp. 101 140, Winter, 1941. On the constitutional aspects of the expanded office, see C. L. Rossiter, "The Constitutional Significance of the Executive Office of the President," *American Political Science Review*, Vol. XLIII, pp. 1206–1216, December, 1949.

[7] See Ross T. McIntire, *White House Physician*, G. P. Putnam's Sons, New York, 1947.

[8] For an interesting account of the work of this employee, see I. H. Hoover, *Forty-two Years in the White House*, Little, Brown & Company, Boston, 1934.

[9] On the general problem of presidential staff, see Don K. Price, "Staffing the Presidency," *American Political Science Review*, Vol. XI, pp. 1154–1168, December, 1946, and Louis Brownlow, *The President and the Presidency*, Public Administration Service, Chicago, 1949.

[10] The Bureau of the Budget is dealt with later in this chapter and in Chap. 29. The other agencies are examined in Chap. 39.

of its work it depends upon the co-operation and resources of other administrative departments. The Council of Economic Advisers assists the President in the drafting of the annual Economic Report to Congress, "studies the national economic development and trends," reviews the many activities of the national government having to do with the nation's economy, and makes recommendations to the President in regard to maintaining full employment, production, and purchasing power. It is apparent that its theoretical responsibility is very significant indeed, but there has been hardly enough actual experience to draw a definitive conclusion as to its actual role. Statements made by its first chairman, a distinguished economist, who retired in 1949, would seem to indicate that it has at least at times been used to find arguments to support a point of view of the President rather than as a body of experts to advise on the economic policies of the nation.[11]

Source of Presidential Authority and Duties A reading of 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,[12] 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 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,[13] by declaring other acts without legal foundation and hence invalid,[14] and by refusing to take jurisdiction on the ground that political questions belonging to the sphere of the President or Congress were presented.[15] Finally, custom and usage have associated certain duties with the office—for example that an egg-rolling contest shall be put on in the grounds of the White House the Monday after Easter, with free admission to all persons who can produce a youngster as an escort. It may be added that not all of the accretion of custom is as colorful yet inconsequential as this. The holding of cabinet meetings may be cited as an example of a more serious duty imposed by tradition.

A 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. Professor Ogg notes three broad subdivisions:

[11] See E. G. Nourse, "Why I Had to Step Aside," *Colliers*, Vol. CXXV, pp. 13, 51–56, February 18, 1950.

[12] Art. II, secs. 2 and 3.

[13] 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.

[14] 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.

[15] See, for example, *Luther* v. *Borden*, 7 Howard 1 (1849).

(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 party leader.[16] Other classifications have been made, but this one seems logical enough except that the phrase "national leader" might be substituted for "party leader." [17] 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 had moved to a position by 1945 where we found ourselves with 1141 principal component parts of the executive branch of the national government manned by some three million public employees. Since that time there has been some reduction in the number of agencies and the number of persons on the pay roll has (1950) been brought down to approximately two million. It is obvious that such a Gargantuan setup cannot of itself be particularly cohesive and that unless some provision is made for co-ordinating its efforts there will be not only far-reaching waste and duplication but distinctive 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 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,

[16] See Frederic A. Ogg and P. O Ray, *Introduction to American Government*, rev. ed., D. Appleton-Century Company, New York, 1947, p. 448.

[17] The President is, of course, ordinarily more or less of a party leader. The mere fact that he is selected by the national convention as presidential nominee gives him a certain standing among the men who control the party. Some Presidents have worked closely with the party organization and may be fairly considered party leaders. Others after election find party demands irritating and consequently tend to break away from intimate party relations. But increasingly the President has assumed a position as national leader. The people look to him for guidance on almost every aspect of life.

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,[18] 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," [19] and under the judicial ruling that he shall be permitted to exercise the removal power except in a few duly specified cases,[20] the President has claimed the right to supervise national 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 always 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 co-ordinate. 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. While they have for the most part had a vague sense of obligation, they have permitted the pressure of their other work and the lack of any adequate machinery of control to block effective action. The fondness of Congress for adding commission to commission without adequately integrating them into a workable system has, of course, made even the endeavors of exceptionally active Presidents more or less ineffective. Even in the case of the major 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. For example, it is well known that the Army, Air Force, and Naval officers who constitute the ranking officials of the service departments below the political, civilian secretaries have sometimes blocked presidential desires in large measure—they have, of course, never refused outright to carry out the instructions of the President, but somehow or other little or nothing in the way of results has been forthcoming. 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. The mere number of these is enough to make a central controlling agency dizzy, while to keep an eagle eye on all of their operations would require superhuman endowments.

[18] See Art. II, sec. 2.
[19] Art. II, sec. 2.
[20] See *Myers* v. *United States*, 272 U. S. 52 (1926), and *Humphrey's Executor (Rathbun)* v. *United States*, 295 U. S. 602 (1935).

Role of the Bureau of the Budget During its early years the Bureau of the Budget gave its attention to matters more or less directly connected with the drafting of a national budget, but during the administrations of Franklin D. Roosevelt a reorganization extended its scope to include various related items. One of the most important subdivisions of the Bureau of the Budget, the Division of Administrative Management, plays a significant role in assisting the President in carrying out his constitutional responsibility of supervising the many administrative agencies of the national government. This division includes specialists whose job it is to maintain constant contact with all of the federal administrative agencies of any consequence. Through personal visitation, conferences, telephone conversations, written reports, and other media these specialists attached to the Division of Administrative Management become thoroughly conversant with the day-to-day operations of the various administrative agencies. It is not always an easy matter for them to pass their familiarity with what goes on to the President, but nevertheless it is not an exaggeration to label them as the eyes of the chief executive in the administrative field. The administrative side of the national government has become so complex that it is an absolute impossibility for any President, irrespective of interest and energy, to know everything that goes on and hence to provide effective over-all supervision. However, through the Division of Administrative Management of the Bureau of the Budget it is at present more feasible for a President to exercise some degree of control than it was at an earlier period when administrative problems were less involved.[21] Of course, a great deal depends upon the particular incumbent in the office of President—a chief executive who has little interest in administrative control will make comparatively little use of the facilities provided by the Division of Administrative Management whereas a President who recognizes the vital need of integration and co-ordination will depend upon this section of the Bureau of the Budget heavily.

Recent Efforts to Achieve Central Control The reorganization bill which the President sent to Congress in 1938 was aimed at bringing the administrative setup into a more integrated relationship with the executive office. 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

[21] Since September, 1946, it has been required that before sending any report or proposal to Capitol Hill all agencies must submit two copies to the Bureau of the Budget with estimates of the probable effect on the budget. Major officials must clear with the Bureau of the Budget all speeches, letters, and statements involving important items. Replies to letters from a member of Congress relating to legislation which might involve an appropriation or relate to a major policy must be cleared with the Bureau of the Budget.

would mean the abandonment of democratic government. The independent establishments continued to be more or less autonomous, with 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 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 and again in 1949 Congress gave him limited authorization to improve the system as a result of the recommendations of the Hoover Commission.[22]

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 and embody the ideas of staff members of a Federal Security Agency, a Patent Office, a Bureau of Internal Revenue, and other 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 the Presidents now have, the initiative in certain cases may even be taken by the executive himself rather than by an agency.

The Record of Franklin D. Roosevelt Although President Hoover had made more use of this device than his predecessors—it was predicted by students that another twenty-five years might see executive orders as commonplace in the United States as in England—it remained for Franklin D. Roosevelt to break all records.[23] 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. That is not to say that Congress ceased passing laws, for large numbers of important acts found their way onto the statute

[22] For additional discussion of the Acts of 1945 and 1949, see Chap. 26.

[23] Senator Henrik Shipstead figured that President Roosevelt had issued 3703 executive orders prior to 1944. During this same period 4553 laws were passed by Congress.

books. But almost all of these laws originated in the executive office, were "steam-rollered" through Congress without substantial change or much opportunity for debate, and contained only general provisions.

N.I.R.A. and Executive Orders The National Industrial Recovery Act of 1933 marked a climax by permitting the President and his representatives to make almost any rules and regulations relating to business and its conduct that they liked. The N.R.A. was shortly set up and began to grind out codes so rapidly that not even the government officials themselves could keep up with what was being done. When N.I.R.A. came to the Supreme Court for a hearing, the justices requested copies of the executive orders issued under it; but chaos was so prevalent that the executive offices had to admit that they did not know where a complete set could be obtained. This state of affairs scandalized even the most liberal members of the court.[24] Even those justices who might perhaps have been in agreement with the general purpose of the law, could not approve a method which provided an elaborate set of administrative regulations carrying severe penalties for infraction, yet which was so sprawling and unorganized that government experts themselves were not familiar with contents.[25] Hence the Supreme Court unanimously declared the N.I.R.A. in conflict with the Constitution and consequently null and void.[26]

Present Status of Executive Orders The fate of the N.I.R.A. threw a damper for a time on the use of executive orders, but their role soon became very prominent again. Congress patched up most of the acts thrown out by the Supreme Court, laying down more definite boundaries within which these orders might operate, but still permitting them a very generous scope.[27] The more liberal attitude of the Supreme Court during recent years has also encouraged the use of executive orders. The national emergency program following 1940 witnessed almost if not quite as general an employment of this device as the depression drive of 1933–1935. What the future may bring, it is, of course, difficult to say, but there is abundant evidence that executive orders will continue to be widely used.[28]

[24] Justice Benjamin N. Cardozo, for example, prepared one of the most striking concurring opinions ever written, in which he severely criticized such disorder.

[25] This was not the sole reason given by the Supreme Court for refusing to uphold the validity of the N.I.R.A. Even more important was the fact that the court did not consider the regulation of ordinary business to come within the scope of the power of Congress to regulate interstate commerce

[26] In *Schechter* v. *United States,* 295 U S. 495 (1935).

[27] 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 or decisions of departments or quasi-judicial agencies. Naturally it solves the problem which the Supreme Court found so shocking in the Schechter Case. 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.

[28] The most elaborate study of executive orders is James Hart, *The Ordinance-Making Powers of the President of the United States,* The Johns Hopkins Press, Baltimore, 1925 It was made before the notable expansion referred to above.

Enforcement of the Laws

The Constitution commands the chief executive to "take care that the laws be faithfully executed";[29] 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,"[30] 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 violating a law, especially if moral turpitude is involved, removal proceedings may be instituted. If general 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.

Maintenance of Order In dealing with the responsibilities which the national government owes to the states[31] it was pointed out that internal disorders may lead to 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.[32]

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

[29] Art. II, sec. 3. [30] Art. II, sec. 1. [31] See Chap. 4.

[32] 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, N. J., 1913. Cleveland's action was upheld in *In re Debs*, 158 U. S. 564 (1895).

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." [33] 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 right to remove is implied in the appointing power and in the broad grant of executive authority to the President and that consequently the President has very wide leeway in that field.[34]

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. This classification, however, may not be deemed satisfactory by students of public personnel administration. 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 sixteen thousand holders [35] 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 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 large enough to satisfy all the demands, with the result that many applicants have been disappointed. When one of these sought revenge by

[33] Art. II, sec. 2.

[34] See *Myers* v. *United States*, 272 U. S. 52 (1926).

[35] For a vivid description of trouble the appointing power caused Lincoln, see Carl Sandburg, *Abraham Lincoln, the War Years*, 4 vols., Harcourt, Brace & Company, New York, 1939, Vol. I.

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 usually not viewed 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. 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 commonly assumed that the sixteen thousand or so places that still require presidential nomination and senatorial confirmation are personally disposed of 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 party in power decide among the various claimants in their state; and, if their decisions are not so inferior 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, although President Roosevelt personally filled the Supreme Court vacancies together with some of the circuit court positions. Ambassadors and ministers, too, are often actually chosen 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 major 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,[36] 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 Presi-

[36] See George Wharton Pepper, *In the Senate*, University of Pennsylvania Press, Philadelphia, 1930.

dent [37] 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 [38] 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. 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.

Criticism of the System The nominations which even a superior President sends to the Senate frequently leave a good deal to be desired. Political hacks and ne'er-do-wells may be sent to minor diplomatic posts because they have powerful friends in politics.[39] Machine lawyers who have had no judicial experience and indeed have scarcely engaged in the practice of law at all are appointed federal district judges, despite the opposition of reputable members of the bar.[40] Collectors of internal revenue and of customs may be so incompetent and inexperienced that their work has to be performed by subordinates. It has long been a truism that numerous postmasters do little more than grace their offices and collect their salaries. Presidents have so much to do in other realms that they can scarcely be expected to give adequate attention to who is to be district judge in New Mexico, the collector of internal revenue at Atlanta, or the collector of customs at Seattle. Moreover, even if they had assistants who performed such a service for them, there would be the question of placating the Senators and politicians. Under our system of government, which was constructed under the theory of separation of power, the President has no adequate legal means of integrating his efforts with those of Congress, despite the obvious necessity of such collaboration. One of the chief means of control has been his appointing power, for Senators and Representatives are willing to follow his leadership for a price. If the

[37] 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.

[38] 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.

[39] For further discussion of this problem, see Chap. 37.

[40] A number of such appointments have been made during recent years, although some good appointments have also been made. President Roosevelt was accused of more than usual carelessness in permitting inferior lawyers to take posts as district judges.

collectors of internal revenue are put under civil service,[41] the question is raised as to what the President can do to impress his leadership on Congress.[42]

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.[43] 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.[44] 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. One of these acts, relating to the federal trade commissioners, was examined by Franklin D. Roosevelt, who maintained that all of the higher public servants should at least be in substantial agreement with the general policies of the chief executive. Acting on such a philosophy Mr. Roosevelt proceeded to ask for the resignation of Commissioner Humphrey, a holdover from the Hoover administration. Mr. Humphrey refused to resign, whereupon Mr. Roosevelt summarily removed him from office. Mr. Humphrey, asserting that he had been deprived of his position in direct contravention of

[41] The original Ramspeck bill did include collectors and related functionaries, but amendments struck out the provision

[42] Professor E S. Corwin in *The President Office and Powers*, 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."

[43] 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.

[44] 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.

the law, asked for the continued payment of salary and prosecuted a claim for compensation in the courts.[45] In deciding this case the Supreme Court modified the earlier Myers decision by ruling that Congress had the authority to exempt certain offices which it regards as quasi-judicial or quasi-legislative in character from the full removal power of the President. Nevertheless, when Chairman Harcourt A. Morgan of the T.V.A. challenged the authority of President Roosevelt to remove him from office, the Supreme Court refused to grant a writ of *certiorari* and hence upheld the President.

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 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 [46] hold their positions for definite terms, usually for four years, and this also relieves the President of 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 his 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." [47] It has been held by the courts that this authority is very wide, except, of course, in so far as impeachment proceedings are involved. If he chooses,[48] 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

[45] See *Humphrey's Executor (Rathbun)* v. *United States*, 295 U. S. 602 (1935).
[46] Federal attorneys, marshals, collectors of internal revenue, and so forth.
[47] Art. II, sec. 2.
[48] Of course, the President rarely if ever *chooses* to do this.

after a convicted person has finished his prison term.[49] A *reprieve* may be 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 say 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 after the hostilities have ceased in so far as that seems desirable.

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 in large measure 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 for individual pardons. 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 sensible. 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.[50]

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

[49] 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. 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.

[50] 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.

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.[51] However, most of the Presidents have come from backgrounds which have emphasized domestic 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 of foreign relations. Nevertheless, in these days of numerous far-reaching world problems any President irrespective of personal experience or inclination must give considerable attention to foreign affairs, even to the extent of attending conferences with heads of other states, recommending specific action to Congress, and discussing international problems at frequent intervals with his Secretary of State. And it should be noted that the President always has the legal responsibility for determining American policy in foreign relations.

Actual Conduct of the Foreign Relations The Department of State and its representatives abroad actually carry on most of the day-to-day activities of the United States relating to foreign countries. These matters are dealt with in some detail in a later chapter [52] and hence it is not necessary to consider them here. At this point it is desirable, however, 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; [53] and again he nominates men in whom he has personal confidence. Whether he 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.[54] 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.[55] 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 his 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.

[51] Woodrow Wilson and Franklin D Roosevelt are the best examples of recent Presidents who have taken a direct hand in this field. Wilson prepared virtually every important note sent to a foreign government. Franklin D. Roosevelt especially in later years took an active interest in this field.

[52] See Chap. 37.

[53] During recent years half or more of the ambassadors and ministers have been drawn from the career ranks.

[54] It is the custom to give an annual diplomatic dinner at the White House.

[55] President Wilson, of course, went himself to Paris.

Military Affairs

General Authority The Constitution designates the chief executive as commander in chief of the armed forces [56] 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 such responsibilities.[57] In nominating officers to the Senate, he ordinarily follows the recommendations of the Army, Air and the Navy departments, although occasionally political considerations seem to enter in. The detailed defense planning calls for expert tactical knowledge and hence the executive delegates this to the Joint Chiefs of Staff. The President must concern himself with the general policy to be followed and not only serves as chairman of the National Security Council but often recommends appropriate legislation to Congress.[58] He, of course, reviews the Army, Air Force, and the Navy, confers regularly with the Secretary of Defense,[59] and approves rules and orders which are prepared for his signature by experts in the National Defense Department.

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. The end of World War II saw approximately five hundred special emergency war powers conferred on the President by an equal number of statutes. 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 Allies. Even before the United States formally entered World War II, the President met Prime Minister Churchill somewhere in the Atlantic to discuss common interests and to draft the much publicized "Atlantic Charter." Shortly after war was declared against Japan, Germany, and Italy by the United States, Winston Churchill came to Washington for an extended series of conferences with Mr. Roosevelt. 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

[56] Art. II, sec. 2.

[57] Presidents Washington, Grant, and Theodore Roosevelt among others had commanded forces in actual warfare. President F. D. Roosevelt served as Assistant Secretary of the Navy during a part of the Wilson administrations.

[58] For additional discussion of the important National Security Council, see Chap. 39.

[59] See, for example, the series of recommendations which F. D. Roosevelt made during 1940-1941 and particularly after the declaration of war against Japan, Germany and Italy.

giving the President the greatest power ever granted a chief executive of the United States in the national defense domain. As the war progressed, the President participated in conferences held at Casa Blanca, Teheran, Cairo, Quebec, and Yalta at which over-all decisions in regard to the conduct of the war were made.[60]

The President as National Leader

The Place of a Leader in American Psychology Considering the sharp criticisms which Americans make of the Germans, Russians, and others on the score of craving for strong leaders, 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 the American people have built up such a reputation abroad, 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 Russians, 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 we had enthusiastically embraced a colorful and able Franklin D. Roosevelt, we had the restraint to refuse to accept some of his bolder notions.[61] 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 national government, and even with the American way of life, they naturally look to him for guidance in all sorts of matters. Congress is 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 gov-

[60] For a discussion of the details of national defense, see Chap. 39.
[61] For example, the proposal to reorganize the Supreme Court.

ernment. 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.

Record of Franklin D. Roosevelt Perhaps no chief executive has given so much attention to his role as national leader as Franklin D. Roosevelt. It was he who addressed the American people as "fellow citizens." At intervals he prepared the most persuasive and flattering reports which he delivered in the most intimate fashion and warmest tones that a public speaker has perhaps ever achieved in this country. Even a "doubting Thomas," who perhaps knew that he would read the words of the fireside chat in his newspaper next day and perhaps find them uninspired, had the rare experience of warming his heart at Mr. Roosevelt's fireside and perchance discovered that the apparent sincerity and friendliness of the President sent disconcerting thrills surging up and down his spine. When recalcitrant Senators and Representatives threatened his program, Mr. Roosevelt would call upon the people and at times generate such support that he managed to save the day. The patronage which he dispensed was, of course, a valuable weapon; the party influence which he could bring to bear was often effective in controlling individuals. But it is doubtful whether these alone go far in explaining the remarkable career of Mr. Roosevelt in the White House. It is doubtful whether any other President has so completely dominated Congress. During the period following 1933, when this control reached such proportions that foreign observers sometimes classed him with the dictators,[62] the President knew that he had the warm support of the majority of the people and saw to it that Congress was aware of that support also. Hence, while congressmen fumed over abdicating in favor of the executive and while they resented the steam-roller techniques which forced through Congress without much opportunity for debate or amendment measures written in the executive offices, they did not dare to revolt. When the voters returned Mr. Roosevelt to office in 1936 by a handsome plurality, the President frequently spoke of the mandate which he had received from the people and the singular responsibility which he therefore bore in running the government. Whether intentionally or not, he relegated Congress to a secondary place; likewise, denouncing the Supreme Court because it was supposedly disregarding the desires and needs of the people, he advocated its reorganization.

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 talents which make possible what Mr.

[62] See, for example, Sidney and Beatrice Webb, *Soviet Communism*, 2 vols., Charles Scribner's Sons, New York, 1936, Vol. I, p. 431.

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.

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16. The President and His Cabinet

The Constitution mentions a speaker who is to preside over the House of Representatives; it specifies that a majority will be necessary for a quorum and otherwise goes into considerable detail in matters relating to Congress. Yet it 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 political executives to have their 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, when Mr. Washington frequently called in several officials to advise him about the international situation. 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 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

[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.

the Supreme Court to render opinions of an advisory nature, but here again he was rebuffed. It is not strange that after such experiences he proceeded to set up an informal group of advisers, 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 depend on them greatly, while Grant more or less openly ignored his cabinet 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. When Secretary of State Robert Lansing took it upon himself to call a cabinet meeting during Wilson's absence in Europe, Mr. Wilson became distinctly annoyed and thereafter consulted his official cabinet less regularly than before. 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 F. D. Roosevelt Administrations 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. Secretary Woodin, apparently primarily a gentleman with a musical hobby, had little or no background that fitted him for such an important government post as head of the Treasury Department. At the other extreme was Cordell Hull who, although not trained in diplomacy, nevertheless as a Senator had long been interested in international relations. In between these two were such

[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."

unconventional figures as Harold Ickes and Frances Perkins, the first woman cabinet officer. It soon was apparent that the President was not leaning very heavily on his regular cabinet, although there was no lack of cordiality in his attitude and 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." Moley, Tugwell, Cohen, Berle, Corcoran, and others who appeared briefly on the scene had more or less free access to the White House. 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. Finally, most of them were relegated to the outer darkness, although it has been alleged that their influence continued.

Experimentation with a 'Supercabinet" 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, especially the New Deal agencies in which Mr. Roosevelt was primarily interested. 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. At any rate the regular cabinet was not dropped and after a time returned to its former place. President Roosevelt continued to lean heavily upon advisers who were personal friends, such as Harry Hopkins who for a time occupied quarters in the White House. Henry L. Stimson, a member of the cabinet in the later Roosevelt years and with experience in cabinets under other Presidents, has stated that "Franklin D. Roosevelt, as a wartime international leader, proved himself as good as one man could be—but one man was not enough to keep track of so vast an undertaking. . . . Mr. Roosevelt's policy was so often either unknown or not clear to those who had to execute it, and worse yet, in some cases it seemed contradictory." [6] Cabinet meetings during the war were a "formality."

Results of a Century and a Half of Cabinet Development After a century and a half the cabinet continues to be an important, though perhaps not a vital part of American government—certainly it has nothing like the influence

[6] See H. L. Stimson, *On Active Service*, Harper & Brothers, New York, 1948, pp. 563–564.

of the British cabinet in affairs of state. With national and international problems more complex and more pressing 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. It is still not recognized formally and legally; 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 cabinet meets at scheduled times, but may be summoned by the President to special sessions at his pleasure. The meetings consider only those matters which he presents to it, and carry the discussion only as far as he desires.[7] Its opinions may be accorded substantial respect; they may be followed in part; or they may be disregarded entirely. It is up to the President himself to determine how far such advice will be accepted.

The Cabinet Today

Membership Though made up of ten members for many years—1913–1947—the cabinet at present consists of the secretaries of the nine departments of State, Treasury, National Defense, Justice, Post Office, Agriculture, Interior, Commerce, and Labor. It was proposed by the committee on administrative management in 1937 that two additional major departments be set up with full cabinet status, but after the exciting battle culminating in presidential defeat, the bill which would have authorized this enlargement was 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, the latter was reorganized and 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,[8] but they lack the full membership that goes with the traditional secretaryships. In 1949 President Truman sought to add a tenth full cabinet post by organizing a new major department in the welfare field, but Congress refused to approve the executive order setting up the new depart-

[7] While no public reports are made as to what goes on in cabinet meetings, former cabinet members have reported some of their experiences in their memoirs. See, for example, D. F. Houston, *Eight Years With Wilson's Cabinet*, 2 vols., Doubleday, Doran & Company, New York, 1926; *The Letters of Franklin K. Lane*, Houghton Mifflin Company, Boston, 1922; Cordell Hull, *Memoirs*, 2 vols., the Macmillan Company, New York, 1948; H. L. Stimson and McGeorge Bundy, *On Active Service*, Harper & Brothers, New York, 1948. The Stimson book is particularly illuminating because he served as Secretary of War under President Taft, Secretary of State under President Hoover, and Secretary of War under President F. D. Roosevelt.

[8] For a time there was a difference of opinion as to whether these administrators were members of the cabinet, but it is now the practice to regard them as of cabinet rank but not as full members of the cabinet.

ment and consequently the size of the cabinet remains at nine. At times 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 would seem that it would be 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.[9]

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, of course, has to confirm his choices to these posts, but except in rare instances [10] it has given its approval more or less automatically. The argument runs that the chief executive has to work with the members of his cabinet and therefore he 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 can designate only those whom he personally likes. Politics, geography, experience, and various other factors must be heeded to a very considerable extent and these frequently determine the actual selection of individual cabinet members.

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 personalities led to difficulties. Since the days of Washington it has been the almost uniform practice to limit cabinet choice to the members of the President's own political party. Cleveland named a "mugwump" Republican, who had been a prominent supporter of the Democratic nominee throughout the campaign, as Secretary of State; Theodore Roosevelt and Taft maintained a Democrat in the War Department; while Hoover chose a nominal Democrat as Attorney General.[11] But these appointments were so exceptional that they serve only to emphasize the rule; moreover the men involved were not for the most part prominent in opposing political camps. Franklin D. Roosevelt departed from the old tradition to a greater extent than any other chief executive. Ickes and Wallace of his original cabinet came from Republican antecedents and background and, 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

[9] 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.

[10] 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.

[11] President McKinley also broke the tradition by naming a "Gold Democrat" to the Treasury Department.

actively identified with party politics. 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.[12] In both cases the appointments were explained as dictated by the national emergency arising out of the world situation.

In picking the members of his own political party for cabinet seats, a President sometimes feels that the national chairman should be rewarded with the postmaster-generalship. Thus Warren G. Harding named Will H. Hayes, Herbert Hoover selected Walter Brown, and Franklin D. Roosevelt designated James A. Farley. President Truman departed from such a precedent by naming a career man in the postal service as Postmaster General and then nominated Democratic National Chairman McGrath as Attorney General. 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, of course, 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. Acting on this principle Woodrow Wilson brought in William J. Bryan as Secretary of State, although the two must have had very little in common.

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 be enough to sway the chief executive. Nevertheless, Franklin D. Roosevelt did depart from this dictate of custom to a considerable extent. In his original cabinet New York had far more representation than the hinterland thought was fair, while more than half of the country stretching from the Mississippi to the Pacific could point to only two

[12] James Forrestal, another Republican, succeeded Knox and became the first Secretary of Defense.

members.[13] However, President Truman rectified this uneven geographical distribution by naming cabinet members from Washington, Colorado, New Mexico, Texas, Missouri, and South Carolina, thus reducing the eastern representation.[14]

Other Factors Influencing Selection While the cabinet as a whole has never been selected on the basis of the members' familiarity with specific administrative tasks, some attention may be paid that consideration.[15] The Secretary of Labor may be someone who has been associated with organized labor. The Secretary of Commerce more likely than not will be a man who has had considerable experience in business affairs.[16] The Secretary of Agriculture is almost always a man who has been directly or indirectly interested in agriculture. The Attorney General is, of course, 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.[17]

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. President Harding brought in his friends Daugherty and Fall; Coolidge recognized his Amherst friend H. F. Stone; Hoover included the president of his alma mater who also was an agreeable fishing mate, R. L. Wilbur; while Franklin D. Roosevelt started out with William H. Woodin as Secretary of the Treasury and later named Harry Hopkins as Secretary of Commerce on this basis. President Truman named his old friend, John W. Snyder of Missouri, to the Treasury Department.

Meetings Although Franklin D. Roosevelt scheduled two cabinet meetings a week when he was experimenting with his supercabinet, it is now customary to hold one meeting each week. 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

[13] The secretaries of War and Agriculture. The former position was later given to a New Yorker.

[14] The representation of the Middle West remained reasonably constant.

[15] Commenting on this point, Harold L. Ickes, who served in the cabinet some thirteen years, said: "They (members of the cabinet) are selected because they come from a certain state, because they represent a certain faction of the party, or because of certain political backing. If it happens that a man develops good executive ability, that is just that much to the good." When asked whether he did not believe that cabinet members were selected for known executive ability, Mr. Ickes replied: "I think that is the exception and not the rule." See the *New York Times*, March 4, 1946

[16] In appointing Harry Hopkins to this post Mr. Roosevelt also broke a tradition and was roundly criticized by business leaders

[17] Secretaries of State Stimson, Hughes, and Hull may be mentioned. In the Treasury Department Hamilton, Gallatin, McAdoo, Mellon and Vinson might be cited.

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.[18] The various members arrive at the executive offices in their official automobiles, are ushered into the cabinet room, and seat themselves around a table which is intended for their use. Unlike the informal arrangement in some countries, the cabinet of the 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 central place on one side of an octagonal table, while the secretaries and administrators are placed around the table according to the seniority of their departments.[19] If the Vice-President attends, he is given the place facing the President.

Order of Business In the English cabinet an agenda is ordinarily prepared beforehand and circulated among the members beforehand so that they may be prepared to discuss the various matters needing attention. A cabinet secretary or his deputy 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. The American cabinet has no secretary 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 in the American cabinet. 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.[20] 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 transpired 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. However, Presidents may indicate that the cabinet discussed the international situation or some other pending question of widespread popular interest.

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

[18] 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.

[19] 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 this purpose in August, 1941. The secretaries, the administrators, and the Vice-President are provided with places around the President who sits in the center of one side rather than at the end as formerly.

[20] It is reported that Franklin D. Roosevelt sometimes related a story or an amusing incident. Lincoln was apparently fond of stories also.

understood that two types of business are transacted.[21] In the first place, the broad policies of the government are examined, canvassed, and dissected. 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 improve national defense or reduce unemployment, of how a food surplus in the farm belt can be handled, 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. Matters of detail are discussed by the higher officials within a department or by the President and a department head; they do not as a rule occupy the time of the cabinet as a body. But 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. It is to be expected in a government as complicated and gigantic as that of the United States that 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 $22,500 per year, though until 1949 their compensation was $15,000.[22] They are entitled to Packards, Cadillacs, or other expensive automobiles for official use and may, of course, collect traveling expenses from the Treasury when they are away from Washington on government business. They are 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. One secretary even has a kitchenette in which he can prepare his own meals when he does not desire to patronize the dining facilities in the Interior buildings. Residences are not furnished the cabinet members, nor is 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

[21] See W. C. Redfield, *With Congress and Cabinet*, Doubleday, Doran & Company, New York, 1924; D. F. Houston, *Eight Years with Wilson's Cabinet*, Doubleday, Doran & Company, New York, 1926; Cordell Hull, *Memoirs*, 2 vols., The Macmillan Company, 1948.

[22] These salaries and perquisites are paid not on the basis of membership in the 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 major departments; administrators are paid as little as $17,500 per year.

prominent in Washington social life complain that the expenses of entertainment eat up most of their income from the government. 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 one half-day per week and may not fill such a period very completely. 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 they usually find that the demands made upon them are such as to leave very little time or energy for anything else. Herbert Hoover, as Secretary of Commerce, regularly arrived at his office by seven o'clock in the morning and often remained until seven or eight or even later in the evening. Harold Ickes was supposed to put in twelve or fourteen hours daily in his office. Cordell Hull once reached his office as early as four o'clock in the morning and remained until after midnight during the succession of international crises which seemed to be the rule during 1940–1941. Of course, not all cabinet members are so active as these men in the affairs of their respective departments. As a matter of fact, it may seem that 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. 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.

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. Agricultural associations obviously expect the Secretary of Agriculture to appear and speak. Business groups are interested in hearing from the Secretary of Commerce. Lawyers are not com-

plimented if the Attorney General fails to make an appearance. International lawyers may honor the Secretary of State with their presidency and in return expect him to speak at the annual dinner. 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 outstandstanding 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, cocktail parties, teas, and other affairs. Likewise they usually go out frequently to diplomatic dinners, theater parties, balls, and many other functions associated with the whirl of society in the national capital. Some of the cabinet members do not dine at home without guests more than two or three times a month; they are invariably lunching out; and more often than not have an evening engagement.

Possible 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.[23] In governments in which the relationship between executive and legislative branches is not so intimate, cabinet members are frequently permitted to attend the legislative sessions, present proposals relating to their departments, and take part in the debate.[24] 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 bills concerning their departments were being debated. Despite every argument, Congress has shown very little interest in any modification which would lead to more intimate relations with the cabinet.[25]

As a matter of fact, the actual situation in the United States involves less

[23] Where the cabinet form of government exists, this is always the case. The cabinet in England is an excellent example of such leadership.

[24] In Argentina and certain other countries ministers may speak, although they are not members of the legislative branch.

[25] 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 Antifederalist 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 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.

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 of government were introduced, which stipulates that the cabinet shall stand or fall on its record in the legislative branch, 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.[26]

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.[27] Business, farming, 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 repeated mistakes, the blundering in the dark, the premature 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 under the Franklin D. Roosevelt administration. Yet it would be impossible to bring in representatives of the groups and skills noted above without very materially adding to the size.

[26] 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.

[27] 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.

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 contacts with legislators, judges, the more vigorous administrators, men of affairs, educators, the clergy, and scientists. If they do not themselves have all these associations, it may be that members of their cabinet can offer such associations. The public-relations secretary of the President follows the sentiment of the various interest groups as mirrored by the newspapers. The President himself may read books which reflect the studied conclusions of certain experts.[28] 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 The purely advisory character of the counsel which the cabinet offers the chief executive has been noted. It has likewise been pointed out 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 [29] has given the holder of that office tremendous power, which may be directed toward beneficial ends or employed to menace the very foundations of the republic. Under such circumstances the need for wise counsel is deemed especially urgent by many thoughtful persons.

Professor Corwin concludes his substantial study of the presidency with the observation that "presidential power is dangerously personalized." [30] 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." [31] 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.[32] 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.[33] "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." [34] Other persons, including

[28] 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. Douglas Miller's *You Can't Do Business with Hitler*, Little, Brown & Company, New York, 1941, was particularly praised. See the *New York Times*, July 24, 1941.

[29] This is discussed in Chap. 14.

[30] E. S. Corwin, *op. cit.*, p. 316.

[31] *Ibid.*, p. 316.

[32] *Ibid.*, p. 304.

[33] *Ibid.*, p. 304.

[34] *Ibid.*, p. 304.

Thomas K. Finletter, Roland Young, and A. Hehmeyer,[35] have made proposals along somewhat the same line though varying in details. In this day of atom and hydrogen bombs and a world which is split between the democracies and communism questions of the greatest magnitude are constantly arising which must be decided as wisely and as promptly as possible if the United States is to survive. No one man is sufficiently informed and infallible in his judgment to exercise this responsibility for the American people. Indeed it is not fair to ask a single person to assume such a staggering burden. It would seem that a cabinet with far-reaching authority to adopt policies and make fundamental decisions is almost vital to the future of the United States. With the important role of Congress and the wide gap which now separates the President and the legislative branch, there is strong argument in favor of bringing together congressional leaders and the top administrative heads in such a cabinet.

A Cabinet Secretariat It has been suggested that the cabinet might be strengthened by the addition of a secretariat such as is to be found in the cabinet of Great Britain and in connection with the Politbureau of the Soviet Union. At present the cabinet of the United States is not organized in such a fashion that it can wield more than nominal influence. Its members ordinarily come to cabinet meetings without knowing what business is to be taken up and more or less unprepared to take an intelligent part in the discussion of momentous public business.[36] Such a system fits admirably into a policy of keeping the cabinet weak, but it does not afford an adequate foundation for a cabinet which many believe should play a vital part in the conduct of the government of the United States. In the early days when problems were comparatively simple, a group of department secretaries could take time off for a few hours each week to give informal advice to the chief executive. As problems have become more numerous and far more complicated, it has been increasingly difficult for the cabinet members to do much more than listen to the President and offer curbstone opinions. It is true that some of them may have derived enough special information from their work as department executives to express themselves intelligently on the questions of the day, but they must be a minority on any one problem. A cabinet secretariat serves several purposes. It notifies the members beforehand what the business to be taken up at a particular meeting will be and it thus permits them to familiarize themselves with the intricacies of the forthcoming business. But it does more

[35] For details, see Thomas K. Finletter, *Can Representative Government Do the Job?*, Reynal & Hitchcock, New York, 1945; Roland Young, *This Is Congress*, Henry Holt & Company, New York, 1943; and A. Hehmeyer, *Time for Change*, Farrar & Rinehart, New York, 1943.

[36] Participating in a University of Chicago Roundtable, Harold L. Ickes remarked: "I served in the cabinet of the President of the United States for almost thirteen years and during that entire period, I always referred to myself as the chief clerk. I think that the advice of members of the cabinet is not sought on important things. Very frequently, they get their information on vital questions from reading the newspapers after action has been taken." See the *New York Times*, March 4, 1946.

than that, for cabinet members left to their own devices could not readily assemble the necessary sources of information. So the secretariat sends along with the agenda various papers, reports, and related materials for the members to go over. Cabinet secretariats also usually include experts on various fields which concern the government. These experts draft the reports which are referred to above and they also may be used to carry on special studies to assist the cabinet in handling its business. The executive office of the President provides some of these services to the chief executive and he may at times see fit to make these available to the members of his cabinet, but the existing arrangement is not such as to add to the strength of the cabinet in more than a nominal measure.[37]

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[37] In commenting on a cabinet meeting under President Truman, James Reston, the able political correspondent of the *New York Times,* wrote: "Today the cabinet convened at 10 A.M. . . . And in about thirty or forty minutes the meeting ended. When the cabinet members sat down in the cabinet room at the White House this morning, however, they did not know what was on the agenda for the meeting. No 'cabinet secretariat' had prepared explanatory memoranda on the questions before them, for there is no 'cabinet secretariat' . . . The general feeling here is that he has not used the cabinet as a serious deliberative body." See *New York Times,* September 28, 1946.

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17. 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 at times introduce bills of their own, there is very slight chance of their passage.[2] Furthermore, all proposals to spend public funds must originate only from the cabinet. The House of Commons may debate the various bills which the cabinet has prepared and 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 re-elect the 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. Under this form of democratic government the two great executive and legislative branches must be geared closely together and except on rare occasions work toward the same end.

Presidential Government Presidential government, on the other hand, is a contribution which the United States has made to democratic institutions.

[1] This is the case during normal times; however, during periods of national emergency, such as 1940–1945, 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. 243 *ff.*

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. Even in the case of the Latin-American governments there has been a disposition to modify presidential government in such a way as to incorporate certain characteristics of the cabinet type.[3] This form of democracy separates the executive and the legislative branches, assigning to each a major role in the government. No formal machinery is provided for integrating the two—indeed the basic concept seems to be that the two will check each other rather than co-operate in a common purpose. 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 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,[4] despite 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

[3] Argentina, for example, permits her ministers to attend sessions of Congress and speak on the floor of either house.

[4] For example, Calvin Coolidge, although a sound party President, found that Congress paid little attention to his recommendations.

work with a President in setting up remedial measures. Nevertheless, the system creaked and groaned under its burden of highly complicated problems, as an oxcart might if loaded with steel girders.

The Concept of Franklin D. Roosevelt When Franklin D. Roosevelt became President, the United States was confronted with problems of a magnitude it had seldom, if ever, faced. Herbert Hoover had sought to bring the resources of the government to the assistance of a country gripped in the toils of perhaps the world's most serious economic depression, but his native caution coupled with the refusal of Congress to co-operate had prevented much effective action.[5] Franklin D. Roosevelt believed that he had a mandate from the people to throw every ounce of energy of the government into an elaborate program to cope with the situation. Using his patronage power with unsurpassed shrewdness and playing upon the fear psychology which gripped even the members of Congress, Mr. Roosevelt brought about a close co-operation between the executive and the legislative branches. Indeed it is probable that the harmony during the years 1933–1936 reached heights never before attained in the United States.

In his messages to Congress Mr. Roosevelt referred again and again to his concept of the proper relationship between the executive and the legislative branches,[6] pointing out the critical plight of the country, the impotence of either branch alone to relieve the situation, and the absolute need for solidarity. Admitting that the separation of the two had been reasonably satisfactory during the earlier years of the republic, the President maintained that one of the most serious problems under the highly developed socioeconomic system of the 1930's was that of permanently tying the executive and the legislative departments together.

Mr. Roosevelt proposed an arrangement under which Congress would surrender a considerable part of its authority to the President and permit the government to be one of strong executive leadership. Driven by the exigencies of the times Congress acceded to the wishes of the President. Virtually every piece of important legislation was drawn up in the executive office and sent to Congress with instructions to "rubber stamp" it without amendment or debate. After a sweeping surrender of congressional authority the President began a reign by executive orders. The result was a series of elaborate measures to give relief to the jobless, to expand credit, to assist the farmers, to regulate business practices, and to revalue monetary standards. Never before—at least except in wartime—had the United States witnessed a similar expenditure of public funds or as vigorous governmental activity. Never before had the people lived under the fundamental assumption that the government was responsible in almost every phase of human life. After many months

[5] The Reconstruction Finance Corporation was set up at this time and several other steps taken, but they were almost like drops in a bucket.

[6] See his messages to Congress during 1934.

had passed, it seemed that a permanent arrangement had been effected under which the President assumed the role of leader and Congress the role of follower.

Developments from 1936 to Date After the election returns had given Mr. Roosevelt a most handsome vindication in 1936, there seemed more reason than ever for the continuance of the executive-legislative harmony which had been so striking a feature of the preceding four years. Mr. Roosevelt had himself apparently not expected such popular approval, but after election he referred repeatedly to the mandate of responsibility which had been given him by the people.[7] For a time Congress continued its discipleship, although there appeared indications of growing resentment on the part of many members of both houses at the secondary role to which they had been assigned. In 1937 the President felt so strongly entrenched that without even consulting congressional leaders beforehand he sent over to Capitol Hill his court reform bill. Although it seemed likely at first that Congress would continue its usual docility, expressions of popular sentiment gave courage to some of the more independent members and the bill was finally defeated. On the strength of this triumph certain congressmen looked about for new fields to conquer and saw their opportunity in the administrative reorganization bill. When originally discussed in 1937, it had occasioned widespread approval and very little criticism; but when it came to Congress in 1938, it was the occasion of a bitter fight and was generally appraised to be of even greater importance than the court bill in determining the future relations of the President and Congress. The defeat of the bill brought to an end the previous working agreement under which the executive drafted a program for Congress to accept without modification. Mr. Roosevelt no longer spoke of his concept of presidential leadership over Congress. Congress had the good sense not to go to extremes in ignoring the wishes of the chief executive. For the time being, at least, the relations between the two branches neither returned to their pre-1934 level of independence nor remained at the 1933–1936 intensity of executive dominance, though the war naturally made the presidential role spectacular. But with V-J Day past, Congress increasingly reasserted its old independence. A presidential list of "must" legislation to meet reconversion problems received little in the way of action from Congress. And when President Truman took over the office, bitter complaints began to come at increasingly frequent intervals from the office of the President because of the refusal of Congress to deal with pressing national problems. The Eightieth Congress was especially castigated by the President on this score.

The Future of Executive-legislative Relationships The experience of the years 1919 to 1932 and 1937 to date seems to prove rather conclusively that the traditional relationship between the President and Congress is not satis-

[7] See the files of the *New York Times* during the closing months of 1936 and the year 1937 for various statements by President Roosevelt.

factory in this day of immensely intricate public problems.[8] On the other hand, there is a good deal of evidence from the 1933–1936 period which indicates that complete executive dominance is likewise unsatisfactory. The first condition prevents a reasonably efficient handling of public problems; the latter, while it may be effective enough for short periods, still embodies serious weaknesses. Congress tends to degenerate when it is little more than a rubber stamp. Conversely, the executive is inclined to take itself too seriously, to imagine that it carries full responsibility for all problems incident to life in the United States. These conditions are particularly unacceptable because they carry the possibility of extreme action on the part of the President. In any efficient government the prompt exercise of power is very necessary, but in a democratic government there must also be adequate checks against the arbitrary use of that power. Cabinet government provides far-reaching powers for the executive, but it at the same time creates machinery for checking those powers when they seem to conflict with the national interest. The executive dominance in 1933–1936 carried with it extensive powers, most of which are probably desirable in this day and age. Its chief dangers lay in its remoteness from any easily imposed check. There was no very adequate method by which an agency of the people, such as Congress, could control a President who had demonstrated his ineffectiveness.

What then of the future relationship between these two 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 which would undoubtedly encounter strong opposition. It has been maintained in certain quarters that a more logical step in the United States would be the strengthening of the present cabinet into a body representing both the executive and the legislative branches which, while not responsible for the conduct of the government to the extent noted in Britain, would have a large measure of influence over both the President and Congress, thus making for teamwork.[9]

Formal Relations of the President and Congress

It has been pointed out earlier 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.[10] At the same time, they were

[8] 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.

[9] For additional discussion, see the preceding chapter.

[10] See Chap. 1.

men of experience and appreciated interdependence and the necessity of cooperation. 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 in such instances.[11] 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 something to say about how long Congress will meet, although this does not involve fixing an exact date of adjournment.

Special Sessions The most important formal control which the chief executive may exercise in connection with the meeting of Congress 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. Presidents Taft, Wilson, Harding, Hoover, and Franklin D. Roosevelt all saw fit to summon Congress into special session at the beginning of their terms. Inasmuch as Congress now starts a regular session just before a President is inaugurated, there is less reason for special sessions than before the adoption of the Twentieth Amendment. Franklin D. Roosevelt invoked use of his power only once after the new amendment went into effect [12] and President Truman has employed it infrequently. Unless a Congress proves recalcitrant and adjourns without taking any action on a program deemed especially important by a chief executive, there does not seem any great need for special sessions at a time when Congress is already spending the greater part of the year in Washington.

Messages The President is required by the Constitution to "give to the Congress information of the state of the Union, and recommend to their con-

[11] 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.

[12] This was the result of Congress's failure to take action on certain items which the President regarded as "must" business. This session was called for the late fall of 1939.

sideration such measures as he shall judge necessary and expedient." [13] 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 necessary 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 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 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. Shortly after the first message will arrive two more or less elaborate communications transmitting the annual budget and reporting on the nation's economy. 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. Some of these special messages dealing with national defense or the international situation may be regarded as of such interest that they will be addressed orally to the assembled congressmen and broadcast by national radio networks to the people.

Spoken versus Written Messages Whether a President will find it advisable to go to Capitol Hill to speak to Congress or will send a message for a clerk to read depends rather largely upon his own talents and inclinations. 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. Obviously, more attention will ordinarily be paid to the sentiments uttered

[13] Art. II, sec. 3.

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 energy 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. Careful 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.[14] During the years immediately following 1933 a message was as revealing as a speech from the English throne,[15] 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 somewhere 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. Especially if a chief executive is of the aggressive type, he may be able to stir up enough popular support to constitute a very potent force, which the members of Congress will be reluctant to disregard.

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 constantly. 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

[14] In analyzing ninety-six major pieces of legislation passed by Congress, Professor L. H. Chamberlain in his *The President, Congress, and Legislation,* Columbia University Press, New York, 1946, concludes that 20 per cent of the ninety-six were the result of executive influence, not of course necessarily presidential messages. An additional 30 per cent he attributes to influence divided more or less equally between the President and Congress; here, too, messages would be significant. See Chap. 1.

[15] 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.

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 executive office 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 no one can doubt that they sometimes are accorded very special attention. Despite the traditions of Congress permitting free debate and the introduction of amendments, many of the presidential bills which came to Congress in 1934 and 1935 were steam-rollered through with no opportunity for amendments and very little debate.

Congressional Attitude toward Presidential Bills At one time Congress was inclined to be quite jealous of its prerogative of drafting the major pieces of legislation. Recommendations were regarded as within the scope of the presidential power, but his tendering of complete bills covering a broad field was viewed with considerable suspicion and hostility. There is reason to believe that some congressmen continue to question the actual initiation of important legislation by the executive—even during the most prosperous period of the New Deal Senators and Representatives frequently voted as the administration dictated but they did it with a smoldering sense of resentment. As a matter of maintaining itself against the executive branch which has for some time been in the ascendancy, this legislative psychology is easily understood.

Arguments for and against the Practice Nevertheless, there seem to be weighty arguments for executive initiation of major legislation in the interest of the general welfare. The President should have a breadth of vision that no legislator is likely to attain, for his very position gives him a nation-wide picture as contrasted with the state or district narrowness of Senators and Representatives. This does not, of course, mean that congressmen are incapable of or do not have the information for a national point of view. It does, however, mean that all too often they vote in order to placate their districts and states or to satisfy a strong pressure group, even when their action is opposed to the best interests of the nation as a whole. Moreover, the administrative departments which are immediately under the chief executive have a direct experience in many fields which congressmen lack. Their day to day familiarity with the handling of certain public problems makes them peculiarly fitted to draft new legislation pertaining to their specialties.

Yet, on the other hand, administrative departments are not infrequently so near to a situation that they can scarcely see the forest for the trees. Again

they have the psychology of "bigger and better" programs and budgets, which if carried to extremes saddles the country with a very expensive and bureaucratic system. Consequently it would seem that the right of Congress to engage in debate over a reasonable period of time as well as the opportunity to offer pertinent amendments should not be abridged. Although the plea of haste is often offered as justification for ramrodding bills through Congress and although at times one cannot doubt the importance of prompt action, nevertheless there is some basis for a conclusion that this emergency technique has been abused during recent years. The staff of the President has paid little or no attention to matters of major importance for months and then suddenly decides that elaborate legislation must be rushed through. Such last-minute action is sometimes so ill-conceived and defectively planned that it affords little or no advantage; moreover reasonable foresight and responsibility could often obviate the necessity for it. Also the picture of one department trying to accomplish an end to which another department is directly opposed is not calculated to generate trust in government, yet that picture was commonplace during the years when Congress abdicated to the sprawling and unco-ordinated executive branch, Altogether, while it is probably quite necessary and wise that the executive be able to plan legislation, it is equally important that Congress participate in producing its final form rather than merely rubber stamping what is delivered from the administrative departments or the White House.

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 it passed the Budget and Accounting Act of 1921, 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. Nevertheless, they were men of affairs [16] who had been accustomed to a large measure of independence and consequently did not look upon themselves as mere assistants of the President. When Franklin D. Roosevelt assumed office, he continued for a time the semi-independence of the budgetary office, but it was not long before he decided that such a situation was unsatisfactory. Lewis W. Douglas, his budget director, resigned, when it became apparent that the President conceived of the Budget Bureau as his personal agency and for several years the bureau drifted along with an acting director and very little pub-

[16] Charles G. Dawes was one of the first of these.

licity. 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. A professional administrator [17] was appointed director; a notable increase in staff soon followed; and the budgetary office took on many functions that had not hitherto been performed.[18] 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 approved.

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 they tend to be of minor importance as far as the appropriations for the regular agencies of the government are concerned. The influence of the chief executive in determining the amounts available for the operation of the various administrative departments is ordinarily very great and in certain instances is almost decisive at present.

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 [19] in contrast to other important matters which receive no mention at all or are disposed of in a few words. The men of 1787 followed this course because they felt that it was very essential to provide in detail for the exercise of such a power. They recalled only too well the troubles which had grown out of its irresponsible use by colonial governors; indeed there was some sentiment for omitting the executive veto entirely. However, the framers were impressed by the concept of "checks and balances," which necessitated a provision for some executive control over the process of lawmaking. Calling special sessions and sending messages permitted the President to exercise a certain amount of "check," but it was of such an indirect variety that it did not meet the requirements of the system which they had in mind. Then, too, there was a realization that Congress might go to extremes in the exercise of its lawmaking power and that some sort of veto power was desirable. The outcome was the grant of a qualified veto power to the President.

[17] Harold D. Smith was brought in from the Civil Service Commission in Michigan to take over this position.

[18] These are discussed in some detail in Chap. 29.

[19] Art. I, sec. 7.

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." [20] 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." [21] It has been held that this does not apply to proposed amendments to the Constitution [22] 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 objection 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 signed an official copy of 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.[23] The chief executive may proceed to sign the bill within ten days—if it is of outstanding interest, sometimes in the presence of its sponsors in the Senate and the House of Representatives. In many cases the President is not 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 at Large 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.

[20] Art. I, sec. 7. [21] Art. I, sec. 7.

[22] 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.

[23] The President has a system for processing bills. They are received in enrolled copy form by the executive clerk of the White House who then proceeds to have a dozen or so copies made which are delivered to the head of the Legislative Reference Division of the Bureau of the Budget. This division distributes the copies to the departments and agencies which have a particular interest in their contents, receives the comments from these agencies, adds the advice of the Bureau of the Budget, and returns them to the executive clerk of the White House. All of this must be done expeditiously since there is only ten days permitted the President to reach a decision. It is estimated that 95 per cent of the bills require little deliberation, but the remaining 5 per cent cause trouble.

These usually 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 a sizable number of congressional proposals [24] 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.[25] This extension of time, which was upheld by the Supreme Court by unanimous vote,[26] 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.[27]

Use of the Veto Power The pocket veto is used quite frequently by Presidents, as has been pointed out above. No study has been made to indicate how chief executives compare on such a basis, but there must be a good deal of variation. It may be added that the statistics which relate to the use of the veto power by the several Presidents usually do not include pocket vetoes. The early holders of the presidential 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 [28]—and even including his vetoes there were just over fifty presidential vetoes from the establishment of the republic down to the Civil War.[29] Recent Presidents have a more impressive record, although there has been little if any tendency to abuse the power. Grover Cleveland set a record up to his time by returning forty-two measures with explanations of his refusal to approve.[30] McKinley, in contrast, found

[24] 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.

[25] 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 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.

[26] In *Edwards* v. *United States,* 286 U.S. 482 (1932).

[27] Of course, state legislatures often pass a larger proportion of their bills at the very end of a session.

[28] 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.

[29] The exact number was fifty-one.

[30] This includes only the vetoes that were accompanied by messages. Cleveland also vetoed several hundred private bills which called for pensions.

it expedient to veto only six bills and resolutions in his slightly more than four years in the White House. Theodore Roosevelt was responsible for forty-two; Taft for thirty; Wilson for thirty-three; Harding for five; Coolidge for twenty; and Hoover for twenty-one. Strangely enough, Franklin D. Roosevelt, with 631 vetoes, despite his virtually absolute control over Congress during his first administration and his substantial influence later, seems to have broken all previous records.[31] President Truman vetoed thirty-two bills in 1949.[32] In comparison with state governors the presidential veto record is one of striking restraint, for the former frequently refuse to approve 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.

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 earlier 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. Thus Coolidge, Hoover, and Franklin D. Roosevelt all refused to approve bills which were aimed at giving bonus payments to the veterans of the First World War.

Overriding of Vetoes When the President returns a vetoed 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. Certain pressure groups, such as the American Legion and farm groups, have such powerful machines that they can literally "snow under" Congress with telegrams, letters, and personal appeals, thus forcing it at times to override a veto. If Congress is particularly interested in a measure and feels that the chief executive has gone out of his way to be obstructive, enough resentment may be stirred up to muster the required vote. Yet Cleveland with forty-two vetoes of general bills was overridden only five times, while Theodore Roosevelt with the same number to his credit actually lost only once to Congress. Coolidge and Hoover had four and three vetoes respectively overthrown.[33] Franklin D. Roosevelt found Congress recalcitrant on a few measures, but this was by no means commonplace where vetoes were involved.

[31] Of the 631 F. D. Roosevelt vetoes, 371 were direct and 260 were pocket vetoes. For an informing article on the record to 1942, see G. L. Robinson, "The Veto Record of Franklin D. Roosevelt," *American Political Science Review*, Vol. XXXVI, pp. 75–78, February, 1942. For an illuminating article on the use which 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. Also see R. L. Baldridge, comp., *Record of Bills Vetoed and Actions Taken Thereon by the Senate and House of Representatives, 1889–1941*, Government Printing Office, Washington, 1941.

[32] See the *New York Times*, January 1, 1950. [33] K. A. Towle, *op. cit.*

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. Several 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 the President has made of the veto power, there is not 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 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 sometimes confronted with highly objectionable "riders" 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 in most cases 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. If he vetoes the bill as a whole, it may cause great hardship in the case of thousands of government employees, for money can be paid out of the Treasury only on authority of Congress. If no provision has been made for a group of departments by the beginning of a new fiscal year salaries cannot be paid. If the President returns the bill to Congress, there is a possibility of having it modified in time for the new fiscal year, but that is always doubtful. As a result few Presidents have had the temerity to veto general appropriation bills, no matter how unjustifiable some of the items have been.[34] The itemic veto would allow a President to strike out the objectionable section, while at the same time approving the bill as a whole. The Legislative Reorganization Act of 1946 contained a provi-

[34] Franklin D. Roosevelt after some deliberation did veto because of objectionable items an appropriation bill providing money for the operation of the independent establishments.

sion prohibiting such "riders" on bills, but they continue to be a problem nevertheless.

Some forty states now empower their governors to exercise the itemic veto in connection with financial measures.[35] 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 members of Congress as the representatives of the people should be squarely confronted with financial responsibility and that adding an additional burden to the chief executive might be the straw that would break the camel's back of an already overloaded President. 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. Admitting the savings that might ensue from the item veto, these critics allege that the price to be paid in weakening the American system of government would outweigh any possible advantage. Franklin D. Roosevelt went so far in his budget message of January 5, 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.[36]

Threats of the Use of the Veto Power It is not 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 such a device—at least it fits into his "big stick" philosophy. His successors have made increasing use of it, frequently with good results, although in the case of certain legislation strongly pushed by pressure groups not even a threat could achieve any results. But 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 probability that the bill will be dropped or that changes will be made so as to obviate the objectionable portions. Of course the Constitution has nothing to say about a threatened veto, but it is no more difficult to imply this device under the general veto grant than to imply the chartering of banks from the powers to tax, borrow money, and maintain an army. Whether it is fitting and in accord with the dignity of the office for a

[35] 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.

[36] 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.

chief executive to make "threats" may be another question. It could be argued that the President is being thoughtful enough to save Congress future embarrassment and that he is merely giving notice of what he intends to do.

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 are his actual endowments, 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 likely that he will achieve concrete results. Professor Corwin [37] maintains that almost without exception the Presidents who have accomplished far-reaching legislative programs have made use of this strategy. Indeed he is so strongly impressed by the possibilities that he proposes a permanent arrangement under which these leaders would be either the sole members of the cabinet or at least share that honor with three or four of the most important administrative officials.[38]

Role of Personal Conferences Some of the most able chief executives have undoubtedly erred in ignoring the possibilities inherent in this informal teamwork. The classic example is perhaps Woodrow Wilson, who might have had his League of Nations proposal accepted had he been willing to forget his own position and cultivate the leaders in the Senate. Some would say that it is not fitting for a President to demean himself and his office by carrying on negotiations with congressional politicians. And, of course, it would not be proper for a chief executive to employ devious tactics in his contacts with the leaders of the House of Representatives and the Senate. But informal conferences, telephone conversations, and invitations to luncheons or dinners at the White House during which important public questions would be canvassed should not be regarded as beneath presidential dignity. After all the President is not a king or a mere symbol of honor. Rather he is the American political leader. If he is to take an active part in guiding the nation he must come into contact with the members of the legislative branch. Considering the lack of any formal machinery under which joint effort on the part of the various branches of government may be organized, it seems essential that the President should forget any fancied dignity and bend every effort toward meeting the problems that confront the nation. Certainly there is much less danger of totalitarianism when responsibility is shared than when the chief executive attempts to shoulder the entire burden himself.

[37] See his book *The President: Office and Powers*, New York University Press, New York, 1940, p. 304.

[38] *Ibid.*, pp. 304–305. See also Chap. 16 above.

The Recent Record As in certain other fields, the presidential record in dealing with Congress has not been consistent. Franklin D. Roosevelt instituted the arrangement of having regular liaison agents who sought to maintain constant contact with both Senators and Representatives and then regularly reported their findings to him. Not infrequently he received delegations of congressmen in his office to discuss public business. Yet President Roosevelt's relations with Congress often lacked cordiality and were weakened by lack of confidence on both sides. President Truman started out enjoying unusually friendly relations with members of both houses of Congress and conferred even with Republican Senators at times. He has pushed the arrangement of using certain of his assistants as liaison agents with the Senate and the House of Representatives even more than his predecessors. However, it must be admitted that despite his own senatorial background his working relations with Congress, particularly the Eightieth Congress, have left much to be desired.

Patronage In another connection [39] attention was given to 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, jobs on the public payroll, and other favors.

National Leadership In considering the role of the President in American life, it was pointed out [40] 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. 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 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 often resort finally to stirring up popular support which will in turn "put the heat" on Congress. At times they have enjoyed spectacular success in these endeavors, while on other occasions the people have not responded very well.

Study Commissions Several recent chief executives have appointed commissions to study and report on complicated public problems. Some of these

[39] See Chap. 15.

[40] See Chap. 15.

have been attended by much fanfare and have issued recommendations which have received wide publicity. The Wickersham Commission on Law Observance and Enforcement, appointed by Herbert Hoover, included in its membership some well-known persons, investigated problems that were uppermost in the public mind, and made a report which led to vigorous discussion as well as some concrete legislation. 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. The Reed Committee set up by Franklin D. Roosevelt to examine the public personnel system, particularly as it related to professional appointments, was certainly not known to the man on the street; only a summary of its findings was made public in 1941; yet it had considerable influence in determining future legislative as well as administrative action.

The report of the President's Committee on Administrative Management was largely embodied in the widely publicized reorganization bill of 1937 and a part of its proposals finally became law in 1939. One of its successful suggestions was that there be included in the executive office of the President a permanent fact-finding commission: the National Resources Planning Board, which should be constantly engaged in carrying on studies of a somewhat technical nature on a wide variety of subjects.[41] Such an agency was eventually set up, but opposition in Congress led to its dissolution after a brief existence. The Committee on Economic Security, set up by President Roosevelt in 1934, undoubtedly focused the attention of large numbers of people on old-age dependence and other related problems and its report had substantial influence on the basic Social Security Act of 1935. More recent committees appointed to study the important problems of public health and public education have called forth widespread interest and resulted in reports calling for the expenditure of hundreds of millions of dollars annually. Congress is inclined to regard these presidential commissions with more or less suspicion, but despite that fact their influence cannot be denied.[42]

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. Actually the philosophy underlying the system of checks stresses their reciprocal character. Hence at this point before passing on to another chapter attention should be given to the controls which the legislative branch can exercise over the executive. These will be discussed in more detail under

[41] See, for example, its excellent studies on urbanism.

[42] For additional information related to these bodies, see C. M. Marcy, *Presidential Commissions*, King's Crown Press, New York, 1945.

the powers of Congress,[43] 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 its 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 considerable importance.

Enactment of General Laws The Constitution gives Congress the power to enact laws which determine 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, in setting up offices give to him the specific appointments. Virtually all of the major programs drafted by a chief executive require 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 great worry and even embarrassment. While the Senate is disposed to approved the great majority of appointments and treaties submitted by the President, it is fond of investigations and delay. When it refuses outright to ratify an important treaty, such as that negotiated by President Wilson at the conclusion of World War I, 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 by any means, for Congress is itself rather fond of setting up such bodies.[44] These may be more partisan than the executive committees, but their findings are often hailed by large numbers of citizens. For example, the Committee on Un-American Activities has carried on sensational investigations of subversive organizations and activities over a period of years. One of the best illustrations of a commission set up by legislative action but with important bearing on the executive departments was the Commission on the Organization of the Executive Branch, commonly referred to as the Hoover Commission.[45] 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.

[43] See Chap. 20.

[44] 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.

[45] See Chap. 26 for further discussion of this commission.

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18. 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. Of course, every delegate recognized the necessity of a lawmaking body, but should such an agency be bicameral or unicameral? Should the large states and the small states all have the same legislative voice 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," relates to the organization of the legislative branch. The small states, very fearful lest they be engulfed by their larger neighbors, insisted on an arrangement under which their interests would be protected—indeed they wanted an equal voice in the lawmaking body. Not unnaturally the large states could not see any justice in this claim. They had in certain cases several times as many inhabitants; they would be expected to bear a heavier share of the taxes. Then why should they not have more to say about the operation of the government? The "great compromise" made it possible for both small and large states to feel that they had won their point. The legislature would be a bicameral body; the lower chamber, constructed on the basis of the claims of the populous states, would have representation according to population; 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, although Congress has its defects, just as any other agency of government. 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 sixty million people only

twelve Senators.[1] Nevertheless, 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. It is significant that the movement toward a unicameral state legislature has not been directed toward a similar goal in the case of the national government.

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 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 grew to one hundred, two hundred, three hundred, until for four 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 over three hundred thousand in 1950.

The Problem of Unwieldiness—By 1910 the membership of the House 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 which would have authorized 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 reapportionment every ten years. The eleven 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

[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.

[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.

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 stipulated that, unless Congress otherwise reapportioned the seats, the Bureau of the Census computation of the number to which each state was 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.

The plight of some of the older states is perhaps sad under an arrangement which keeps the size of the House of Representatives fixed at its present number. Of course, no state likes to have it proclaimed from the housetops that it is in the ruck of the race among the states. Nevertheless, the present scheme of more or less automatic reapportionment after each census is distinctly advantageous. Congress itself is too much involved with other matters to attend to the details every decade, while the Bureau of the Census is quite capable of impartially computing the distribution. The reservation which permits Congress to intervene if it concludes that some other allocation is preferable safeguards the process.

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 states which deny or abridge the suffrage of citizens who possess the proper age qualifications and

[4] For additional discussion of this act, see Z. Chafee, "Congressional Reapportionment," *Harvard Law Review*, Vol. XLII, pp. 1015–1047, June, 1929. For discussion of the more recent legislation, see L. F. Schmeckebier, *Congressional Apportionment*, Brookings Institution, Washington, 1941.

[5] Sec. 2.

have not engaged in rebellion or crime.[6] This mandate has not 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 neither numerous nor particularly 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. However, custom and usage have ordained that a candidate who expects to be taken seriously must possess additional qualifications. An age of only twenty-five years on the part of the candidate 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] and thus are for the most part of middle age. Citizenship in the United States of only seven years standing on the part of a particular candidate would certainly not be regarded as acceptable by most 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 considers residence of even fifteen or twenty years in a locality as merely 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.[13] But these exceptions only

[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.

[13] A study of members of both houses of Congress in 1948 was made by John M. Willig and reported under the title "Portrait of the Average Congressman" in the *New York Times Magazine,* May 23, 1948. He learned that there were 248 lawyers in the House and 66 in the Senate. Other occupations represented included: 78 educators and teachers, 55 farmers, 17 publishers, 21 reporters and editors, 7 doctors (all in the House), 14 bankers, 7 former sheriffs, 6 accountants, 9 manufacturers, and more than thirty other business men. The average age of Representatives was 52 and only two were under 30—108 were over 60 years of age. Average weight was 184 pounds, or some 25 to 30 pounds over the national male average. The average height was 5 feet 9 inches. Out of 432 members—three vacancies existed—323 held a college degree and 87

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 always 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 an important factor in selecting congressmen; under ordinary circumstances, however, it is much less significant.

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. Even after election opponents sometimes make capital out of the residence question—the seat of James M. Beck, the vociferous foe of bureaucracy in government, was challenged on the ground that he had spent much of his time away from Philadelphia attending to legal business in New York City.

Should District Residence Be Required? There is marked difference of opinion as to the validity of the strict rule ordained by custom. It has been argued that the requirement of local residence makes for a mediocrity in Congress which not only hampers its work but is also embarrassing to the general reputation of the United States. Moreover, it is pointed out that urban

a high school diploma. Seventeen Representatives belonged to Phi Beta Kappa and approximately one tenth held honorary degrees. An average of almost twenty-five years of married life was reported; twenty were in the bachelor category, and six had been divorced. Average number of children was slightly over two. In the House 307 Protestants, 55 Catholics, 5 members of the Jewish faith, and 7 without religious affiliation were reported. About 85 per cent own their own homes, with an average assessment of $10,787. Two out of three use tobacco; about 70 per cent use liquor. An average of 18 books was read per year; fishing and golf were top hobbies; average working hours ran from 8:48 A.M. to 6:31 P.M. Average years in office ran to eight years ten months. Representatives saw an average of ten visitors each day. Nine members were foreign-born. About half had served in the armed forces, with 122 in World War I and 54 in World War II. Seven were women. Half confessed that they had at times voted split tickets.

centers, which may have a number of promising candidates, find it difficult to bestow adequate recognition on the various claimants, while rural districts may not have a single candidate who has suitable background for effective service as a representative. On the other hand, it is maintained that only local residents can understand the psychology and know the interests of the people of the district. There is probably room for a difference of opinion on this point, but it cannot be denied that the requirement has contributed to a situation which permits some districts virtually no effective representation at all in Washington. When men of no training, little aptitude, and not even outstanding character are chosen by districts as Representatives, it is for most practical purposes as if the seats were allowed to remain vacant. Of course, rural districts have no monopoly on such Representatives. Indeed it may well be that the lack of representation itself is more than a matter of residence. Where there exists a tradition that the position of Representative should be passed around at frequent intervals, there is likely also to be lack of effectiveness—it is literally impossible for any person to become sufficiently familiar with the complicated process of doing business in the House of Representatives in less than half a dozen years. Then, too, another contributing factor is the concept of a Representative as an automaton or a puppet in a Punch and Judy show who will respond to the various strings that are pulled but who will have no ideas or indeed no mind of his own.

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. This is supposed to be done promptly under a constitutional stipulation that each district shall include approximately the same number of inhabitants. Most of the states do redistrict with reasonable celerity, but there are a few that consistently ignore the constitutional mandate. Illinois, for example, did not see fit to revise its districts during the more than four decades 1901–1947. When a state fails to redistrict itself after additional seats are apportioned it, Representatives at large are necessitated.[14] 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, maintained until 1948 congressional

[14] In 1950, the number of Representatives at large was somewhat smaller than has sometimes been the case. In that year Ohio and Connecticut each had a single Representative at large; New Mexico and North Dakota both elected two Representatives from the whole state; and Delaware, Nevada, Vermont, and Wyoming, with a single Representative each, perforce elected at large. A little earlier there had been ten congressmen at large from six states having more than a single seat.

districts in the metropolitan region of Chicago which included within their boundaries something like one million people.[15] At the same time, it continues downstate rural districts with about 150,000 inhabitants. New York recently had one district with 799,407 people and another with 90,671. Thus, despite the democratic traditions of the country and the mandates of the federal and state constitutions, certain states actually permit rural residents in some instances to have several times the voice in the national House of Representatives that some of the urban dwellers have. 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, for with urban areas growing much more rapidly than rural areas during recent decades there was no disposition on the part of the latter to yield to the former their rightful share of authority. Because urbanization is fairly recent, rural sections still control the legislatures of many states and have illegally prolonged 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 ignore the constitutional prescription. However, Congress is not fond of dealing with problems the solution of which would lead to resentment by local groups. Hence, little or nothing is done to correct the situation.

Gerrymandering The task of dividing states up into congressional districts is entrusted to state legislatures, which are, of course, partisan in character.[16] 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 which is 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

[15] However, Illinois after many years has redistricted itself. Under the 1947 act Cook County received thirteen of the twenty-six seats on the basis of a population of 4,049,331 in 1940. Downstate Illinois received thirteen seats on the basis of 3,824,824 people in 1940. On the steps leading up to this legislation, see F. L. Burdette, "The Illinois Redistricting Case," *American Political Science Review*, Vol. XL, pp. 958-962, October, 1946.

[16] For a series of maps showing the division of the various states into congressional districts, see the *Congressional Directory*, Government Printing Office, Washington, published at least once each year.

that point, for a leading party except in very unusual 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 party affiliation in every nook and corner, 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 an equitable scheme; consequently it seeks to put the minority strongholds together into as few districts as possible. These districts will, of course, elect minority congressmen by handsome majorities, but the remainder of the state will be carried by the majority party by small margins.

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." [17] The 1941 act makes no mention of contiguous territory.

Congressional Elections Members of the House of Representatives are chosen at general elections which are also used for the selection of state and even local officers. Consequently the details regulating these elections are adopted by the 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.[18] 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 [19] 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

[17] See *Woods* v. *United States*, 287 U.S. 1 (1932).
[18] Art. I, sec. 4.
[19] See *Newberry* v. *United States*, 256 U.S. 232 (1924). This was a five-to-four decision.

way for congressional action.[20] 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 themselves 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," [21] and thus confers jurisdiction over these disputed elections on the House of Representatives. 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 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 its final 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. There is some evidence that partisanship enters into the final determination, especially when party strength is evenly divided and when the person whose election is contested is a faithful member of the majority party. Nevertheless, there are cases in which the fraud has been so obnoxious that not even the party members in the House find it possible to support their brother.[22]

Term of Office Although the President holds office for four years without re-election and Senators enjoy even longer terms, Representatives must stand before the voters every two years. It was the hope and the 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 exert some influence in that direction. 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. In many cases the outcome of an election is so close that a very little vote-shifting will mean subsequent defeat. A congressman, being human, is usually first of all interested in his own political future and deems it prudent to take precautions that will assure success at the polls. If his 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.

[20] See *United States* v. *Patrick B. Classic et al.*, 85 L. Ed. 867 (1941).

[21] Art. I, sec. 5.

[22] For example, James J. Butler, the son of Boss Butler of St. Louis, was refused a seat under these circumstances.

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 administrative assistant and an efficient secretarial staff. It should be obvious that most efforts of this character detract from the attention which a Representative can give to the important pending legislation. After all, the congressman reasons, the fate of the nation may be important, but it is not likely to be affected by inaction as immediately as is my own fate at the polls. 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 also 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 four or six years at least to become reasonably acquainted with the "ropes"—they think only how nice it would be to have an annual salary of some $15,000 and how selfish it is for one man to want to enjoy such blessings for an extended period.

Finally, the two-year terms play a part in bringing about deadlocks 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 a majority of Representatives of another. But in the off-year election, 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, as well as during the end of the first Truman term. 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 some of the psychology still prevailing in England that considers legislative office a public honor.[23] Starting out at $3,000 per year at that time the remunera-

[23] Members of the House of Commons receive the equivalent of about $2,800 per year as an allowance but almost no perquisites. Members of the House of Lords are not paid at all.

tion has gone up by degrees to a salary of $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, which in the case of the Pacific Northwest Representatives runs to more than $1,000. Since 1946 each Representative has been provided at public expense with an administrative assistant, who receives some $8,400 per year, to relieve him of part of his routine duties. Reasonably generous amounts are appropriated for secretarial assistance; although there is some opprobrium attached thereto, some Representatives keep some of this in the family by hiring their wives and children as nominal secretaries. A $500 allowance for telegraph and telephone service is also very helpful, especially when Representatives live at a considerable distance from the national capital and wish to communicate regularly and at length with their constituents. Finally, provision has recently been made for a congressional pension system under which congressmen by paying in modest amounts can draw a fairly generous allowance from the public treasury beginning at sixty-two years of age if not still a member.

The Franking and Other Privileges Likewise the franking privilege permits Representatives to send their official mail without the payment of postage and this has been generously interpreted to include almost every conceivable object, even trunks, household effects, furniture, and so forth. 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 the country with hundreds of thousands of propaganda pamphlets without the heavy expense of postage. For air mail and special delivery $75.00 per year is allowed for stamps. An allowance of $200 to $500 per year 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. During the years since World War II many have visited Europe every year; others have selected the Far East, South America, and colonial possessions of the United States. While such trips were at one time frowned upon in many quarters as junkets, largely for the personal pleasure of members of Congress, it is now frequently realized that despite some abuse they serve a useful purpose in acquainting legislators with international problems which are vital to the United States and which often require legislative action.

Adequacy of Congressional Emoluments It may appear from the preceding paragraph that Representatives take unfair advantage of their official positions—and some of them probably do. The initial salary seems munificent to the rank and file of the citizens, who manage to get along on less than one fifth as much; but expenses in Washington are high. Something can doubtless be saved on the travel allowance, even after their families have been transported. The franking privilege is far too generally abused. In comparison with the

members of 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 substantially to the welfare of the country. Offhand it might seem that their salary is excessive compared with the equivalent of about $2800 allowed to members of the British House of Commons,[24] but this is probably a matter of underpaying the latter.

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.[25] A few Representatives take undue advantage of their freedom of speech and make the most 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. Innocent victims feel that some safeguard should be set up to make this outrageous vilification impossible, but it is difficult to impose any restriction which would not interfere with legitimate expression of opinion.

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, since the body of rules that has been developing for well over a century continues in effect from session to session 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.[26]

[24] Membership in the House of Commons was long on an honorary basis. It is extremely difficult for those without private means to serve on the £1000 allowed at present.

[25] Numerous "revelations" have been made of the shortcomings of Representatives. The column of Drew Pearson and Robert Allen, entitled "Washington Merry-go-round," not infrequently airs the sins. See also R. Clapper, *Racketeering in Washington*, L. C. Page & Company, Boston, 1933; and W. P. Helm, *Washington Swindle Sheet*, Albert & Charles Boni, New York, 1932.

[26] 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, August, 1934, pp. 632 642.

Sessions For many years the House of Representatives convened every year in December. In the odd years a "long" session started out to continue until late spring, summer, or even fall, depending upon the pressure of business, while in the even years a so-called "short" session was begun which had to come to an end not later than the fourth day of the following March. The latter 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 officeholding 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 their 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.[27] The House of Representatives now convenes every year on January 3 or shortly thereafter as determined by an agreement with the Senate.

Length of Sessions Under the new arrangement there is less reason for short and long sessions and hence no formal 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 fall,[28] thus 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.[29]

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

[27] If this date happens to fall on Sunday, January 4 is substituted.

[28] 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. The session in 1949 lasted 290 days, the longest peacetime session since 1921–1922 which ran to 292 days. The all-time record was set by the third session of the Seventy-sixth Congress which lasted 366 days. Floor sessions of the House were held on 165 days in 1949, averaging four hours and twenty minutes each.

[29] There is nothing in the Constitution to prevent secret sessions, but the House from the beginning has seldom resorted to them.

made beforehand by the majority party caucus. 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.[30] 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. After 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 itself has from time to time drawn up regulations which seemed desirable; 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 these 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 more than ten printed volumes of huge size.[31] It is no wonder that not even the Speaker himself, despite his lengthy service in the House, can trust himself to declare what the rules are on any 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.[32] 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

[30] The Speaker is first elected; then the other officers as a group.

[31] 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.

[32] These are full-time employees of the House.

in confusion worse confounded come to grief." [33] 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, not given to exaggeration, estimated that a revision 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." [34]

Why the Rules Are Not Modified Proponents of the present cumbersome rules argue that the House of Representatives would not be able to function at all were it not for the elaborate rules now governing. They admit that most 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 [35] 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 serve to centralize control in the hands of a small group of members 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 the 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 little coterie of old-timers belonging to the majority party 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.

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

[33] See his *Legislative Procedure*, Houghton Mifflin Company, Boston, 1922, p. 1.
[34] *Ibid.*, pp. 19–20.
[35] Of course, in the totalitarian countries legislative bodies are a mere sham.

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 elevation 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 political 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.[36]

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." [37] 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 powerful 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" proceeded to take away the power of the Speaker to name members of standing committees.[38]

Present Functions of the Speaker At present the Speaker in presiding over the House of Representatives 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

[36] 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.

[37] Thomas B. Reed was frequently referred to as "Czar" Reed.

[38] 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.

Representatives. In order to speak, make motions, or offer amendments, Representatives must secure the floor and that requires their 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 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.[39] Although no longer chairman or even a member of the Committee on Rules, the Speaker has the responsibility of applying 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 a quorum was present at a given time not only those who answered the roll call but those physically present in the chamber might be counted. There was violent objection when the interpretation was announced on the part of minority members who sought to keep the House from transacting business by preventing a quorum, but it has for many years been regarded as a sensible ruling with a beneficial effect. A majority of the House of Representatives may, of course, 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 very active in the party caucus. Not infrequently he is called to the White House to go 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

[39] However, Speakers may also try to be fair to the minority-party claims. Nicholas Longworth was praised by the Democratic opposition for his fairness.

of serving subpoenas on witnesses for committees, and even on occasion they may be ordered by the Speaker to round up enough absent members to secure a quorum for business. Pages of youthful age 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 total payroll of both houses now includes some 4500 persons, with a monthly disbursement amounting to almost two million dollars.[40]

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 important in world affairs as the United Sates. 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 fundamental decisions are made by a committee before the bill ever reaches the floor of the House. A recent tax bill may be taken as a case at point. No one could very well rate it as unimportant, but the deliberations on the floor were necessarily somewhat general because of the exigencies of the times and the serious effect of any considerable modification. Yet anyone who assumed that the bill more or less took form out of the air and was passed only after cursory consideration made a grave error. The Committee on Ways and Means spent many weeks drafting the bill. During that time it sought expert advice from several sources—the President and the Secretary of the Treasury among others gave their opinions—and it devoted protracted discussions to the policies involved. Most of the important bills go through much the same process before they come onto the floor and hence it is not expected that the final step will be more than a routine approval of what has gone before.

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

[40] Among these are a special Capitol police force with more than 150 members.

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.[41] This committee includes in its membership all Representatives and 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 each member who speaks. So the House meets as a committee of the whole to carry on most of its debates and to consider amendments to pending bills. One of the greatest advantages of the committee of the whole is that the time-consuming roll-call is not used.

Other Committees When the two houses of Congress are unable to agree on the details of a bill, although they favor its general character, it is the practice to set up special conference committees to iron out the differences. The composition and work of these committees will be considered in greater detail at a later point,[42] so that it is sufficient to mention them here. Despite a general prohibition, special committees are still appointed to handle matters which are not recurring in nature and are discharged when they complete their assignment.[43] Joint Committees on Internal Revenue Taxation, Nonessential Expenditures, Atomic Energy, the Economic Report, and the Library 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 on various types of business that supposedly had to be handled more or less regularly. Many of these actually had little or nothing to do and hence it was decided in 1927 to reduce the number. Forty-eight committees were provided for preceding the legislative reorganization which took place in 1947. There was a striking divergence among these committees as to amount of work, size, and general importance. Twelve were of outstanding significance and handled the bulk of the bills—members of these committees were not permitted to serve on another standing committee.

[41] There are 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.

[42] See Chap. 21.

[43] The House of Representatives had four of these special committees in 1950 as follows: Special Committee on Reconstruction of House Roof and Skylights and Remodeling of House Chamber, Special Committee to Conduct a Study and Investigation of the Problems of Small Business, Special Committee to Attend World Assembly for Moral Rearmament, and Special Committee to Investigate Lobbying Activities.

Then there were committees of which few people had ever heard and which nobody but their members and employees would ever have missed if they had suddenly disappeared. Almost no work was sent to them and what was submitted might well have been handled by clerks. The Committee on the Disposal of Executive Papers, as its name suggests, was more or less the waste-paper man of the House. In reality it had even less to do than the old paper and rags man, for the executive and administrative departments do the work of sorting out the valuable papers that need to be preserved, while the manual work of disposing of the useless papers is, of course, entrusted to janitors. Likewise the Committee on Mileage was another example of a far from overworked group. One may ask why these committees were permitted to exist when they had so little significance. The answer is that they provided additional chairmanships and posts for political followers.

Finally, in 1946, it was decided to undertake a drastic overhauling of the standing committee system, with the result that the number of committes was cut from forty-eight to nineteen. These are as follows: Agriculture, Appropriations, Armed Services, Banking and Currency, District of Columbia, Education and Labor, Expenditures in the Executive Departments, Foreign Affairs, House Administration, Interstate and Foreign Commerce, Judiciary, Merchant Marine and Fisheries, Post Office and Civil Service, Public Lands, Public Works, Rules, Un-American Activities, Veterans' Affairs, and Ways and Means.[44] Some of these are broken down into subcommittees.[45]

Size of Standing Committees There is no uniform size of standing committees, although a number of them have twenty-five or twenty-seven members. The largest committee is that of Appropriations which has forty-five members and so elaborately organized internally that it is almost a system of committees in itself. The smallest committee has only nine members.[46] There is some relationship between size and importance, but the correlation is not entirely dependable. The Ways and Means Committee is usually considered to have a slight edge over any other committee, although with twenty-five members it is much smaller in membership than the Committee on Appropriations. The highly important Rules Committee has only a dozen members in contrast to the twenty-five 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 numer-

[44] A list of the House committees may be conveniently found in the *Congressional Directory*, which also lists members of each committee.

[45] A recent report indicated that the following committees had subcommittees as is indicated: Agriculture 9, Appropriations 12, Armed Services 12, District of Columbia 6, Education and Labor 6, Expenditures in the Executive Departments 5, Foreign Affairs 6, House Administration 4, Judiciary 8, Merchant Marine and Fisheries 8, Public Works 5, and Veterans' Affairs 6.

[46] The Committee on Un-American Activities.

ous.[47] 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 conference 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 outstanding committees and few are keen about the less important 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.[48]

Committee Chairmen During the days when the House was less democratic than at present, committee chairmen sometimes 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 very 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 are in good standing and 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 oldtimers 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 its vacant chairmanship, there is

[47] In 1950 the Democrats had twenty-seven members of the Appropriations Committee and the Republicans eighteen. However, the Committee on Un-American Activities was composed of five Democrats and four Republicans.

[48] 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.

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 this serves at least to give an apprenticeship to mediocrity. It is argued in its favor that seniority prevents intrigue and manipulation, and it must be admitted that even under seniority a good many chairmen have been distinctly able men.[49]

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[49] 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.

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19. The Senate

The upper chambers of national legislative bodies are frequently identified more with honor than with authority. The House of Lords in England, for example, is made up of nobles both temporal and spiritual, many of whom represent the most aristocratic ancestral lines; but, although its prestige is enormous in certain circles, it has yielded final power in controversial matters to the House of Commons. The Senate of the United States started out under rather auspicious circumstances—at a time when state pride was a particularly powerful force—a chamber composed of two ambassadorial Senators from each state was naturally in the public eye. During the intervening century and a half it has managed very successfully to hold its place of influence in spite of a world-wide deterioration of second houses in general. The Senate and House of Representatives are sufficiently different at present to make it somewhat difficult to compare their authority, but few would dispute the great influence of the Senate in national affairs. As was noted in the preceding chapter, few among those who advocate reforms in the governmental structure propose to abolish the Senate altogether, although a good many might modify some of its practices.[1] All in all, it may be said that the American Senate is today the most powerful upper legislative body in the world.[2]

Membership in the Senate

Size In comparison with the House of Representatives, the Senate is a reasonably small body of approximately one hundred members. It started out with scarcely more than one fourth that number and as new states were created it added to its membership until early in the present century it reached the size of ninety-six. Whether the future will see an enlargement depends entirely upon the admission of new states to the union. If Hawaii, Alaska, and Puerto Rico are granted statehood we will find ourselves with a Senate exceeding one hundred in size. However, any considerable enlargement is highly improbable. A body of approximately one hundred is perhaps too large for deliberative purposes unless definite leadership is provided, especially when some of that number are invariably temperamental enough in character to

[1] For example, its rules have been severely criticized.
[2] Among foreign countries Switzerland stands out because of its powerful upper house.

delight in exhibitionism. Nevertheless, in comparison with the House of Representatives and indeed most other national second chambers, the Senate is distinctly limited in membership.[3]

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 representation. 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. Senators carry themselves with a demeanor which some observers have likened to that of royalty. 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.[4] 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 seem to 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. Even the strutting about, so dear to some of the Senators, may be traced back to this source. The Constitution itself recognizes the sacredness of the dogma of equal representation by qualifying the article dealing with amendments [5] 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 and behavior of the Senate, there has been a certain amount of criticism directed at it. Nevada has a population somewhat in excess of one hundred thousand; New York is approximately one hundred times as populous. Yet both states have two Senators. If there was only the glaring inequality noted in the case of Nevada and New York and if the remaining states were substantially equal in population, the situation would provoke little comment. But there are Delaware, Vermont, New Hampshire, and Rhode Island of small area and population totals and the more extensive

[3] The English House of Lords has more than seven hundred members; the Council of the Republic in France has more than three hundred members.

[4] 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.

[5] Article V.

Wyoming, Arizona, New Mexico, Montana, the Dakotas, and Idaho with their generously spaced inhabitants to be set against Pennsylvania, Illinois, Ohio, Texas and California. 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 does not constitute a serious problem at all. Nevertheless there is some substance to the complaint of New Yorkers that they contribute perhaps one third of the federal taxes and yet have only two votes in the Senate in determining what those taxes shall be and how the money raised shall be spent.[6]

The Bonus Proposal It has been suggested that every state might continue to be given two seats in the Senate, but that the states with the great populations might be awarded a sort of bonus in the form of an additional seat for, say, every million people. As long as the present Constitution remains in force, no modification of this kind could possibly be effected because of the clause, referred to above, which declares that no state can, without its consent, be denied equal representation in the Senate. It might be possible to persuade some of the states to surrender their equal voice, but no realistic person would for a moment imagine that every state would agree to this.[7]

Arguments in Favor of Status Quo Even if it were feasible to abandon the present system of equality there is considerable doubt in the minds of many informed persons as to whether or not it would be desirable. There would necessarily be a substantial increase in size which would in itself present drawbacks. Moreover, since the House of Representatives can reflect the point of view of the most thickly inhabited and populous states, why need the Senate be constructed on the same basis? Woodrow Wilson concluded that the Senate derives its chief significance from the "fact that it does not represent population, but regions of the country." [8]

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. Moreover, ambassadors are never elective officials—they represent a government in another capital and are appointed by the heads of the government for that purpose. 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,[9] while other

[6] Of course in the House of Representatives New York has members in proportion to its population and can exert considerable influence on tax measures.

[7] Some states on general principles seldom approve of anything. Where their own interests were involved, there would be even less likelihood of approval.

[8] See his *Constitutional Government in the United States*, Columbia University Press, New York, 1908, p. 114.

[9] The Camerons, Quay, and Penrose held senatorial seats for something like half a century.

state legislatures found it difficult to agree on any candidate and sometimes were deadlocked for weeks and even months at a time. Particularly in those states where puppet Senators were designated by political bosses or big business a great deal of dissatisfaction arose. State legislatures which ignored their local functions to scrap interminably over the senatorial choice also came in for castigation. On the other hand, certain states sent exceedingly able "ambassadors" to the Senate. One need mention only the names of Webster, Clay, Calhoun, and the elder LaFollette as examples of scintillating choices made under the original system.[10]

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.[11] 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 a term has expired or if one of the seats of the state has been vacated. 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—even to ensconcing themselves in the position.[12]

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.

[10] The more recent of these was also popularly elected.

[11] 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.

[12] 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.

Pennsylvania continued Boss Penrose in the Senate after the Seventeenth Amendment became effective and tried to place Boss Vare there, although he was finally denied a seat. Nor is there any conclusive indication that the puppets of bosses and corporations have been shut out by the direct-election method. Former Senator James E. Watson missed the great figures that were associated with the Senate during the earlier era,[13] but distance may have for him thrown a rosy haze about the past. Such names as Norris and Vandenburg, 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 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 others which are distinctly more arduous.[14] The average age of the Senators does not often drop under fifty-five and may sometimes almost reach sixty.[15] This means, of course, even allowing for long records of service, that Senators are not young when they begin their terms. For every Clay, LaFollette, the younger Lodge, and Long [16] there are dozens of men who are past fifty or even sixty when they enter the Senate.

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.[17] 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 legis-

[13] See his *As I Knew Them*, The Bobbs-Merrill Company, Indianapolis, 1936.

[14] In a study made of Senators in 1948, reported in the *New York Times Magazine*, May 23, 1948, it was noted that 66 were lawyers, average weight was 186 pounds and height 5 feet 9 inches; 73 were college graduates and 17 high school graduates; 11 were Phi Beta Kappas; about half held an honorary degree; 81 were Protestants and 11 Catholic; 6 were millionaires; only half used tobacco and 60 per cent liquor; average wardrobe 8½ suits; average number of callers was 14 per day, average period spent in Senate was 7¾ years; 40 were serving first terms; three were foreign-born; 35 served in uniform in World War I and 7 in World War II; 28 had been state governors; one out of three had at some time voted a split ticket; 65 per cent were helped by their wives with homework.

[15] The average age in 1950, was 57 years and two months. In 1948, it was just under 58 years. The oldest member in 1950, was 82 years and the youngest 31 years. Only three members were under 40 years in 1950, and two were over 80.

[16] These men were in their early thirties when elected. Henry Clay took the oath of office before he was thirty, while Rush Holt of West Virginia had to wait a few months until his thirtieth birthday permitted him to take a seat. The son of Huey P. Long was elected in 1948, one day before he reached 30 years of age.

[17] In 1950, 22 of the Senators were natives of five states: South Dakota, Alabama, Iowa, West Virginia, and Massachusetts.

lature, 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.[18] Judging from the predominance of lawyers in the Senate, legal training is often regarded as a desirable, although not an absolute qualification.[19]

The Senate the Judge of Qualifications The Constitution confers on the Senate the power to judge the qualifications of its members, but the Senate chooses to exercise that authority, at least in more than a nominal fashion, only on rare occasions. If one could imagine a notorious criminal winning election, it might well be that the Senate would be sufficiently shocked to refuse a seat. However, Huey Long was allowed to occupy a seat, despite all of the charges of corruption and perversion of democratic institutions that were hurled at him. In the 1920's great notoriety attended the attempts of Boss W. S. Vare of Pennsylvania and public-utility favorite Frank L. Smith [20] 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.[21] This has resulted in some strange choices, but it is perhaps a sound rule. In extreme cases the Senate must take cognizance of an abuse of this freedom—on occasion it may seem that the Senate has been far too long-suffering—but it could scarcely examine in detail the strength and weakness of each candidate without laying itself open to serious criticism.

Term of Office Senators are the envy of most elective public officers because they need face the voters only every six years. Representativs 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. The length of term contributes to an independence on the part of Senators which is not evident in the case of any other legislators in the United States. It also stimulates a contempt for routine which most elective officers cannot afford. During a

[18] 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.

[19] It is only fair to point out that many of the lawyers are not active in practice and indeed would be at a loss in handling a case.

[20] 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.

[21] Early in 1942, the Senate Committee on Privileges and Elections recommended that Senator Langer of North Dakota be unseated on the ground 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.

period when public economy is being urged and when the House of Representatives has made cuts in appropriations, it is frequently the Senate which will restore the original figures on the ground that a few million dollars more or less do not make a great deal of difference.

Continuity in Membership 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. Senators who have served two decades are not curiosities, while some Nestors can point to more than thirty years spent in that body. Over the long period extending from 1790 to 1924 an average of 27.2 per cent of the Senators were new every two years, although at times the ratio fell as low as 10 per cent. In comparison the rate of turnover in the House of Representatives during the same period ran to 44 per cent.[22] Considering the long initial term and frequent re-elections, it is not surprising that the Senate is more experienced than its sister body or that individual Senators in general have more influence than their colleagues in the House.

Salaries 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 which is paid in the House of Representatives. Their perquisites, however, are somewhat more liberal, for they are allowed a larger amount for secretarial and clerical hire than the Representatives, though their administrative assistants receive the same salary.[23] They have the same mileage allowance going to and from Washington; enjoy the same franking privileges;[24] are entitled to $400 each year for stationery and $105 for air-mail and special delivery stamps; and receive the same amount for the use of the telegraph and telephone lines. They are covered by the same pension provisions as their colleagues in the House. Their opportunities for junketing, how-

[22] See R. E. McClendon, "Re-election of Senators," *American Political Science Review*, Vol XXVIII, pp 636 642, August, 1934.

[23] The amount which Senators receive for staff varies somewhat, depending on the population of the state from which they come. In states under three million they received $34,500 per year in 1950 for office help, supposed to consist of an administrative assistant, an aide, and six others. From three to five million population states carry $36,900, five to ten million states $42,420, and over ten million states $43,920. Actually leeway is permitted a Senator, so that he may pay a smaller number of staff members at higher rates. Senatorial mail varies from some three hundred to ten thousand letters per day for a single Senator. One senatorial office received 17,000 telegrams in a forty-eight hour period. The Senator may read personally and reply to one hundred of these; the remainder are handled by the clerical staff which therefore needs to be sizable. See Nona Brown, "Long Distance Lobby: The Senatorial Mail," *New York Times Magazine*, September 25, 1949.

[24] And this is subject to the same abuses. Senator Burton Wheeler gave the American 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. See the *New York Times* for July, 1941.

ever, are somewhat more frequent because of their smaller number. Moreover, their trips may permit a style above that of their brethren of the lower house. An average Senator in 1950 cost the taxpayer over fifty thousand dollars per year exclusive of junkets.

Privileges and Immunities of Members The privileges and 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. Moreover, the independence of the Senators encourages an irresponsibility which sometimes attains notorious proportions. The late Senator Long of Louisiana made the floor of the Senate his sounding board for the most outrageous and unfounded vilification of any person or any group he chanced not to like at the moment. Fellow Senators attempted to remonstrate when he made these demagogic attacks on his senatorial colleagues and the presiding officer went so far as to censure him for his irresponsible vituperation. However, beyond that mild action no official steps were taken to curb the "Kingfish," although those whom he attacked had no recourse. Finally, the Senator from Louisiana went so far as to send broadcast through the mails printed copies of some of his violent Senate speeches and one of his victims brought a suit on the grounds of slander and libel. The federal courts were reluctant to entertain a case involving the touchy pride of the Senate, but the situation presented such abuses that they finally consented. After due consideration they ruled in effect that Senators could not use their immunity to spread unfounded charges of vile character by means of the mails, even though the charges themselves were uttered on the floor of the Senate.[25]

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. Considering the smaller size of the Senate, the longer terms of its members, and the prevailing psychology, it is not strange that there should be important differences. 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

[25] The suit was brought by S. T. Ansell in the District Court of the District of Columbia. Senator Long pleaded his immunity from civil arrest during the time the Senate was in session, but the court held that he must stand trial. This ruling was upheld by the appellate court of the District and by the Supreme Court of the United States in *Long* v. *Ansell*, 293 U.S. 76 (1934). Justice Brandeis, all members concurring, declared that "Senators of the United States while in the District of Columbia in attendance at sessions of the Senate are immune from arrest in a civil case but are not from the service of a summons."

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.

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." [26] 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 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." And former President *pro tempore* Ingalls remarked: "Rules are never observed in this body; they are only made to be broken." As Vice-President, Thomas Jefferson prepared for the use of the Senate the *Manual,* which has already been referred to in connection with the rules of the House of Representatives.[27] The Senate started out in 1789 with nineteen of these rules; it has added to the number until there are forty at present. The last general revision of rules took place in 1884. Senator H. H. Humphrey, in 1950, characterized the Senate rules as "archaic." 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.[28] In general, the Senate rules are distinctly less complicated than those of the House of Representatives. The smaller size of the Senate permits an informality which could not well be associated with the larger House. More than that, the senatorial psychology, to which we have several times referred, 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 who sees in himself a modern Messiah chosen to save the

[26] Art. I, sec. 5. The Senate met 186 days in 1949, compared to the 165 days on which the House held floor sessions. The Senate sessions averaged six hours and fifteen minutes each in that year as compared with four hours and twenty minutes for the House.

[27] See Chap. 18.

[28] 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.

country from itself, 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.[29]

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 and decided that he would bend every effort toward revising them in keeping with modern requirements. Few public men have equaled Charles G. Dawes in ingenuity, vigor, and compulsion, but even Dawes could not move the Senate. The more he cajoled, argued, and appealed to public opinion the more obstinate the Senators became. 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 behavior of the more extreme of their colleagues leaves much to be desired and that the rules play into the hands of the Huey Longs. 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. After much discussion the Senate actually set the clock back rather than ahead in 1949 by making its closure rule even more rigid and difficult to apply than had been the case.

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.[30] Others have regarded the duties of a presiding officer as beneath their dignity or at least as outside their main circle of interests. It is rare for a Vice-President to ignore his senatorial assignment entirely, but he may be halfhearted in interest and frequently absent from his post. 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.[31] This person, nominally elected by the Senate itself but actually the choice of the majority caucus,

[29] For the Senate closure rule of 1917, see Chap. 21.

[30] Vice-President J. N. Garner supposedly exercised very great influence on Senate deliberations.

[31] He presides permanently if the Vice-President becomes President. In that case the President *pro tempore* receives the salary of the Vice-President.

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 conscientiousness 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. Reading, roll-call, engrossing, journal, file, and recording clerks are employed in generous numbers; provision is made for opening the sessions with prayer; and there are pages to scurry about on errands.

The Committee System

Committees are less important in the Senate than in the House of Representatives, although their role should not be minimized. The smaller size of the Senate permits more of the business to be handled in the limelight of the floor. Besides there is some feeling that an assemblage of ambassadors should not entrust the most consequential matters to committees. Finally, the inclination of the Senators at times to disregard the recommendations of their committees 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 has already been 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.[32] 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.[33] 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. Despite the less striking role given to committees, the Senators see fit to keep a fairly sizable number of standing committees in operation. 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-

[32] The Senate maintained only one special committee in 1950.

[33] 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.

four to thirty-four. Another drastic pruning in 1947 reduced the number of standing committees from more than thirty to fifteen. The current standing committees are as follows: Agriculture and Forestry, Appropriations, Armed Services, Banking and Currency, District of Columbia, Expenditures in the Executive Departments, Finance, Foreign Relations, Interior and Insular Affairs, Interstate and Foreign Commerce, Judiciary, Labor and Public Welfare, Post Office and Civil Service, Public Works, and Rules and Administration.

Outstanding Senate Committees A half a dozen or so of the standing committees are important enough to deserve special attention. The committees on Finance and Appropriations are always regarded as outstanding, although their pre-eminence is probably somewhat less noticeable than in the case of their counterparts in the House of Representatives: the committees on Ways and Means 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." [34] 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 and has been especially in the limelight during the last decade. It considers not only bills which are aimed at overhauling or adding to the system of federal courts, but those which concern procedure. Judicial nominations are referred to it for consideration, while proposals to amend the Constitution may also go to this committee. 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. After a world conflict or on those occasions when far-reaching international agreements relating to commerce or other peaceful matters are in the offing this committee may overshadow all others. 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 in size, although there is less difference than the numbers in membership of the two chambers would indicate.[35] The largest committee—the Appropriations Committee—has twenty-one members, while the others regularly have thirteen members. A gentlemen's agreement is worked out to determine how many of the members on each committee shall

[34] Art. I, sec. 7.

[35] However, they are, like many of the House committees, often broken down into subcommittees. A recent report indicated subcommittees as follows: Agriculture and Forestry 1, Appropriations 12, Banking and Currency 7, Civil Service 4, District of Columbia 6, Expenditures in the Executive Departments 2, Foreign Relations 2, Interstate and Foreign Commerce 3, Judiciary 5, Labor and Public Welfare 3, Public Works 3, and Rules and Administration 5.

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 definite majority. Individual senators serve on two or three of the standing committees and in no case are they permitted to hold more than a single chairmanship.

Selection of Committee Members The Senate theoretically elects its own committees, but this is a mere formality, since actual 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. When vacancies occur as a result of death during a session the inner circle of the party organizations, particularly the steering committees, may handle the disposition. 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. As in the case of the House of Representatives, the seniority system is under severe criticism, but there is no agreement as to a substitute. President Truman was asked as a former member of the Senate about this system at a press conference; he replied: "The seniority system by which chairmen of committees in Congress are selected is a defective one because the best qualified men do not always get the jobs. But any substitute that has been proposed is unworkable, and the present system has the merit of keeping order in the legislative process." [36]

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[36] See the *New York Times*, February 15, 1950.

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20. A General View of the Powers of Congress

If the doctrine of separation of powers were strictly applied, Congress would exercise only legislative powers. As it is, most people identify Congress with the legislative process which will be dealt with in detail in the next chapter. 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.

Responsibilities 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 has been noted in discussing the formal amending process,[2] only the congressional method of proposing amendments 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 important statutes, although it is possible in certain instances to accomplish this end through the use of the treaty-making and other powers.

Electoral Responsibilities Perhaps the very routineness of the responsibilities of Congress in connection with the election of a President and a Vice-President blind one to their existence. No one can get very 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 a party split should occur, 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. How long the House of Representatives would be permitted to choose a President from the three candidates

[1] For a fuller discussion, see Chap. 40.
[2] See Chap. 3.
[3] See Chap. 3.
[4] See Chap. 14.

receiving the highest number of electoral votes or the Senate the Vice-President from the two most popular candidates for that office might be debatable.[5] There is some reason to believe that, should the multiple-party system prove at all enduring, some other provision would be made for the election of the two executive officers. But under the terms of the Constitution as it now stands Congress is entrusted with these potentially heavy responsibilities. 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," [6] and that it judges the qualifications of its own members, including the validity of their elections.[7]

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.[8] 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.[9] 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 formally 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. Inasmuch as most of the important undertakings of administrative agencies call for the expenditure of money, the approval of Congress is essential. A considerable portion of the time and energies 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 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 legis-

[5] See Amendment XII.

[6] See the Constitution, Art. I, sec. 4.

[7] *Ibid.*, Art. I, sec. 5.

[8] If Congress authorizes the President to handle organization, he may, of course, arrange such matters. Thus in 1939 President F. 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.

[9] See the Constitution, Art. I, sec. 9.

lative process—the courts have ruled that there must always be some connection between their labors and the problem of making laws.[10] However, almost any subject under the sun has at least a remote relation to the legislative process and hence Congress has considerable leeway. The spectacular investigations of the Committee on Un-American Activities have a bearing on the creation of public opinion, the program of the Federal Bureau of Investigation, and divers other fields quite remote from lawmaking.[11] Similarly the committees which delve into the campaign expenditures of political parties and congressional candidates participate in the formulation of public opinion and the restraint of political corruption. During a recent year some fifty special committees or subcommittees of standing committees were carrying on investigations of one kind or another. Senator Estes Kefauver has pointed out the weaknesses of some of these investigating committees, remarking that some "do not even have the good grace to file a report that Congress and the taxpayers may read in exchange for the money spent" and that others are "worse than useless and harmful to the welfare of the country." He brands certain congressional investigations as primarily "headline-hunting."

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.[12]

Senatorial Confirmation of Appointments The congressional role is especially outstanding in relation to the fifteen thousand or so officials who are nominated by the President but confirmed by the Senate. Theoretically, these appointments originate in the executive office, but, as has previously been noted, the vast majority of them really fall under the jurisdiction of members of Congress, especially Senators.[13] The President is far too busy to investigate the various claimants to the collectorship of internal revenue in New Orleans or the federal marshalship in Des Moines. However, Senators and Representatives from the states in which those cities are located usually display a good deal of interest in these positions. Senators who belong to the President's political party do not wait to be asked which candidate they favor—they inform the executive office whom they desire appointed and except in rare

[10] *McGrain* v. *Daugherty*, 273 U.S. 135 (1927).

[11] 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.

[12] For a fuller discussion of this point, see Chaps. 15 and 26.

[13] See Chap. 15.

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.

Procedure of Confirmation 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. Since the number of Senators nominated is not large, this latter procedure is not commonplace. 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 the nature of the 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 and Foreign 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 be given a chance to air their views. If the nomination represents the choice of a member of the Senate there is little likelihood of any protracted discussion in the committee, for the convention of senatorial courtesy ordains that the judgment of Senators is always good. However, if the President has ignored the Senators directly concerned or if he has on his own initiative chosen for an office of national scope a person who does not suit the Senate, there may be a great to-do. Even in these cases a strong President may eventually win out, although weeks and even months intervene between the nomination and confirmation. Still, refusals to confirm are not rare.

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 legally vacated and the President must make some other arrangement.

Judicial Functions

General Judicial Functions All of the courts below the Supreme Court have been created by Congress and even the highest tribunal which is specified in the Constitution depends upon Congress as far as composition, organization, and appellate jurisdiction are concerned. At one time Congress made

the rules under which the courts operate and even now it has that authority, although it prefers to delegate the task to the courts themselves.[14] The money to operate the courts is appropriated by Congress; the laws which they assist in enforcing are enacted by Congress; and the judges who sit on 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 provided for in those countries which model 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 national government are subject to impeachment. Military and naval officers are obviously not included, being subject to court-martial. 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, or conviction of, treason, bribery, or other high crimes or misdemeanors." [15] The question early arose as to whether "civil officers" was 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. They may be judged by their own colleagues and if found wanting may be expelled from their seats in extreme cases—consequently there is no great need to bring them under impeachment.[16] In addition to the President and the Vice-President, it is at present understood that cabinet members, federal judges, and other important 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 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

[14] Two volumes of procedural rules were drafted by the courts in 1937 and published in the form of *United States Reports*.

[15] Art. II, Sec. 4.

[16] 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.

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 decade.

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 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 that 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 with what offenses the accused is charged. 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 the charges. Ordinarily several weeks or months are permitted to intervene before 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. This time lag saves many trials, since most of those who see ruin staring them in the face resign after articles of impeachment have been voted. This was what happened in the recent cases of Judge Manton of the Circuit Court of Appeals in New York City, several district judges who abused their bankruptcy authority, and a very peppery district judge in Illinois who addressed most of those who came before his court with profane language.

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 attempt 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.[17]

Suggested Reform of the Impeachment Process The conduct of a number of federal judges during the 1930's 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 were by no means the rule among the federal judges, but they were too numerous to be ignored. The cumbersome process of voting articles of impeachment and the even more onerous burden imposed upon the Senate convinced many people that a modification was required. The Judiciary Committee of the House of Representatives finally reported in 1937 the Sumners bill which provided that federal and circuit district judges, who seemed to be causing 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. This bill did not pass, but a similar proposal was accepted by the House in 1941 though not by the Senate.[18]

International Affairs

Congress as a whole has a general interest in the international relations of the United States, although this field is especially shared by the President with the Senate only rather than with Congress as a whole. 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 Marshall aid, an arms assistance program, and the foreign service must be approved by both houses. 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. During the recent critical developments in the international field, there has been considerable accentuation of congressional activities in this sphere. 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

[17] For an extended book on this subject, see A. Simpson, *A Treatise on Federal Impeachments*, Law Association of Philadelphia, Philadelphia, 1917.

[18] Under this bill the Attorney General would prosecute such cases.

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. A treaty accomplishes little unless it is ratified; moreover, the refusal of the Senate to approve a treaty may occasion the President himself great personal embarrassment.[19] 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 its terms. The custom of senatorial courtesy in connection with the confirming of appointments has been discussed at an earlier point.[20] There is something of the same loyalty accorded fellow Senators who have had a good deal to do with the negotiation of a treaty. Hence, Presidents often appoint Senators as members of commissions charged with assisting in the drawing up of important treaties to which the United States is a party.[21] Or if that is not done, the chief executive at the very least will seek to keep senatorial leaders informed of what is going on, even to the extent of asking their advice and attempting to secure their approval of every major step which is taken.

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 [22] requires it to be sent to the Senate. Upon arriving there, it is referred by the rules of the Senate, to the influential Committee on Foreign Relations for study and recommendations. This committee, which always has among its members some of the most independent and influential Senators, does not in any sense consider its function to be that of automatically rubber stamping a treaty.[23] Indeed, it regards itself as charged with far-reaching responsibility in ascertaining that the treaty safeguards the best interests of the United States. With little inclination to be hurried, the Committee on Foreign Relations often accords the most minute attention to the various provisions of a treaty as well as to the general policies involved. 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

[19] After the Senate refused to ratify the Treaty of Versailles the name of President Wilson became the byword of contempt in many sections of Europe, although he had been greeted as a demigod before

[20] See preceeding paragraphs.

[21] 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 in certain quarters. 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."

[22] See Art. II, sec. 2.

[23] 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.

refusal to ratify, or approval after certain changes have been made or subject to specified reservations. If the treaty is at all controversial, it is quite probable that the committee members will not see eye to eye on its merits or defects and consequently will divide on recommendations to the Senate. Hence, there may be a majority report and one or more minority reports.

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." [24] Yet the Senate has ratified about 80 per cent of the treaties sent to it without reservation and has refused outright less than one hundred during the entire history of the country. Of the more than one thousand treaties that have been negotiated, approximately 150 have been subject to senatorial insistence upon partial revision or reservation.[25] The United Nations Charter was speedily ratified in 1945 and with only two dissenting votes.

Number of Treaties The ordinary citizen is usually quite vague about the frequency with which the United States enters into treaty relations with other countries. A casual guesser may place the number in the tens of thousands, while one who recalls the treaties that have occasioned newspaper headlines and spirited Senate debate may limit his estimate to a few dozen. Actually the treaty-making power is used moderately rather than generously or parsimoniously. During a time when the world was enjoying peaceful conditions in a large measure, 1924–1930, the Senate ratified 106 treaties with forty-one countries—an average of almost twenty per year. It may shock those who have the notion that a treaty is always the cause for senatorial wrangling and extended debate to be told that in 1934 the Senate ratified twelve treaties in the space of one hour! [26]

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 commit the United States to far-reaching undertakings, such as old-age annuities. This has been interpreted somewhat less strictly than might have been the case, however, for the two-thirds rule applies to those

[24] See W. R. Thayer, *Life and Letters of John Hay*, 2 vols., Houghton Mifflin Company, Boston, 1920, Vol. II, p. 393.

[25] See D. F. Fleming, "The Role of the Senate in Treaty-Making," *American Political Science Review*, Vol. XXVIII, p. 583, August, 1934.

[26] For additional discussion of the role of the Senate in treaty-making, see Elmer Plischke, *Conduct of American Diplomacy*, D. Van Nostrand Company, Inc., New York, 1950, Chap. 10.

who are present in the Senate chamber when the vote is taken rather than to the entire number of Senators.[27] Yet even so the rule is burdensome, particularly when treaties of more than routine character are being considered. 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 ones which have been turned down include some of the most important treaties the United States has negotiated.[28]

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 something to be said for reducing the requirements for assent from the present two thirds to an ordinary majority.[29] 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 compared with internal affairs. No well-informed person will deny the great importance of wise management of our international relations. But at the same time it must be borne in mind that domestic problems—for example, widespread unemployment, an unfair distribution of the national income, and a rapidly mounting public debt—are also of far-reaching consequence. The latter may all be dealt with by an ordinary majority vote; why then a two-thirds requirement for treaties? [30] One salutary result of such a change might well be the discouragement of "backdoor" practices which are not 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, as Theodore Roosevelt did in the case of Santo Domingo. Franklin D. Roosevelt was impelled on several occasions to have international agreements handled by ordinary statutes with their majority requirement because he doubted whether a two-thirds vote could be mustered in the Senate.

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?

[27] Of course, a quorum must be present.

[28] 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.

[29] R. J. Dangerfield, *op cit.*, goes far in clearing the Senate of any grave charges.

[30] In proposing a constitutional amendment which would permit a majority of the Senate, or possibly a majority of both houses, to ratify treaties, Senator Claude Pepper of Florida, 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.

Its membership is certainly more representative of the entire people than that of the Senate. The House has to approve legislation, and appropriations carrying out the provisions of treaties. 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, but the Senate, jealous of its authority, has been unwilling to concur.[31]

Legislative Powers

Constitutional Provisions Although the Constitution disposes of certain very important matters with a few words, it devotes a lengthy section [32] 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,[33] 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 generally liberal attitude on the part 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 far reaching—it is, indeed, impossible to conceive of what might have happened had a different ruling been made by the Supreme Court.[34]

Inherent Powers There has sometimes been a vigorous controversy as to whether Congress has inherent authority to enact 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." [35] While some persons have argued that all legislative

[31] 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.

[32] Art. I, secs. 7 and 8. [33] Art. I, sec. 9.

[34] For additional discussion of this important topic, see Chaps. 1 and 3.

[35] Art. I, sec. 8.

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 national government under our constitutional system. The theory most commonly accepted by the framers was that the national government was to be one of enumerated powers delegated by the sovereign states. This theory, explicitly stated in the Tenth Amendment, would seem to deny completely any inherent powers in domestic affairs, though in foreign affairs the inherent authority of the national government is firmer. The Supreme Court has not seen fit to deal fully with the controversy, although it has included in its opinions a few dicta which seem to give comfort to the defenders of inherent power.[36] The "necessary and proper" clause is usually interpreted as upholding implied powers and not as upholding inherent powers.

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." [37] The argument has been that the national government possesses powers which are neither specifically enumerated nor implied, yet which are not particularly inherent in a sovereign state. Rather these powers arise from the admonition to provide for the general welfare and are in an indirect sense deduced or "implied" from it. 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 national 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* [38] Mr. Justice Stone used the

[36] 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 Sates 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.

[37] Art. I, sec. 8.

[38] 297 U.S. 1 (1936).

argument to support the Agricultural Adjustment Act and in *Steward Machine Company* v. *Davis* and *Helvering* v. *Davis* [39] 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 made little impression upon the court for many years, the end which supporters of the doctrine desired, that is, the expansion of federal power, in spite of the Tenth Amendment, has recently been achieved in a large measure by the liberal interpretation of the "general welfare" clause.[40]

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.[41] Of course, it is true that Congress takes steps during periods of internal or international emergency that are not thought of during more normal times. But 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. As the court said in *Wilson* v. *New*: "Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed." [42] The effect of an emergency is not to confer new powers, but rather to encourage a liberal interpretation of old powers. Hence, Congress itself goes to the extreme limits of the powers granted it, while the Supreme Court, influenced to some extent no doubt by the exigencies of the time and the flood of public opinion, will be as liberal as possible in permitting the inclusion of this action under the broad outlines of a well-recognized grant of power.[43]

Permissive and Mandatory Powers One explanation of the enlarged role of Congress during periods of great difficulty is to 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

[39] 301 U.S. 548 (1937); 301 U.S. 619 (1937).

[40] 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. See also Chap. 28 following.

[41] In *Home Building and Loan Association* v. *Blaisdell*, 290 U.S. 398 (1934), the Supreme Court specifically said that "emergency does not create power."

[42] 243 U.S. 332 (1917).

[43] See on this subject J. P. Clark, "Emergencies and the Law," *Political Science Quarterly*, Vol. XLIX, pp. 268–283, June, 1934.

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. Therefore, if Congress does not reapportion the seats in the House of Representatives after each decennial census, it has definitely ignored its constitutional obligation, but nothing positive can be done immediately to compel the requisite action.[44]

Exclusive and Concurrent Powers In examining the role of the states in the government [45] it was pointed out that although they have in large measure lost 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.[46] 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.[47] Finally, there are numerous areas in which Congress and the state legislatures are both very active. Business, labor, welfare, transportation, electricity, distribution, agriculture, mining, conservation are only a few of the fields over which both nation and state have partial jurisdiction.

Federal Police Power The police power, which covers public health, public safety, and public morals, has long been identified with the states. Indeed, the Supreme Court in refusing to uphold the child labor law of 1916 based its attitude largely on the effect that a different decision would have upon the police power which seemed to be the last refuge of the states.[48] The

[44] During the late 1920's attempts were made to have the courts intervene, but without success. Of course, public opinion may have some effect or an election may impose a penalty.

[45] See Chap. 5.

[46] 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.

[47] 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.

[48] 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.

pressures forcing 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. 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 an 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. It should be noted that the so-called "federal police" power is not a direct power of the national Congress, as it is in the case of state legislatures. Its use is rather derived or implied from enumerated powers attached to Congress.

Limitations on the Legislative Power As has been pointed out before,[49] 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. It is conceivable, of course, that Congress might like to grant titles of nobility, pass bills of attainder and *ex post facto laws,* and provide for the permanent abandonment of the historic writ of habeas corpus, but the probability is not great. On the other hand, it is possible that direct taxes [50] and duties on "articles exported from any state" [51] might be levied by Congress during its search for additional revenue, were it not for the constitutional barriers.

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 to such an extent 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 which Congress has from time to time enacted. The commerce clause itself has been invoked again and again during the past few decades to justify the regulation of business practices, the protection of organized labor, the regimentation of the coal-mining industry,

[49] See p. 378.

[50] Direct taxes are not absolutely prohibited but must be apportioned among the states according to population. This makes their use scarcely feasible at present, although during the Civil War an attempt was made to employ them.

[51] Art. I, sec. 9.

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 long 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 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.

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21. The Making of Laws

Physical Setting

Congressional Chambers 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. When the houses are in session, their flags are displayed over their respective wings. While these quarters perhaps lack the rich historic associations that are attached to the halls of the English House of Commons and House of Lords and the National Assembly and the Council of the Republic of France, they are, nevertheless, more commodious and more modern than the majority of these European halls. And having been in continuous use [1] for more than a century, they are associated in the minds of Americans with many events of great historic importance.

House Chamber The House of Representatives occupies a large room in the south wing of the Capitol which is characterized by mahogany, black leather, eagles, marble, and neutral-color 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 on the left side. Although individual seats are assigned, members pay very 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 until recently were so poor 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 guarded by attendants who permit admission only to members and former members.

[1] Except for adjournments and brief repair periods.

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 clerks corresponds to that 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. These contain desks for the employees of the committees, tables and chairs for committee meetings, filing cabinets, and other equipment. They are reasonably adequate for their purpose, although perhaps less elaborate than the conference rooms of the new departmental buildings.

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 sumptuous 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, interchanging opinion with constituents, and handling the burdensome correspondence and personal services, 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 so by enacting laws. That is not to say that every

action of Congress necessarily 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 and in procedure are treated as bills," adding that "opinion as to what a joint resolution might include has changed from time to time." [2] 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. There has been a good deal of criticism of this dichotomy, which is for the most part quite artificial. As far back as 1871 Hannibal Hamlin inquired "why we should have our statutes encumbered with legislation headed by different modes of enactment." [3] Charles Sumner, James G. Blaine, and James A. Garfield all advocated dispensing with the distinction between bills and joint resolutions, but the two types have persisted unto this day. Congressman Luce pointed out some years ago that the supposedly temporary and minor role of joint resolutions could not be depended upon by lawyers, for "experience proves that permanent provisions do sometimes get into them." [4]

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 utterly unimportant private affairs, provide pensions for widows of former Presidents, or appropriate money to pay for damage caused by post office or army trucks. In general the latter are known as "private" bills, that is, they do not concern public affairs, 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. The annual budget is always prepared in the executive office of the President. How many other

[2] See his *Legislative Procedure*, Houghton Mifflin Company, Boston, 1922, p. 556.
[3] *Ibid*, pp 556 557. [4] *Ibid*, p. 558.

bills may be drawn up by the immediate advisers and assistants of the chief executive depends upon the energy of the President as well as upon the tenor of the times—it has already been pointed out that during several years following 1933 virtually all important legislation was prepared there.[5] The numerous administrative departments never let a year go by without asking Congress to act favorably on all sorts of bills. Some of these embody the most ambitious schemes and call for the appropriation of tens of millions of dollars, while others merely seek minor changes in existing laws which relate to these agencies.[6] Pressure groups may or may not have elaborate legislative programs of a positive character, but it is a rare pressure group which does not some time or other push a bill which it has prepared. The farm lobby, the industrialists, organized labor, the veterans, and the many reform associations all draw up bills which they hope that Congress will enact as laws. Finally, there are the hosts of individuals who want various personal favors which can be satisfied only by passing a law. Widows of Presidents feel themselves entitled to handsome pensions; the owners of a tungsten mine want the tariff laws modified in such a way as to increase their advantage over foreign producers of that mineral; the parents of a deserter from the Army want the stigma of desertion erased; a victim of a post office truck prays for monetary relief to meet hospital expenses and loss of income.

Role of Senators and Representatives In general, then, 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 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 law-making. However, one should not 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 some of the members of the legislative branch are utterly barren of ideas which would lead to statutes, still there are always those Senators and 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

[5] See Chap. 17.

[6] For example, on August 7, 1941, the Securities and Exchange Commission, co-operating with a committee from the financial interests, submitted to the House Foreign and Interstate Commerce Committee a group of proposed amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposals represent the research of both the Commission and the industry and are hence particularly interesting as an attempt of a governmental agency and a pressure group to reconcile their differences. The eighty-six suggestions contain fifty-five which are agreed upon by both parties. The rest are proposals of both groups which they expect the congressional committee to decide upon before it recommends action to the House. For an informing article on the general role of administrative agencies in law-making, see E. E. Witte, "Administrative Agencies and Statute Lawmaking," *Public Administration Review*, Vol. II, pp. 116–125, Spring, 1942.

group of kindred souls. 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. One may mention Senators George, Wagner, Taft, and Hatch as recent examples of members of Congress who have had more than nominal interest in important legislative measures.

Formal Drafting It is one thing to have a general notion of what a bill should include and quite another thing to produce 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.[7] 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. Any student who has had occasion to examine a bill will recall that the form is distinctly different from other English prose, so much so in fact that it is not easy for a layman to read with understanding. 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."[8] 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. The bill which has been noted above was divided into three titles and 304 sections. Title I was labeled "General Provisions and Authority" and was subdivided into four sections dealing with "Purposes and Time Limit," "Prices, Rents, and Market Practices," "Practices Affecting Prices," "Agricultural Commodities," and "Prohibitions." Title II, "Administration and Enforcement," was subdivided into sections relating to "Administration: Personnel," "Obtaining Information," "Procedure," "Review," and "Enforcement." Title III, "Miscellaneous," included sections pertaining to "Quarterly Report," "Definitions," "Separability," and "Short Title." Lest there be a misunderstanding in regard to terms used in the bill, nine definitions of such words as "sale," "commodity," "persons," "ceiling," and "documents" are specifically written into it. To safeguard against judicial action which might throw out the entire act because certain sections were regarded as objectionable, the following separability clause was inserted:

[7] Some legislative bodies at times will permit the introduction of a proposal to legislate simply by title, waiting for the body of the bill to be added later, but Congress does not follow this practice.

[8] This bill was drafted in the executive office of the President and introduced in Congress on August 1, 1941.

"If any provision of this act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the act and the applicability of such provisions to other persons or circumstances shall not be affected thereby." Finally, a short title is given so that the act may be conveniently referred to as the "Emergency Price Control Act of 1941." [9]

Bill-drafting Assistance It should be apparent from the resume of the bill just mentioned 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 make little 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 an ordinary lawyer is the interpreting of laws rather than their original preparation. Inasmuch as the task of bill-drafting is one calling for technical assistance, pressure groups frequently call in experts to advise them while each house of Congress maintains a bill-drafting agency, known as "The Office of Legislative Counsel." [10] If a Senator or a Representative desires to prepare a bill which will accomplish a certain end, he ordinarily furnishes an outline of what he has in mind to the fifteen or so professional bill-drafters on the pay roll of Congress and expects the technical work to be done by them. Even in the case of bills which come from outside groups or persons, it is not uncommon for a friendly congressman to use his good offices in having the bill expertly drawn by the technicians who serve on the staff of Congress. If the bill has already been prepared, he may ask the bill-drafting bureau to examine it in order to correct mistakes or point out defects.

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 two or three hundred bills will be brought to a national legislature in the course of an entire year.[11] Where the cabinet form of representative government or a totalitarian government prevails, bills are almost if not entirely a monopoly of the leaders who head the government. Hence there are not the numerous bills relating to the same subject, the pet projects of pressure groups, or the crackpot schemes of cranks.[12] But in the United States virtually anyone considers himself quite competent to think up a bill, although

[9] Actually the legislation authorizing price control was not passed until early in 1942, but the original bill bore this title.

[10] On this office, see F P Lee, "The Office of Legislative Counsel," *Columbia Law Review*, Vol. XXIX, pp 381 403, April, 1929.

[11] In England perhaps three hundred bills of general character will be brought to Parliament in a year.

[12] 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.

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.[13] The cost of printing all of these legislative proposals is by no means insignificant. Moreover, public expense is further augmented by the necessity of maintaining sizable staffs of clerks to keep track of this enormous number of bills and resolutions. Suggestions have been made concerning a reduction, but it is not an easy matter to devise rules which would not have the effect of closing the door to worthy measures while shutting out the flood of inconsequential bills.

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 [14] 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—several times the number brought into most foreign legislative bodies in an entire year. 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 the "grass roots" does, however, result in the preponderance of bills originating there. As soon as the clerks of the House or Senate get around to it, each bill is given a number—H.R. 755; S. 272, for example—showing its general precedence among the measures in that house, but this has little significance except as a means of identifying bills.

[13] In 1949, a total of 10,627 measures were introduced and of these 793 were passed. Of the latter number 32 were vetoed.

[14] 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 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 beyond a doubt what particular standing committee should receive it. Thus a bill to add an additional circuit court of appeals would naturally go to the Committee on Judiciary in either house; a proposal to reorganize the Army would be referred to the Armed Services committees; while a measure designed to amend the acts relating to the Foreign Service of the United States would go to the Committee on Foreign Relations in the Senate or the Committee on Foreign Affairs in the House of Representatives. 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 in 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 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. A Speaker who referred a bill relating to railroads to the Committee on Banking and Currency because of the known sympathy of that committee for his point of view would, to say the least, come in for a barrage of criticism. In the Senate the reference to a committee is even more automatic than in the case of the House.

Printing After the bill has been referred to a standing committee, it is ordered printed, irrespective of whether it has any merit or substantial support. Copies are furnished to the members of the committee and to Senators and Representatives and may usually be obtained by interested citizens. Needless to say, the printing of thousands of bills every year is a costly affair, which has generated some criticism. State legislatures sometimes order printed only those bills which a committee deems worthy of serious attention or even decides to report favorably. Congress might save many thousands of dollars annually by adopting a similar practice, but there has been little disposition to make the change. Inasmuch as the standing committees dismiss the majority of bills referred to them with little or no attention, the failure to print in these instances might not be considered very serious. Nevertheless, it is difficult for members to determine what is important and

what is lacking in significance without having printed copies. Moreover, it is alleged that pressure groups oppose a change of this character because it would make it more difficult to carry on their work of propaganda both among members of Congress and the general public. At it is now, the government prints their bills at public expense, whereas otherwise they might have to bear the cost of printing themselves if they wanted to go far in campaigning for the proposal.

Committee Consideration The standing committees may find themselves with hundreds of bills referred or they may have only a few 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 has heavy tasks to perform—the Committee on Appropriations for example—it may find it convenient to subdivide into smaller groups for the actual work of examining what has been assigned to it.[15] 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. Since the sharp cut in the number of standing committees in 1947, there has been a proliferation of these subcommittees, with more than one hundred in the House of Representatives alone.

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. Some of the most important committees schedule regular weekly meetings, but others assemble at the call of the chairman. Even the less burdened are permitted a modest amount of money for clerical hire, while the ones which handle the bulk of the bills have numerous clerks, stenographers, and messengers. Under the Legislative Reorganization Act of 1946 each standing committee is provided with a research staff to assist it in studying the bills referred to it. Inasmuch as the formal sessions of the Senate and the House of Representatives are held in the afternoon, the committees do most of their work in the morning. It may be added that committees are not ordinarily supposed to meet while their respective houses are in session unless they receive special permission.

The Mortality Rate After the committees have sorted out the bills which are deemed worthy of consideration, they file away the 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. At first glance it seems shocking that six or seven bills out of ten never find their way out of the committee stage; certainly it would appear that more bills than that are meritorious. It has been proposed that

[15] Each subcommittee ordinarily has five members.

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. There is so much difference, however, between the state legislatures and Congress that the argument loses the undoubted force which it has in the state sphere. State legislatures may have a plethora of bills, but there is nothing like the congestion associated with Congress. To require a report on every bill, regardless of its worth, would constitute an additional drain on the time and energies of an already overburdened Congress. That is not to say that every committee takes its responsibility as seriously as it might and that every deserving bill gets reported out under the present setup. It is well known that some committees are much more efficient than others and that stubborn committees will at times hold up for months or even indefinitely a bill which has general support. However, those weaknesses probably do not afford an adequate basis for a drastic rule-revision requiring that every bill be reported on within a specified time by the committee to which it was referred.

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 recently spent more than three months on a single tax bill.[16] 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. In such cases detailed investigation has been made before the bill was drafted; hence there is no point in repeating what has already been done. The committee may distrust the conclusions 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 research 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 for a committee to ask for the assistance of specialists in the administrative

[16] 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.

departments. In drafting a new tax bill the Committee on Ways and Means of the House and the Finance Committee of the Senate almost invariably call in the experts of the Treasury Department to aid them in computing how much a certain tax would yield and to forecast what the general effect of a given tax would be on the economic structure of the country.

Adequacy of Committee Information 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. Accurate information is not available on every point that arises in connection with a bill. More than that, the committee members have many other functions to attend to in addition to their service on a committee. Under the circumstances it is perhaps not strange that committee consideration is not always all that it might be. The very number of bills which some of the committees struggle with makes careful scrutiny of details almost out of the question. The recent provision for research staffs has already added substantially to the effectiveness of committees and should be even more significant as time passes.

Public Hearings During recent years it has increasingly been the practice to hold public hearings on bills around which much general interest centers. At any one time it is probable that several committees are holding public hearings on pending legislation—sometimes as many as a dozen or so such hearings may be going on during a single morning. 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 often they are moved to the caucus room or some other more commodious place because of the public interest in them. A visitor will not be impressed by every speaker, for it is too much to expect that ranting and emotional appeals will not be common among personally involved and none too objective witnesses. Nevertheless, many of those who testify are quite familiar with the subject and able to speak with enough authority about the effect of legislation that they contribute appreciably to the understanding of the committee members.

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. 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 a large table; a conversational tone is used; and the

spectators, who are usually seriously interested rather than merely sight-seeing, 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. Both speakers and members usually behave with due decorum and extend the appropriate courtesy to the other. Nevertheless, occasionally a witness or a committee member will allow his emotions to get out of control. In the summer of 1941 one Representative went so far as to "punch a witness's jaw" because he alleged that he had been called "an offensive name." The Representative was apparently so excited himself that he later remarked: "I swung at him. I don't even know whether I hit him or not." [17] During this hearing the committee members were badgering the witness with extraneous questions that implied that the newspaper, *PM*, for which he worked was a "Communist paper." [18]

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. In writing to Chairman Doughton of the Committee of Ways and Means on July 31, 1941, President Roosevelt recalled that Mr. Doughton and Jere Cooper had discussed with him the "problem of the excess profits tax." [19] He then proceeded:

> There is one other subject which I did not have a chance to talk with you about. It relates to lowering the exemptions in the lower brackets. I know that very few tax experts agree with me but I still think that some way ought to be found by which the exemption of a single person should be reduced to $750. . . . Further, I am convinced that the overwhelming majority of our citizens want to contribute something directly to our defense and that most of them would rather do it with their eyes open than do it through a general sales tax. . . .

Administrative Pressure Executives of administrative agencies will ask to be heard in person or submit elaborate statements of their reason for requesting a favorable action from the committee on a certain bill. Even after the requests of administrative heads for appropriations have been turned down by the Bureau of the Budget, they sometimes expend great energy in persuading the committees of Congress to accede to their desires.

Pressure Groups Representatives of pressure groups also manage to make their influence felt whether public hearings are held or not.[20] Some of the most powerful are able to get themselves invited to the private hearings of

[17] See the *New York Times*, August 2, 1941. Representative Newt V. Mills of Louisiana and George Reedy were involved.

[18] *Ibid.*

[19] The full text of this most interesting letter together with the reply of Mr. Doughton is to be found in the *New York Times*, August 3, 1941.

[20] For a more detailed discussion of the role of pressure groups, see Chap. 13.

the committees. No one can doubt the influence which agents of the farm lobby have in connection with the deliberations of the Committees on Agriculture of both houses. Bankers may impress the Committees on Banking and Currency; organized labor leaders may have much to do with the decisions of the Committees on Labor, etc. 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 frequently 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. Naturally, much of the most effective work of pressure agencies is done while bills are in the committee stage.

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. No minutes are kept of these proceedings—as is done in some countries so that the members of the legislative body can inform themselves as to what transpired.[21] Congressman Robert Luce characterizes these executive sessions as "the most interesting, important, and useful part of 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." [22] 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 a stubborn committee will pigeonhole a bill which has generous 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. For many years it has been particularly vital and important to the House of Representatives to find a remedy for this situation. One of the achievements of the "revolution" of 1910–1911 was a rule permitting a majority of the Representatives to force a committee to

[21] In France committees of the National Assembly, for example, keep such records which are deposited in a central office for the examination of any deputy.

[22] See his *Congress—An Explanation*, Harvard University Press, Cambridge, Mass., 1926, p. 12.

surrender a bill within fifteen days provided the committee had already had the bill that long a time. This modification proved less useful than its proponents had imagined, for it was difficult to secure the support of as many as half of the Representatives for such a purpose. In 1931, attention was given the matter again and the requirement to discharge a committee was made less difficult by substituting one third for one half of the Representatives. Thus under the 1931 rule 145, rather than 218, of the members of the House of Representatives could compel a committee to surrender a bill. Even this device proved rather complicated in practice—out of thirty-one attempts to invoke it during 1933–1934 only six resulted in securing the necessary 145 signatures and in only two cases was a bill finally wrested from a committee. Nevertheless, the Democratic leaders feared the new rule and in 1935, restored the old requirement of one half, or 218 of the members. Consequently at present it is not impossible but certainly very difficult to discharge a committee. Sometimes a bill can be rescued by having it moved from a hostile committee to one which is favorably disposed, but this, too, is not at all easy because it requires a majority vote.[23] In general, if a committee is not willing to give up a bill, it reposes peacefully and indefinitely in the pigeonholes. But one step forward was taken temporarily in a related field. In 1949, the rules were modified so that if the Committee on Rules refused to bring a bill before the House, the chairman of the standing committee which had considered the bill might move after twenty-one calendar days that the measure go to the floor for action. If this received a majority vote the bill then went to the House for decision. But in 1951 this was repealed.

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 inadequate provision is made for leadership in Congress has necessitated an informal arrangement under which some semblance of a legislative program can 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 party caucus or conference 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

[23] On the use of this device, see J. P. Chamberlain, *Legislative Processes; National and State*, D. Appleton-Century Company, New York, 1936, pp. 129 *ff.*

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 distinctly 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 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, though this may be left largely in the hands of the policy committee in the case of the Senate. 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 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.[24] 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 cannot follow this course at all frequently unless he is willing to be 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, although it does not at present seem to be in the limelight. Many observers have felt that it is extremely objectionable to compel a congressman to surrender his own opinions and convictions and to accept the contrary views of the caucus. On the other hand, practical considerations demand at least a partial program, else adjournment arrive without anything accomplished. Inasmuch as little or 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.

[24] The Republicans pride themselves on giving reasonable freedom. The Democrats require two-thirds vote of a majority of party members to make caucus action binding on all members of the party.

Significance of the Caucus System The caucus system [25] may seem to encourage back-room tactics—indeed it is frequently referred to as "invisible government" because, although not operating in the public eye, it actually determines a large measure of legislative action. Thus, if the majority caucus decides to support a certain bill, the committee to which the bill has been referred is almost bound to act accordingly. There is little or no likelihood that an approved bill will be ignored by the committee or that changes not in keeping with caucus action will be made in its contents. On the other hand, if the majority caucus opposes a bill, a standing committee may refuse to report on the bill at all. Furthermore, it will be virtually impossible to discharge the committee from consideration of the bill because the caucus stand would render it impossible to secure the signatures of 218 Representatives, say, in the House. If a bill is one which is considered important by the majority caucus, almost every obstacle will be removed from its path. Calendars may be terribly crowded and the end of a session near, but the Committee on Rules will bring in a special order of business which will make it possible to consider the measure. If there is any possibility of emasculatory amendments and embarrassing debate, the Committee on Rules at the instigation of the majority caucus may bring in a special rule which will make amendments impossible and literally shut off debate. The floor leader and the whips of the majority party will be constantly at work seeing that every step is safely taken, that party members are in their places when a vote is taken, that the opposition party is not given the opportunity to "put something over." Consequently it is impossible to understand the operation of the lawmaking process without taking into account the very important role assumed by the caucus of the majority party. Of course the effectiveness of the minority party will also depend in large measure on the success which its caucus has had in welding the opposition members into a cohesive, hardhitting aggregation.

Role of the Caucus in the Senate It should be pointed out 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 some years 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.[26] That is not to say that the policy committee, majority floor leader, the steering committee, and the party whips will not labor energetically to carry a bill which they adjudge to be in the best interests of the party; but no official caucus action is taken which would bind the party Senators in voting. Considering the irritation manifested by the Senators when any attempt is

[25] The term "caucus" has such an unpleasant connotation in the popular mind that the term "conference" has now been substituted in some quarters. The Republicans use the term "party conference" for their caucus.

[26] 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.

made to curb their independence, this reduced role of the caucus in the Senate is not particularly surprising.

Steering Committees The chief instrument which a party caucus or conference uses in carrying out its functions after a policy decision has been made by the caucus or the party policy committee 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 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,[27] 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,[28] 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

[27] Senator Alben W. Barkley, the majority floor leader in the Senate in 1941, was actually chosen by President F. 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.

[28] For example, in the summer of 1941 the majority steering committee in the Senate filled the committee vacancies occasioned by the death of Senator Harrison and the elevation of Senator Byrnes to the Supreme Court bench.

of the steering committee, which is the great super-committee of this House, with power to kill and to make alive.[29]

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 determine the order of business. The House of Representatives maintains three of these for different types 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,[30] 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 nearly 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 adherence, especially in the House of Representatives which is more congested than the Senate.[31] In order to select those bills which are deemed especially vital from the mass, the majority steering committee and the Speaker of the House or the majority leader in the Senate 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 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, since there is no possibility of voting on all of them. The steering committee does not work in the limelight

[29] 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.

[30] 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.

[31] The Senate does not like to give special precedence to certain bills and follows the regular order much more faithfully than the House.

and consequently may act irresponsibly at times, but it does assume a measure of responsibility because the party which it represents will be blamed if legislation on current problems is not forthcoming.

Committee Reporting When the time fixed for bringing the favored 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 deals with most business in formal session.[32] 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 [33]—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 on Rules has brought in a special order, or "gag rule," calling for an immediate vote which has the effect of prohibiting an expression of opinion from the members. During the 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.[34] This means that debate in the lower house is pointed, spirited, and limited to a reasonably short aggregate period, during which numerous Representatives participate.

[32] The Senate continues to use the committee of the whole in debating treaties

[33] 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.

[34] Extensions of time for five minutes are not exceptional, but they are not requested by most speakers.

Debate in the Senate There are few points on which the Senators are more sensitive than on freedom of debate. Although they may be bored to death by the interminable speeches of colleagues, they are loath 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." [35] Senators are not supposed to speak more than twice on the same bill during a single day, but this constitutes no very serious limitation. On rare occasions 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 and slightly modified in 1949, 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 the revised 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 sixty-four 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.[36] Nineteen attempts have been made to invoke the closure rule since 1917, but only four have been successful. Since 1927 the rule has never been successfully applied.

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 daring 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.[37] Huey Long broke all records except one in filibustering against the N.I.R.A. in the first Congress after the "Lame Duck" Amendment went into effect. In 1938, the southern Democrats carried on a successful filibuster against the antilynching bill, while in 1941, Senator Burton

[35] 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.

[36] Of course, by no means all of the Senators, perhaps no large number, would avail themselves of the time permitted

[37] For a recent study of filibustering, see F. L. Burdette, *Filibustering in the Senate,* Princeton University Press, Princeton, 1939.

K. Wheeler used what amounted to such tactics during the debate on the lend-lease bill, although he finally permitted a vote to be taken after days of delay. During the period since World War II various filibusters have prevented action on civil rights legislation.

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 back 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 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 who favor a measure file past tellers to be counted and those who are opposed do likewise. 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 usually 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[38] 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 various state legislatures and even a few foreign legislatures now employ.[39] These are reasonably foolproof and cut the roll call to a mere fraction of the time now required. Moreover, they are so efficient that they afford a means of requesting the

[38] This includes roll calls to ascertain quorums as well as formal voting. A monumental work on roll calls in Congress is being prepared under the auspices of the Columbia University Press under the title *The Atlas of Congressional Roll-Calls; An Analysis of Yea-and-Nay Votes.* It is expected that forty-one volumes will eventually appear, the first of which came out in 1944. These will cover the period 1777 to 1932 and analyze some 54,000 roll calls in both the House of Representatives and the Senate.

[39] This is recommended by Senator Kefauver in E. Kefauver and J. Levin, *A Twentieth Century Congress,* Duell, Sloan and Pearce, New York, 1947, Chap. 5.

floor, summoning a page, answering present to roll calls to ascertain a quorum, and so forth. 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 some 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 to the Senators or the Representatives to amend from the floor. The techniques which are employed in this conection have been dealt with in an earlier chapter; [40] 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, five or more managers to serve on a conference committee. These conferees may be given instructions by their respective houses,[41] although there is a 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

[40] See Chap. 13.

[41] 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 more experienced Senators.

of the situation are such that the two houses will reluctantly approve the compromise, despite a noticeable lack of enthusiasm. The House has at times been especially loath to accept unpalatable compromises because of the oft-asserted greater skill of the senatorial conferees in getting their way. Conference committees are currently used in a tenth or more of all the bills and resolutions adopted by Congress and are a feature of virtually all important pieces of legislation.[42] They have been criticized because of their secret negotiations, the advantage they have in the rule that their recommendations be accepted or rejected in whole, and the supposed influence which pressure groups have on their decisions. Nevertheless, it would be exceedingly difficult to get along without them unless Congress were willing to set up a system of joint committees, such as Massachusetts has had in her state legislature for a number of years.[43] Joint committees would seem to offer a good many advantages if Congress could be persuaded to adopt them.

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 shortly after they have passed both houses.[44] There is little purpose in repeating what has already been dealt with in connection with the powers and duties of the chief executive, but it is well to refresh one's memory on this stage.[45] If the President vetoes the bill,[46] it, of course, must return to Congress and receive the support of two thirds of both houses before it can become law. If the 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 the bill itself has specified 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*.[47] 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

[42] To illustrate the power which conference committees have and to give an example of what is sometimes their procedure, the defense highway bill of 1941 affords an excellent and not isolated case. On June 16 the Senate passed the bill with provisions totaling $250,000,000. The House on July 21 increased the appropriation to $287,000,000. When the bill reached the conference committee's hands it was raised to $320,000,000. President Roosevelt vetoed the bill indicating that he thought it had been made a pork-barrel affair. See *New York Times*, August 5, 1941.

[43] For a discussion of joint committees, see Chap. 44.

[44] A total of 793 of these bills went to the President in 1949.

[45] See Chap. 17.

[46] Vetoes totalled 32 in 1949.

[47] 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.

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 sessions. Moreover, members of Congress were until 1950 permitted to revise statements which they made on the floor before publication; in May, 1950 an agreement was reached by the dominant party leaders abolishing such a privilege, at least in the Senate. 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.[48] Nevertheless, the *Record* affords valuable assistance to a serious student of the legislative process. Since 1946 it has included a summary of business transacted, designated the "Daily Digest." If the *Record,* with its more than twenty thousand double-column pages every year,[49] 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 they contain so little meat on their bones that they give only a fragmentary notion of what has transpired. 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 transactions are unfortunately not so easily obtained as these three publications, but they are frequently more important as sources of information than the *Record.* They are published as *House or Senate Documents* or *Reports* and after a few years they are sometimes almost unobtainable even in reference libraries.[50]

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[48] 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.

[49] In 1949, there were 15,386 pages of debates plus 7180 pages of "Remarks extended" in an appendix.

[50] Some reports of committees cannot be found even in the libraries of large cities or great universities.

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22. Toward a More Effective Congress

During the decade preceding 1945 there was a rising tide of criticism of the system under which the Congress of the United States operated. Far-reaching changes had been brought about in the office of the President and in the administrative departments; indeed in the case of the former such spectacular modifications had been made that it was commonplace to refer to the "new Presidency." Under Franklin D. Roosevelt a sizeable force of "little Presidents," "brain trusters," consultants, research personnel, planners, budgetary and administrative management technicians, and secretaries had been recruited to assist the President in the discharge of his duties, which had become increasingly extensive and complicated. But the organization of Congress remained very much the same as it had been several decades earlier, when instead of voting the expenditure of many billions of dollars the annual budget ran to a mere $1,000,000,000 and when the general task of law-making was a far simpler matter than during the great depression and the war years. It was alleged by many critics that Congress lagged far behind the President in competence to deal with public business, that the difficult relations characterizing the legislative and executive branches were to be explained in large measure by the inferiority complex which Congressmen had developed as a result of the more aggressive and alert Presidential staff, and that the long delay and frequently inadequate results of congressional action were to some extent at least to be accounted for by the antiquated system under which Congress operated. To those who regarded the legislative branch as the bulwark of democracy, representing the people more intimately than any other branch and responsible for fundamental policy decisions, the deteriorating reputation of Congress was a source of much concern. Nevertheless, despite the acute situation, the members of Congress for some years seemed to display little initiative in correcting the shortcomings. Perhaps the very inferiority complex which had resulted from the savage criticisms hurled at their branch in contrast to the praise often given to the executive branch created a state of paralysis; certainly it led to extreme sensitiveness.

Proposed Changes In the meantime various organized groups interested themselves in the problem. The National Planning Association drafted a long list of specific changes which it recommended as necessary to restore the effectiveness of Congress. Among other things it suggested approximately fifteen

standing committees in each house, a majority and minority policy committee in each house, a more effective closure rule in the Senate, the discontinuance of riders, the modification of the seniority rule for committee chairmanships, and the formal questioning of executive department heads before each of the whole houses.[1] The American Political Science Association, made up of university instructors interested in government together with various others concerned with public affairs, gave its attention to the matter by creating a special committee to study the entire situation and bring forth recommendations as to promising changes. The Committee on Congress of the American Political Science Association after a 4-year study unanimously recommended ten changes, including the following: (1) legislative surveillance of administrative action should be entrusted primarily to the subcommittees of the House Committee on Appropriations; (2) representatives of all interest groups appearing before congressional committees should be required to register; (3) an automatic time limit of perhaps six years should apply to standing committee chairmanships or, as an alternative, the Committee on Committees of the majority party should choose the chairmen at the beginning of each Congress; and (4) the annual salaries of members of Congress should be fixed at $15,000.[2]

The Joint Committee on the Organization of Congress In 1944, after rather extensive publicity had been given to the findings of the National Planning Association and the American Political Science Association's Committee on Congress, a Special Committee on Executive Agencies of the House of Representatives took cognizance of the need by recommending that Congress take action to "modernize" itself. Shortly thereafter a Joint Committee on the Organization of Congress was authorized by the Senate and the House of Representatives under the chairmanship of Senator Robert LaFollette, a well-known Senator from Wisconsin, and the vice-chairmanship of Representative A. S. Monroney from Oklahoma who had exhibited interest in the problem.

Proposed Changes There was much speculation as to the significance of the setting up of the Joint Committee on the Organization of Congress, with divided opinion as to whether any practical result of consequence could be expected. The committee went about its assignment in a serious manner, selecting a competent research staff under the direction of Dr. George Galloway, and displaying genuine interest in the possible changes which might be made. Occasionally it proved difficult to find a time when the committee could meet, and there were various pressures which doubtless were felt to some extent by

[1] The recommendations of the National Planning Association may be found in summarized form in a pamphlet compiled by W. R. Tansill, a member of the staff of the Legislative Reference Service of the Library of Congress, under the title "The Organization of Congress," published by the Government Printing Office in 1945. The complete report will be found in Robert Heller, *Strengthening the Congress; A Progress Report*, National Planning Association, Washington, 1946.

[2] For the full report, see George B. Galloway and others, *The Reorganization of Congress; A Report of the Committee on Congress of the American Political Science Association*, Public Affairs Press, Washington, 1945.

the members. In its preliminary sessions the committee decided to carry on an investigation covering the following aspects of the problem: (1) the staffing of Congress; (2) committee structure and operation; (3) relations between the House and Senate; (4) liaison between Congress and the Executive; (5) legislative oversight of administration; (6) relations with electorate; (7) relations with special-interest groups; (8) congestion of legislative business; (9) the administrative organization of Congress; and (10) compensation of congressional personnel.[3] Staff studies were subsequently prepared and more than thirty public hearings were held two or three times each week during the period March 13 to June 29, 1945.[4] Finally, early in 1946, the Joint Committee made its report. Much to the disappointment of many students of government, the committee did not feel that it was feasible for it to make recommendations regarding several of the thorniest problems, such as the system of selecting chairmen of standing committees on the basis of seniority, the filibuster technique in the Senate, and the almost autocratic role of the Committee on Rules in the House of Representatives. However, it is probably fair to state that most informed persons were distinctly impressed by the courage of the committee in tackling what everyone regarded as a task of great difficulty.

The Joint Committee's Report The scope of the recommendations made by the committee was broad and on the whole the proposals represented rather less in the way of compromise than many expected.[5] A detailed consideration of the recommendations is hardly feasible, but it may be of interest to note the most important items. Perhaps the most sensational proposal as far as the general public was concerned involved a drastic reduction in the number of standing committees: in the Senate from thirty-three to sixteen (or possibly fourteen) and in the House of Representatives from forty-eight to eighteen. In order to meet the problem of poorly attended committee sessions alleged to be the result of assignment of a single member to several committees, it was recommended that each member be limited to one standing committee. Inasmuch as members complained that they were unable to give necessary attention to law-making because their constituents made such heavy demands on their time in doing favors and errands of one kind and another in Washington, it was proposed that each member of Congress be provided an administrative aide to be paid a salary of $8,000 to relieve him of non-legislative duties.

Since few of the committees had the facilities for carrying on anything like adequate research relating to the measures submitted to them, the Joint Committee recommended that each standing committee be provided a staff of four

[3] See U. S. Congress, Joint Committee on the Organization of Congress, *Organization of the Congress; First Progress Report*, Government Printing Office, Washington, 1945.

[4] These hearings are worth consulting. See *ibid.*, *The Organization of Congress; Summary of Hearings before the Committee Pursuant to H. Con. Res. 18*, Government Printing Office, Washington, 1945.

[5] For the complete report, see *ibid.*, *Organization of the Congress*, Government Printing Office, Washington, 1946.

research experts who would be exempt from discharge for political reasons. To provide additional technical services to the committees, the Legislative Reference Service of the Library of Congress and the Office of Legislative Counsel (for bill-drafting) were to receive more adequate financial support. Committees, instead of delaying reports for long periods, were to be instructed to report all bills favored by them promptly and with a statement giving a digest of the bill, reasons for action taken, the national interest involved, and the amount of money which would be required. Legislative riders on appropriation bills were to be prohibited; executive hearings on appropriation bills were to be abandoned; conference committees would be limited to differences in fact between the two Houses.

Among the other recommendations of the Joint Committee was one requiring pressure groups to register the names of their agents, the scope of their interests, and the amounts spent for various purposes, with the secretary of the Senate and/or the clerk of the House of Representatives. Federal courts were to receive authorization to settle claims made against the government, thus relieving Congress of the burden of many claims bills. The District of Columbia (the national capital) would be given self-rule and Congress would consequently no longer have to act as its council. At an early stage in each annual session the two Houses were to adopt a budget which would represent a balance of expenditures and revenues. The General Accounting Office was to carry on a considerably expanded survey of the government agencies so that Congress would be better informed as to what was actually going on. An Office of Congressional Personnel was proposed to provide a modern personnel system for all service employees of the Capitol. The *Congressional Record* was to be expanded in scope so as to furnish more information as to the entire process of lawmaking. Majority and minority policy committees were recommended to furnish more adequate leadership in Congress.

The Congressional Reorganization Act of 1946

Congressional Action in 1946 The report of the Joint Committee received wide publicity and in general evoked favorable comments from the press and from students of government. But it seemed to cause consternation among certain members of Congress who either held or expected to hold committee chairmanships and who saw their added prestige and influence threatened as a result of the reduction in the number of standing committees. The opposition was successful in holding off a vote for a time and it was feared in many quarters that actual passage was doubtful. However, the expert handling of the bill by Senator LaFollette and Representative Monroney, together with the strong sentiment prevailing outside of congressional halls, eventually led to the passage of the Reorganization Act of 1946 which embodied a major part though not all of the recommendations of the Joint Committee on the Organ-

ization of Congress.[6] With the enactment accomplished by a Democratic Congress and a Republican Senate and House elected in November, 1946, there still seemed a possibility that the reorganization might fail to be implemented. But despite a certain amount of muttering by some of the newly elected members and their older colleagues, the provisions of the Act of 1946 were followed at least in form in organizing both Houses of Congress in 1947.

Provisions of the Reorganization Act of 1946 As passed the Reorganization Act reduced the number of standing committees in the Senate from thirty-three to fifteen and in the House of Representatives from forty-eight to eighteen. It authorized an administrative aide for each Congressman and provided research staffs for the standing committees. Committee assignments of members were limited, but not to the extent of the single assignment recommended by the Joint Committee. The financial requirements were in general accepted, but Congress balked at establishing a modern personnel system for Capitol employees. The proposals to give the District of Columbia self-government and to make federal courts responsible for disposal of claims against the government also were shelved for the time being. The great problems of seniority and filibustering were left untouched. Some regulation was provided for pressure groups.[7] All in all, few were disposed to deny that significant progress had been made, though much remained to be done. A score of 50 per cent. might seem justified on the basis of what was achieved in relation to the entire problem of modernizing Congressional organization.

Actual Accomplishments under the Act of 1946 Several years have now elapsed since the Reorganization Act of 1946 became effective and it therefore seems feasible to undertake at least a tentative though perhaps not a definitive evaluation of the results accomplished. The number of standing committees in both Houses has been sharply reduced, with the result that there is a more equal distribution of work. Under the old system committees such as Appropriations and Ways and Means in the House and Foreign Relations and Finance in the Senate were heavily burdened, while certain others had little or nothing to do. It would not be fair to say that all standing committees at present have the same amount of work, but there is certainly far more equality of load. Moreover, under the present set-up the standing committee systems in the two Houses are reasonably parallel, which, of course, has an advantage. While there has been some pressure to set up special committees to take over certain functions and thus nullify the reconstruction of the standing committee system as provided under the Act of 1946, this has been successfully resisted for the most part. More serious is the fact that sub-com-

[6] For an account of the work leading to the Act of 1946 by the chairman of the Joint Committee of Congress, see R. M. LaFollette, Jr, "Systematizing Congressional Control," *American Political Science Review*, Vol. XLI, pp. 58–68, February, 1947.

[7] See p. 244 for a more detailed discussion of the provisions in regard to pressure groups. For an evaluation of the provisions on the basis of the first year of its operation, see Belle Zeller, "The Federal Regulation of Lobbying Act," *American Political Science Review*, Vol. XLII, pp. 239 271, April, 1948.

mittees of the standing committees have been spectacularly increased in number—there were recently 146 of them—and there has been some disposition to accord to the subcommittees almost as much autonomy as the former standing committees enjoyed. No one can circulate among the members of Congress without hearing frequent and sharp criticism at this point, though it may be suspected that some of the complaint comes from those Congressmen who never looked with enthusiasm on the change and who remember that they might have held chairmanships of committees under the earlier arrangement.

Perhaps the most valuable achievement of the Act of 1946 has been the improvement in Congressional research facilities. The situation existing prior to 1946 was shocking in this respect. Some of the committees, it must be admitted, have abused the provisions made for expert research staff by employing journalist hacks and political hangers-on. The events reported in 1949, under the organization of the new Democratically-controlled Congress indicate that the provision relative to discharge of research staff members for political reasons is not being observed in every case. Nevertheless, it can hardly be denied that some of the committees have done an admirable job in recruiting research staffs; the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs may be mentioned among others as outstanding examples. The Legislative Reference Service of the Library of Congress has labored very diligently to provide expert assistance to Congress and has achieved substantial results, though it has been denied adequate appropriations and received somewhat of a slap in the face when the House of Representatives voted to set up an Office of Co-ordinator of Information.

The regulations imposed on pressure groups are rather innocuous, and there is no evidence that pressure activities have been diminished by the Act of 1946. Nevertheless, the mere registration of agents and the reporting of expenditures serves a useful purpose. Some improvement is to be noted in the bad practice of attaching legislative riders to appropriation measures and in the character of the *Congressional Record*. On the other hand, the financial provisions of the Reorganization Act have been largely ignored. The appropriations for the General Accounting Office have never been such as to permit the performance of the work specified in keeping Congress constantly informed as to the efforts of the many administrative agencies. While Congress went through the motions of establishing a maximum sum to be appropriated during the years 1947–48, the two Houses failed to agree on the amount and the practical result was hardly perceptible. Despite the vigorous opposition of certain members who maintained that the financial provisions mentioned above should be considered among the most important parts of the Reorganization Act and that it could not be properly claimed that they had failed when they had never been put into effect, the majority leaders of the Senate and House in 1949, agreed upon a repeal of this section. Representative Monroney, the co-sponsor of the Act of 1946, gave Congress a rating of 50 per cent. in carry-

ing out the provisions of the Reorganization Act during the first year; a slightly higher rating might possibly be justified after additional experience, but in general that evaluation probably holds true for the entire Eightieth Congress.[8]

What Remains to Be Done

If the Act of 1946 may be said to have covered about 50 per cent. of the field and the actual carrying-out rate during 1947–49 has been 50 per cent., that means that a net achievement of approximately 25 per cent. has been made. Such figures are of course the merest estimates, but the fact remains that much remains to be done to bring the Congress of the United States to a point where it can handle its enormous responsibilities with maximum effectiveness.

Limitations on the Power of the Rules Committee One additional problem has been dealt with during the first days of 1949: the autocratic power of the Committee of Rules of the House of Representatives. Since the "Revolution of 1910–11," when the Speaker's powers were drastically clipped, the Committee on Rules has played a large role in determining House business. Recently it has essayed a more autocratic role than previously and on a number of occasions has prevented standing committees from bringing their measures to a vote. In organizing the House at the beginning of 1949 the rules were modified so that if the Rules Committee refused to give a bill right of way, the chairman of the standing committee which had original jurisdiction might move after twenty-one calendar days that the measure go to the floor for action. The House then determined by majority vote whether to pass or kill the bill as reported by the committee. Various members of the House of Representatives soon began to regret this reduction in the power of the Rules Committee and in 1950 an attempt was made to restore the original authority. With the chief executive strongly opposed to such a change, the reactionaries were unsuccessful for the time being but in early 1951 the new Congress voted the Rules Committee its old power.

The Filibuster The reaction on the part of the public and the President to the technique of filibustering in the Senate has become increasingly unfavorable. Key legislation which would undoubtedly have passed had it come to a vote has been held up by the action of a minority—sometimes a very small minority—in the Senate through talking the opposed measure to death (the filibuster).[9]

[8] Several evaluations of the reorganization brought about by the Act of 1946 have now appeared. Senator Estes Kefauver contributed a brief article entitled "Did We Modernize Congress," to the *National Municipal Review*, Vol. XXXVI, pp. 552–557, November, 1947, after the act had operated for less than a year. A more formal evaluation has been made by Senator Elbert D. Thomas. See his "How Congress Functions under the Reorganization Act," *American Political Science Review*, Vol. XLIII, pp. 1179–1188, December, 1949.

[9] Professor Rogers, however, points out that: "It is a remarkable fact that every proposal defeated by a filibuster has been unregretted by the country and rarely readvocated by its

The Closure Rule as Amended in 1949 Having taken a definite stand on the Civil Rights Bill and realizing that the chances of passing this bill were not good as long as the filibuster is permitted, the Democratic leaders stated it to be their intention during 1949 to face one of the most important problems of the Congress of the United States. It was hoped that it would be possible to adopt a closure rule under which a simple majority of the Senate would be able to bring debate to a close and obtain a vote on a pending measure. But after a bitter fight in which eight Republican Senators joined fifteen Democratic Senators from the South, the efforts of the majority leaders, which carried the support of President Truman, proved unavailing. The rule finally adopted provided that debate could be shut off after a stated interval by a vote of two-thirds of the sitting members except that any future attempt to amend the closure provision would be immune from the application of the rule. The net effect of this was variously interpreted, but it is the opinion of many well informed students that it did little or nothing to ameliorate the situation and indeed quite possibly has made it worse.[10]

The Seniority System Another problem of the highest significance remains for the future to deal with, though there is more awareness of its importance at present than ever before. This involves the curious system of giving the chairmanships of the standing committees in both houses of Congress to those who have been there the longest. Irrespective of ability, reputation, leadership in the party, or any other factor, these important positions have been bestowed on those who can be called Nestors in Congress. During recent years the system has been more bitterly attacked in the press and elsewhere than ever before, perhaps because several of the most influential chairmen have behaved in a highly sensational if not a scandalous fashion, making not only themselves but their party somewhat ridiculous by their fantastic utterances. Even in those cases where it is clearly absurd to place Senators in chairmanships, seniority governs. For example, in 1941, a vacancy occurred in the chairmanship of the Committee on Military Affairs as a result of the death of Senator Sheppard. Seniority ordained that Senator Robert R. Reynolds of North Carolina should take the position, despite the fact that he openly opposed the national defense program of the government and was the single member of that committee who voted against the extension of the period of

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supporters." But he adds, "Such minority omniscience . . . must be more accidental than wise, and the danger is always present . . . that the interests of the country will be adversely affected." See his *The American Senate*, Alfred A. Knopf, New York, 1926, pp. 168–169. On this same point Professor Corwin says, "Nor, unfortunately is the question simply whether the filibuster has killed good measures, but also whether it had led to the enactment of bad ones. The indefensible concessions which a small bloc of so-called 'Silver Senators' have been able to wrest from Congress from time to time during the past sixty years is conclusive testimony on that point." See his *The President: Office and Powers*, New York University Press, New York, 1940, p. 291.

[10] Mr. Robert Heller of the National Planning Association believes that "it will be harder rather than easier to limit debate." See the *New York Times*, December 28, 1949

selectee service.[11] The *New York Times* may have been unduly wrought up by the elevation of Senator Reynolds, but its castigation of the seniority rule deserves attention: "The seniority system results not merely in putting at the heads of committees, with a determining voice in policy, men who may be opposed both to the policies of the Government in power and of the majority in Congress; it not only prevents the ablest and most highly regarded men in Congress from reaching the positions of major responsibility, but it tends to lower the average quality of the membership of Congress by discouraging able men from becoming candidates." [12] There are few who have much to say in defense of the seniority system, though there are doubtless many who for reasons best known to themselves continue to favor such an irrational arrangement. But the difficulty is a suitable substitute, and here there is great difference of opinion. The most obvious plans of having chairmen elected by the two Houses or by their fellow members on the committee are questioned because of alleged fears that an even more unfortunate situation growing out of political manipulation would result.[13] But if public opinion continues to develop at its present rate, it seems probable that a change will be made within the foreseeable future simply because of the feeling that no method of filling chairmanships could be worse than the present one.

A More Cohesive Organization There has been a great deal of severe criticism of the caucus system which characterizes certain legislative bodies and at one time was influential in Congress. Certainly such a system has had many weaknesses, but it offers at least one important advantage and that is the ability to get things done. One of the major problems in Congress during recent years has been the difficulty of carrying through a program. The President has presented many recommendations; political party platforms have promised various programs; individual congressmen have taken a vigorous stand in favor of certain bills. And yet when the work of the Congress is analyzed at the end of a year, there is widespread criticism that so little has been accomplished. The Eightieth Congress, which was controlled by the Republicans, was most severely castigated by President Truman and others as a "do-nothing Congress" at a time when the United States was confronted with numerous problems of first-rate importance which required legislative attention. Many observers explained the lack of results on the ground of the Democratic executive and the Republican Congress and this doubtless complicated the situation. Yet the Eighty-first Congress, which the Democrats controlled, seemed almost as unable to reach agreement as its predecessor.

[11] Senator Reynolds opposed the lend-lease bill, the repeal of the arms embargo, and almost everything else that looked toward strengthening the United States during the early years of World War II. The *New York Times*, July 29, 1941, characterized him thus: "In his years in Congress he has shown neither intellectual distinction nor ordinary good judgment."

[12] See July 29, 1941 issue.

[13] President Truman stated in 1950, that he did not look upon the seniority rule with favor, but none of the proposed substitutes seemed to impress him either. See the *New York Times*, February 15, 1950.

Actually the problem is one which goes deeper than mere party majorities. Dr. George B. Galloway, one of the leading authorities on legislative matters in the United States, has pointed out the bearing of the lack of a cohesive party organization in both houses of Congress on the seeming inability of recent Congresses to complete the business which confronts them.[14] In the old days the party caucuses in both houses of Congress, particularly the House of Representatives, drafted programs and managed to throw the united party strength back of these programs. But during recent years party organizations have deteriorated and though they still may be observed in both the House of Representatives and the Senate play a comparatively small role in getting business completed. Many matters do not even receive caucus attention these days, even in the House of Representatives where the caucus system has been stronger than in the Senate. In those instances where the caucus does attempt to prepare a party program, it is frequently difficult if not impossible to hold party members to the support of such measures. The result is that Southern Democrats join Northern Republicans and the so-called Democratic programs of the President and the Democratic National Convention fail to be put into effect. The weakness of the party machinery may not be a matter of great regret, but the net impact on the country is very serious indeed. In a Congress of 531 members some scheme of cohesive organization is essential if the necessary work is to be accomplished. But such a system does not now exist. One solution might be the adoption of the cabinet arrangement which characterizes Great Britain and most of the other democratic countries. However, it would not be easy to transplant such an arrangement to the United States. Perhaps the caucus system could be revamped, its worst aspects eliminated and added vitality infused. But something needs to be done if the American democracy is to continue strong.

Financial Integration The Reorganization Act of 1946 sought to bring about a more effective system of handling financial measures, but after several years of experience these provisions were inoperative. Opinion varied as to why little or no success had been achieved here—some maintained that Congress had actually made little attempt to carry out the financial changes. But many responsible citizens agree that something must be done to improve financial techniques used by Congress. A more or less carefully integrated proposed budget comes to Congress from the executive office of the President and then Congress proceeds in such a manner that there is insufficient relationship between taxes and expenditures. The difficulty is not so much that members of Congress do not realize the importance of an orderly financial system in these days of great pressure on the Treasury, but the system which they use does not encourage a co-ordinated financial plan. Under the present system numerous changes are made in the appropriations for specific purposes

[14] Dr. Galloway emphasized this point in the annual Shepard lecture at Ohio State University in 1950.

by committees and on the floor; yet it is difficult if not impossible for members to determine whether there is money to pay for these additions. Under the new functional or general-purpose budget first submitted to Congress in 1950, it is hoped that Congress may be able to improve its methods in this field. It is understood that certain commitments have been made by influential members of Congress and it will be interesting to see to what extent these are instrumental in improving the situation.[15]

Committee Procedure There has been an increasing amount of anxiety over the disposition of certain committees of Congress to ignore the constitutional rights of citizens. While the courts are bound by the provisions of the Constitution guaranteeing certain rights and privileges to the people, congressional committees at times conduct themselves in such a manner as to suggest a police-state. In this day and age of complex problems Congress has a difficult task of performing its constitutional duties and it is essential that congressional committees carry on various investigations in order that Congress may know how to proceed. But the fact that committee investigations are necessary does not justify practices which ignore the basic principles of a democratic government. When congressional committees adopt techniques commonly associated with the Gestapo or the Russian M.V.D., badger witnesses into impossible positions, treat them as if they were criminals without giving them an opportunity to defend themselves, and blast their reputations through irresponsible charges, it seems obvious that something is wrong. Of course, not all committees of Congress behave in such an irresponsible manner, but the record during recent years is not a reassuring one.

Responsible Behavior by Individual Congressmen In a group of more than five hundred persons it is too much to expect that everyone will be equally aware of their responsibility as Representatives and Senators of the United States. It is unsophisticated to expect that any rule or set of rules on the part of Congress will bring about the appropriate attitude on the part of every individual member. Nevertheless, the situation has deteriorated to such a point that Congress as a whole might well give attention to what can be done to improve the feeling of responsibility on the part of its members. During the days when the position of the United States was less important in international affairs, it was embarrassing to have Senators utter fantastic statements, but the damage resulting to the United States was not serious in most instances. But with the United States in a position of grave responsibility for what goes on in the world, it is impossible to ignore the conduct of Senators who abuse the hospitality of foreign countries and who because of their inflated ego make public charges which alienate foreign peoples.[16]

[15] Mr. Robert Heller of the National Planning Association has been very critical of the failure of Congress to make the financial provisions of the 1946 Act effective. See the *New York Times*, December 28, 1949.

[16] A small group of Senators traveling in Europe ostensibly to learn about conditions there, in 1949, caused much criticism in Sweden as a result of crude complaints which they made

Nor can one condone the immature conduct of Congressmen in dealing with their own countrymen, for there is an important relationship between such behavior and the distrust which large numbers of people display toward Congress. Judges may commit blunders at times, but in general they pay careful attention to the proprieties of judicial behavior. Presidents sometimes disappoint large numbers of citizens by their unwise utterances and unconventional behavior, but their reputation on the whole is good in this respect. Both judges and Presidents are regarded with greater respect and more confidence than the members of Congress. Individual congressmen often complain because their branch of the government does not receive its due, pointing to their very important constitutional responsibilities. They lose sight of the fact that no provisions in the Constitution can bestow the recognition which they want from the American people—such a position can only come from conduct on the part of congressmen which will inspire confidence in the people. When Senator X as a member of the Joint Committee on Atomic Energy charges the chairman of the Atomic Energy Commission with "gross mismanagement" and hearings of his committee reveal little or nothing to substantiate such charges, it is not to be wondered that many citizens lose confidence in the word of a Senator. Or when Senator Y sets out on a trip across the continent and pauses at intervals to fling charges at the State Department, maintaining that that department has 57 Communists and 205 "bad risks" on its staff—refusing at the same time to furnish names even on the floor of the Senate, it is difficult to believe that he is behaving responsibly when the Secretary of State categorically denies such allegations and the Loyalty Board records apparently do little to substantiate such charges. One concludes that this Senator is unable to get the limelight in a legitimate way and therefore indulges in such crackpot utterances to attract publicity.

While no formal rule is likely to control such unfortunate behavior on the part of congressmen, there does appear a probability that Congress could deal with such cases by various informal methods. As it is, these cases go more or less unheeded and Congress seems to follow the policy that it is within the province of any congressman to make a fool of himself if he pleases. With the general good name of Congress at stake, some effort might well be made to indicate that conduct unbecoming a congressman is not regarded with favor.

Cutting down Debate In a democratic government it is appropriate that adequate time should be permitted for debating public questions on the floors of the legislative branch. The brief sessions of legislative bodies in totalitarian countries are more or less travesties and no friend of the United States would advocate such a system here. However, there is a difference between adequate debate and unlicensed debate. It is well known to all familiar with the legisla-

about their reception. Apparently they regarded themselves as kings or dictators and wanted magnificent displays.

tive process in the United States that most of the decisions are made not on the floor of the houses of Congress but in committee sessions. Debates on the floor are primarily intended to give members an opportunity to attract public attention and within reason this is legitimate. But when there are pressing matters waiting to be taken up and Congress, particularly the Senate, engages in long-drawn-out debate, the situation becomes serious. Robert Heller of the National Planning Association, an authority in legislative matters, in 1949 pointed to the "appalling delays" resulting from "large-scale, time-consuming irrelevancy in Senate debate." [17]

Absenteeism among Congressmen Any one who has visited the Senate or House of Representatives is probably aware of the small attendance to be observed most of the time. Many are not aware that attendance at committee sessions is frequently so poor that committees find difficulty in carrying on their business. It would be easy to conclude that congressmen are too lazy to attend to their official duties or that they are spending their time on the golf course or elsewhere in pursuit of pleasure. When taxed with absenteeism a few years ago, members of Congress defended themselves on the ground that they were so busy doing favors for constituents and handling correspondence that they simply could not get to sessions of Congress or committee meetings. On this basis the Congressional Reorganization Act of 1946 provided that every Representative and every Senator should receive a well-paid administrative assistant to relieve him of such routine duties so that he could give attention to fundamental work of a legislative character. Yet the absenteeism record remains bad and indeed is growing worse, especially in the Senate. During the first session of the Eighty-first Congress 250 leaves were granted to Senators and this does not take into account those absent without leave. In March, 1949 the Senate reported twenty-three business days; during this month twenty-nine Senators were officially absent for a total of seventy-seven days. Many believe that large numbers of congressmen actually have little interest in the important problems confronting the United States and that they prefer to give their time to the petty aspects of their positions. Others declare that members of Congress are so busy building up political fences and so concerned about their own political futures that they shirk their public responsibilities. Inasmuch as congressmen are now paid quite handsomely according to the standards of the legislative bodies of the world and indeed in comparison with the compensation received by the great majority of American citizens, it has been suggested that it would be fair to institute a system of docking the pay for every day of absence without leave except on account of illness.[18]

[17] See the *New York Times*, December 28, 1949.

[18] This is included among the proposals of Mr. Heller of the National Planning Association for additional changes in the organization of Congress. See the *New York Times*, December 28, 1949. Supposedly members of Congress are docked in their pay when absent, but this provision has never been applied in practice.

A Joint Committee on Organization With new problems arising every session and pressure at a very high point, it has been proposed that Congress provide for a permanent Joint Committee on Organization. This committee could not only give its attention to changes which would seem desirable from time to time but might well be charged with observing the operation of various provisions made in the past for the effective functioning of the House of Representatives and the Senate.[19] An examination of the experience under the Reorganization Act of 1946 reveals that the financial provisions and other items have received very little attention. A permanent Joint Committee on Organization might be able to exert enough influence to effect the carrying out of such stipulations. As it is, it is everyone's business to see that the House of Representatives and the Senate handle their important business adequately and that means that it is for practical purposes no one's business. A permanent Joint Committee on Organization would at least have the official mandate to give attention to such matters.

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23. The Lower Federal Courts and the Department of Justice

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. The student may wonder why it is necessary to have two separate systems rather than a single unified hierarchy. Wouldn't substantial sums of money be saved by substituting a single judicial organization for the present complicated setup? Would not a unified system be more efficient, reduce delays, and outlaw political practices sometimes associated with courts? The reply to these queries must take into account the federal plan of government under which the United States operates. Everything else being equal, it would, of course, be preferable to have one hierarchy of courts rather than a separate federal judiciary and various 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 the United States has.

Under a unitary form of government there would be no justification for two separate judicial organizations; indeed the countries of unitary governmental form maintain national systems of courts. 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. No informed person would have imagined that state tribunals could have been abolished by the framers of the Constitution. Indeed local pride was so great that there was some feeling that all courts should be confined to the state category—at least except for a single federal Supreme Court. On the other hand, if the central government had to depend entirely upon state governments to enforce its laws, there would be friction and even weakness. The delegates, remembering the experience under the Articles of Confederation, recognized that danger and wisely decided to

authorize the establishment of a complete system of federal courts alongside the state courts. Hence the United States has a Supreme Court and numerous state supreme courts; federal circuit courts of appeals and state circuit and appellate courts; federal district courts and state district tribunals. It may be difficult for a foreign student to keep the complicated structure in mind, but it harmonizes with American political institutions and in general has proved reasonably satisfactory.

Article III of the Constitution The third article of the Constitution is usually known as the "judiciary article" because it is devoted to the federal courts. It provides in some detail for the jurisdiction of the federal tribunals since the framers realized that there would be serious conflict unless the boundaries between the work of the state and federal courts were made quite clear. However, comparatively little attention is given to the structure of the system. Congress is commanded to set up a Supreme Court, although nothing is specified as to its size or organization. Inferior federal courts are also mentioned, but their number, type, organization, exact jurisdiction, and composition is left to the judgment of Congress.

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 fall under the jurisdiction of those courts. It is not difficult to appreciate the importance of having federal laws applied and interpreted by federal courts. The judges of state courts must, of course, take oaths that they will uphold the Constitution and laws of the United States, but even so they are state

officials, deriving their authority and salary from state sources. When a federal statute would work to the disadvantage of a state, these local judges might find it difficult to give impartial consideration. Having federal courts, it is to be expected that their jurisdiction extends over laws enacted by Congress. 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. The federal courts are obviously the logical agencies to assume this responsibility. Courts of any grade, state or national, may interpret the federal Constitution, but there must be some method of reviewing those inferior courts that produce divers interpretations so that eventually there will be a single authoritative statement of what a clause of the Constitution means. It is clearly apparent 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. A vessel whose home port is nominally Houston may be engaged for the time being in transporting a cargo of merchandise from Baltimore to Los Angeles. Disputes relating to the freight carried, the supplies purchased, insurance on the vessel and cargo, collisions with other vessels, the food and wages of the crew, the flaunting of the captain's authority, and numerous other matters may involve several states or their citizens; moreover the attempted mutiny of a crew or the damage done to a cargo may occur on the high seas far beyond the waters of a state. Federal courts are more likely to be impartial than state tribunals in these cases of conflicting jurisdiction.

Nature of Parties In addition to cases which come to the federal courts because of their subject matter 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, for there is a not unnatural disposition on their part to favor their own citizens. 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 which the states looked upon as derogatory to their sovereignty. 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. A common kind of controversy is a suit of a citizen of one state against a citizen of another state. These may not 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.

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 by far the largest number, 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

[1] See *Chisholm* v. *Georgia*, 2 Dallas 419 (1793).

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, has effected a speeding up of justice, though some district courts are still far from up-to-date with their work. The repeal of the Eighteenth Amendment and its accompanying laws is supposed by some persons to have relieved the federal judiciary of a large part of its burden, but in reality dockets are heavier now than ever.[4] Even cases involving liquor are still commonplace, although they deal with "moonshiners" who distill without paying the federal tax, with the sale of untaxed liquor, and with various revenue requirements. The greater part of the cases brought to the federal courts for decision for many years had to do with private matters, but in 1941 government cases totaled 14,547 while private cases numbered 14,362.[5] With the necessity of condemning property for defense purposes and enforcing various control laws, the number of government cases bulked large during the war years and has remained at a high point since.

Types of Civil Cases The civil cases which are entered on the 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. In the latter event there

[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] District court cases (cases commenced) have been as follows: civil, 58,956 in 1947, 46,725 in 1948, and 53,421 in 1949; criminal, 33,652 in 1947, 32,097 in 1948, and 34,432 in 1949; bankruptcy, 13,170 in 1947, 18,510 in 1948, and 30,539 in 1949. See the *Report of the Proceedings of the Regular Annual Meeting of the Judicial Conference of the United States, September 22–24, 1949*, Government Printing Office, Washington, 1949.

[5] See the *Second Annual Report of the Director of the Administrative Office of the United States Courts* (1941).

may be a question as to whether a contract actually exists, while if a formal contract is in litigation there may be a difference of opinion as to certain provisions, the degree of liability for infringement, or the terms of abrogation. 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 more than 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 except Louisiana, which because of its French antecedents followed the *Code Napoléon.*[6] Inasmuch as local conditions have varied from state to state and the common law is developing rather than static, there are at present a number of 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 two states of the parties to the case. Where there was a contradiction, they used their discretion in working out a compromise. The decisions in these cases were gradually building up a body of common law which some predicted might eventually become a system of federal common law. However, 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.[7] Hence a suit by the father of a boy who was run over by a freight engine of a Pennsylvania corporation in Ohio would involve only the common law of Ohio.[8]

[6] Even in Louisiana the common law has influenced the legal system.

[7] See *Erie Railroad* v. *Tompkins*, 304 U.S. 64 (1938).

[8] 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."

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. Suppose the destruction of valuable property, not easily replaced, is threatened by neighbors. Even if monetary damages could be expected, this might not compensate for the loss. The English early recognized the injustice which the application of the ordinary common law worked in exceptional cases and made provision accordingly.

Equity 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 vigor as well as its teeth and if it perchances 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 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.

Equity embodies the concepts of the famous Roman law, the *corpus iuris*, rather than the prevailing Anglo-Saxon philosophy. It grew up alongside of common law in so different a mold largely because it was formulated by the clerically trained ministers of the king who knew the canon or church law which was based on the Roman law. 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 originally in England separate courts administered equity rules, both common law and equity are now applied by the same federal courts in the United States. Lawyers decide under which law they wish to bring their cases and enter them accordingly on the appropriate docket. It may be added that federal courts have been charged with the abuse of the writ of injunction in labor strikes and as a result have been limited by law in their issuance

of that writ in these cases.[9] 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 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. This involves operation of thousands of miles of railroads for years at a time, reorganization of the corporate structure, capital expenditures for improvements, and other complicated tasks. Of course, the courts do not do the actual work themselves, but they are obliged to oversee the management of the receivers as well as to approve important changes which the latter propose to make in the hope of putting the business back on its feet.

Criminal Cases

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,

[9] The Norris-LaGuardia Act.

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. Many of these consciously organize a racket which they know will separate suckers from their money, while promoters of one kind and another skate nearer and nearer to thin ice until they finally are arrested by the federal authorities for using the mails to defraud. For years a racket which brought repeated offenders to the federal district court of one state sent out what purported to be lists of women and men desiring to contract marriage. Alluring statements were made in regard to the estates of these lonely souls; these were followed by personal letters and photographs. Unfortunately for the suckers, it always developed that the estates were being liquidated by the courts and hence some ready cash was needed to pay the living expenses, travel costs, and hospitalization of the spurious bride or groom. Apparently large numbers of people were separated from their money in this racket, judging from the enthusiasm which its organizers displayed for resuming business immediately after release from prison.

Criminal Procedure The court procedure in criminal cases is regulated both by provisions of the Constitution [10] 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 jury trial 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. In cases involving serious charges counsel must be furnished at public expense 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 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. In general, it may be said that federal courts protect the

[10] For a more detailed discussion of these, see Chap. 7.

rights of the accused and do not permit the extreme behavior sometimes encountered in state courts. Lawyers are expected to display reasonable decorum and to proceed with the defense of their client without abusing the technical rights. The federal record of convictions is distinctly better than that of many state courts.

Federal District Courts

Organization The United States is divided into more than ninety districts [11] 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, but there are some exceptions which combine parts of two states into a single district. These courts have single-judge benches except when injunctions are sought to prevent the enforcement of federal or state laws alleged to be unconstitutional.[12] 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. In the southern district court of New York, for example, something like a dozen sessions will be held at the same time. In some instances the federal district courts go on circuit through their territory, holding court regularly in three or four of the large cities; again they remain stationary in a single city. Court rooms and other facilities are provided in the local federal building.

Judges The district judges, now approximately 200 in number, are appointed by the President with the consent of the Senate for an indefinite tenure, pending good behavior.[13] In general, residents of the district are chosen as judges and the recent administrations have probably depended in a good many instances on the local Senators and even on political machines to provide nominations. The court reorganization bill of 1937 would have made it possible to shift the district judges around rather easily so that the heavily loaded dockets might be relieved by the temporary assignment of judges from districts in which the number of cases is not large. This provision was lost with most of the other items, but it is still possible to assign judges for special work if they are willing to undertake additional service. Inasmuch as no additional compensation is paid and only a small sum is allowed for expenses, most of the judges are not enthusiastic about helping out in other districts.

[11] Alaska, Puerto Rico, Hawaii, the Virgin Islands, and the Panama Canal Zone have district courts which are included in this number.

[12] The emasculated court bill of 1937 made this provision which really combines the district and the circuit court stages into a single hearing.

[13] On the appointment of federal judges, see W. D. Mitchell, "Appointment of Federal Judges," *American Bar Association Journal*, Vol. XVII, pp. 569–574, September, 1931.

Nevertheless, it is not uncommon to find judges from the hinterland sitting in the federal district court in New York City during the summertime.[14]

Professional Record of Judges Judges are, of course, always members of the legal profession and usually have had years of experience in legal practice. Although they receive annual salaries of $15,000, which is distinctly less than many successful members of the bar earn privately, there is no dearth of candidates, for the tenure and prestige attached are attractive. Most of the district judges perform their duties with at least reasonable satisfaction, but there are some instances in which holders of the office prove themselves unfitted for the position. In addition to those who by temperament are not suited for judicial responsibility, there have been a number during the last decade who have used their positions for their own selfish advantage. A few have literally become "merchants of justice," selling their favor to litigants who would pay their price; a larger number have appointed friends and relatives repeatedly as holders of lucrative receiverships in bankruptcy. One federal district judge has recently been impeached; several others have resigned under threat of impeachment; more have been censured by Congress after investigation; while still others continue to function despite widespread criticism from the more reputable members of the bar in their districts. Proposals have been made to simplify the process of getting rid of these misfits,[15] but no actual steps have thus far been taken in that direction.

Attachés of the District Courts The federal district courts are assisted by a number of functionaries who deserve notice. Clerks of the court enter cases on the docket and keep the records—in some districts there will be a clerk or deputy in each of several cities where the court holds sessions. United States commissioners, who are also scattered over a district, assist the court by attending to certain preliminaries. After arrests have been made on warrants which they issue, they frequently hear the evidence to determine whether the accused should be held for subsequent action. United States marshals and their deputies maintain order in the court room, make arrests, guard prisoners, summon witnesses, serve court orders, and carry into effect as far as possible court judgments. As in the case of clerks and commissioners, deputy marshals may be stationed at various points where the district courts sit on circuit. Finally, there are the federal district attorneys and their deputies who represent the interests of the government in the cases which arise in the district courts. The duties of these attorneys may be slight in connection with civil proceedings, but in criminal cases they prepare and present the prosecution for the government and with the judges bear the burden of handling the processes of information which take the place of grand jury indictments. Both

[14] Justice Willis Van Devanter even sat in New York after he retired from the Supreme Court bench.

[15] In 1941 the House of Representatives voted favorably on a bill to permit impeachment of district and circuit judges by three circuit court judges to be designated by the Supreme Court, but the Senate has not concurred.

district attorneys and marshals are appointed by the President with the consent of the Senate for four-year terms, although it has been argued with considerable plausibility that they should be selected on a merit basis. As it is, they are the choices of the Senators and the Representatives of the party in power and sometimes seem to pay more attention to political activities than to their official duties. The Hatch Act has improved the situation somewhat by removing them from offices in political organizations and the Department of Justice has taken up the slack by exercising a considerable amount of supervision over their work.

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—at the height of the depression more than sixty thousand at once.[16] 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.[17] An appeal may be taken under certain circumstances to the circuit courts of appeals—in a few instances to the Supreme Court—but the great majority of cases are settled finally in the district courts.

Pretrial Procedure 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, has now been accepted by the judicial council after long urging by those interested in judicial reform and is 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. Then, too, there are numerous cases which involve irrelevant points, questions which have already been clearly decided by the higher courts, and confused charges. Instead of allowing these to remain on the docket until they finally come up in formal court sessions, thus consuming the valuable time of the judge and the various court attendants, an effort is made to have them removed from the docket, restated, or otherwise revised before the trial stage so that if they come up for trial at all they can be proceeded with at once rather than referred back to the attorneys for further attention.[18]

[16] Bankruptcy cases were so numerous at this time that they outnumbered all other cases, both criminal and civil.

[17] 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.

[18] See the *Second Annual Report of the Director of the Administrative Office of the United States Courts*, Washington, 1941.

Circuit Courts of Appeals

Organization 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 York and New Jersey and New England, are compact in size. No attempt is made to divide the country equally either on the basis of territory or population, for the determining factor in establishing the circuit courts of appeals is amount of litigation to be handled. These courts are multiple-bench courts, having from two to six judges assigned to them, depending upon the pressure of business.[19] At least two judges must sit in a single case, though three is the common number. When the circuit courts of appeals have more than three judges attached, it is customary to hold more than one session at a time, in order that the docket may be kept reasonably clear. The name applied to these courts would probably indicate that to hold court they travel about within their territories; but while this is in some instances done, it is not always the case.

Judges There are at present more than fifty judges attached to the circuit courts of appeals. In addition the Supreme Court judges are nominally assigned to the several circuits, but, because of the nature of their duties in Washington, they do not currently participate in hearing cases. Circuit judges are appointed by the President with the consent of the Senate, hold office during good behavior, and receive salaries of $17,500. They may be the personal choice of the President or they may be selected in reality by the Senators and political leaders of the dominant party. Franklin D. Roosevelt at first permitted Senators to name the new judges, but there was considerable criticism engendered by the inability of the Senators concerned to agree and by the resulting delays, sometimes two years in duration. To offset this the President apparently talked to the Senators from the states involved and then nominated well-known deans of law schools and other prominent members of the bar.[20]

Caliber of Judges The judges of the circuit courts of appeals are in general superior in caliber to the district judges, although the Supreme Court at times delights in raking them over the coals for their inability to see eye to eye with it in interpreting the Constitution. Unfortunately there have been two very shocking incidents involving these judges during the last few years. M. T. Manton, senior judge of the First Circuit Court of Appeals in New York City, ranking immediately below the members of the Supreme Court,

[19] District judges sometimes are called in to sit with the circuit judges if the occasion demands it.

[20] The deans of the law schools of Yale, Ohio State, Pennsylvania, and Iowa among others, were appointed circuit judges.

was convicted of selling judicial favors and sentenced to a term in federal prison. The evidence submitted in the case proved that he had been a "merchant of justice" for some years and had carried on wholesale frauds. President Roosevelt demanded his instant resignation and only this prevented another impeachment case. The second instance involved a circuit judge by the name of Davis in Philadelphia.[21]

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 [22] 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. Because they are of the opinion that all important cases should have access to the Supreme Court itself, many lawyers complain about the extensive power these courts have, especially about their final jurisdiction. However, a prompt consideration of cases requires some limitation on the right of appeal to the highest court.

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 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 position in the judicial hierarchy as district courts in that they have final decision [23] in regard to facts, but their rulings on law may be revised by circuit courts of appeals. This combination of three sorts of power in one agency has seemed to many to violate the principle that the lawmaker and the prosecutor should not sit as judge. While, of course, the circuit courts of appeals have some review of decisions of quasi-judicial administrators, it has not seemed sufficiently broad to provide an adequate guarantee of justice. Hence in 1940, the Logan bill, which pro-

[21] For reports of the Davis case, see the files of the *New York Times* for 1941. Judge Davis subsequently resigned, but continued to draw his salary as a retired judge. The Attorney General sought impeachment despite the resignation.

[22] The Supreme Court may call up any case by *certiorari* from the circuit courts.

[23] This authority is qualified by the requirement that the findings of fact are supported by the evidence.

vided for the review of administrative decisions in nearly all cases, was passed by both houses of Congress. After President Roosevelt vetoed it, the Department of Justice set up a committee of outside lawyers to study the problem and to make recommendations. In the spring of 1941, this committee made a report which, while split three ways on the nature and degree of review, was in unanimous agreement on the necessity of more extensive judicial review of decisions of administrative agencies.[24] It appears likely, then, that in the future the duties of federal courts, particularly the circuit courts of appeals, will be enlarged to include more cases originating in the quasi-judicial commissions.

Central Supervision of District and Circuit Courts

The Judicial Council Although the district courts, circuit courts of appeals, and Supreme Court have long been organized into what appeared to be a closely knit hierarchy, as a matter of fact until 1922 their unity was more apparent than real. Of course, the work of the lower courts was checked by the appeals carried to the Supreme Court, but this did not provide anything like the continuous supervision which is essential in an integrated system. 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 holds annual sessions; to it all federal district judges are required to make annual reports of a somewhat detailed character which are used as a basis for drawing up recommendations o 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. The reorganization bill of 1937 would have increased the authority of the council, particularly in transferring judges from one court to another. However, even without this added power, the judicial council has achieved a substantial amount of good in bringing the district courts and circuit courts of appeals into an integrated system.[25]

Administrative Office of the United States Courts The judicial council meets only once a year and must necessarily confine itself largely to recom-

[24] For a discussion of the complicated report of this committee by its research director, see Walter Gelhorn, *Federal Administrative Proceedings*, The Johns Hopkins Press, Baltimore, 1941.

[25] For additional discussion, see F. W. Morse, "Federal Judicial Conferences and Councils," *Cornell Law Quarterly*, Vol. XXVII, pp. 347–363, April, 1942.

mending 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 been established in the Supreme Court building in Washington. The work of this agency is less well known and less spectacular than the labors of the judicial council, but it is, nevertheless, fairly important in bringing about a reasonable amount of uniformity in the lower courts. The suggestions which the judicial council makes to the lower courts may be implemented by assistance which the Administrative Office renders. Negotiations with individual judges for temporary service in courts other than their own can be carried on by a permanent agency of this character far more successfully than by a council in session only a few days each year.[26]

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 [27] 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. Besides Congress, politically motivated as it is, is scarcely a suitable body to decide what shall be done in the case of

[26] 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; also H. P. Chandler, "The Place of the Administrative Office in the Federal Court System," *Cornell Law Quarterly,* Vol. XXVII, pp. 364–373, April, 1942.

[27] For a good discussion of these courts, see W. G. Katz, "Federal Legislative Courts," *Harvard Law Review,* Vol. XLIII, pp. 894–924, April, 1930.

claims. The regular courts have more than they can do as it is and, being away from Washington, might not have information that would enable them to pass on a claim. 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 that court.[28] This court has five judges, appointed by the President with the consent of the Senate for indefinite terms subject to good behavior, and holds 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.[29]

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. Some of these are of interest only to the residents of the District of Columbia, but the district court and the court of appeals are of wider importance because far-reaching cases, such as the injunction against the United Mine Workers in 1948, are brought to the former, while the latter hears appeals at times from the rulings of the administrative commissions. What this court decides may be of concern to the entire country, although the Supreme Court has the final word in certain cases.

Other Special Courts A United States Customs Court,[30] 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. An importer maintains that slave bracelets are hardware and should pay a duty of, say, 20 per cent, while the government claims that they are jewelry, and hence should be taxed at 50 per cent. Disputes of this kind find their way into the Customs Court. 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. 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.

[28] 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.

[29] On this court, see F. W. Booth, "The Court of Claims," *United States Daily*, December 1–5, 1928.

[30] On this court, see G. S. Brown, "The United States Customs Court," *American Bar Association Journal*, Vol. XIX, pp. 333–336, 416–419, June, July, 1934.

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. Consequently it seems more appropriate to consider it at this point than in connection with the administrative departments. From the very beginning the United States has 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 legal business of the national government. Few departments have grown as consistently as the Department of Justice—during the last two decades it has taken on important new duties in connection with the identification and capture of criminals, immigration and naturalization, and defense. Nevertheless, it is still by no means as large a department as the Treasury, Department of Agriculture, or the Federal Security Agency.

General Organization The Department of Justice[31] has at 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 department submit to him.[32] Some of the actual work in this connection is performed by the Attorney General himself, though legal assistants do the spadework. 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 councilors have their offices in the buildings of the departments which they advise and are for most purposes actually a part of those departments, but in theory they are a part of the Department of Justice. Various assistant attorneys-general are provided as aides to the Attorney General to supervise antitrust, tax, claims, lands, criminal, alien property, and customs divisions of the department.

Supervision of Federal District Attorneys and Marshals The Department of Justice supervises the work of the federal district attorneys and marshals in the various district courts. Assistants are sometimes sent from Washington to aid in certain cases and on occasion even supersede the local officials entirely. Corrupt practices are checked. Conferences are called in Washington either with a single district attorney or marshal or with the entire number. Much has been done in integrating the efforts of the district attorneys and marshals as a result of this supervision now maintained by the Washington offices.

[31] 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

[32] These are published in a series of volumes known as *Opinions of the Attorney General.*

Antitrust Division Some of the subdivisions of the Department of Justice, such as the customs and tax divisions, deal largely with routine matters, but the antitrust division belongs to a somewhat different category. Some years ago there was a disposition to regard monopolistic practices as inevitable, despite any laws that might have been passed on the subject. Consequently this division did little more than occupy office space. In the thirties there came to this division a lawyer and professor of law, Thurman Arnold by name, who proved audacious enough to maintain that monopolies are not ordained by Providence and that many of their practices are detrimental to the general welfare. He and his successors instituted a number of suits which have received notoriety, and which it is claimed have resulted in savings of millions of dollars to the public.

The F.B.I. Another subdivision of the Justice Department, the Federal Bureau of Investigation, has received unusual publicity. The G-men,[33] whom it stations throughout the country, have captured the imagination of the American people as a substitute for the Texas Rangers or western sheriffs of an earlier day. They have been active in tracking down the "public enemies" of the United States until now the most vicious gangsters are either dead or in Alcatraz. During the war years this bureau spent a great deal of time and energy ferreting out spies, "fifth columnists," other agents who plot against the United States, and violators of the Selective Service Act. It has built up one of the largest fingerprint files in the world to assist not only federal agents but local police in identifying criminals. It should be noted that the F.B.I. is confined to investigating; it does not prosecute those charged with offenses against the law nor does it punish.

The Solicitor General 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. Needless to say, the work of preparing arguments to support the constitutionality of a far-reaching law requires not only considerable time, but marked ability and ingenuity. There is striking variation in the skill with which this work is carried on. The early years of the F. D. Roosevelt administrations were handicapped by mediocre solicitors general who made a poor showing before the Supreme Court, but recently there has been a notable improvement both in deciding the grounds on which to argue and in presenting the cases themselves to the Supreme Court.

[33] J. Edgar Hoover, the director of this bureau, relates some of the deeds of these men in his book entitled *Persons in Hiding*, Little, Brown & Company, Boston, 1938. For a more up-to date and somewhat critical study of this bureau, see Max Lowenthal, *The Federal Bureau of Investigation*, William Sloane Associates, New York, 1950.

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24. The Supreme Court

Constitutional Basis The Supreme Court is the only court specifically provided for by the Constitution of 1787, but its structure is not stipulated in any detail.[1] 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 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.

Basic 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. Apparently on the supposition that the Supreme Court would not have enough to do in the exercise of general appellate jurisdiction over the decisions of the lower courts together with the two types of original jurisdiction conferred by the Constitution, the Judiciary Act of 1789 not only provided for the circuit duty noted above but also gave the Supreme Court original jurisdiction in certain other cases. However, the court in *Marbury* v. *Madison*[2] held that the latter authority was beyond the power of Congress to confer and consequently declared that section of the Judiciary Act of 1789 invalid. 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. Thus it may be seen that Congress, frequently at the instigation of the President, has not hesitated, at least prior to 1869, to make changes in the structure of the court.

[1] Students will find the Introduction to Charles Fairman's, *American Constitutional Decisions*, Henry Holt and Company, New York, 1948, a very illuminating discussion of the Supreme Court in all of its aspects. A more detailed treatment is given in P. A. Freund, *On Understanding the Supreme Court*, Little, Brown & Company, Boston, 1950.

[2] See 1 Cranch 137 (1803).

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 diplomatic 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. All in all, there was very little in the first decade of the operation of the Supreme Court to point to the great role which it was to play later in the government.[3]

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 favored 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

[3] For additional discussion of the early history of the Supreme Court, see Charles Warren, *The Supreme Court in United States History*, 3 vols., Little, Brown & Company, Boston, 1922–1926, Vol. I.

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." [4] Starting out with the daring and unexpected decision in *Marbury* v. *Madison*, opinion after opinion of Marshall's laid broad outlines within which and out of which our present constitutional system has developed.

Marshall found himself somewhat of a failure as a biographer of Washington; it was popular in some New Deal circles a few years ago to brand his opinions as rhetorical, loosely reasoned, and unsound; but most historians have accorded him one of the first places among modern jurists throughout the world.[5]

Roger B. Taney Marshall 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 [6] and his southern background, 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 underrated and misunderstood Chief Justice.[7] 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 interpretation 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 early part of 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. The Supreme Court received severe criticism from President Lincoln and subsequently underwent reorganization which increased its membership in 1863, reduced it in 1866, and finally in 1869 fixed it at its present size.

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.[8] Its role as guardian of the Constitution was not seriously

[4] *McCulloch* v. *Maryland*, 4 Wheaton 316 (1819).

[5] 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.

[6] Reported in 19 Howard 393. This case was decided in 1857 and declared that Negroes could not be citizens.

[7] See C. B. Swisher, *Roger B. Taney*, The Macmillan Company, New York, 1935.

[8] 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

challenged; indeed judicial interpretation had become an outstanding characteristic of the American system of government. The prestige attached to the court was so great that a seat on its bench was generally regarded as the highest honor to be attained by any member of the bar, despite the greatly reduced emoluments that might result.[9] 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.[10] 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 industrial recovery, agricultural adjustment, and business regulation incident to the depression, the Supreme Court declared certain of 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 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.[11] President Roosevelt publicly denounced the court, consigning it to the "horse-and-buggy days" he was so fond of holding up to ridicule. In an address to Congress on January 6, 1937, President Roosevelt said: [12]

> Means must be found to adapt our legal forms and our judicial interpretation to the actual present national needs of the largest progressive democracy in the modern world. . . . The judicial branch also is asked by the people to do its part in making democracy successful. We do not ask the courts to call nonexistent powers into being, but we have a right to expect that conceded powers or those legitimately implied shall be made effective instruments for the common good. The process of our democracy must not be imperiled by the denial of essential powers of free government.

The Reorganization Bill of 1937 Early in 1937, after he had been overwhelmingly re-elected President of the United States, Franklin D. Roosevelt without warning sent to Congress a bill which was intended to bring about important changes in the Supreme Court as well as in the entire federal judiciary.[13] It was asserted by his opponents that the provisions relative to the

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which it considers desirable." See *The Twilight of the Supreme Court*, Yale University Press, New Haven, 1934, p. 181.

[9] Chief Justice Hughes is supposed to have given up a practice of $500,000 per year.

[10] The court had been something like three years in arrears.

[11] See Drew Pearson and Robert Allen, *Nine Old Men*, Doubleday, Doran & Company, New York, 1936.

[12] *New York Times*, January 7, 1937.

[13] The bill was sent to Congress with an accompanying presidential message on February 5, 1937.

lower federal courts were intended for camouflage and that the primary aim of the President was to pack the Supreme Court with his henchmen so that he could use it as he desired. The most controversial section of the bill provided for 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. Other items of the bill dealt with the temporary transfer of circuit and district judges to relieve the congestion of certain dockets, the creation of the office of proctor to assist the Supreme Court in supervising lower federal courts, and the elimination of the long delay in carrying cases involving constitutional points from the lower federal courts to the Supreme Court. The President maintained that Congress had the undoubted authority to carry through such changes, referring to the nineteenth-century acts which had not infrequently changed the size of the Supreme Court bench.

Popular Excitement Generated by the Bill It is probable that even the President and his closest advisers had little notion of the great excitement which would eventually be stirred up by this proposal. The newspapers gave the bill the most prominent and generous space on their front pages and devoted long editorials to its discussion. The more talk there was of the terms of the bill the more bitter raged the controversy. Proponents declared that it contained nothing that was even slightly dangerous to American institutions —indeed they asserted that the bill would rescue the country from the tyranny of the Supreme Court, which was never intended by the framers of the Constitution but which resulted entirely from usurpation. On the other hand, the opponents invoked the greatest array of arguments and evidence to prove that the enactment of such a law would mean the downfall of everything of any importance in the American system of government, even to democracy itself.[14]

Middle-of-the-road citizens admitted that the Supreme Court had perhaps not been sufficiently responsive to public sentiment, agreed that there was at least some precedent in the nineteenth century for New Deal legislation the court had thrown out, but concluded that popular approval and acceptance of the role of the court during the lengthy period stretching from 1869 to 1937 and the generally valuable service which it had rendered weighed so heavily against such a course as President Roosevelt proposed that prudence dictated the most careful consideration. Perhaps never in the history of the country had more interest been stirred up in proposed legislation; certainly recent generations had not witnessed such a display of emotions in connection with a domestic institution, although the League of Nations in the international field may have been responsible for as much excitement.

[14] Out of the many articles dealing with the proposed changes only two can be noted here: A. T. Mason, "Politics and the Supreme Court," *University of Pennsylvania Law Review*, Vol. LXXXV, pp. 659–677, May, 1937; and Charles Fairman, "The Retirement of Federal Judges," *Harvard Law Review*, Vol. LI, pp. 397–443, January, 1938.

The Fate of the Bill in Congress 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 held the bill for five months, during which lengthy hearings were scheduled and numerous prominent citizens expressed their views. The Senate Judiciary Committee finally voted by a margin of ten to eight to report adversely on the bill. Hoping to save at least a measure of the substance of the proposal, a substitute bill, the Logan-Hatch bill, was then put forward to authorize the President to name two new Supreme Court judges. The sudden death of Senator Joseph T. Robinson, the administration floor leader, may have been responsible for the defeat of this bill—at any rate it was referred to the Judiciary Committee which had the effect of killing it for the time being.

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 may be 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 legislative action, fate permitted him to reform it by appointment. The retirement of several conservative justices and the death of others enabled the President to name seven of the nine justices who constituted the court.[15] Hence President Roosevelt had the unique experience of appointing a larger number of Supreme Court members than any other President since George Washington. It is not surprising that these appointments were given to men who were known to sympathize 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. The results of this change in the personnel of the Supreme Court 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. Indeed, while they were in substantial agreement on major constitutional issues, they shortly began to display differences of opinion on technical points which has led to more split decisions during recent years than at any previous time.

The Future of the Supreme Court In these days of uncertainty and change it is very difficult to look at all into the future. What then of the future of the

[15] Chief Justice Stone was already an Associate Justice of the court. Counting his appointment as Chief Justice, President Roosevelt was responsible for naming eight out of nine of the members of the court.

Supreme Court? Is it likely to be that of eclipse and impotence? Will it remain the wielder of that authority which has long distinguished the government of the United States from other governments? One of the most eminent writers on the American constitutional system points to the "rapid relegation of judicial review to a secondary role." [16] The bloodless revolution in the court achieved by President Roosevelt through his appointing power did at least temporarily deal the prestige of the Supreme Court a rather heavy blow. Even if they agree that the changed attitude of the court is for the good of the country, observers must confess that there has been somewhat of a diminution in reputation because of the method used to bring about such a change and the about-face which the court has made on certain issues. However, in this connection it must be remembered that some of this departure from an earlier position had been undertaken, or at least started, before the personnel of the court changed—the Wagner Labor Relations Act and the Social Security Act had both been upheld by the "nine old men" themselves.[17]

On earlier occasions the Supreme Court has found it necessary to reverse itself, although never perhaps on as many issues as on this occasion. The Supreme Court has also previously engaged in conflict with the other branches of government and incurred unfavorable public opinion; yet eventually it has righted itself and gone on its way. While not enough time has elapsed since 1937 to justify categorical conclusions, it does seem apparent that the Supreme Court no longer is regarded as the chief support of the American system of government. Less is heard nowadays of judicial supremacy and more emphasis is placed on the role of the President and Congress. Nevertheless, it would be unwarranted to relegate the Supreme Court to a place of minor importance, for its prestige is still high and its exercise of the power of judicial review is significant.

Organization and Operation of the Supreme Court

Composition The Supreme Court is made up of a Chief Justice and eight Associate Justices who are appointed by the President with the consent of the Senate for indefinite terms 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 frequently been over sixty and sometimes has approached seventy.[18] However, some of the recent selections have involved younger men —one justice being just over forty years of age upon taking office.[19] It has

[16] Edward S. Corwin, *The President: Office and Powers,* New York University Press, New York, 1940, p. 316.

[17] Reported in 301 U.S. 1, 548, 619 (1937).

[18] In 1937 the average age approached seventy years.

[19] Justice William O. Douglas. Justice Douglas was born October 16, 1898, and was nominated to the Supreme Court on March 20, 1939.

been 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—and, it may be added, has been quite uncommon. Both Republican and Democratic Presidents feel that it is proper to appoint members of their own party to such a point that their associates will constitute a majority of the court,[20] but politics is not ordinarily a very important factor in the judicial acts of the justices. Thus President Hoover found it possible to nominate B. N. Cardozo, a New York Democrat, to succeed Justice Holmes, a Massachusetts Republican. Again Franklin D. Roosevelt advanced Harlan F. Stone, a New York Republican, to the chief justiceship upon the retirement of Chief Justice Hughes. A decade or so ago there was somewhat of a tradition that an appointee to the Supreme Court should have had considerable judicial experience, particularly of the appellate variety. However, Presidents Roosevelt and Truman have not been impressed by such a convention, with the result that few of their appointees have had any considerable amount of judicial background of the appellate variety.[21] Several recent justices, Black, Byrnes, Burton, and Minton for example, came to the bench from the Senate, while Justices Reed, Murphy, Jackson, and Clark were moved from the Department of Justice. Frankfurter and Rutledge had their training as professors of law; Murphy was primarily known because of his record as mayor of Detroit, governor of Michigan, and governor general of the Philippines; and Justice Douglas impressed President Roosevelt by his able record with the Securities and Exchange Commission.

Geographical Distribution Geographical distribution enters to some extent into the selection of justices, but it is scarcely of first-rate significance. In 1950 there was no justice with the possible exception of Justice Douglas from the West; [22] Ohio and Indiana had one member each; [23] the South had four; [24] while the other two were representatives of the East.[25] Other factors may sometimes be observed, but they are not of general consequence.

Salary and Privileges 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. Allowance is made for clerical hire, supplies, and of course travel expenses incurred in the course of official business. Elaborate suites of offices, library facilities, and a restaurant

[20] However, President Truman has leaned so heavily toward Democratic appointments that in 1950, the Supreme Court had only a single Republican member, Mr. Justice Burton.

[21] Justice Hugo L. Black served for eighteen months as police judge in Alabama; Justice Frank Murphy was Judge of the Recorder's Court in Detroit from 1923 to 1930; Sherman Minton came to the Supreme Court in 1949, from the Federal Circuit Court of Appeals in Chicago.

[22] Justice William O. Douglas was born in Minnesota, graduated from college in Washington, but was admitted to the bar in New York. His professional career has been carried on in New York, Connecticut, and the District of Columbia.

[23] Justice Burton and Justice Minton.

[24] Chief Justice Vinson and Justice Reed come from Kentucky, Justice Black from Alabama, and Justice Clark from Texas.

[25] Justice Robert H. Jackson spent professional years prior to government service in New York and Justice Felix Frankfurter in Massachusetts.

are provided in the new Supreme Court building, although for many years the justices frequently had to do their work at home and even bring their lunches with them.

The Supreme Court Building Considering its influence in the government, it is strange that for well over one hundred years the Supreme Court 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. This building, located across from the Capitol on Capitol Hill, faces that building and is convenient both to it and to the Congressional Library. Its exterior of white marble and its classical lines make it stand out from its surroundings—some visitors expressed disappointment after the building was completed because they considered it glaring in its whiteness—but the years have mellowed it somewhat into greater harmony with neighboring structures. Within there is a great central hall and corridor, also of marble, the magnificent Supreme Court chamber 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. No expense has been spared in furnishing the building—lighting fixtures, tables, and chairs are all superb in quality.

Sessions The Supreme Court ordinarily begins its formal sessions in October and adjourns for the summer in 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 meeting at nine or ten o'clock in the morning the hour of twelve has been long the accepted time for beginning a sitting. The long 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 public sittings. In appellate courts a great deal of the work is done by the justices in their private chambers or offices—the Supreme Court probably surpasses even the highest state tribunals in this respect. Judges have to go over voluminous records submitted in connection with cases; they have to consult court reports which contain the decisions on related points of law; and finally they have to prepare the opinions in which they explain why and on what basis they have

decided as they have. All of this requires much time and energy from the justices themselves as well as from their law clerks. All in all, the members of the Supreme Court take their duties very seriously and considering their age display above the ordinary energy.

The Weekly Schedule 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. The public sessions are held in the chamber or hall, which constitutes the main room of the Supreme Court building, while the Saturday meetings are scheduled for the less formal wood-paneled conference room.

A Formal Sitting Promptly at high noon the justices of the court, led by the Chief Justice, file into the courtroom through their private entrance and take their places at the bench which dominates that chamber. A crier has called out to those in the corridors that the court is about to begin; the clerk of the court has given the signal which causes the attorneys and spectators to rise from their seats. As the justices in their somber black silk gowns take their places, the clerk presents them as the "Honorable Chief Justice and Associate Justices of the Supreme Court of the United States" and adds "May God save the United States." 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. Although the silk gowns serve to minimize individuality, it is interesting to note that the chairs which the justices occupy, although all of black leather and of a conservative type, nevertheless are not uniform in size or style because of the custom of permitting each member of the court to select his own chair. 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 arguments 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 would otherwise 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 of course carried on in the privacy of the conference room, with the result that considerable mystery surrounds what goes on. Members of the court have rarely spoken or written of the conduct of these conferences and that of course adds to the lack of knowledge. 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 long 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. At times, such as 1934, 1935, and 1936 when controversial issues were frequently before the court and there was division within the court itself, the exchange of views must have sometimes involved the display of emotions, even acrimony. Indeed 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 exercises wide freedom in appointing colleagues to prepare opinions which contain the reasons for a certain decision in a case and that he often seizes 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 is far less than many imagine. He reminded his visitors that the Chief Justice has nothing to do with 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 by Majority Vote The Supreme Court arrives at decisions by simple majority vote, with a minimum of six justices required as a quorum;

[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.

on those 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 several important decisions by five-to-four votes.[28] There is reason to believe that the rather frequent instances of such a division during the difficult years of 1934–1937 contributed to the drop in the prestige of the court. 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]

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. The drafting of opinions calls for a great deal of legal research into judicial records of the past as well as the most careful phrasing and organization. Some justices have proved that they are past masters at this sort of work, while others have been responsible for opinions that are involved and illogical. While not written for popular consumption and indeed often 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 opin-

[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). But the total number of five-to-four decisions on major issues does not exceed twenty even today.

[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; *ibid.,* "The Roosevelt Court: Votes and Values," *American Political Science Review,* Vol. XLII, pp. 53–67, February, 1948; and *ibid., The Roosevelt Court: A Study in Judicial Politics and Values,* The Macmillan Company, New York, 1948.

ions 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. The court does not announce its decisions until the accompanying opinions have been prepared and printed. Eventually the opinions are published in volumes known as *United States Reports* which appear at the rate of two or three each year. These reports, which are to be found in any law library of any consequence, are commonly referred to in some such manner as this: 305 U.S. 55, which means volume 305 of the series, page 55.[30]

The Work of the Court

General Picture During recent years the Supreme Court has had anywhere from nine hundred to eleven hundred cases filed on its docket annually. Though it was far behind with its work two decades ago, it now manages to dispose of all of these cases with the exception of approximately one hundred before it adjourns in May or June. The greater part of the cases which are brought to the Supreme Court are not considered of sufficient importance to justify detailed opinions; the court may decline to hear the case at all or it upholds lower courts without recourse to an opinion. Opinions have been rendered recently as follows: 1925, 212; 1930, 168; 1935, 160; 1940, 169; 1943, 137; and 1947, 143.

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 courts 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, no cases of this sort actually arise. It may be wondered why the framers placed such a provision in the Constitution under such circumstances. Was it because international law was different at that time or because they were ignorant of its provisions? The explanation is that they wished to avoid any embarrassment, were not certain that state and lower federal court judges would be familiar with international law, and hence limited such cases to the highest court, with the expectation that its judges could be depended upon to refuse jurisdiction.

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 numerous, although at any time several of them are usually to be found on the docket of the Supreme

[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.

Court. Even in this day there are disputes as to state boundaries, which after fruitless negotiations on the part of state officials usually find their way to the highest court.[31] Then there are disputes over the use of natural resources, such as the water of rivers and lakes. One of the most important cases of this character was that which pended for many years and had to do with the diversion by Chicago of large quantities of water from Lake Michigan. Wisconsin, Michigan, Ohio, and other interested states asked the Supreme Court to order Illinois, as the legal guardian of Chicago, to ceases such a practice.[32] At times the states will make agreements which they later wish to ignore. Some of these are of such a nature that they cannot be forced by court action, but others involve contractual obligations. Thus Kentucky sued Indiana to compel the latter state to proceed with an agreement to build a bridge over the Ohio River which one administration had entered into but a succeeding set of state officials had refused to honor. Although not very numerous, these cases ordinarily require considerable time on the part of the Supreme Court and may pend over a period of years.[33]

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. When W. H. Taft became Chief Justice, he found that the Supreme Court was far behind in its docket and devised means for a more prompt disposal of its work. Acting on such recommendations Congress further limited the cases that could be appealed to the court as a matter of right, much to the dissatisfaction of certain lawyers who felt that almost every case of more than routine consequence ought to be permitted a hearing in the highest court of the land. 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 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. At the same time if there is no other basis for taking a case to the highest court it will be

[31] Indiana, Kentucky, Oklahoma, and Texas have recently argued over boundaries.

[32] The Chicago drainage case has received the attention of the court for about twenty years. Perhaps it should be said that a series of cases arising out of the diversion of water by Chicago has occupied the attention of the court. As recently as 1940 such a matter received a hearing.

[33] There have been more than eighty cases since 1789 in which one state sued another—an average of less than one case each year. One of the best discussions of such cases is to be found in *Kansas* v *Colorado*, 185 U S. 125 (1902).

alleged that such denial has taken place, with the result that many petitions are turned down in short order. The series of cases which received so much attention and caused so much controversy during the first term of President Roosevelt belong to this first category. Congress, acting very largely under administration strategy, enacted the N.I.R.A., the A.A.A., the Guffey Coal Act, and other legislation designed to assist the national government in meeting the economic depression. In all of these cases certain parties affected by the laws refused to obey their provisions and either sought injunctions to stay the execution of the laws or were proceeded against by the Department of Justice. The lower federal courts sometimes decided that the laws were valid and again that they were invalid. Where it was held that the laws were valid, the parties who were immediately affected carried their cases to the Supreme Court, asserting that such laws were beyond the power of Congress to enact under the grants made by the Constitution. The Supreme Court then examined the laws, compared their provisions with the specific clauses of the Constitution, and found that they were null and void because no such authority was conferred on Congress.

Number of Laws Declared Invalid 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 a fair number of congressional statutes unconstitutional;[34] 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 160 years of the history of the republic.[35]

2. Cases Arising out of State Acts The number of cases arising out of alleged conflict between state action and the federal Constitution, treaties, or laws is large. Many more state laws have been declared invalid by the Supreme Court than national laws—two hundred or so altogether. 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. Every session of a state legislature enacts hundreds of statutes which may be objected to by those affected. These interested parties may seek an injunction from the courts to restrain the enforcement of such acts or they may wait until state officials have proceeded against them for violation. In any case the parties concerned frequently maintain that the state legislation denies them due

[34] Eleven federal statutes were declared void in 1935–1936.

[35] 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.

process of law in that it takes away their life, liberty, or property, especially their property, without due process of law. Or they may declare that such statutes deny them equal protection of the law as guaranteed by the federal Constitution. Again they may contend that they are engaged in interstate commerce and that such regulation on the part of a state exceeds the authority of a state in the commerce field.

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. Where large numbers of persons and corporations are interested in a single case, several parties may join together to finance the litigation and may even request that they be permitted to be heard by the court, but the chief litigant must be one who has real interest. 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.[36]

Criticisms of the Appellate Process: Excessive Cost Perhaps the most telling criticism that can fairly be aimed at the appellate process takes the form of high costs.[37] In a democratic government it would seem that even the Supreme Court should be available to every citizen however humble if the case which he has involves a question of first-rate legal importance. Under that supposition the cost of bringing cases to the highest tribunal in the United States should be very reasonable indeed. Yet strangely enough, there is probably no court in the world where it costs more to have a hearing, while in most countries appeal to the highest court involves far less in the way of expenditure. Records in the case, which rarely run under two or three printed volumes and may go to half a dozen or so, must be printed and that alone may involve a cost of many thousands of dollars. Counsel must be employed at considerable expense and their transportation and hotel bills to, from, and in Washington must be met. Altogether it is unusual for an appeal to cost less than $7,000 or $8,000, while bills of $50,000 to $100,000 are not uncommon.

[36] See F. R. Aumann, "The Supreme Court and the Advisory Opinion," *Ohio State University Law Journal*, Vol. IV, pp. 21–55, December, 1937.

[37] R. H. Smith, *Justice and the Poor*, Charles Scribner's Sons, New York, 1919, deals in considerable detail with the general problem.

It does not seem therefore that the Supreme Court is any place for a poor man, or indeed the rank and file of citizens, to go. Even the Schechter Brothers, despite all of the financial assistance received from well-wishers who hated the N.R.A., shortly found themselves in bankruptcy court, largely, it is reported, because of the strain of meeting the costs of *Schechter Poultry Company* v. *United States*.[38] It is only proper to note that the Supreme Court has a modest fund which it may use to assist impoverished litigants in meeting their printing bills, but this is but a drop in the bucket in making it within the realm of feasibility for the rank and file of citizens to avail themselves of the services of the Supreme Court.

Limited Jurisdiction Lawyers frequently complain that the Supreme Court is too unwilling to receive cases which ought to have its attention. They criticize the rules which govern the appellate jurisdiction of the court and furthermore declare that the Supreme Court is not sufficiently liberal in applying these rules. They are fond of pointing out that the Supreme Court refuses far more petitions to hear cases than it actually accepts; out of a thousand or so cases that are filed with the clerk of the court no more than a hundred or two will receive the attention that goes with an opinion. It is difficult to determine the fairness of such a criticism. The reply has been made that the Supreme Court is not suposed to pass on every important case but only those involving vital issues of far-reaching import that have not hitherto been ruled on. It has been suggested that the Supreme Court might be organized into several sections, such as are characteristic of the highest courts in certain foreign countries. However, there is the difficulty of obtaining uniformity of interpretation under such a system. Furthermore, with the Constitution specifying "*one* Supreme Court" there might be some question as to the legality of such a reconstruction.[39]

Training of Justices Another criticism frequently voiced comes from those who would make the Supreme Court less dependent upon lawyers. Most of the questions which the court has to consider relate to economic and social matters; a good many involve scientific processes and inventions. It is main-

[38] 295 U.S 495 (1935)

[39] Former Attorney General Robert H. Jackson, later appointed to the Supreme Court, criticizes the judicial process as follows: "This is a government by lawsuit. . . . These constitutional lawsuits are the stuff of power politics in America . . . The court may be, and usually is, above party politics and political parties, but the politics of power is a most important and delicate function, and the adjudication of litigation is its technique. . . . Judicial justice is well adapted to insure that established legislative rules are fairly and equitably applied to individual cases. But it is inherently ill-suited, and never can be suited, to devising or enacting rules of general social policy. Litigation procedures are clumsy and narrow, at best; technical and tricky, at their worst." He quotes from the dissenting opinion of Justices Black, Frankfurter, and Douglas in *McDarroll* v. *Dixie Lines*, 309 U.S. 176, 198 (1940): "Judicial control of national commerce—unlike legislative regulations—must from inherent limitations of the judicial process treat the subject by the hit and miss method of deciding single, local controversies upon evidence and information limited by the narrow rules of litigation Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection for interstate commerce intended by the Constitution." *Struggle for Judicial Supremacy*, Alfred A. Knopf, New York, 1941, pp. 287–288, 290.

tained by some critics that lawyers have had almost no training in business or social service and that they consequently display the greatest ignorance when it comes to passing on cases that have to do with business practices and social issues. Scientists wax even more eloquent when they condemn the lawyer-justices of the court for their decisions dealing with patents and other scientific matters; it is asserted that the judges show by their very references that they do not have the slightest notion of the basic principles in such processes. It may be that President F. D. Roosevelt gave indication that he shared these points of view by appointing Senators, law school teachers, and administrative officials to the court. Justice Brandeis, although a lawyer, certainly felt that the court should do more than view social and economic questions from the narrow legal viewpoint; his opinions frequently brought in such fresh approaches.[40] The difficulty in this connection is very complicated in this age of specialization. To bring to the Supreme Court bench experts in every field would make a court of gigantic proportions. If expert courts were set up to handle each type of case, there would, in all probability, be the lack of uniformity that characterizes the lower federal courts. The fact that briefs are frequently drawn up by technical experts and masters who have special knowledge of a field are sometimes appointed by the Supreme Court to take testimony and present recommendations serves to offset to some extent any narrowness in background on the part of the justices themselves.

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[40] It may be suggested that students examine some of Justice Brandeis's opinions, especially where he has dissented. Also see A. T. Mason, *Brandeis: Lawyer and Judge in the Modern State,* Princeton University Press, Princeton, 1933.

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Section IV

THE NATIONAL GOVERNMENT: ADMINISTRATION

25. The Problem and General Character of Administration

The Recent Origin 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. The world has witnessed the exploits and misdeeds of kings and monarchs, tyrants and dictators, presidents and prime ministers for centuries, until one wonders whether they can bring forth anything new, despite the new individuals that appear on the scene. Although they have had lengthy periods of eclipse and occasionally have been dispensed with altogether, parliaments, congresses, senates, and diets are also of long standing in the field of government. Courts of one kind and another have been traditionally associated with political institutions from very early times. And, of course, it cannot be argued that the complicated administrative machinery, now so striking a characteristic of modern government at every level, sprang up overnight. National defense, in so far as it belongs to the administrative field, antedates kings and parliaments—even in the earlier tribal stage people had to defend themselves against the onslaughts of their enemies. 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. Hence the roots of public finance go so far back in the past that dimness prevents any very clear picture. Even the newer administrative agencies perform functions that were not entirely unknown in past centuries. The ancient Egyptians apparently regulated business practices, while the Babylonians made some provision for the care of the aged. But until comparatively recently modern 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.[1] 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 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, with slightly over one hundred thousand civil employees. The succeeding half a century has added two major departments, several agencies that can only with difficulty be distinguished from departments, some twenty-five independent establishments, and various bureaus and emergency offices—a total of more than a thousand principal component parts of the government.[2] But this does not begin to tell the story, for the departments already in existence expanded their programs and added tens of thousands of new employees. A better idea of the tremendous growth of administration during the last half a century may be gained by a realization that the number of federal employees has increased many times while the expenditures have jumped even more strikingly. Indeed we have spent in a single year recently not so much less than we spent during the first century of the existence of the government.

Causes of Administrative Expansion

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 talk, one might imagine the entire

[1] For a lucid account of the development of public administration during this early period, see Leonard D. White, *The Federalists,* The Macmillan Company, New York, 1948.

[2] In 1945 President Truman reported 1141 principal component parts of the executive branch of the national government as follows: 13 in the executive office of the President, 499 in ten departments, 364 in 23 emergency boards, and 265 in 26 independent establishments, boards, commissions, and corporations.

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 a few venal clergy, or the home because of certain 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 or "empire-building" on the part of administrative agencies to expand their staffs and their functions unnecessarily, 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.[3] 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 not 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. True, health may not be what it ought to be; farmers may not receive their fair share of the national income; and child care may be

[3] For additional discussion of the causes of such growth, see the thoughtful comments of John M. Gaus in his *Reflections on Public Administration*, University of Alabama, University, 1947; Leonard D. White and others, *New Horizons in Public Administration*, University of Alabama, University, 1945.

neglected; but these must be regarded as necessary evils since the government does not have the resources to engage in elaborate programs aimed at their amelioration.

Industrialization and Urbanization As a country emerges from a stage of sparse settlement and enters one of huge urban concentration and as industrialization appears, the need of administrative services is manifest. When people live in villages or on farms, maintaining law and order is relatively simple—a single policeman may be able to supervise two thousand or more people. Put those same people in New York City and their temptations and irritations become such that it requires one policeman for every three or four hundred inhabitants. Industrialization largely causes the disappearance of the tiny workshop in which the master and his few employees can discuss their mutual problems during their daily encounters. Organized labor develops to represent workers in their negotiations with owners who may live in a remote city and have little or no personal contact with their employees. Complicated machinery produces many hazards and leads to accidents—the government is then forced to protect the worker by setting up systems of workmen's compensation. Ruthless men of affairs, driven on by the desire for gain, manufacture harmful food and drugs, sell valueless securities, and otherwise prey upon hundreds of thousands and even millions of people whom they do not know and who hence mean little or nothing to them. Again the government is forced to intervene to protect the "productive from the predatory," the sheep from the wolves.

Economic Depressions and War Despite the ingenuity and initiative of private business the economic machinery which is geared to industrialization breaks down periodically. Millions of persons are thrown out of work; banks close; the specter of starvation haunts hundreds of thousands of households. Even the billion-dollar corporations find themselves unable to cope with the situation. Maddened with fear and driven on by their disappointment, the rank and file of the people turn to the government in desperation. Modern warfare is intimately geared into the administrative setup, particularly because it depends so largely on supply, transport, and general industrial mobilization.

Psychology of Plenty Industrialization is ordinarily accompanied by an increase in national wealth which in turn leads to a psychology quite different from that associated with a simpler society. When the entire population is on the very margin of subsistence, those who have the misfortune to sink below do not expect any considerable help from outside sources. Fate has not dealt kindly with them, but they grin and bear their disaster as best they can. However, in a country in which millionaires are commonplace and the salaries paid business managers may run to several hundred thousand dollars per year, popular psychology is transformed. The lower-income group and the unemployed see no reason why they should starve or even why they should accept employment at a few cents per hour while their fellow countrymen

maintain town houses, country houses, winter resorts, and summer cottages, are served by retinues of servants, and drive around in an assortment of expensive cars. Inasmuch as there are always millions of these under-privileged even in prosperous America, their demands can be insistent, particularly in a government in which votes determine elections. An examination of the administrative activities of the national government reveals a number of elaborate projects traceable in whole or in part to the psychology built up by a comparison of the wealth of the United States with that of other countries. A country which has a national income every year that approximates the total national wealth of certain other major powers can afford to be generous in caring for its under-privileged. At least that is the argument of large numbers of people.

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 poor relief was 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. Many of the administrative activities undertaken by the national government since 1932 fall into this category.[4]

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 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

[4] For a study of the development just before the "New Deal," see C. H. Wooddy, *Growth of the Federal Government, 1915–1932*, McGraw-Hill Book Company, New York, 1934. This may be compared with the situation revealed in Lawrence Sullivan's *Bureaucracy Runs Amuck*, Bobbs-Merrill Company, Indianapolis, 1944.

whole. Public opinion demands the regulation of certain business practices and Congress responds by establishing a Federal Trade Commission, which, although concerned with some of the same problems as the Department of Commerce, is given its own independent status. At another time there is widespread interest in a program which will furnish credit which is not readily available from ordinary credit agencies, so Congress produces the Reconstruction Finance Corporation. War creates the need for an amazing assortment of agencies to handle almost every conceivable type of problem. Many of these agencies whether set up in times of peace or war might have been tacked onto already existing departments, but Congress is usually reluctant to do that for several reasons.

Congressional Attitude toward Administrative Agencies 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. The congressmen cannot understand how their brand which they regard as comparatively innocuous can be castigated by those who seem to be able to develop ingenious, less above-board, but nonetheless effective tactics.

Then, too, the members of Congress cannot help resent the current emphasis upon administration. As the lawmakers, they are charged with shouldering the responsibilities of the United States; yet the administrators frequently steal their thunder and assert that except for their efforts the government could not exist. Congressmen get along with a suite of from two to five offices which, though well enough furnished, appear modest indeed when compared with some of the beautiful offices occupied by administrators who are not even heads of departments. Adding more functions to existing agencies would merely serve to increase an importance which seems already too overweening. 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 great departments, such as the State Department, Commerce Department, Department of Agriculture, and Department of Justice, which in certain instances are almost as old as the republic itself.[5]

[5] Two departments, State 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.

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.[6] Almost on a par with these major departments there are new "agencies" which can only with difficulty be differentiated from the former. The Federal Security Agency and the Housing and Home Finance Agency employ numerous persons, spend enormous sums of money, and wield impressive authority—indeed they would 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 years or even 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." The Interstate Commerce Commission has a staff of some twenty-five hundred persons, occupies a large building and exercises a great deal of authority. At the other extreme, there are independent establishments that have only a handful of employees, rate only a few rooms in some obscure corner, and would scarcely leave a ripple if they disappeared from sight. In between these poles there are numerous bodies which are at least reasonably important—the Federal Trade Commission, the Federal Power Commission, the Federal Communications Commission, and the Federal Reserve Board, for example.

Board Versus the Single-head Type The departments and the agencies have single executives at their head, although they may have boards to assist in certain aspects of their work. 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 number. It might be supposed that the departments and the agencies would administer work which calls for prompt decision and clear-cut 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. Some improvement has been made in recent years in reducing the use of boards to those agencies which have deliberative functions, but there are still cases where establishments headed by boards are given more or less routine responsibility.

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. The secretaries, undersecretaries, assistant secretaries, administrators, directors, and commissioners who are in general charge of the administrative agencies are almost invariably political

[6] These agencies are placed under independent establishments in the *United States Government Organizational Manual* for 1949, but their work is more like that of the major departments than that of the commissions and boards usually thought of as independent establishments and hence a distinct category has been made above.

appointees who go out of office when a new President is inducted or at least as soon as their terms have expired. 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.

Field Organization It is frequently assumed that the administrative agencies and officials of the national government are largely if not entirely confined to the District of Columbia. Actually only some 10 per cent of the administrative personnel are stationed in Washington, while the rank and file are to be found in the field. It is not a simple matter to present anything like a clear picture of the field organization for various reasons. The very magnitude of the field service makes for a complex setup. Perhaps more important is the fact that there is less uniformity than one might expect in the field organization of the various agencies. It has been noted that while there is some difference among departments at the Washington level the degree of uniformity is fairly high. But in the field a great deal depends upon the program to be carried out. The administration of the Federal Reserve System is not closely related to the national defense organization in the field; the reclamation program is not spread out over the entire country as is the social security program. The result is that the number of regions employed by the various agencies for administrative purposes varies from six to a dozen or so and even if the number of regional subdivisions is the same in two departments it is not likely that the boundaries of the regions will be the same. Some administrative departments can handle most of their field problems in fairly large areas including several states; others require smaller areas because they have a more intensive coverage. A recent survey by the Joint Committee on Reduction of Nonessential Federal Expenditures revealed 526 state and district offices of the national government, 3619 field and county offices and institutions, 290 regional offices, 97 branch offices, 127 veterans' hospitals, centers, and depots, and 41,790 post offices. New York City alone was reported to have 1200 federal offices; Chicago gave space to approximately 1000; while Philadelphia and Los Angeles could claim more than 500 each.[7]

Co-ordinating Machinery One of the major problems of national administration is that of co-ordination. Even under the most careful distribution

[7] For additional discussion of the field organization, see Earl Latham and others, *The Federal Field Service*, Public Administration Service, Chicago, 1947.

of functions there will be a situation where more than a single agency is concerned with a given activity. According to common report there is little or no attempt to co-ordinate the efforts of two or more departments that are working in a single field—indeed there is a widespread belief that on general principle each agency proceeds to work at cross purposes with the others. There have been some sensational instances of such wasteful practices and it must be admitted that a high degree of co-ordination is not easy to attain. Nevertheless, it is a serious mistake to ignore the attempts which are being made to cope with the problem. Sometimes there is only an informal exchange of ideas through personal conference, telephone conversation, or memorandum, but in other instances there are standing interdepartmental committees which play an important role in bringing about a reasonable degree of uniformity. Some of these involve only two agencies, while others may bring together representatives of four or five or more interested departments. Some of these committees may meet infrequently; others are accustomed to convene every week or even oftener at times. The interdepartmental committee, known as "SWNCC" and later "SANACC," which brought together representatives of the State Department, War Department, and Navy and later the Air Force, had a great deal to do with the administration of occupied Germany and Japan at one period. The Military Liaison Committee to the Atomic Energy Commission includes representatives of the departments of the Army, Air Force, and Navy. Some of these committees are maintained at a very high level, with the heads of the departments as members; others draw their members from an intermediate level where there is a higher degree of professionalism and time demands permit more detailed attention to the work of the committee.[8] Another type of co-ordinating device is the conference, of which the Attorney General's Conference is a good example. These are usually intended to bring together representatives from Washington and the field in order to promote closer co-operation.

Government Corporations During recent years there has come into increasing prominence an administrative device known as a "government corporation." Instead of setting up new federal departments or creating additional subdivisions of existing departments, it has been found desirable to provide government corporations which can be used as agencies of the national government but which have a certain degree of autonomy, enjoy greater freedom of action, and are not subject to all of the burdensome red tape which characterizes the administrative departments. These are created by Congress as legal entities which may sue and be sued; their stock is ordinarily owned exclusively by the United States; and their authority is defined in detail in the statute which sets them up. In 1931 there were only ten of these in existence; by 1938 the number had gone up to twenty-seven; and in 1944 there were forty-

[8] For additional discussion, see M. T. Reynolds, *Interdepartmental Committees in the National Administration*, Columbia University Press, New York, 1939.

four. Since the end of World War II some government corporations have been liquidated, but these agencies remain important and may be expected to play a significant role in national administration. Outstanding examples of government corporations are: the Tennessee Valley Authority, the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, and the Commodity Credit Corporation. Government corporations ordinarily operate outside of the civil service system, have less dependence on the General Accounting Office than agencies strictly public in character, and may be less closely related to the Bureau of the Budget.[9]

Authority of the Administrative Agencies

Legal Basis As has been noted 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 create administrative agencies and instruct them 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. He may not find it convenient or satisfactory to take care of the immediate tasks which are involved in his pardon power and consequently may use the Department of Justice for this purpose, depending himself upon the recommendations which it makes. It should be remembered at this point, however, that neither the Congress nor the President can delegate their authority completely to an administrative agency,[10] 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 day-to-day operations 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. Thus the Treasury Department collects taxes, borrows money, provides currency, takes care of public funds, and pays out claims against the national

[9] For additional discussion of government corporations, see J. H. Thurston, *Government Proprietary Corporations in the English-Speaking Countries*, Harvard University Press, Cambridge, 1937; John McDiarmid, *Government Corporations and Federal Funds*, University of Chicago Press, Chicago, 1938, and M. E. Dimock, "Government Corporations," *American Political Science Review*, Vol. XLIII, pp. 899–921, 1145–1164, October, December, 1949.

[10] 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.

government as it is authorized to do by general law or by appropriation act. The newer agencies may have direct authority to operate in a given area, but some of them can wield only those powers which arise from the device known as "grants-in-aid." 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, conscious of 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 having the authority to enter these fields directly, Congress has 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,[11] yet exerts very great influence through the disbursement of grants-in-aid to states which co-operate with it. For example, it cannot compel a state to set up an old-age pension system, dependent children's benefits, or a program of pensions for the blind. Nevertheless, the money which it controls—hundreds of millions of dollars every year—is sufficient to persuade the states to adopt these programs and to follow minimum standards which it specifies.

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, which may be expected to deal with agricultural surpluses, credit, or insurance, very much as a private business would handle similar activities. 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.[12]

[11] This agency does have extensive authority over the old-age insurance program which is not based on the states.

[12] For additional discussion of public corporations in the United States, see M. E. Dimock, *Business and Government*, Henry Holt and Company, New York, 1949, Part VIII; F. M. Marx, ed., *Elements of Public Administration*, Prentice-Hall, Inc., New York, 1946, Chap. II; C. H. Pritchett, "The Government Corporation Control Act of 1945," *American Political Science Review*, Vol. XL, pp. 495–509, June, 1946.

Quasi-judicial and Quasi-legislative Functions Finally, there are several administrative agencies which perform duties which are quasi-judicial or quasi-legislative in character.[13] The Federal Trade Commission hears evidence and explanations in regard to unfair business practices and finally decides whether or not there is sufficient proof of charges to issue an order to "cease and desist" from engaging in them further. The Federal Communications Commission and the Interstate Commerce Commission both sit in quasi-judicial and a quasi-legislative capacity in connection with radio broadcasting, interstate telephone and telegraph lines, and interstate railroads and buses, deciding cases and issuing rules and regulations which have the force of law. Not all the functions of these commissions will be quasi-judicial by any means, for they also have more or less routine administrative duties. However, the quasi-judicial or quasi-legislative duties are at times so important that they overshadow the other functions.

General Services Administration

Prior to 1949 the national government maintained no agency which was responsible for what might be designated "house-keeping" or general administrative services. The Treasury Department handled some of this work; the Federal Works Agency gave its attention to other aspects of this labor; and other agencies, such as the National Archives Establishment, were charged with preserving various records. The Hoover Commission pointed out the unsatisfactory character of such a system, noting the heavy expenses accruing to the government because of the obsolete methods of dealing with some of these problems. Among its eight general conclusions was one which read as follows: "General administrative services for various operating agencies—such as purchasing supplies, maintenance of records, and the operation of public buildings—are poorly organized or co-ordinated."

Creation of a General Services Administration Among the first recommendations of the Hoover Commission to receive the attention of Congress was this one relating to general services. Just why it should have received such early consideration is not entirely clear—certainly there are other items more basic in character. At any rate an act was approved on June 30, 1949, which became effective on July 1, 1949, and provided for the establishment of a new General Services Administration. The act transferred to this agency various existing organizations as follows: the Federal Works Agency, the National Archives Establishment, the Administrative Committee of the *Federal Register,* the Board of Trustees of the Franklin D. Roosevelt Library, the National Archives Council, the National Historical Publications Commission, the

[13] These are dealt with in R. E. Cushman's *The Problem of Independent Regulatory Commissions,* Brookings Institution, Washington, 1937; and W. K. Doyle, *Independent Commissions in the Federal Government,* University of North Carolina Press, Chapel Hill, 1939.

National Archives Trust Fund Board, and the Bureau of Federal Supply, together with functions of the War Assets Administration, Director of Contract Settlement and of the Office of Contract Settlement, and the Contract Settlement Act Advisory Board and the Appeal Board.[14]

Organization and Functions The General Services Administration has a single administrator at its head who is appointed by the President with the consent of the Senate. The agency is not of cabinet rank, but it is nevertheless one of the important administrative establishments of the national government. It maintains headquarters offices in Washington and various district offices throughout the country. Its responsibilities include the following: (1) management of government records, (2) utilization and disposal of real and personal property, (3) procurement and supply of personal property, (4) public works not closely related to the normal work of other departments of government, and (5) federal grants and loans to states and local governments or other public agencies for the construction of public works.[15]

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[14] Most of these latter agencies were in process of liquidation or at least were scheduled for liquidation. Also to begin with, the Public Roads Administration was placed here, until shortly moved to the Commerce Department.

[15] See *United States Government Organization Manual, 1949*, Government Printing Office, Washington, 1949, p. 417.

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26. Administrative Reorganization

Though hardly peculiar to the government of the United States, the problem of the adequate organization of the governmental structure is perhaps more acute in the United States than in some other countries. This state of affairs is not to be accounted for on any one ground. The democratic character of the country, the role of public opinion, and more especially great influence exerted by pressure groups in the United States contributes to the situation, explaining the establishment of not a few of the topsy turvy agencies and even more accounting for the retention of outmoded offices. The inclination of the Congress to create new agencies to handle the constantly arising demands of the modern world rather than to assign them to existing departments is certainly a factor which cannot be overlooked in this connection. The rapid succession of World War I, the Roosevelt New Deal, and World War II, with their elaborate programs designed to cope with national defense, international collaboration, world-wide economic depression, and social welfare, to mention only a few, provided an almost ideal background for an immensely complicated and often almost chaotic expansion in the governmental structure. One may observe such a growth at all levels of government, national, state, and local, but it is at the national level that the situation has developed most sensationally.

Criticisms of the Administrative System In addition to the general criticisms noted above, several specific charges have been leveled at the national administrative system. Perhaps the most telling of these is the one which pointed out how utterly impossible it is 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 is nominally at the head of the system, it has been humanly impossible for him to do more than keep a weather eye out for abuses. In the second place, such a top-heavy structure is more or less inefficient. Half a dozen agencies may be working on different phases of the same problem and no one of them desires to assume or is assigned final responsibility. One agency repeats what has already been done by another; another attempts 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. Moreover, boards have been 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 have waxed eloquent about the economic wastefulness of a system that permits duplication, red tape, working at cross-purposes, and long delay. Extreme enthusiasts believe 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 to Cope with the Problem It is interesting to note that, despite the geometric ratio which seems to characterize the development of the problem, there has been a considerable amount of attention given to the situation over a fairly long period.[1] Those who have read in the press during recent years of the work of the Commission on the Organization of the Executive Branch of the Government, popularly known as the Hoover Commission, may easily assume that it has served in a pioneer capacity. Without intending to detract in the least from its contribution, it should be pointed out that various other attempts have been made during a period of at least half a century to deal with the matter.

This is hardly an appropriate place to present a detailed account of the several forays, sorties, and assaults that have been made on the entrenched forces of over-elaboration, duplication of effort, irresponsible administration, and their cohorts in the government of the United States. However, a brief resume may serve a useful purpose. To name any one person or group as the first in the field would only lead to controversy, but it may be noted that President William Howard Taft during the first decade of the century appointed a Commission on Economy and Efficiency to investigate the structure and operations of the national government. Though it included some able members and took its assignment seriously, the practical results of this commission were disappointing despite the thirty-five circulars which it issued. President Woodrow Wilson displayed interest in the developing problem, but

[1] As early as 1876 the Boutwell Committee in the Senate considered the reorganization of departments—its report may be found in *Senate Report 289,* Forty-fourth Congress, second session, Government Printing Office, Washington, 1876. Another committee of the Senate, known as the Cockrell Committee, dealt with the problem about a decade later—its report may be found in *Senate Report 507,* Fiftieth Congress, first session, Government Printing Office, Washington, 1887. Then in 1893, the Dockery-Cockrell Joint Commission made a report on the subject—see *House Report 2000,* Fifty-third Congress, third session, Government Printing Office, Washington, 1893.

the pressures of World War I prevented much in the way of concrete action. As Secretary of Commerce, Herbert C. Hoover went so far as to undertake a survey of the extent of duplication in the national government, and as President, he gave a great deal of thought to the overlapping of authority and the irresponsibility of numerous agencies, eventually persuading Congress to grant him the authority to reorganize the national administrative setup subject to congressional approval. Acting under this permission President Hoover undertook an extensive rearrangement and consolidation of the administration departments, but a Congress dominated by the Democratic party 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 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 dared hope for. 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. The President was occupied with the problems presented by the worst depression in American history during the two-year period allowed for this reconstruction. He 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. Therefore, the best opportunity which an American chief executive had ever had produced nothing like the benefits which had been anticipated. Some important changes were made, but they were not far-reaching enough in character to effect any general reorganization of the federal administrative system.

The Committee on Administrative Management and the Reorganization Act of 1939

President Roosevelt Appoints a Special Committee The addition of the New Deal alphabetical agencies to the administrative system, bringing the total number to approximately one hundred, generated adverse criticism among those who had expected Franklin D. Roosevelt to achieve reform in

government. These new agencies were neither placed under the merit system nor otherwise brought into well-defined relationship with the older departments. Public opinion encouraged some of the more independent congressmen, including Senator Harry F. Byrd of Virginia, to train their guns on the President and threaten a congressional investigation. Not to be caught sleeping, 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. Louis Brownlow, Charles E. Merriam, and Luther Gulick, all men of experience and wide acquaintance with the principles of public administration, recruited a staff of recognized experts to assist them in making the most searching study which had thus far been made of the federal administrative machine.

The Committee Report The Committee on Administrative Management completed its studies in 1937, and shortly thereafter submitted its report to the President.[2] The recommendations which were made by the committee were soon made public and received almost universal commendation as far as general principles were involved, though there was naturally some difference of opinion in details. Some thoughtful citizens, for example, doubted the wisdom of the recommendation which proposed to substitute a single civil service administrator for the existing three-man commission and there was some question raised about the extent to which the report went in urging the inclusion of the quasi-judicial commissions under the major departments, but these objections were comparatively minor. 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 should 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 should be given regular rather than sporadic attention.

Delay in Transmitting Report to Congress 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 was more interested in other matters and consequently allowed the report to remain on his desk for several months. 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.[3] Having

[2] 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.

[3] See Chap. 24.

broken its fetters which had for several years subordinated it to the executive, Congress was in a mood for additional rebellion and saw that opportunity in the administrative reorganization bill. Nevertheless, it was commonly predicted that the bill would finally be accepted by Congress, perhaps with reasonable modifications. But interested observers had not reckoned with Father Coughlin who, on the Sunday before the bill came to a vote in the Senate after passage in the House of Representatives, told his radio listeners that they could save their country by flooding Washington with telegrams protesting against the bill.

The Reorganization Act of 1939 After refusing to accept the original reorganization bill, the Senate proceeded to have the Brookings Institution prepare a study on administrative reorganization.[4] 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 act 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 ranked with the ten major departments: the Federal Security Agency, the Federal Works Agency, and the Federal Loan Agency.[5] Widely scattered divisions of the government were brought together into these three integrated new 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, the Central Statistical

[4] Additional discussion of this report 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. For the text, see "Brookings Report," *Senate Report 1275*, Seventy-fourth Congress, first session, Government Printing Office, Washington, 1937.

[5] For Plans 1 and 2, see *United States Statutes-at-Large*, Seventy-sixth Congress, first session, Vol. LIII, part 2

Board, the National Resources Planning Board, and the National Emergency Council [6] were placed in the executive office of the President.

Plan 3 related to the Treasury, Interior, Agriculture, and Labor Departments and brought about only minor changes except that it combined ten divisions of the Treasury Department into a large Fiscal Service to be headed by an assistant secretary and composed of three sections: Office of the Treasurer of the United States, Bureau of Accounts, and Bureau of Public Debt. Plan 4 was even less important, doing little of more than detailed consequences except perhaps the shift of the Weather Bureau to the Department of Commerce, the establishment of a Civil Aeronautics Board in the same department, and the transfer of the Food and Drug Administration from Agriculture to the Federal Security Agency. The final plan, effective on May 22, 1940, provided only for the moving of the Immigration and Naturalization Service from Labor to the Justice Department.[7]

Conclusion The net result of the reorganization which the chief executive effected under the act expiring in July, 1940, was significant. The establishment of the three great agencies dealing with federal security, public works, and federal loans was certainly of far-reaching importance, although it seems unfortunate that it was not possible to put the first at least fully on a par with the ten major departments. Some of the other changes resulted in controversy between certain of the departments, but in general they seem wise. 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.[8] Almost at once President Roosevelt issued executive orders 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.[9] At about

[6] In the case of the National Emergency Council a new title "Office of Government Reports" was conferred.

[7] See the *Federal Register* of April 11, May 22, and June 2, 1940 for Plans 3, 4, and 5.

[8] This authority was granted during the period of the war and for six months thereafter.

[9] 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

the same time the chief executive grouped seventeen bureaus and administrations of the Department of Agriculture into four large divisions.[10] 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. 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 there were in 1945, 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.

The Reorganization Act of 1945 Shortly before recessing for Christmas in 1945, Congress passed an act which authorized the 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 ever been granted previously. For various reasons—the power of certain pressure groups, the lack of political courage on the part of the President, the exercise of a veto by Congress, etc.—the total achievements realized during the period 1946–47 were comparatively minor in character. A National Military Establishment, with the Departments of the Army, Navy, and Air Force, as constituent parts, was created, but this was done by act of Congress rather than under the Reorganization Act of 1945.

The Commission on the Organization of the Executive Branch

As the post-war period developed, it became apparent that the United States was burdened with a governmental structure which was not only very costly but relatively irresponsible and ill-suited for the work to be undertaken.

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 Divison of Defense Co-ordination, and the Army and Navy except for building on military reservations.

[10] These divisions were as follows: Agricultural Marketing Administration, Bureau of Agricultural Economics, Agricultural Conservation and Adjustment Administration, and the Agricultural Research Administration.

Congress recognized this situation in 1947, when it concluded that the President would not be able to deal with the problem and provided for the establishment of a 12-member Commission on the Organization of the Executive Branch of the Government which has come to be known as the Hoover Commission.

Composition of the Commission Made up of four members designated by the President *pro tempore* of the Senate, four by the Speaker of the House, and four by the President, the Hoover Commission represented a wider variety of interests than most investigating bodies in the United States. Among the members of the Hoover Commission were to be found Senators, Representatives, cabinet members, a former President, a member of the Civil Service Commission, business men, and a single university professor. These men naturally varied considerably in ability and experience, but at least for the United States the general character was above the average to be encountered in public bodies. The commission selected its own chairman and it is interesting to note, particularly in light of his earlier record in the reorganization field, that former President Herbert C. Hoover was accorded that honor.

Task Forces and Staff of the Commission The Hoover Commission devoted two years to its assignment, gathering together some 300 specialists, often distinguished men in their own name, who for the most part were organized as "Task Forces," to investigate specific areas.[11] The reports of the latter, running to approximately two million words, were reviewed in detail by the commission as a whole, sometimes favorably but often with drastic modifications, and a general set of recommendations drafted.

Unlike earlier bodies, the Hoover Commission had at its disposal a sizable amount of money for expenditure and an understanding that additional sums within reason would be forthcoming.[12] Instead therefore of depending upon its own members for the necessary explorations or drafting university professors who could be expected to give large amounts of time because of their fundamental concern or expecting civil servants to carry the primary burden, it employed a number of professional management firms to make the basic studies. That is not to say that university people were excluded or that civil servants rendered no service, for the contributions of both were significant, but Chairman Hoover apparently felt greater confidence in a different type of investigator who has appeared on the scene in increasing numbers during recent years and who offers his services as a professional consultant to public agencies and private business concerns. Some of the studies made by the latter were of a high order and deserve great praise; it is felt however in some quarters that a number of the firms contracted furnished inadequate or

[11] An illuminating article on the task force role in the Hoover Commission by one who served on the staff may be cited: Charles Aikin, "Task Force: Methodology," *Public Administration Review*, Vol. IX, pp. 241–251, Autumn, 1949.

[12] The Commission spent approximately two million dollars all told.

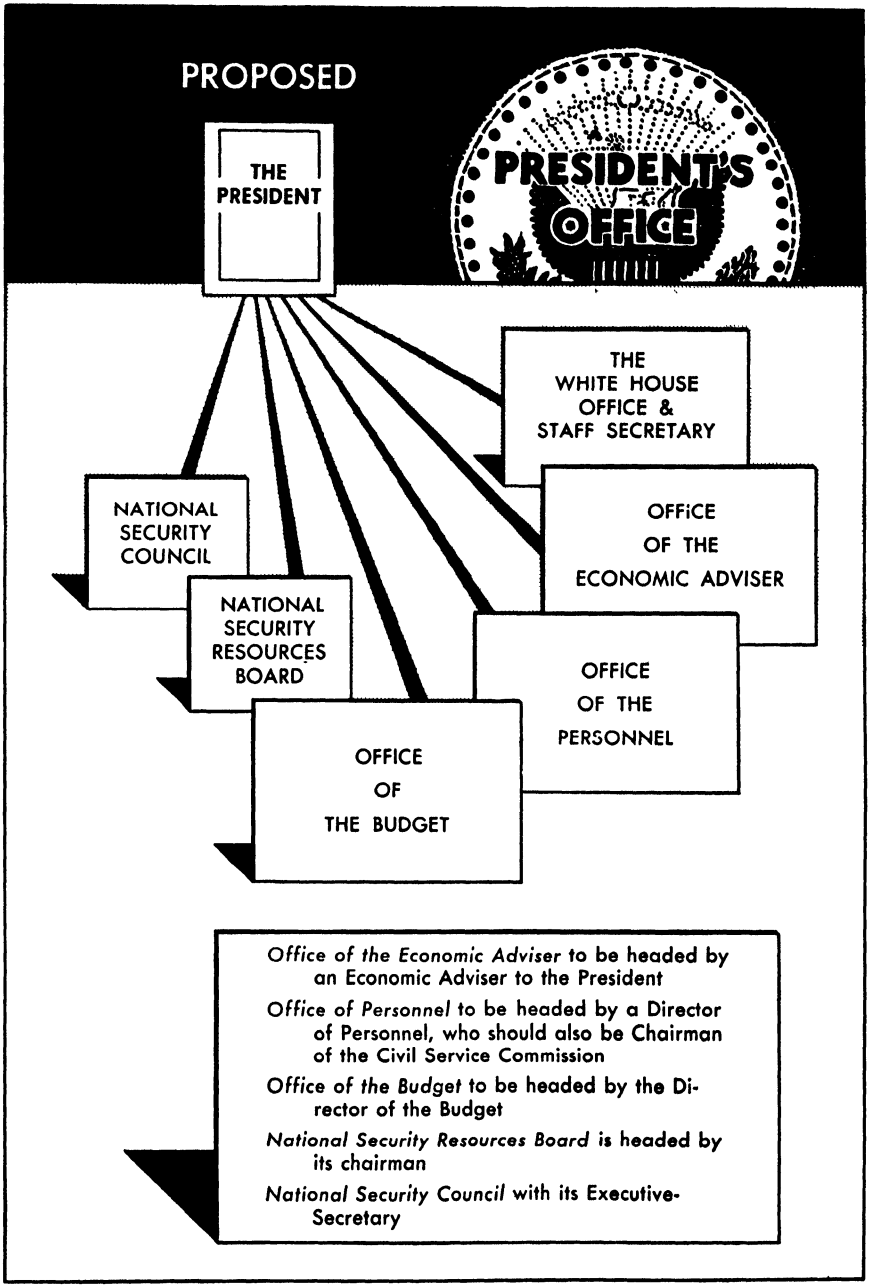
at best mediocre studies which formed the basis for the reports of the "task forces" on specific areas of administration.

The Scope of the Report The scope of the report made by the Hoover Commission has been variously regarded. The basic general recommendations, filling a sizable volume, are specific in character and cover the organization and functions of the various administrative agencies in considerable detail. At the same time it may be noted that certain major problems which have at least a bearing on the organization of the executive branch are not dealt with more than passingly if at all. Perhaps the two most significant of these involve the relation of the executive to the legislative branch and the reconstruction of the cabinet in such a manner as to give it substantial responsibility for the conduct of government. Both of these are receiving the attention of serious students of government in the United States who regard them as exceedingly important to the future of the country. A lengthy study which passes these over naturally has disappointed some people and led to criticism of the commission on the grounds of undue timidity, lack of perspective, or even inability to understand the real problems.[13] A commission made up to such a large degree of top-level government officials and men of affairs would perhaps invariably be reluctant to come to grips with these delicate matters, maintaining that they are too academic or controversial to touch and that the proper role of such a commission should be limited to concrete items of organization and function within the existing framework. Even as it was, on frequent occasions members of the commission pointed out in dissents that they regarded the commission as exceeding its authority.

Eight Shortcomings of the Executive Branch The report of the Hoover Commission starts out with a consideration of the general management of the executive branch and notes eight significant shortcomings.[14] "First. The executive branch is not organized into a workable number of major departments and agencies which the President can effectively direct, but is cut up into a large number of agencies, which divide responsibility and which are too great in number for effective direction from the top. Second. The line of command and supervision from the President down through his department heads to every employee, and the line of responsibility . . . up to the President, has been weakened, or actually broken, in many places and in many

[13] For such a critical point of view, see Herman Finer, "Hoover Commission Reports," *Political Science Quarterly*, Vol. LXIV, pp. 405–419, 579–595, September and December, 1949.

[14] For the average student the most convenient references to the recommendations of the Hoover Commission are the following: W. Brooke Graves, ed., *Executive Reorganization: A Symposium*, Government Printing Office, Washington, 1950, and "Summary of Reports of the Hoover Commission," *Public Administration Review*, Vol. IX, pp. 73–99, Spring, 1949 For the complete official report, see Commission on Organization of the Executive Branch of the Government, *Reports*, Government Printing Office, Washington, 1949. For certain purposes the reports of the Task Forces which did the basic studies for the Hoover Commission will be very illuminating. These are also published by the Government Printing Office. To locate individual reports, see *Index to the Reports of the Commission on Organization of the Executive Branch of the Government and the Supporting Task Force Reports*, Eighty-first Congress, first session, Government Printing Office, Washington, 1949.



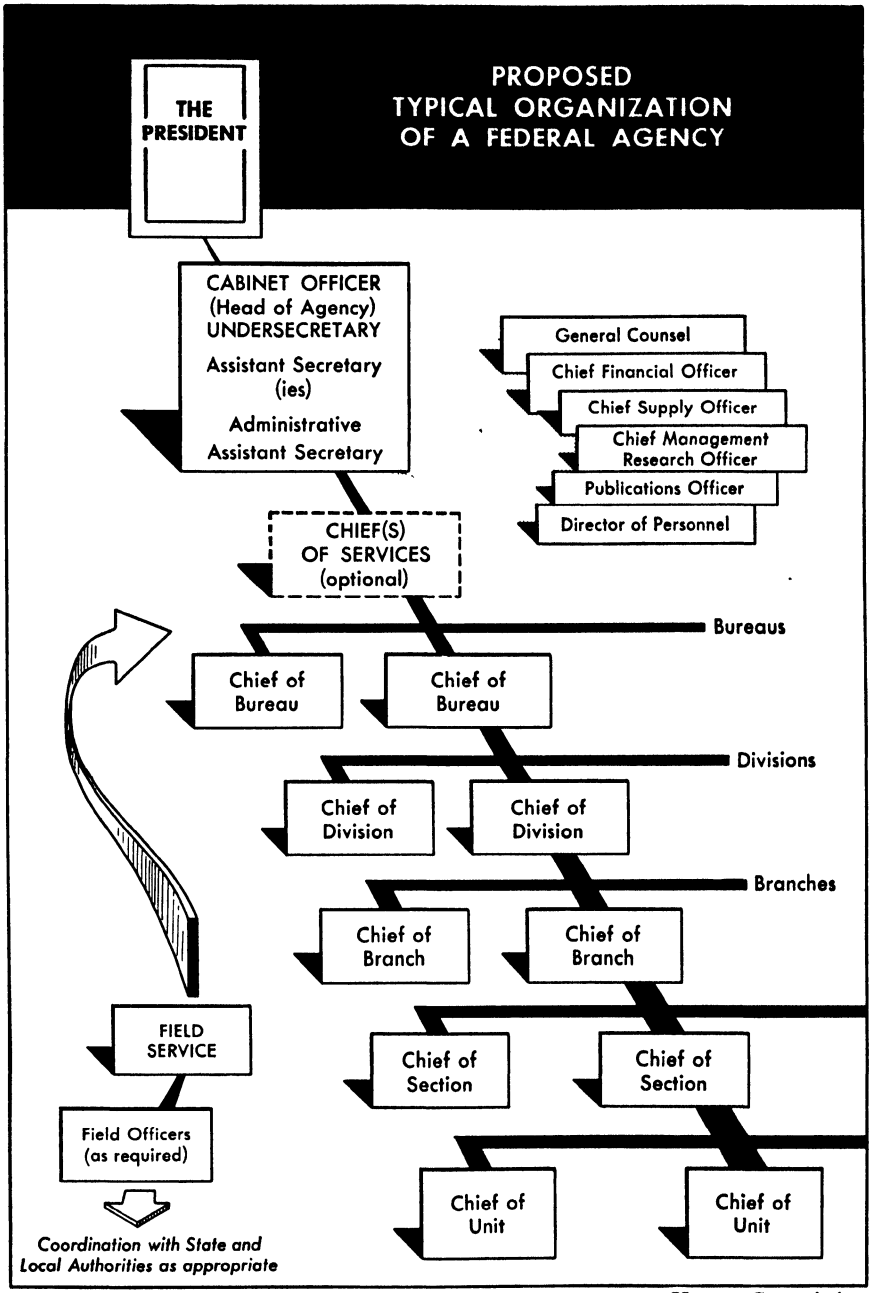
Hoover Commission

Figure 2.

ways. Third. The President and the heads of departments lack the tools to frame programs and policies and to supervise their execution. Fourth. The Federal Government has not taken aggressive steps to build a corps of administrators of the highest level of ability with an interest in the program of the Government as a whole. Fifth. Many of the statutes and regulations that control the administrative practices and procedures of the Government are unduly detailed and rigid. Sixth. The budgetary processes need improvement, in order to express the objectives in terms of work to be done rather than in mere classifications of expenditure. Seventh. The accounting methods require standardization and simplification and accounting activities require decentralization. . . . Eighth. General administrative services for various operating agencies—such as purchasing of supplies, maintenance of records, and the operation of public buildings—are poorly organized or co-ordinated."

Recommendations Pertaining to the Office of the President In its scrutiny of the executive office of the President the commission pointed out that its function is not to assume operating functions and that statutory authority over operating departments should not be vested in any of its staff members or agencies. It then stated that the President should not be prevented by statute from reorganizing the executive office of the President as he deems wise and should be permitted to choose the heads of his staff agencies, except in the case of the Civil Service Commission, without the confirmation of the Senate. An Office of Personnel under the chairman of the Civil Service Commission was recommended in the office of the President, while the importance of the functions of an Office of the Budget was stressed. An Office of the Economic Adviser, with a single head, was suggested to replace the Council of Economic Advisers. The membership and assignment of cabinet committees should be determined by the President rather than by statute. A recommendation involving the appropriation of funds for a staff secretary in the office of the President suggests a development somewhat along the lines of the cabinet secretariat in Britain.

Recommendations Relating to the Organization of Administrative Departments While refraining from setting of any specific number of administrative departments as desirable, the commission expressed the opinion that a consolidation on the basis of major purposes should reduce the existing number by about two-thirds. Department heads should be fully responsible under the President for the conduct of their departments, should have authority to name their staff officials and as a rule their bureau chiefs, and should be given adequate staff assistance. Perhaps as a result of their own experience the members of the commission recommended that each department head "should be given authority to determine the organization within his department." Thus it may be seen that despite the advocacy in some quarters in the United States of a system of permanent undersecretaries and career bureau heads, indeed the establishment of an administrative class



Hoover Commission

Figure 3.

similar to that in Britain, the members of the Hoover Commission favored even greater political direction than is now the rule.

Recommendations Relating to Public Personnel Administration In the field of public personnel management it was recommended that the Civil Service Commission be retained, with its three members, but that it place primary emphasis on fixing standards, post-auditing to determine adherence to such standards, imposing of sanctions on laggard agencies, and the hearings of appeals from the public or public employees in accordance with laws. "Primary responsibility for recruiting and examining . . . should be placed on the departments and agencies." The present salary ceiling was regarded as too low.

Recommendations Relating to the Budget "The Federal budget is an inadequate document, poorly organized and improperly designed to serve its major purpose, which is to present an understandable and workable financial plan for the expenditures of the Government . . . We recommend that the whole budgetary concept should be refashioned by the adoption of a budget based upon functions, activities, and projects; this we designate as a "performance budget."

Recommendation of an Office of General Services As a result of task-force studies which revealed sharply wasteful and inefficient conditions in the various agencies charged with purchasing supplies, maintaining public buildings, and managing public records, the Hoover Commission recommended the establishment of a new Office of General Services to "prescribe regulations governing the conduct of these three activities by departments and agencies . . . The Office of General Services should, to the greatest extent possible, delegate responsibility for exercising these three functions to the departments and agencies."

Recommendations Relating to Foreign Affairs and the State Department The Hoover Commission regarded with some concern the increasing habit of setting up special agencies to deal with matters relating to foreign affairs and warned against such legislation "unless there are overwhelming advantages" to be gained. Passing to the State Department the Commission declared that this department "as a general rule should not be given responsibility for the operation of specific programs, whether overseas or at home," but "should concentrate on obtaining definition of proposed objectives . . . on formulating proposed policies in conjunction with other departments and agencies to achieve those objectives, and on recommending the choice and timing of the use of various instruments to carry out foreign policies so formulated." Despite its stand for a free-hand on the part of department heads in organizing their agencies, the Commission took the trouble to lay down quite specific lines of organization for the State Department, even to the addition of two new deputy under secretaries, five line units under five assistant secretaries, and additional assistant secretaries to handle

economic and social affairs, congressional relations, and public affairs. The basic principle of organization is to be geographical and the foreign service and Washington officials dealing with foreign affairs should be amalgamated over a short period into a single foreign affairs service serving at home or overseas as needed.

Recommendations Relating to National Security In the national security field the Hoover Commission was impressed by the rivalry among the services, the lack of financial consciousness on the part of professional military personnel, and the general importance of integrated effort. It therefore recommended "that the principle of unified civilian control and accountability be the guiding rule for all legislation concerned with the National Military Establishment and that full authority and accountability be centered in the Secretary of Defense, subject only to the President and Congress." The three services should be headed by under secretaries rather than by full secretaries.

Other Recommendations of the Commission Space does not permit even a general summary of the remainder of the recommendations of the Hoover Commission, but a few items may be mentioned. The Post Office should be taken out of politics and run on the lines of a government corporation though without being incorporated as such. As extension of functional organization is suggested in the Department of Agriculture. The Department of Labor should be given responsibility for many agencies not at present under its control. The Treasury Department should be "thoroughly reorganized along functional lines." Both the Commerce and Interior Departments require extensive reorganization, with a rearrangement of functions which among other things would group all major nonregulatory transportation activities under the Department of Commerce and bring flood control and rivers and harbors improvement from the Department of the Army to the Interior Department. A new major department of Social Security and Education was recommended along with a United Medical Administration "into which would be consolidated most of the large-scale activities in the fields of medical care, medical research, and public health." A considerable overhauling of the Veterans' Administration, with the insurance program set apart in a Veterans' Life Insurance Corporation, was suggested.

The Impact of the Hoover Commission Recommendations It will require a decade or so to judge the full impact of the Hoover Commission, but it may be justifiable to make a few comments which will throw some light on the subject. The publicity received by the report has probably established a record for anything comparable, with newspapers throughout the country particularly stressing the reduction of $3,000,000,000 in annual public expenditures calculated as feasible by the commission. Within the space of a few months executive orders were issued which resulted in carrying out the major part of the recommendations not requiring formal legislation. Congress has authorized a General Services Administration, a reorganization of the

State Department based on the recommendations of the Hoover Commission, and a new deputy secretary of National Defense. After some delay Congress conferred on the President limited authority to reorganize for a period of two years subject to a veto by absolute majority vote of either house of Congress within sixty days—this fell short of the recommendations, but it, nevertheless, made it possible to carry through reforms that would otherwise have been impossible. The President promptly sent seven proposed plans calling for fairly important changes to Congress and all of these except for the one which would have created a major department in the welfare field passed the veto hurdle. The Bureau of Employment Security was moved from the Federal Security Agency to the Department of Labor; the Bureau of Public Roads was transferred to the Department of Commerce from the General Services Administration; the Postmaster General was given greater authority in managing the Post Office Department; the National Security Council and the National Security Resources Board were placed in the Executive Office of the President; and the chairman of the Civil Service Commission was made chief executive and administrative officer of that agency.

In March, 1950, the President sent to Congress twenty-one reorganization plans. Six proposed to strengthen the authority of the secretaries of Treasury, Interior, Agriculture, Commerce, Labor, and Justice; seven extended the provision noted above in the case of the chairman of the Civil Service Commission to the Interstate Commerce Commission, Federal Trade Commission, Federal Power Commission, Securities and Exchange Commission, Federal Communications Commission, National Labor Relations Board, and Civil Aeronautics Board. Other plans involved the enlargement of the sphere of the Department of Labor, the re-arrangement of the functions of the General Services Administration, and the transfer of the work of the Maritime Commission to the Department of Commerce. Sixteen of these became effective late in May, 1950, while five plans dealing with the National Labor Relations Board, Treasury Department, Agriculture Department, Interstate Commerce Commission, and Federal Communications Commission were vetoed by Congress. A little later the President sent in several other reorganization plans intended to correct defects in proposals which Congress had rejected. In September, 1950, the President signed an act, largely based on Hoover Commission recommendations, providing for a performance type of budget, the reorganization of the Treasury, and a more effective accounting system.

After two years the President and Congress could point to a substantial record of accomplishment in the re-organization field—Dr. Robert L. Johnson, chairman of the Citizens' Committee for the Hoover Report, estimated that 35 per cent of the recommendations of the Commission on the Organization of the Executive Branch of the Government had been put into effect.[15]

[15] See the *New York Times*, May 24, 1950.

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27. 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 than has been the case recently. The national government started out in 1789 with approximately three hundred civil servants.[1] In the centennial year, 1889, it gave civil employment to slightly more than 150,000 persons,[2] while by the year 1939 the number approximated one million.[3] World War II sent it soaring to the three-million mark, and while there has been a reduction since 1944 the number has never fallen much below two million.[4] 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 more specialized training and expertness from civil servants as well as greater numbers of them. As long as the national government confined itself to the collection and disbursement of tax money, the carrying of mail, the keeping of records, and related functions, it was possible, although not always very satisfactory, to entrust the work to persons whose principal qualification was political influence. The newer activities of the federal agencies necessitate numerous clerks, copyists, messengers, and routine assistants also, but in addition they require engineers, public health doctors, social workers, agronomists, tax experts, lawyers, and a galaxy of other highly trained technicians. The net result has been a notable intensification of the problem of public personnel administration.

Varied Rate of Expansion Even though there has been a long run in the direction of adding more and more names to the federal pay roll, the rate of increase has not been constant. Indeed there have been periods when for several years large numbers of positions have been stricken from the list. During national emergencies induced either by internal or international situations the number of federal civil servants ordinarily goes up by leaps and bounds because of the elaborate programs devised to cope with new problems. Then as normal times again return, there is usually a more or less strong senti-

[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] The aggregate number as of February 1, 1950, was 1,948,900.

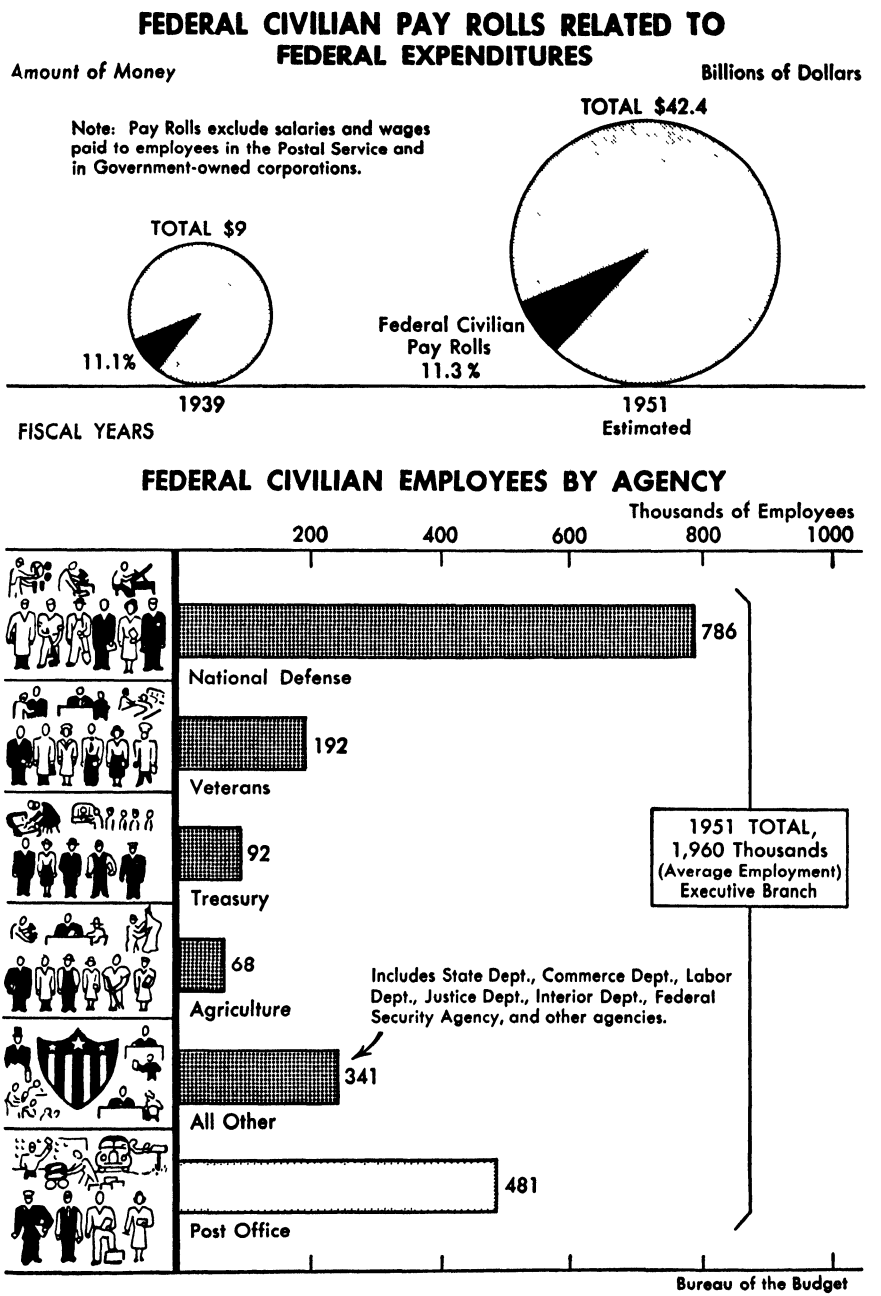

FEDERAL CIVILIAN PAY ROLLS RELATED TO FEDERAL EXPENDITURES
Amount of Money
Billions of Dollars
Note: Pay Rolls exclude salaries and wages paid to employees in the Postal Service and in Government-owned corporations.
TOTAL $9
11.1%
1939
TOTAL $42.4
Federal Civilian Pay Rolls 11.3%
1951 Estimated
FISCAL YEARS
FEDERAL CIVILIAN EMPLOYEES BY AGENCY
Thousands of Employees
200
400
600
800
1000
786
National Defense
192
Veterans
92
Treasury
68
Agriculture
Includes State Dept., Commerce Dept., Labor Dept., Justice Dept., Interior Dept., Federal Security Agency, and other agencies.
341
All Other
481
Post Office
1951 TOTAL, 1,960 Thousands (Average Employment) Executive Branch
Bureau of the Budget

Figure 4.

ment to curtail the staffs of even those services of the government which are not primarily related to the emergency. Thus, in 1916 the civil employees of the national government totaled 438,057, while at the height of the war preparations a year or two later about twice that number, 917,760, were reported. Almost immediately after the armistice in 1918 a drastic reduction was begun which cut the pay roll to approximately six hundred thousand, where it remained until the economic crisis following 1929 again pushed the government into new fields. The number of federal employees then started increasing, until it passed the nine hundred thousand mark in 1939. Instead of shrinking as it might have done had the international situation maintained its equilibrium, the pay roll continued to expand as a result of the national defense program. Thousands of new employees were recruited every month; new civil service examinations were announced every few days; and the demand for trained mechanics was so great that examinations were given upon application at any time. During 1944, the peak, more than three million civil employees were working for the national government! Since some fifty-two million persons were employed in every paid capacity at that time, those figures indicate that something like one out of every seventeen workers labored for the national government in Washington or the field. By 1945 a reduction of some three hundred thousand federal employees had been achieved and two years later, in 1947, federal employment rolls stood at a level of about two million where they remained with slight deviation until 1950, when the critical international situation led to another expansion.

The Spoils System in Federal Employment

Early Years: 1789–1829 The early years of the new government set up in 1789 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.[5] President Washington started out by prescribing superior standards and he was more or less faithfully followed by Adams, Madison, Monroe, and John Quincy Adams. Jefferson's record in this matter was not too good, for he removed about one fourth of the Federalists who held positions over which he had control. On the other hand, it must be remembered that he came in as the first representative of an opposing party. Altogether Professors Mosher and Kingsley are of the opinion that these years warrant the appellation "The Period of Administrative Efficiency." [6]

The Period 1829–1865 If the early period can be regarded as reasonably free from undue political influences, that can not be said of the years 1829 to

[5] For a discussion of the place of the 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.

[6] See their *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941, p. 17.

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." [7] In his first message to Congress President Jackson expressed his sentiments on official competence in the following words: "The duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance; and I cannot but believe that more is lost by the long continuance of men in office than is generally to be gained by their experience." Professors Mosher and Kingsley characterize these years as "The Period of Unmitigated Spoils." [8]

The Years 1865–1883 Following the Civil War public opinion began to question some of the extreme practices associated with the spoils system. Examinations were used by some of the more progressive departments for the selection of employees; some 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.

From 1883 to Date The popular revulsion arising out of the spoils method of disposing of federal positions led to the passage of the Pendleton Act in 1883. Although this placed only approximately 10 per cent of the positions of the executive civil service on a merit basis,[9] it did start a movement which has gained more and more headway, despite congressional reluctance and political machine opposition. During the succeeding half century the proportion of public positions filled under the merit system gradually increased, until in 1932, it reached a mark of 81.82 per cent.[10] Then came the establishment of the multiplicity of New Deal alphabetical agencies, which for the most part were staffed with spoils proteges. From slightly over one hundred thousand the number of civil positions not subject to the Civil Service Commission increased to approximately four hundred thousand and the proportion of spoils positions jumped from less than 20 per cent to something like 40 per cent. For several years there was much gloom in the circles of merit-system advocates, since the ground that had been painfully gained seemed to be dropping away alarmingly, but the events of 1939–1941 again restored the earlier proportion of approximately eight out of ten.

[7] 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.

[8] *Ibid.*, p. 17.

[9] At this time 13,780 positions out of 131,208 were in such a category.

[10] At this time 477,161 out of 583,196 were subject to examination.

Current Status of Spoils in Public Employment In comparison with a few governments, such as England, which place all non-policy-determining civil positions under the merit system, the record in the United States may not be too impressive, despite the progress that has been made since 1883. The appointment of the collectors of internal revenue, the customs collectors, the federal district attorneys, the federal marshals, and others under noncompetitive arrangements leaves a big gap. Not all of the positions outside of the jurisdiction of the Civil Service Commission, however, go to unqualified persons; as a matter of fact, it is claimed that some of them are given to persons better qualified than the rank and file of the so-called "merit" employees.[11] Nevertheless, political considerations do play a large role in filling many of these exempt positions and may, as far as the law is concerned, be all-important. More than that, some of the places which are nominally under the merit plan are actually in large measure subject to the spoils system. First-, second-, and third-class postmasters, for example, are examined by the Civil Service Commission, but the nature of the examinations and the role of the dominant party in determining the appointments make it questionable whether the spoils system has been displaced.

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 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 spoils system, based on personal rather than party politics. The picture is 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. The present federal personnel system probably represents an all-time high, and is definitely superior to state and local practices.

The Future of Spoils There is much difference of opinion as to whether it is feasible to go further in substituting merit for spoils in federal employment. The President's Committee on Administrative Management and other groups have recommended the merit plan for all non-policy-determining positions, apparently on the supposition that the United States could follow the English example. In an opposing camp are those politicians, journalists, and even scholars who maintain that the American form of government necessitates the spoils system in some measure and that no further curtailment is desirable.[12] These latter argue that there is no formal leadership provided

[11] The Tennessee Valley Authority, for example, has an elaborate personnel system which it considers superior to the Civil Service Commission setup.

[12] For such a point of view, see J. Fischer, "Let's Go Back to the Spoils System," *Harper's Magazine*, Vol. CXCI, pp. 362-368, October, 1945; W. Turn, "In Defense of Patronage," *Annals of the American Academy of Political and Social Science*, Vol. CLXXXIX, pp. 22-28, January, 1937.

under the Constitution, that there must as a matter of fact be leadership, and that the main way that the President can gain the co-operation of Congress is through the use of the spoils which are at his disposal.

The Rise of the Merit System

The discussion in the preceding section presents a background for a consideration of the rise of the merit system of public employment in the United States since the curtailment of the spoils arrangement has not only been accompanied but largely effected by the establishment of merit machinery.

Gradual Character Foreign students are sometimes surprised at the comparatively slow 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 many members of Congress, heads of departments, and the political fraternity in general. Theodore Roosevelt relates in his *Autobiography* some of the tribulations which the early members of the commission had to bear. With his usual impatience Mr. Roosevelt was not anxious to shoulder the most irritating of these slights and boldly challenged the members of Congress to a political duel. As civil service commissioner he was not willing to hold examinations in those states whose Senators and Representatives refused reasonable appropriations for that program. When candidates from such states inquired why examinations were not given, Mr. Roosevelt courteously informed them that the funds of the Civil Service Commission were not sufficient to give examinations throughout the country and that it seemed only fair to limit the examinations to states whose congressmen had supported more generous appropriations. The multitude of disappointed candidates forthwith proceeded to barrage their Senators and Representatives with complaints until, much as they resented it, these congressmen were forced to increase the allowance of the Civil Service Commission. 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 [13] and in 1924 it almost reached the three-fourths level.[14] In 1932, a level 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.[15]

The Recession of 1933–1938 Although Franklin D. Roosevelt had long been interested in civil service reform and for several years after graduation

[13] A total of 292,460 out of 435,000 positions, or 67.23 per cent, were subject to examination in that year.

[14] To be exact, 74.80 per cent of the positions were under the merit system.

[15] In 1937, about 64 per cent of the federal positions were under the Civil Service Commission.

from Harvard had made such reform almost his sole profession, the first years of his presidency saw the merit system thrown back something like a quarter of a century. Indeed critics charged that no President of the twentieth century had done so much to wreck merit in public employment! The report of the President's Committee on Administrative Management, as has been pointed out, recommended the extension of the merit method of recruitment to all positions in the federal service with the exception of those few whose holders fixed policies. Nevertheless, Congress paid little attention to this section of the report and the merit system gained little or no ground as a result of the Reorganization Act of 1939. In the meantime, Mr. Roosevelt, stung by the caustic comments of his critics or realizing how badly he had neglected his old-time love, began to display signs of a renewed sense of responsibility. As early as 1936 he issued an executive order which provided that first-, second-, and third-class postmasters should be placed under competitive examination administered by the Civil Service Commission. Following that, a series of executive orders placed all civil positions not expressly exempted by law [16] from the merit system under the Civil Service Commission.

The Ramspeck Act of 1940 Nevertheless, despite all of the favorable action by the President, between three and four hundred thousand federal positions remained outside of the merit system in 1940.[17] Not all of these were on a distinct spoils basis inasmuch as there was a tendency for departments to set up their own examinations when it became apparent that Mr. Roosevelt was again supporting merit reform. But still there was a widespread feeling that the large number of offices expressly exempted from the regular personnel system constituted a menace to the maintenance of high standards. Even where agencies voluntarily used competitive examinations, there was no guarantee of permanence; nor was any very adequate means provided to assure the public that more than lip service was being paid to the merit principles. In 1939 Representative Robert Ramspeck of Georgia introduced a bill which aimed at the extension of the formal merit system to the New Deal agencies which by law had been placed outside of its operation. The bill was not welcomed by large numbers of congressmen—as a matter of fact it was pigeonholed for months by the committee to which it was referred. In the meantime public pressure became intensified, President Roosevelt, furnished support, and Congress slowly and reluctantly brought the bill out where it could be discussed. It was, perhaps, too much to expect that all positions would be transferred from spoils to merit at a single fell swoop.[18] Amendments reduced the scope of the bill and as finally passed in December, 1940, it left between

[16] In setting up the New Deal agencies Congress had expressly provided in many cases that the merit system should not be applied.

[17] On June 30, 1941, 367,932 positions were in this category. Letter from A. S. Flemming, Civil Service Commissioner, dated January 7, 1942.

[18] The Ramspeck Act provided that qualifying examinations should be given to those already in possession of the jobs which were included under the act. Incumbents who made a grade of 70 on the noncompetitive examination would be permitted to retain their positions.

two and three hundred thousand positions outside of the jurisdiction of the Civil Service Commission.[19] Such important agencies as the Tennessee Valley Authority, for example, were by amendment expressly excluded. Nevertheless, this act represented a very notable step forward and had the effect of again raising the proportion of federal positions under the formal merit principle to approximately 80 per cent.[20]

The Reed Committee After his interest had revived, Franklin D. Roosevelt gave the federal personnel problem a generous amount of attention. Among other steps, he appointed a Committee on Civil Service Improvement, headed by Justice Stanley F. Reed and composed of several other Supreme Court justices and distinguished members of the bar, to investigate the recruitment of professional members of the civil service, especially lawyers. With Professor Leonard D. White as its research director, it carried on an unusually searching investigation of the role of the technician in the federal agencies and finally reported to the President in 1941. The committee was not able to agree unanimously; however, the majority expressed the opinion that lawyers should also be brought under the regular personnel machinery. On April 25, 1941, the President issued an executive order [21] which became effective on January 1, 1942, carrying out the recommendations of the Reed Committee. A board of legal examiners consisting of the Solicitor General, the chief legal officer of the Civil Service Commission, and nine men [22] to be appointed by the President was set up in the Civil Service Commission. This board was given authority to determine procedures and frame examinations for federal attorneys.

World War II During the early period of World War II some effort was made to continue the operation of the normal civil service procedures, but it soon became apparent that personnel demands were such that no peacetime system could be expected to handle the problems. Civilian employment stood at somewhat under one million before the war and it went up by leaps and bounds until more than three million persons were on the national government payrolls in a civilian capacity. Instead of surrendering in despair the Civil Service Commission recognized the emergency and gave a great deal of its attention to assisting in recruiting the large numbers of workers required—one of the commissioners, Arthur S. Flemming, was largely relieved of routine responsibilities and made an especially noteworthy contribution to the wartime personnel problem. Obviously the ordinary civil service regulations had to be relaxed and new appointments were made on a temporary basis. Instead of

[19] The Act became effective on January 1, 1942, and added "well over 100,000 positions to the competitive class," according to Commissioner A. S. Flemming in a letter to the author.

[20] As of June 30, 1941, 73 per cent of the civil employees were under the merit system, but Commissioner Flemming in a letter dated January 7, 1942, stated: "I am certain that the number is now well above 80 per cent."

[21] See the *Federal Register*, April 25, 1941, for the terms of this order.

[22] These nine men are drawn as follows: five from chief law offices of executive departments, two from law faculties, and two from among practicing attorneys.

scheduling examinations every year, open type examinations were used, under which applicants could be considered at any time. The end of the war saw the national government with many more employees than it would need during peacetime; moreover, it faced the very difficult problem of getting back to the regular civil service system. Many of the temporary employees desired to remain in federal employment and there was the question of how to select those who could be retained and what procedure would be used to transfer them to civil service status. Civil servants who had entered the military service had a legal right to employment when they were demobilized. Finally, there was the claim of the veterans for special consideration as they came home and looked about for jobs. Many months passed after 1945 before the situation settled down and the normal civil service system began to operate with some degree of smoothness.

Future Growth The future growth of the merit system depends largely upon formal action taken by Congress, although some discretion is given to the President to issue executive orders bringing hitherto exempt positions under the Civil Service Commission. Congressmen have long looked with suspicion upon the whittling away of their patronage, although they sometimes shed crocodile tears and beg for sympathy in their intolerable task of picking one fortunate recipient from a field of clamorous seekers.[23] Since there is considerable difference of opinion as to how much farther Congress may be expected to go in this direction, the future growth of the merit system in public employment is problematical. It is interesting to note that the Hoover Commission in 1949 took a stand in favor of the existing arrangement of placing the second rank of administrative personnel, even to the inclusion of certain bureau heads, outside of the career service, despite the sentiment expressed by many persons for a system of permanent undersecretaries and top level officials such as Britain maintains. The international situation confronting the United States in 1950 again led to the suspension of regular civil service appointments and the provision for temporary emergency appointments.

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 reactionary practices and hold it responsible for many of the weaknesses of the federal system of employment. There is also a widespread belief that the Civil Service Commission has the power to make appointments to public positions, although actually it makes appointments only to its own staff.

[23] Congressmen have sometimes said that they make ninety-nine enemies for every friend they gain as a result of appointments, but they still want to make the appointment, judging from their reluctance to accept a substitute arrangement.

Composition From its inception more than half a century ago [24] 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 by the President with the consent of the Senate and are full-time employees of the government. The President's Committee on Administrative Management suggested a drastic change in its organization—the substitution of a single director or administrator and the creation of a fairly large advisory council made up of personnel experts drawn from business corporations, universities, and elsewhere. Although this recommendation was probably in keeping with the approved principles of public administration, many people felt that the time was not ripe for major changes because they feared that, despite the qualifications specified for the administrator, political considerations would enter into the choice. The Hoover Commission after considerable discussion recommended the retention of the three-member commission but suggested that one member be given responsibility for the day-to-day non-policy activities of the commission. This was done in 1949.

Caliber of Commissioners There has been a considerable variation in the qualifications of the persons appointed as commissioners. A few have been well known before they entered the service of the government; [25] a few others have achieved eminence as members of the commission; [26] but, in general, the ordinary citizen cannot even name the civil service commissioners. Their work is not carried out in the glare of a spotlight; no political future is opened by service on the commission; and the duties are perhaps somewhat too routine to attract the man of affairs. Nevertheless, it would not be fair to conclude that the caliber of the members is unimpressive for, while some of the commissioners have had very little to contribute, others have in a quiet way done a great deal.[27]

Organization During most of its more than half century of existence the Civil Service Commission has suffered from chronic malnutrition. In comparison with other less important agencies of the federal government it has usually had to get along on niggardly appropriations and operate with a small staff. Even its office space has been far from adequate. The recent interest in the merit system has made it possible to remedy this situation to a considerable extent. Since 1939 the staff of the commission has increased by more than 100 per cent; a building vacated by another agency has been turned over for its use; and appropriations have become appreciably larger. In Washington there are the following functional subdivisions and boards: Examining and Placement Division, Information Division, Budget and Finance Division, Med-

[24] It was created in 1883 by the Pendleton Act.

[25] Theodore Roosevelt may be cited here.

[26] Arthur S. Flemming, one of the recent commissioners, was comparatively unknown before taking office, but he achieved considerable prominence because of his emphasis on cutting red tape, reducing delay, and meeting national emergency requirements.

[27] Leonard D White is a good example of a valuable member of the commission drawn from academic circles.

ical Division, Personnel Division, Investigations Division, Inspection Division, Office Services Division, Personnel Classification Division, Retirement Division, Service Record Division, Veterans' Service Section, Board of Appeals and Review, Fair Employment Board, and Loyalty Review Board. In the field there are fourteen 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.[28]

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 employees who do the same type of work will possess substantialy 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 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. Some of these functions will be discussed in greater detail later in the chapter, but this summary may serve to give a general idea of what the Civil Service Commission does. The Hoover Commission concluded that the functions assigned to the Civil Service Commission are too routine in character and recommended that much of its recruiting and examining work be transferred to the various agencies, leaving the Commission to concentrate on formulating policies, fixing standards, and checking the performance records of the agencies.

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.[29] These are headed by personnel experts who have been drawn from private business, state and local governments, and research agencies. They not only handle the relations between their agency and the Civil Service Commission but perform personnel functions for their departments.[30] In order to bring these departmental personnel administrators

[28] For additional discussion of this field service, see W. E. Mosher and J. Donald Kingsley, *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1941, Chap. 5.

[29] This was done by executive order of June 24, 1938.

[30] On the work of departmental personnel agencies, see O. C. Short, "Public Personnel Agencies" and G. R. Clapp, "A New Emphasis in Personnel Administration," both in *Annals of American Academy of Political and Social Science*, Vol. CLXXXIX, pp. 104–118, January, 1937.

into some sort of an 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.[31] Under this order considerable emphasis on decentralization was provided and agencies were authorized to give their own examinations to fill positions which are unique to a single department.[32] The adoption of the Hoover Commission recommendation referred to in the preceding paragraph would add much additional responsibility to the departmental personnel agencies and decentralize federal personnel administration in large measure.

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 national government has given some attention to this problem for many years, but it is only recently that recruiting has received anything like proper consideration. Even now there is more or less widespread feeling that not enough effort is made to bring federal employment opportunities to the notice of those who might make the best civil servants.

Prestige of Public Employment Underlying the entire recruiting problem is the prestige generally attached to public employment. If citizens as a whole 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.[33] On the other hand, 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. Ambitious young men have rarely set up government employment as

[31] For additional discussion of the developments relating to the Civil Service Commission, see John McDiarmid, "The Charming Role of the United States Civil Service Commission," *American Political Science Review*, Vol. XL, pp. 1067–1096, December, 1946.

[32] See Chap. 15.

[33] Professor L. D. White has published some illuminating monographs on this subject. See his *Prestige Value of Public Employment*, University of Chicago Press, Chicago, 1929, and *Further Contributions to the Prestige Value of Public Employment*, University of Chicago Press, Chicago, 1932. The Hoover Commission sent questionnaires to 3448 seniors in 94 colleges; of these only one in four indicated that they were interested in a government career. More than half rated public employment below private employment on the basis of prestige. This prestige factor not only bears on recruiting able people to begin with, but it contributes to the turnover of approximately 500,000 or one out of four in federal employment every year.

their goal because they have been infected with the widespread feeling that tenure was not dependable, remuneration inferior to that in private employment, and promotion slow and to a considerable extent based on seniority. Prior to 1933 very few university-trained people seriously thought of public service as a career; private business and the professions were adjudged to be far more promising. As a result, there was a distinct tendency for mediocre and even below-average persons to drift into government employment as the line of least resistance. That is not to say, of course, that there were no able public employees prior to 1933, for, despite the general psychology, a reasonably large number of capable people did somehow or other get into the service. Nevertheless, the situation was a serious one.

The English Attitude It is instructive to compare the American attitude toward public employment with that to be found in Britain. For a long period of time the most talented young men in England have looked forward to a career in the government service and immediately upon graduation from Oxford or Cambridge or another university have taken the examinations for admission to the foreign service, the home service, the colonial service, and other branches of government employment. While the professions also attract able young men, private business until rather recently was pronounced 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. Discarding the premise that business alone is well able to handle the economic side of American life, people began in desperation to seek government assistance in meeting their problems. The national government undertook to set up elaborate programs to cope with the alleged weaknesses in the business structure as well as to meet the exigencies of the situation. The disparity between government and private salaries virtually disappeared—indeed for a time the government could in many instances offer more remuneration than the professions or private business. With professional opportunities limited and private businesses firing rather than hiring, numerous young men and women reappraised public employment as a career. Those who ventured to try the water found that many public jobs offered variety, reasonably good compensation, fairly rapid promotion, and tolerable security. It did not require long for the word to spread among university students that public employment was far more promising than had long seemed to be the case. The result was 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 was not difficult to see the evidence of this radical change in attitude. The Foreign

Service, many of whose recruits trained in consular service had resigned because of the blandishments of business, found that it had so few vacancies that no new examinations were required for two years. Single examinations announced by the Civil Service Commission for college graduates attracted as many as fifteen or twenty thousand applicants. The National Institute of Public Affairs was founded to select the most promising university seniors for internship training following graduation.[34] Since 1937 opportunities in private business have been such as to attract large numbers of promising young men and women, but interest in the public service as a career has also remained at least reasonably keen.

Announcement of Examinations An immediate device for recruiting persons for the federal service is the announcement of an examination. The Civil Service Commission prepares bulletins or circulars which contain information in regard to a position or positions to be filled.[35] The closing date for receiving applications to be admitted to the examination is specified; the qualifications which candidates must offer in the way of age, education, residence, and experience are indicated in considerable detail; the duties and compensation attached to the position are outlined briefly; and sample questions may or may not be given. Finally, instructions are provided about the application to be submitted, the oath of accuracy to be attached, and the certificate of residence which must at times be furnished. Until comparatively recently these announcements were not so informing as they might have been; nor were they so widely circulated as many considered desirable. First-class post offices usually displayed them on bulletin boards; civil service area offices also could supply them. Occasionally a newspaper would run a brief note, but no attempt was made to distribute them to those particularly qualified. However, much has been done during recent years to improve their attractiveness and their coverage. At the present time 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.[36] 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

[34] 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. The National Institute of Public Affairs wound up its work in 1949 when the national government set up training programs in various agencies.

[35] 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.

[36] 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.

of applicants, extensive publicizing 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. The fact that people already in government employment account for a large proportion of applicants for new examinations and the fondness of middle-aged ne'er-do-wells for civil service makes it especially desirable to attract those who do not frequent post-office corridors or other places where announcements have been traditionally displayed.

Examinations

The giving of examinations probably deserves to be rated as the most important single step in the recruiting process.[37] Examinations cannot make up for lack of good material, but they should, if they are properly drawn, be able to separate the 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 as meeting the minimum requirement as to training, experience, and so forth, 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. Assembled examinations are usually given in federal buildings or in second- and first-class post offices, although other places, such as university buildings, may be designated. 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 for all of those throughout the country taking the same examination. A time limit is imposed so that stragglers will not take undue advantage.

Short Answer versus Essay Questions For many years civil service examinations required the writing of rather extended essays on assigned topics; some examiners still argue for the validity of this type of examination and the Foreign Service makes considerable use of the essay even now. However, there has been considerable criticism of the essay question because the standards of those who do the marking must necessarily vary. Since competent people can honestly attach grades ranging from very good to poor on a single essay answer, there is real reason to doubt the objective accuracy of this form

[37] 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.

of examination. It is obvious that numerous persons must be used to mark an examination taken by thousands of candidates and, if there is a variation in standards, the results will not be valid. Consequently more and more use is being made of the short-answer type of question. Besides increasing examination validity, short-answer questions reduce the grading problem because answers are either right or wrong. Clerks can be given keys for checking or it is possible to use one of the grading machines which run off several hundred papers per hour—all without human fallibility. Furthermore, the easier grading inherent in short-answer examinations makes it possible to prepare the results and draft an eligible list much more quickly than when essays are required. The chief objections to short-answer questions are that they do not easily test ability to express oneself or to organize and that they are difficult to frame without vagueness and even without double meaning.[38]

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 judged 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, the federal civil service now makes wide use of vocational tests. Candidates for typing positions must bring typewriters with them to copy material supplied for this purpose. A record is kept of time required and the grade is based on speed, accuracy, and neatness. Those who aspire to railway mail positions have to sort imaginary mail.

Intelligence, Aptitude, Capacity, and Information Tests In examining candidates for positions that call for superior intelligence and broad background the national government 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 higher levels 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

[38] For additional discussion of the relative merits of these examinations, see Mosher and Kingsley, *op. cit.*, Chap. 9.

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 an easy matter. Not only a personnel expert but also an expert in the field of the examination must read every submitted test. Lewis Meriam tells a story which indicates the necessity of careful and expert grading.[39] A civil service examiner and a Department of Agriculture representative were grading theses submitted for an unassembled test. "Suddenly the silence was broken by an exclamation of 'Great Scot' from the Agriculture man. The commission examiner asked: 'What's the matter?' 'This thesis here,' said the specialist, and he read its title. The Commission examiner said: 'Yes, it is by all odds the best of the lot.' The Department of Agriculture man bowed and said: 'Thanks for the compliment. I wrote it and this —— cribbed it.' "

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 to their ability to handle records, type, and so forth. On the other hand, some well-trained technicians may be completely ineffective because they lack common sense, the ability to collaborate with others, 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 personal qualifications as opposed to intellectual attainments 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 national government 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 examination now employed—even they sometimes require a year or more to grade. More-

[39] *Public Personnel Problems*, Brookings Institution, Washington, 1939, p. 82, footnote.

over, the fact that candidates are scattered over the entire United States adds to the complications. State and local personnel boards face the problem of distance, but it is nothing like as difficult as that which confronts the federal authorities. Personal interviews by appointing agencies serve to some extent as a substitute for this technique as an integral part of the examination, but there is still a considerable argument in favor of a wider use of the oral interview by the examining agencies. It may be added that this method of rating candidates also has weaknesses, for there is often a distinct difference of opinion among oral examiners about the capabilities of a single person. Inasmuch as many oral boards would be necessary if this device were used for the more popular examinations, it is apparent that there would be an inherent lack of uniform standards. Recent plans of the national personnel agencies call for the use of investigators to check previous experience by interviewing former employers. This substitute for oral examinations may prove its worth.

American and English Examinations Contrasted There is a widespread notion that the American and the English civil service examinations are far apart in basic concept. The English examination is supposed to be very general in nature, aiming at ability rather than acquired knowledge or experience. On the other hand, the examination in the United States is often adjudged as practical, being designed to test current familiarity with a field rather than general intelligence. In other words, the English are credited with picking the best available candidates without reference to what they know about the position to be filled, expecting to train them after entrance into the public service. The United States is, on the other hand, said to want people who have already been trained and can take over the duties of a job immediately, even though they may not possess the keenest intelligence. In reality, there is far less difference between the two systems than this generalization indicates. The English as well as the Americans recruit stenographers, accountants, and routine workers through the use of practical tests, for it would be out of the question to furnish training in these fields to large numbers of raw candidates. Any difference in the two personnel systems is largely in filling positions which call for a high degree of initiative.

The English Administrative Class The English have geared their examinations for the administrative and some of the executive class rather closely to the universities, with the result that the examinations resemble those given at Oxford and Cambridge. Moreover, the English prefer to take their future civil servants of the top classes immediately after they are graduated from a university and, indeed, place the maximum age in the early twenties. The United States until recently has had few positions under the merit system that would compare with the administrative class in England. In selecting candidates for general administrative posts taken from civil service lists, there has been less disposition to insist on a tender age, superior intelligence, and future promise.

Attitude toward Universities in the United States The public officials in this country are less convinced that university training is the only avenue through which candidates for the ranking positions should enter the public service—indeed, some of the most influential have not been university graduates at all. Nevertheless, there has been a marked trend toward the English practice during the last decade. Regular examinations are now held especially to attract university seniors and recent graduates to general administrative and technical positions. Moreover, these examinations, although probably less searching from a scholarly standpoint than the corresponding English examinations, do attempt to ascertain basic intelligence and ability as well as familiarity with a field. While we seem to be following the English lead to recruit for nonclerical positions, they have modified somewhat their plan and currently place more emphasis upon the social sciences.[40]

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 above, 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 the various appointing agencies. Eligible lists are ordinarily valid for a year, but 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. In addition to supporting movements which they consider patriotic, they labor assiduously to wangle special favors, despite the fact that no country in the world surpasses, and indeed few equal, the United States in wages and allowances to the members of its armed forces. 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 an eligible list.[41] There is a raging controversy over the justification of this practice. Many veterans believe that the country owes them a preference, while personnel experts sometimes reply that there is no rational basis for encumbering the public service with mediocre or inefficient people who are not capable of earning a livelihood in any other way. At the conclusion of

[40] For more detailed treatment of the English system, see H. M. Stout, *Public Service in Great Britain*, University of North Carolina Press, Chapel Hill, 1938.

[41] This is ordinarily done only in the case of disabled veterans. In a study of the effect of veterans' preference the Brookings Institution concluded that the 1944 act "has fouled and stalled the whole delicate machinery" to put public employment on a strictly merit basis. It added: "Despite its obviously laudable intention, the law has required the Civil Service Commission to reward veterans by falsely equating patriotic service with special ability. The result has been much like that of a handful of sand in a gear box." See F. T. Cahn, *Federal Employees in War and Peace*, Brookings Institution, Washington, 1949.

World War II, when large numbers of military personnel began to worry about taking their places in civil life, the President announced that certain types of federal positions would be largely reserved for veterans. Executive orders have been issued in certain cases limiting appointments to those with war-service records.

Appointments

Certification When there is a vacancy in a department under the merit system, the appointing officer in that agency notifies the personnel agency that an appointment or appointments are in the offing. The personnel agency then proceeds to certify the three highest names on the appropriate register, or eligible list. If the positions call for junior stenographers, names will be taken from the junior stenographer register; if junior administrative technicians are desired, the names, of course, come from that particular register. When an eligible list is new, the names certified are of those who have grades as high as 90,[42] but as appointments are made, names are removed until it may be necessary to certify people who have a bare passing mark, unless a new register in the meantime supplants the older one. Some appointing departments are careless in asking to have names certified and may wait several weeks or even several months before making the contemplated appointments. Since during this time the three names cannot be certified for any other position, people high on a register may actually not receive appointment as quickly as those further down. This seems to indicate a need for limiting the period that a department can retain the names certified to it as eligible for a position, unless the carelessness of certain agencies is to work a hardship on those seeking public jobs.

Departmental Specifications 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 which 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 had 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. Of course, appointing officers cannot ask for a definite person and anyone high on the list who has the qualifications stipulated is certified in preference to those lower down. Nevertheless, it is possible by going into considerable detail to limit very severely the number who can qualify, even to permitting only a single person. In so far as the specifications to determine the

[42] 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.

certification are essential to a good appointment, there seems to be a valid argument for the practice. However, if it is used to get personal friends certified over eligibles whom tests show to be more capable, then it deserves the severe criticism that some people in Washington shower on it. The extent to which appointing authorities abuse this privilege is difficult to ascertain. It is well known that there are registers which are almost if not entirely neglected,[43] while persons on other registers are transferred at the request of the appointing authority so that they can be given jobs. Moreover, there are cases of candidates never receiving appointments, although they have repeatedly stood at the tops of registers. If personal qualities are such that these high-ranking eligibles could not possibly do a job well, it is doubtless justifiable to ignore them year after year in favor of those lower ranking ones who have more satisfactory personalities. Of course, if the certification system is distorted, as some members of Congress allege, to build up a coterie of followers and friends, it amounts to a new variety of spoils under a guise of the merit system.

Personal Interviews If an appointing authority is not certain 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 the certified three 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 eligible register.

Provisional Appointment Appointments under the merit system are made on a provisional basis until the appointee has served a probationary period of one year. If he does not prove satisfactory, he may be dropped without undue difficulty during that initial period; however, if his first year turns out well, he is ordinarily accorded permanent tenure.

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.[44] This requirement violates a cardinal principle in modern public personnel administration and has been severely criticized. In reply the proponents of the requirement argue that candidates with equal qualifications should not be penalized because they happen to reside some distance from the national capi-

[43] A few years ago certain registers of social science analysts were set up with several thousand persons listed. Appointing authorities did not favor the examination to begin with and made virtually no use of the lists which cost the government almost $100,000. In the meantime large numbers of appointments involving similar qualifications were made. To what extent the opposition of the appointing officers to the examination entered into their failure to use the resulting lists is an interesting question on which there is a difference of opinion.

[44] See United States Civil Service Commission, *Federal Employment under the Merit System* Government Printing Office, Washington, most recent edition, for the current practice.

tal, 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. And, indeed, some substantiation is given these charges when one examines the number of appointments made from among the residents in the vicinity of Washington.

Classification, Compensation, Promotion, and Retirement

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. Despite persistent criticism from public administration students and even from the Civil Service Commission itself, Congress long refused to provide any satisfactory basis for classifying the positions in the federal service. Finally, 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 responsible for a nation-wide classification plan.[45]

The Eighty-first Congress enacted the Classification Act of 1949 which supersedes the Classification Act of 1923 and its amendments. Under this act some 885,000 white-collar workers of the national government, located in Washington, in the states and territories, and even abroad, are classified under two schedules.[46] A General Schedule, abbreviated GS, takes the place of the former Professional and Scientific Service, the Subprofessional Service, and the Clerical, Administrative, and Fiscal Service provided under the older act. This General Schedule is subdivided into eighteen grades in contrast to the fifteen grades of the CAF (Clerical, Administrative, and Fiscal Service), and the eight grades of the Professional and Scientific Service. Of these eighteen grades, three, GS-16, GS-17, and GS-18, represent new top level categories carrying minimum salaries of $11,200, $12,200, and $14,000 respectively per annum. The General Schedule starts with a minimum annual salary of $2200 for GS-1 employees. The second classification is designated the Crafts, Protective, and Custodial Schedule and is subdivided into ten grades. It starts out

[45] 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.

[46] The Classification Act of 1949 does not apply to the Foreign Service, the postal field service, agencies such as the Tennessee Valley Authority, the Atomic Energy Commission, and the Inland Waterways Corporation, and several groups where it would be difficult to apply a fixed schedule.

with an annual compensation of $1510 and provides for a maximum salary scale of $4900 for CPC-10 employees.[47]

Compensation In comparison with foreign governments, or the state and local governments in the United States, the national government pays rather generous salaries to its employees. England offers a very few members of its administrative class high salaries, and Canada is also reasonably considerate of some of its ranking employees, but by and large neither deals as generously with its public employees as the national government in the United States. 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 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 and capable people.[48] The majority of the clerks and stenographers receive in the neighborhood of $200 per month, while the ordinary compensation of more highly trained persons ranges from some $250 to $500 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 under that which corporations and private firms at times maintain.[49] It may be that some increase in the maximum amounts permitted by the present law should be made, although it is improbable that the public service can or should ever pay the generous salaries which private business finds it possible to bestow on a few favored persons.[50] Substantial increases in federal pay scales were authorized in 1945, 1946, and 1949.

[47] Minimum and maximum salaries under the General Schedule are as follows: GS-1 $2200 and $2680, GS-2 $2450 and $2930, GS-3 $2650 and $3130, GS-4 $2875 and $3355, GS-5 $3100 and $3850, GS-6 $3450 and $4200, GS-7 $3825 and $4575, GS-8 $4200 and $4950, GS-9 $4600 and $5350, GS-10 $5000 and $5750, GS-11 $5400 and $6400, GS-12 $6400 and $7400, GS-13 $7600 and $8600, GS-14 $8800 and $9800, GS-15 $10,000 and $11,000, GS-16 $11,200 and $12,000, GS-17 $12,200 and $13,000, and GS-18 $14,000 minimum.

[48] 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 112*ff*.

[49] In 1950, more than two thousand employees were receiving $10,000 per year or more, most of them in the $10,000–$11,000 category. The Classification Act of 1949 limited the GS-16 positions to 300, the GS-17 positions to 75, and the GS-18 positions paying $14,000 to 25. For an interesting study on the top level salaries, see the *New York Times Magazine*, February 19, 1950, p. 16.

[50] 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,

Promotions Governments the world over have had more trouble with their promotion systems than with almost any other personnel problem.[51] 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 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. Even if no real basis for such an assertion exists, there is always a popular suspicion that political and personal considerations enter into the decisions of a board or administrator.

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 recorded 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.

Admission of Outsiders into the Higher Positions Another complicated problem of the promotion system is the extent to which the more important jobs are to be filled by advancing employees already in the service or by hiring experienced outsiders. Morale is not improved by disregarding just claims of people already employed; on the other hand, new blood is often desirable to neutralize the bureaucratic psychology that is always ready to grow upon the slightest encouragement even in the best-administered agencies. While it is not the practice to limit the higher positions to those already in the federal

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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.

[51] See, for example, Leonard D. White, *The Civil Service in the Modern State*, University of Chicago Press, Chicago, 1930.

service, many of the vacancies are filled by the advancement of promising young employees. It has been asserted that some of the recent examinations have been framed in order to give a distinct advantage to the holders of federal positions, if not to bar outsiders entirely. In any case, it might well be that those with background in public employment would by the very nature of their experience be more familiar with certain fields than outsiders could easily be.

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 has been most 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.[52] Amounts equal to 5 per cent [53] 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 are supposed to surrender active duty at sixty-five years of age.[54] For many years the maximum annual retiring allowance was $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. Others with a shorter record of federal employment receive smaller proportions, with fifteen years in public employment ordinarily the minimum for a regular pension. Those with less than fifteen years of service receive a lump sum payment of their contributions at the end of their employment. Additional provisions make some assistance available to those who lose their health or are otherwise disabled after they have served the government for a specified number of years.

Miscellaneous

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

[52] Some governments, including England, do not require contributions from employees.
[53] Prior to 1942 the rate was 3.5 per cent.
[54] During the war years this rule was not enforced.

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.[55]

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.

Removals If the position which an employee holds is abolished, 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 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 charges lodged against him. The accused then has the right to reply to those charges, but he is not guaranteed an oral hearing,[56] 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—indeed there are many who believe that there is too much protection for large numbers of indifferent employees. 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.[57] 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. Fairly large numbers of persons [58] have

[55] However, during the period of the war vacation leave was suspended or at least severely curtailed. Even ordinary holidays were not always observed.

[56] In state and municipal civil service systems the right of an oral hearing is often given.

[57] See E. Brooks, *In-Service Training of Federal Employees,* Civil Service Assembly of the United States and Canada, Chicago, 1939.

[58] American and George Washington universities have scheduled dozens of special courses, which are frequently taught by a government official. Several thousand employees may be enrolled at one time in these many courses.

taken advantage of these courses, but the majority have been content to drift along year after year. 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. Likewise a number of courses are offered dealing with the general problem of administration; others stress public personnel administration; and still others involve fiscal problems. Beginning in 1949 a number of agencies set up interneship programs for the orientation and training of promising young recruits entering the public service as junior professional administrative assistants and technicians.

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.[59] As the movement became stronger, the employee associations took on the characteristics of labor unions, although they did not designate themselves as such. Early in the present century the post-office employees started agitating for increased pay and shorter hours. Theodore Roosevelt was incensed at this pressure and issued orders sternly forbidding lobbying practices, but even his vigor was not enough to stem the rising tide. 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 at present something like 90 per cent of the employees in Washington are claimed by the various associations. A National Federation of Federal Employees has a large membership drawn from numerous agencies. The United Public Workers, drawing members from all levels of government in the United States, national, state, and local, was originally affiliated with the C.I.O., but it was expelled from such a relationship in 1950 on the ground of alleged communist domination. C.I.O. then proceeded to set up the Government and Civic Employees Organizing Committee to recruit public employees for a non-communist union.[60]

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

[59] Letter carriers organized as early as 1889 and post-office clerks the following year.

[60] Other labor organizations which include employees of the national government are as follows: National Association of Letter Carriers, United National Association of Post Office Clerks, National Federation of Post Office Clerks, Railway Mail Association, National Rural Letter Carriers' Association, National Alliance of Postal Employees, National Association of Postal Supervisors, American Federation of Government Employees, etc.

of federal employees. 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. Most of the unions have denied themselves the use of the strike in their dealings with the department heads or Congress.

Loyalty Checking The strained relations with the Soviet Union, the deep-seated opposition to communism, and the general international situation confronting the United States following World War II focused the attention of those within and outside of the government or the problem of disloyalty and subversive activities on the part of those in public employment. Widespread rumors reported large-scale disloyalty on the part of those in government service. Space does not permit a detailed account of the developments prior to 1947, but it may be noted that various motions were made in Congress and that both the Civil Service Commission and the Department of Justice gave serious attention to the matter, though it was not an easy problem with which to deal. On March 22, 1947, President Truman issued an executive order which received front-page coverage throughout the nation. In this order the Attorney-General was instructed to make a list of the "totalitarian, Fascist, Communist, or subversive groups" in the United States which were seeking to overthrow the government by unconstitutional means. Membership in such an organization by a civil or military employee of the government was declared to be proof of disloyalty while intimate association also might be considered as indicating a lack of loyalty to the United States. The Civil Service Commission with the various employing agencies of the government was ordered with the co-operation of F.B.I. to carry on a careful investigation of those already employed by the national government and of applicants for such positions. Loyalty boards were to be established in the various departments to consider evidence presented and to decide whether individual employees represented a security risk. Regional loyalty boards were provided throughout the United States and a general loyalty review board was set up in Washington to have jurisdiction over appeals made by employees under charges. A great deal of time and energy have been devoted to the loyalty checks and a number of cases have been discovered of federal employees who either directly or by association have been engaged in subversive activities; others have been adjudged as poor security risks because of their inclination to talk indiscriminately. Such persons have been discharged or in certain doubtful cases been permitted to resign. The impressive aspect of the record has been the very small number of those found guilty or even doubtful—a very small fraction of 1 per cent falling into such a category.[61]

[61] During the first two and a half years of its operation 123 employees were discharged after loyalty checking and an additional 848 employees resigned during investigation. The total number of cases found sufficiently doubtful to warrant reference to a loyalty board ran to

Political Activity One of the perennial problems which arises in every country involves the participation by public employees in political activity. In the democratic countries there is a deep-seated feeling that public employment should not bar citizens from certain types of political activity; yet at the same time it is realized that it is not satisfactory to permit public employees to use their public positions to benefit a particular political group against the general interest. As early as 1907 an executive order forbade the civil service employees of the United States to take an active part in political campaigns or in the management of political organizations. The Civil Service Commission attempted to deal with the matter, but it was not easy to control certain persons despite the generally good record of those in the career service. In 1939 Congress passed the Hatch Political Activities Act which among other provisions stipulated that not only career civil servants but all federal employees with the exception of those holding policy-determining positions must refrain from "pernicious political activities." Under this law federal district attorneys, United States marshals, and others who formerly were very active in collecting campaign funds and managing campaign drives are forbidden to use their positions in such a manner as to influence the election or nomination of any candidate for federal office. They may, of course, along with career civil servants, attend political rallies, express personal opinions, and vote. In 1940 a second Hatch Act was passed by Congress which extends such regulations to state and local employees engaged on a full-time basis in activities financed in whole or in part by federal funds.[62]

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6083; of these 5693 were cleared of all charges. A group of 170 were in the process of appeal or were facing removal when the report was made. See the *New York Times*, November 22, 1949.

[62] This Hatch Act has been considered in Chap. 11 because of its provisions relating to campaign expenditures by political parties. For additional discussion of these limitations, see United States Civil Service Commission, *Interpretation of the Hatch Act and Regulation of Political Activity*, Government Printing Office, Washington, 1940; L. V. Howard, "Federal Restrictions on the Political Activity of Government Employees," *American Political Science Review*, Vol. XXXV, pp. 470–489, June, 1941; V. O. Key, "The Hatch Act Extension and Federal-State Relations," *Public Personnel Review*, Vol. I, pp. 30–35, October, 1940.

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28. National Revenues

In 1789 the total expenses of the national government averaged only approximately $1.00 per capita; hence the problem of revenues was comparatively simple. During recent years federal revenues have amounted to from two to three hundred dollars per capita,[1] and even this income has frequently not been sufficient to meet the cost of government. 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 from two to three hundred dollars presents grave problems even in this day and age. Those who look upon public finance merely as a bookkeeping proposition have sometimes professed equanimity, but the current tax rates impel most people to perceive that such revenues are not forthcoming without severe burden on the people of the country.

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 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, as he did during World War II, looking toward a pay-roll tax which would siphon off a considerable portion of the increased national income in order to safeguard against inflation, but he has no power in his own name to take action.[3] The Treasury Department naturally enough concerns itself with revenues and not infrequently advises Congress as to what is required and how the amount needed can best be produced; yet here again the final action can be taken only by Congress.

[1] During the fiscal year of 1945 budgetary receipts amounted to $44,762,000,000, or more than $300 per capita perhaps, but they have ordinarily been within the range noted above. Actual receipts for 1949 ran to $38,246,000,000. Estimated receipts for 1950 and 1951 are $37,763,000,000 and $37,306,000,000 respectively.

[2] Art. I, sec. 8.

[3] This recommendation was made by President F. D. Roosevelt in a letter to Chairman Robert L. Doughton of the Committee on Ways and Means of the House of Representatives and urged speedy action.

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.

The Public-purpose Clause It has been 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, people began to speculate on the meaning of these words and not a few interpreted them as an "unlimited commission to exercise every power which may be alleged necessary for the common defense or general welfare." [4] However, the authors of the *Federalist* vigorously denied this assumption, branding the attitude as "stooping to such a misconstruction." [5] For many decades the view expressed by the *Federalist* more or less prevailed,[6] though every now and then there arose those who denounced it. However, the philosophy of the New Deal turned its back on such a negative concept,[7] with the result that the taxing power was widely used after 1932 to bring about certain ends. The initial attitude of the Supreme Court was not favorable to this point of view if the case of *United States* v. *Butler* [8] may be taken as an indication, but the reform which took place following 1937 reversed this position to some extent at least. Altogether, it seems probable that Congress in the future will be permitted to use its own judgment in determining what constitutes the "general welfare" with little fear of interference from the Supreme Court.

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." [9] 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 dis-

[4] *The Federalist*, No. 41.
[5] Ibid.
[6] See Chap. 20 above for additional discussion.
[7] See James F. Lawson, *The General Welfare Clause*, author, Washington, 1934.
[8] 297 U.S. 1 (1936).
[9] Art. I, sec. 8.

advantage 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 $200,000 are required to pay several times the rate fixed for net taxable incomes under $2,000 and it would seem at first sight that this violates uniformity; but the courts have ruled that uniformity requires equality only for those in the same circumstances. Thus it would not be possible to tax a Rockefeller with a net income of say $5,000,000 at a rate of 90 per cent and a Ford with the same income at, say, a rate of 60 per cent. Inheritance and gift taxes have been graduated according to size of the estate or gift and this, too, has been upheld as legitimate and not a violation of the uniformity provision.

Geographical Uniformity Uniformity does not 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. However, if one consignment comes from a country with which the United States has a reciprocal trade agreement and another of the same kind from a country with which there is no such agreement, the import tax may be much heavier in one case than the other. Similarly if a cargo of wool arrives at San Francisco and another of the same grade comes to New York, uniformity would not demand the same import duty unless the condition of both cargoes is the same; for example, if one load of wool is washed and the other is unwashed the customs duty might vary considerably between the two ports of entry.

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 from England 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." [10] 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, though the time has long ceased when the southern states needed this protection. Considering the high cost of manufacturing certain products due to the heavy labor costs in the United States and burdensome overhead, it is sometimes argued that it is just as well that Congress cannot add to the handicap by putting on an export tax. On the other hand, large quantities of lumber have been shipped from Oregon and Washington to the Far East and Latin-American countries largely because it was cheaper to import from the United

[10] Art. I, sec. 9.

States than to cut native timber; the net effect being to reduce our already seriously threatened timber resources. An export tax on such products would doubtless have saved important supplies for future use at home.

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." [11] Before the end of the eighteenth century the Supreme Court had interpreted "direct taxes" as meaning poll taxes and taxes on land,[12] 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 attempted for more than half a cenury and will probably not be resorted to in the future except in cases of extreme need. The various states present such a diverse picture in per capita wealth that apportionment of federal taxes on the basis of population would work a great hardship on the poorer states.

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 taxes without apportionment among the states on the basis of population. This law operated for a number of years, was finally repealed after the emergency was over, but did not come up for review by the Supreme Court until 1880.[13] In deciding the case the Supreme Court held that an income tax is not a direct tax as that term is used by the Constitution and consequently does not need to be apportioned. Here the matter rested until 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.[14] 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. Seldom has the court been more severely criticized for a decision; reports were rife that the original hearing had resulted in a vote for the constitutionality of the act and that political considerations played a part in the vote after the second

[11] Art. I, sec. 9
[12] See *Hylton* v *United States*, 3 Dallas 171 (1796).
[13] See *Springer* v. *United States*, 102 U.S. 586 (1880).
[14] See *Pollock* v *Farmers' Loan and Trust Co.*, 158 U.S. 601 (1895).

hearing. An amendment to the Constitution was proposed to remove the barrier set up by this court 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." Acting under this authorization Congress has enacted a number of statutes imposing income taxes on both individuals and corporations and these levies have become the chief sources of national revenue.

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 co-operation 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*,[15] in which Maryland sought to tax one of the branches of the Bank of the United States. Laying down the rule that a state can not hinder the national government in the exercise of its power through the medium of taxation, the court stated that conversely the national government can 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; thus it was ordained that state employees could not be expected to pay federal income taxes on their salaries and that state bonds or income derived therefrom could not be taxed. It was difficult for many observers to see how an ordinary income tax on state employees, which merely required them to pay their fair share of the expenses of the national government, could be considered interference with the operation of state government. 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 in the New York Port Authority case the Supreme Court upheld that right.[16] Growing out of that case there has 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.

Recent Developments Relating to Exemptions After considerable discussion, in the course of which President F. D. Roosevelt placed himself on record as favoring the extension of this rule to cover state bonds, legislation was proposed to Congress authorizing the collection of a tax on income derived from privately owned state securities. The state and local officials have been strongly opposed to this proposal on the ground that, while they would probably be given a complementary right to tax income arising from federal bonds, the net effect would be unfavorable to the states. At the present time the

[15] Reported in 4 Wheaton 316 (1819).

[16] *Helvering* v. *Gerhardt*, 304 U.S. 405 (1938). In *Graves* v. *New York ex. rel. O'Keefe*, 306 U.S. 466 (1939) the right of the state to tax incomes of federal employees was upheld.

actual property used by states in connection with their operation is definitely not subject to federal taxation. Nor could a tax which would have the effect of controlling or limiting a direct action be countenanced. But taxes on the note issues of state banks have forced the suspension of their circulation;[17] salaries of state employees are now regularly taxed just as are similar incomes of those in private employment; and it is conceivable that the interest payments of state and local bonds will be removed from the exempt status which has long been enjoyed. With the needs of the various governments for additional revenues at an all-time high, it is natural that an attempt should be made to get at billions of dollars of bonds which have hitherto been tax free. It is difficult to prove that the taxing of these securities would result in any curtailment of state powers, though it might be that interest rates would have to be increased on new issues, and that state bonds would be less attractive to investors. But the federal revenues could be increased by many million dollars by such an extension of federal taxing authority.

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. The tariffs which have been in effect through most of the years of the republic have produced sizable revenues, but it would be difficult to maintain that they have not been even more important as a protection to American industry against foreign competition. The congressional act placing a heavy tax on the face value of notes issued by state banks may be cited as an example of a tax which, though on its surface a revenue measure, actually was intended to remove such notes from circulation. Federal inheritance laws, which permit a credit in the case of those states having their own corresponding laws, have been important in encouraging the states to provide for such taxes. The federal tax on narcotics may be offered as another example of a tax intended to regulate rather than to produce revenue.

Varying Attitude of the Supreme Court 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.[18] Again in the A.A.A. program[19] and bituminous-coal control cases[20] the Supreme Court refused in the middle 1930's to uphold the use of the taxing power for regulative purposes. However, Congress proceeded to revamp the legislation, still retaining

[17] See *Veazie Bank* v *Fenno*, 8 Wallace 533 (1869).
[18] See *Baily* v. *Drexel Furniture Co.*, 259 U.S. 20 (1922).
[19] See *United States* v. *Butler*, 297 U.S. 1 (1936).
[20] See *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936).

the regulative taxes to a considerable extent, and the Supreme Court found the new laws satisfactory. Thus at the present time the taxing power is an important device for regulating certain practices and indirectly bringing about ends which are regarded as socially desirable. It would hardly be correct to state that there are no limits to its use in this field but it apparently is now accepted as a legitimate device which may be employed within reason.

Double Taxation not Prohibited There has long been an impression on the part of numerous citizens that double taxation is not permitted under the terms of the Constitution. In reality there is nothing in the Constitution at all which relates to this practice. For many years double, triple, and even more burdensome taxes have been levied upon the same property, despite all of the complaints that have been raised. There has been an attempt on the part of certain associations to ameliorate the situation, which at times has worked great hardship. For example, Arthur Reeves, deriving his income from a business enterprise in Wisconsin and himself a legal resident of Massachusetts and a citizen of the United States, spends enough of his time every year at his ranch in Mexico to come under the tax laws of that country. He has to pay a tax in Wisconsin because the profits are earned there; Massachusetts and the national government of course expect their share because of legal residence and citizenship; while Mexico requires everyone living six months of the year in that country to pay income taxes there. The result is quadruple taxation on the same income, which under present tax rates might leave very little, if any, of the original income for the use of the owner. While some progress has been made as a result of international agreements in obviating some of the hardships accruing under multiple taxation by foreign countries, the current need for revenue is so pressing that little has been done to curtail such taxation within the United States.

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. Aside from the income taxes, estate taxes, and a few other levies, the taxes imposed by the national government have been collected at their source rather than from the person who finally pays them. Thus tobacco excises are paid in the first place by the companies which manufacture cigarettes and cigars, but they are not actually borne by those companies, being

passed on to the smoker, who may or may not realize that half or more of what he pays for a pack of cigarettes goes for taxes.[21] Similarly, a purchaser of theatre tickets usually has a very vague notion of how much of what he pays for admission represents a tax levied by the national government. Income taxes are, of course, paid directly, but large numbers of the people have not been asked to assume these taxes because of exemptions which have been permitted. The result has been that while an average man may groan over the local general property taxes he has not always been aware that he was actually shouldering an even heavier burden of federal taxes.

Should Tax Consciousness Be Stressed? 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. They point to the generous amounts expended on veterans' benefits, agricultural subsidies, pork barrels, and various other items, at the same time declaring that the American people would be far less generously inclined if they realized that they were paying for these out of their own pockets. Public officials, on the other hand, shy away from letting the people know what is exacted from them in the form of taxes because they believe that it is not politically expedient to dwell on such matters. If the people are not aware of what is being extracted, these officials reason, no resentment is likely to be aroused which will finally hit Congress. During the years when expenditures were reasonably modest and the proportion of the national income going for taxes was correspondingly low, the problem of tax consciousness was not a very pressing one. However, as expenses have soared and taxes have increased, the situation has become aggravated, until many thoughtful people are of the opinion that tax consciousness on the part of the rank and file of the people is of the highest importance. If uncontrolled inflation is to be warded off and widespread suffering prevented, definite steps must be taken toward inculcating financial responsibility in the minds of the people.

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 following 1929 the receipts from this tax fell to a point below $1,000,000,000; even as recently as 1941 the total yield from individual and corporate income taxes ran to only some $4,000,000,000. However, in 1945 income taxes brought in $36,188,000,000. The increases in income tax rates resulting from the international crisis in 1950 will doubtless break even this record. Income taxes levied by the national government are of the net variety and apply to both

[21] Federal taxes on a package of cigarettes amounted to seven cents in 1950. State and local taxes are in addition.

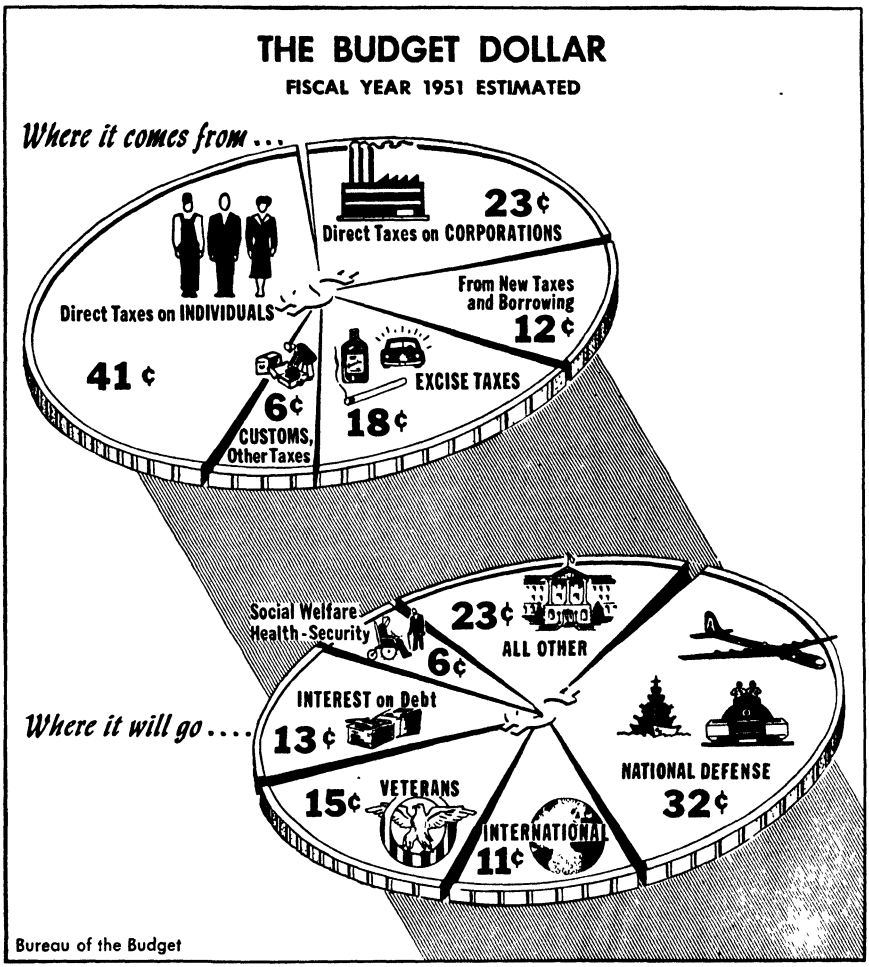


Figure 5.

individuals and corporations; they are regarded as perhaps the most equitable of all taxes because they are based on annual net income.

Broadening the Income-tax Base Prior to 1941 single persons were permitted an exemption of $1,000 and married persons or heads of families an exemption of $2,500; an additional exemption of $400 for each dependent child under eighteen years of age and for dependent aged persons was given. Several million people had to pay an income tax despite these rather generous exemptions, but the majority of those gainfully employed were not affected. The financial problems brought on by the national defense program convinced many informed people that the tax basis should be broadened so

that large numbers of other persons would be brought under the income tax. Not only would additional revenue be forthcoming, but a more responsible attitude was predicted. So in the fall of 1941, Congress passed a retroactive law effective as of January 1, 1941, which reduced exemptions to $750 in the case of single persons and $1,500 in the case of heads of families, leaving the $400 exemption for each dependent unchanged. In 1944, a further reduction in exemption was made to $500 per person—$500 for a single person, $1,000 for married couples, and $500 for dependents. After World War II a slight increase in the exemptions was made—in 1950, the individual and dependent exemption amounted to $600.

Individual Income Taxes Income taxes are levied by the national governernment are of two types: individual and corporate. Individual income taxes, as the title implies, are levied on the net incomes of individuals and currently are exceedingly productive. Of the many billion dollars brought in by all income taxes during recent years, individual income taxes have accounted for more than half. Not long before the war period the normal tax rate on individual incomes ran to only 4 per cent, though surtaxes on large incomes were added. The rates went up sharply during the war years, until at the end of the war the smallest taxable incomes were subject to a tax of more than 20 per cent while the largest ones paid more than 90 per cent. A small reduction was made at the end of the war, but the heavy expenses of national defense preparations started in 1950 necessitated substantial increases.

Corporation Income Taxes Income taxes on corporations have also been an important source of federal revenue—during an earlier period an even more lucrative source at times than individual income taxes.[22] Like individual income tax rates, the rates on corporate incomes soared during the war years,[23] until it has been charged that they made it impossible for many businesses to build up reserves essential for reconversion after the war. Congress recognized this claim after V-E Day and in the summer of 1945 passed legislation reducing the burden to some extent, especially in so far as reserves were concerned. However, as in the case of individual income tax rates, sharp increases were necessary in 1950.

Excise Taxes The receipts which come in from various excise taxes are far less than those produced by income taxes, but they are nevertheless substantial. Though perhaps less complete in their coverage than such taxes in certain other countries, these taxes in the United States have left little except food untouched. They have included—and still include in many instances—such items as liquor, tobacco, automobiles, telephone and telegraph bills, gambling devices, toilet preparations, sporting goods, jewelry, furs, electrical

[22] In 1942, for example, corporate income taxes brought in $5,621,000,000 in contrast to $3,606,000,000 produced by individual income taxes

[23] In 1945, corporation income taxes brought in $16,399,000,000, an all-time high up to that time.

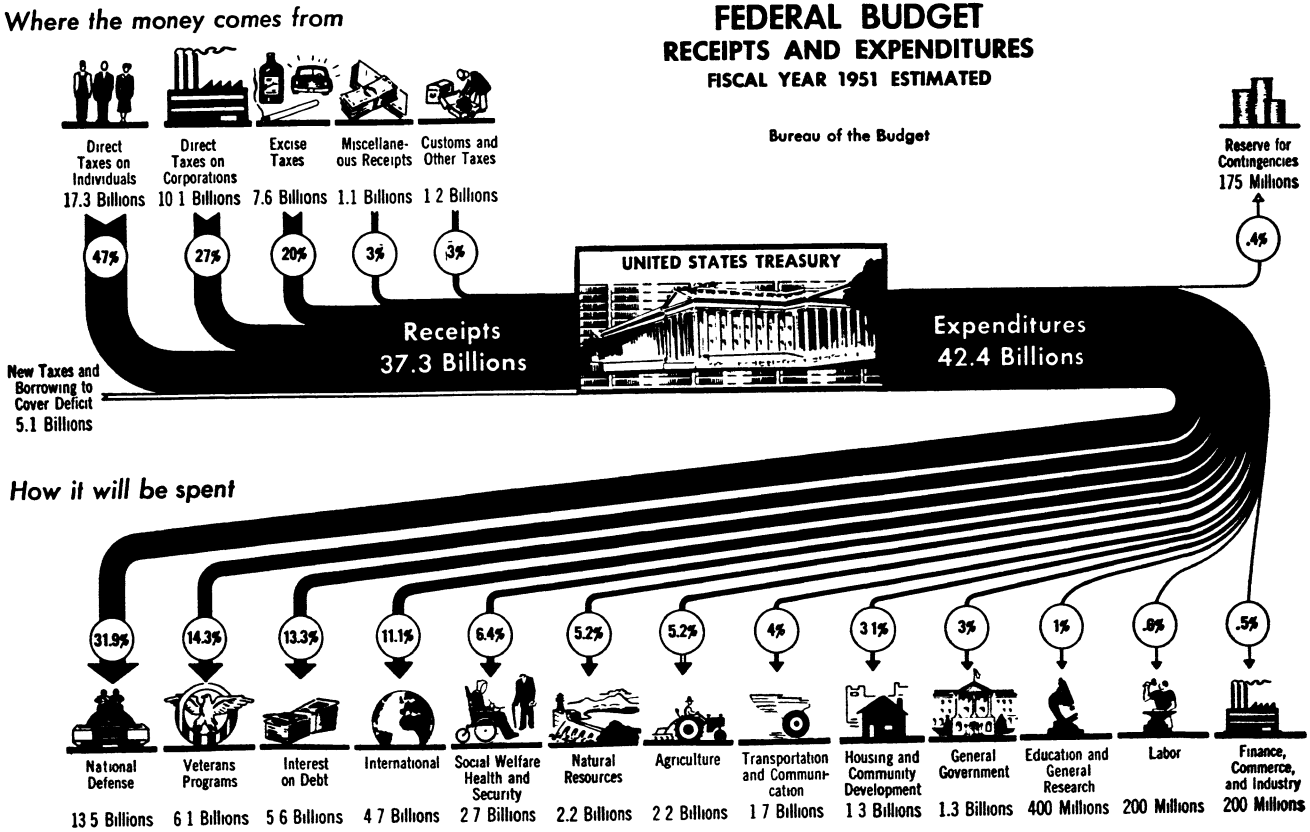

Where the money comes from
FEDERAL BUDGET
RECEIPTS AND EXPENDITURES
FISCAL YEAR 1951 ESTIMATED
Bureau of the Budget
Direct Taxes on Individuals
17.3 Billions
47%
Direct Taxes on Corporations
10 1 Billions
27%
Excise Taxes
7.6 Billions
20%
Miscellaneous Receipts
1.1 Billions
3%
Customs and Other Taxes
1 2 Billions
3%
Reserve for Contingencies
175 Millions
.4%
UNITED STATES TREASURY
Receipts
37.3 Billions
Expenditures
42.4 Billions
New Taxes and Borrowing to Cover Deficit
5.1 Billions
How it will be spent
National Defense
13 5 Billions
31.9%
Veterans Programs
6 1 Billions
14.3%
Interest on Debt
5 6 Billions
13.3%
International
4 7 Billions
11.1%
Social Welfare Health and Security
2 7 Billions
6.4%
Natural Resources
2.2 Billions
5.2%
Agriculture
2 2 Billions
5.2%
Transportation and Communication
1 7 Billions
4%
Housing and Community Development
1 3 Billions
3 1%
General Government
1.3 Billions
3%
Education and General Research
400 Millions
1%
Labor
200 Millions
.8%
Finance, Commerce, and Industry
200 Millions
.5%

Figure 6.

appliances, and photographic equipment. They have produced more than seven billion dollars in a single year.[24]

The Question of a General Sales Tax Some people would like to see a general sales tax levied by the national government because they believe that this would go far in the direction of bringing the tax burden home to every citizen. As it is, there are numerous excise taxes which are more or less sales taxes, but they are usually included in the retail price and hence are not always apparent to the purchaser. A straight sales tax of 3 per cent or so would bring in large sums of money and would serve notice on the purchaser that he is helping meet federal expenses; moreover it would take in virtually all people. However, such a tax is not regarded with enthusiasm by the politicians because it irritates large numbers of people. Furthermore, there is the vigorous opposition of organized labor which maintains that such a tax falls too heavily on the small wage earner because so large a proportion of his income goes for food, clothing, and other items on which there is a sales tax.

Customs Receipts While the receipts of most taxes have increased, often even by several hundred per cent, the income from customs has declined or remained more or less constant during recent years.[25] Trade with many foreign countries has been limited by the severe shortage in dollar exchange; reciprocal trade agreements have cut import duties to a lower rate in many instances. Hence, though customs receipts once were one of the major sources of federal income, they now occupy a comparatively minor position on the list, accounting for only about 1 per cent of total revenues.

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.[26] As recently as 1941 such taxes produced less than a billion dollars, but increased payrolls and a higher tax rate have resulted in much heavier yields. The two-billion-dollar mark was passed in 1947, and it is estimated that well over three billion dollars will come in during the 1950 fiscal year.[27] If proposed changes in the coverage and further increases in the rate are effected, employment taxes may be responsible for five billion dollars or even more each year. Some of this money is 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. Critics of the Treasury complain bitterly at using these funds to take care of deficits, maintaining that the amounts collected should be carefully preserved until they are needed. But the maximum load on the system is not expected to be reached until 1970 or so and in the meantime it is maintained by the Treasury that government bonds are as safe as any investment.

[24] In 1949, $7,551,000,000 came from this source.

[25] Customs receipts have been as follows during recent years: 1941, $392,000,000; 1944, $431,000,000; 1945, $355,000,000; 1948, $422,000,000; 1949, $384,000,000.

[26] For a discussion of such a program, see Chap. 34.

[27] In 1950, estimated receipts from this source are $3,048,000,000.

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, which is one of the departments first set up in 1789. 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. A sizable building east of the White House is given over entirely to the Treasury, but this has long since been inadequate to house the Washington staff. Much of the actual work is done in the various districts into which the United States is divided for fiscal administration, with the result that the Treasury staff is widely scattered throughout the country.

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 [28] and the Customs Service.[29] 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 payroll 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. It might be supposed that all customs duties would be collected at such ports as New York, San Francisco, and New Orleans, and a large portion of such levies are. However, imports may be sent under bond to interior points and the customs duties collected at those places by the local collectors of customs.

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 has to keep billions of dollars worth of gold and silver bullion 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

[28] 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.

[29] See L. F. Schmeckebier, "The Customs Service," *Service Monograph 33*, Brookings Institution, Washington, 1924.

disbursements of the United States. Prior to 1940 the Treasury maintained ten divisions which handled various fiscal matters, but these were consolidated by Reorganization Plan 3 into a co-ordinated 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.

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 has been 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 Office 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. Almost any federal employee who travels for the government has experienced the sharp eye of this office, for only valid items are approved and if a mistake is made it is not uncommon to have requests months or even years after for refunds. 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.

Criticism of the General Accounting Office With the Comptroller General appointed for a term of fifteen years and removable only by Congress, it is more or less natural that considerable autonomy should be enjoyed by the General Accounting Office. President F. D. Roosevelt found himself in conflict with this agency shortly after he assumed office and in 1937 placed himself definitely on record as being dissatisfied with the system. The Comptroller General at that time, a gentleman by the name of John R. McCarl, was a holdover from the Republican era and had scant sympathy for the pump-

priming policy of the New Deal. While he could not say what money should be spent for, he did question many expenditures proposed by various of the newer agencies on the ground that they were not within the appropriations made by Congress. Moreover, he severely criticized some of the financial practices of the government departments, including the Tennessee Valley Authority. President Roosevelt maintained that the Comptroller General should be responsible to the chief executive and removable by him and this course was recommended by the President's Committee on Administrative Management. When the President submitted his scheme for a reorganization of the administrative setup to Congress, this item was included and led to widespread discussion which reached the impassioned level both in Congress and throughout the country. It was maintained by the New Dealers that it was intolerable to have a single official, such as the Comptroller General, able to hold up important projects of the various departments and that every part of the government should work under the policy laid down by the President. Opponents of this point of view asserted that the Comptroller General represented the chief protection of the people against dictatorship and that it would be the height of folly to place this official under the President. Congress finally refused to carry out the wishes of the President, but the term of Mr. McCarl soon expired and Franklin D. Roosevelt handled the situation by allowing the position to remain vacant for a time and then appointing a person whom he felt he could trust to the office. Consequently the tempest which once raged died down, but the recommendations of the Hoover Commission brought the situation into the limelight again. Former President Hoover took the stand before a congressional committee to urge far-reaching changes in this office which would improve federal accounting procedures. The Comptroller General angrily denied that existing accounting systems were inadequate and maintained that an interdepartmental committee which had been set up would be able to deal effectively with any problems which might arise. Hence the status of the General Accounting Office remains controversial.[30]

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[30] For studies of the General Accounting Office, see Harvey Mansfield, *The Comptroller General,* Yale University Press, New Haven, 1939; and G. S. C. Benson, *Financial Control and Integration—with Special Reference to the Comptroller General,* Harper & Brothers, New York, 1934. An act of Congress in 1950 decentralized federal accounting.

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29. National 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 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. Thus, like the poor which are always with us, the necessity of public expenditure remains constant, though the exact amounts required may vary a great deal from time to time.

Unlike private persons or businesses, the government must spend large sums of money whether it has adequate receipts or not. Private persons and businesses would soon find their credit exhausted and face bankruptcy if year after year they paid out far more than their income. Governments not only sometimes spend a great deal more than they take in—in the case of the United States for an unbroken stretch of almost two decades [1]—but they often even increase their expenditures at a time when income is drastically reduced. Public credit places a strong government in a preferred position in this matter; moreover, when national income is cut governments are almost invariably called upon to assume in addition to their regular duties large burdens of relief, pump-priming, and other activities of an extraordinary nature.

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. In their wildest dreams the founders of the republic could never have foreseen a time when the national government would find it expedient to pay out even a fraction of contemporary appropria-

[1] Beginning with the latter years of the Hoover administration the national government spent more than it took in until the fiscal year of 1947. The years 1947 and 1948 showed a budget out of the red, but 1949 saw deficit financing again.

tions. As a matter of fact, recent expenditures have reached such proportions 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 $40,000,000,000, $75,000,000,000, or even $93,000,000,000 actually is.

Recent Increases It was not until shortly before World War I that the national expenditures reached a total of $1,000,000,000 in a single year. The Congress which first authorized the expenditure of public funds aggregating

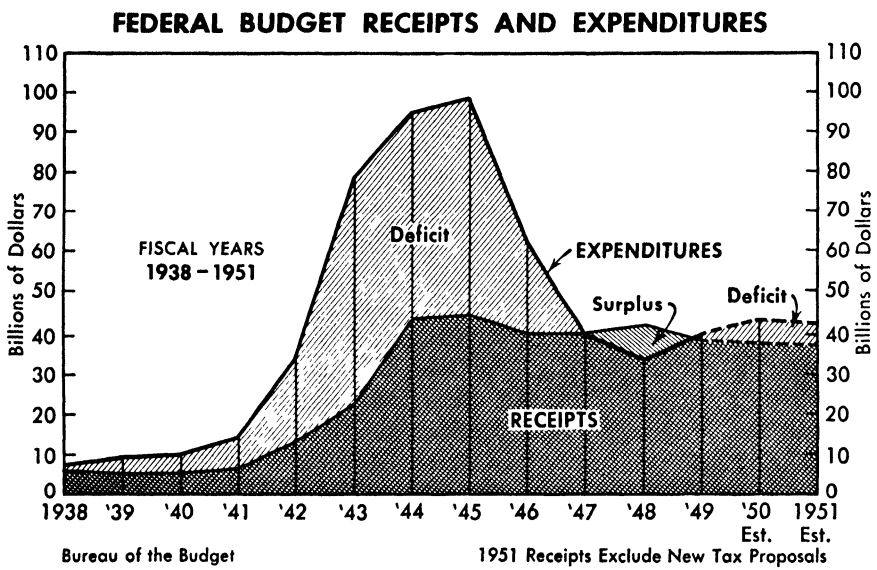


Figure 7.

$1,000,000,000 received a great deal of publicity as a "billion-dollar Congress." Now that amount strikes the public as being almost too insignificant to mention. It is as if a sybarite, spending money right and left in the most lavish fashion, were to refer to the days when he lived in the utmost penury in the "third-floor back" of a run-down boarding house. From 1930 to 1936 the expenditures of the national government increased from just under $4,000,000,000 per year to more than $9,000,000,000. Then in 1937 there was a small drop to just over $8,000,000,000, but this was followed by steady increases, until in the fiscal year of 1945 more than one hundred billion dollars [2] was actually paid out. After World War II cuts were made which brought total expenditures to the neighborhood of forty billion dollars per year, but in 1950 the amount began to soar again. Per capita cost averaged $5.26 during the years 1789–1913; it rose to $64.55 during the three

[2] The actual amount in 1945 was $100,404,596,685.

years 1933–1936 covering the high point of the New Deal; and it approximated $700 in 1945.

Where The Money Goes

Legislative, Executive, and Judicial Expenditures The traditional functions of the national government are hardly inexpensive, but they account for a comparatively small proportion of the total expenditures. Despite the handsome treatment which it accords to itself, Congress is responsible for the expenditure of only a fraction of 1 per cent of the total amount.[3] The executive office of the President has expanded until the chief executives of a few years ago would scarcely be able to find their way around; yet even so it costs the country only a few million dollars annually.[4] The elaborate system of federal courts, including the Supreme Court itself, necessitates the paying out of much less than 1 per cent of the total expenditures.[5] In other words, the total cost of the executive, legislative, and judicial branches of the government runs to less than $100,000,000 out of a total of $40,000,000,000, or even $100,000,000,000.

Other General Government Costs The ordinary administrative agencies account for a far larger sum than the legislative, executive, and judicial branches, but even so they are not responsible for any major part of the outlay. Budgetary classifications have varied during recent years so that it is difficult to compare expenditures for this purpose. Financial management has caused the paying out of something like $400,000,000 per year recently. Government contributions to the civilian employees' retirement system aggregate a slightly smaller amount.[6] Total general governmental costs have recently exceeded a billion dollars each year.[7]

National Defense The cost of national defense, including pensions for veterans of past wars, interest on debt incurred during previous periods of intense activity in preparing for defense, and the maintenance of armed forces, has long been heavy. Various estimates, based on calculations as to how much of the national debt could be fairly charged to defense and other somewhat vague items, have placed the proportion of national expenditures devoted to this purpose at well over half. Indeed one of the main arguments for disarmament advanced in the 1920's was the tremendous expense involved and the far-reaching improvements in education, health, and general public welfare which could be made with the money saved. Direct expenditures for national defense mounted from $1,559,000,000 in the fiscal year of 1940 to $84,532,000,000 in 1945. In 1946, these expenditures dropped sharply to $45,103,-

[3] Estimated legislative expenditures in 1950 amounted to about $46,000,000.
[4] These costs were estimated at approximately $10,000,000 in 1950.
[5] The estimated cost of judicial functions in 1950, was $26,000,000.
[6] In 1950, the estimated amount was $328,000,000.
[7] In 1949, these ran to $1,170,000,000. They are estimated at $1,267,000,000 in 1951.

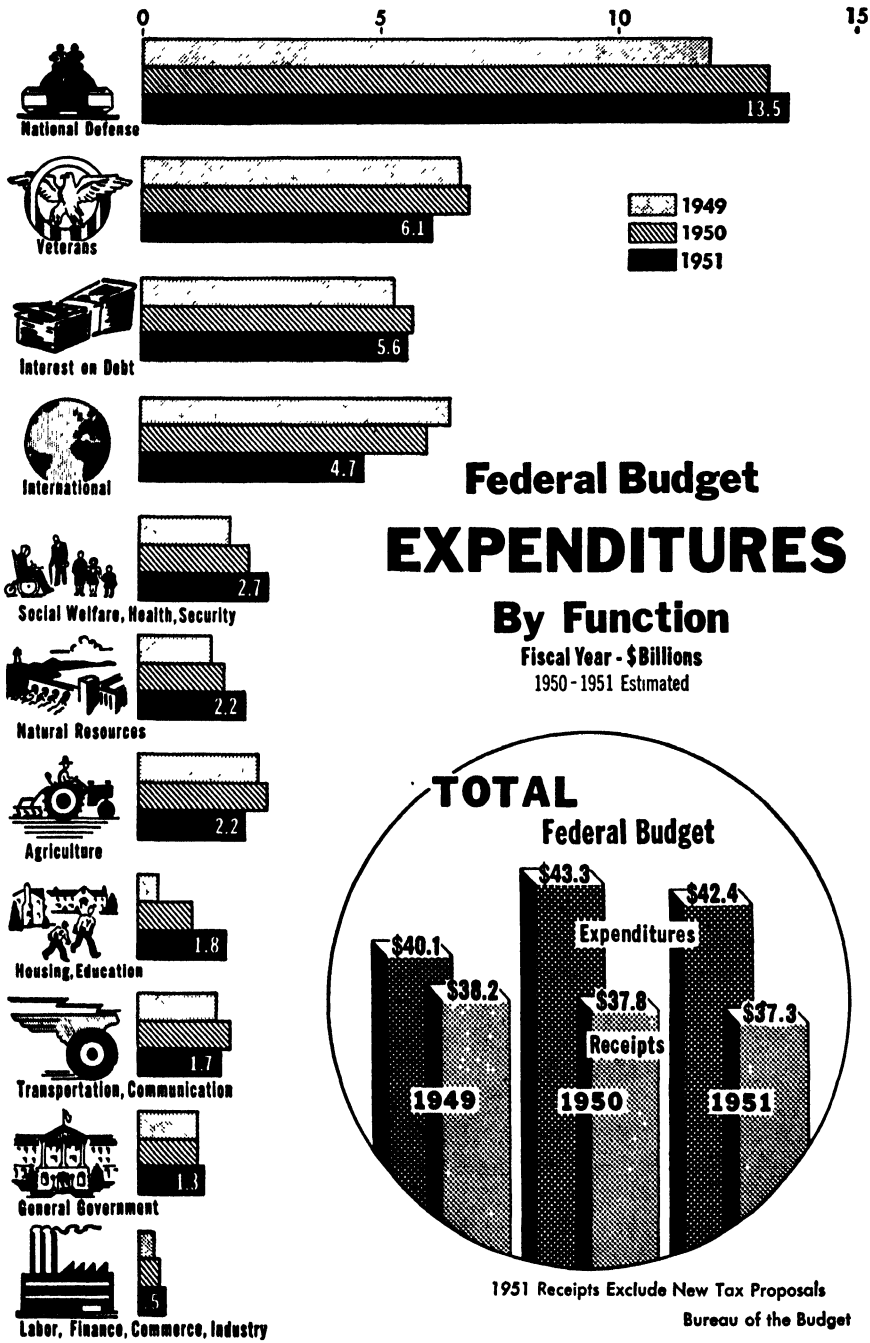

0
5
10
15
National Defense
13.5
Veterans
6.1
1949
1950
1951
Interest on Debt
5.6
International
4.7
Federal Budget
EXPENDITURES
By Function
Fiscal Year - $Billions
1950 - 1951 Estimated
Social Welfare, Health, Security
2.7
Natural Resources
2.2
Agriculture
2.2
Housing, Education
1.8
Transportation, Communication
1.7
General Government
1.3
Labor, Finance, Commerce, Industry
.5
TOTAL
Federal Budget
$40.1
$38.2
$43.3
Expenditures
$37.8
Receipts
$42.4
$37.3
1949
1950
1951
1951 Receipts Exclude New Tax Proposals
Bureau of the Budget

Figure 8.

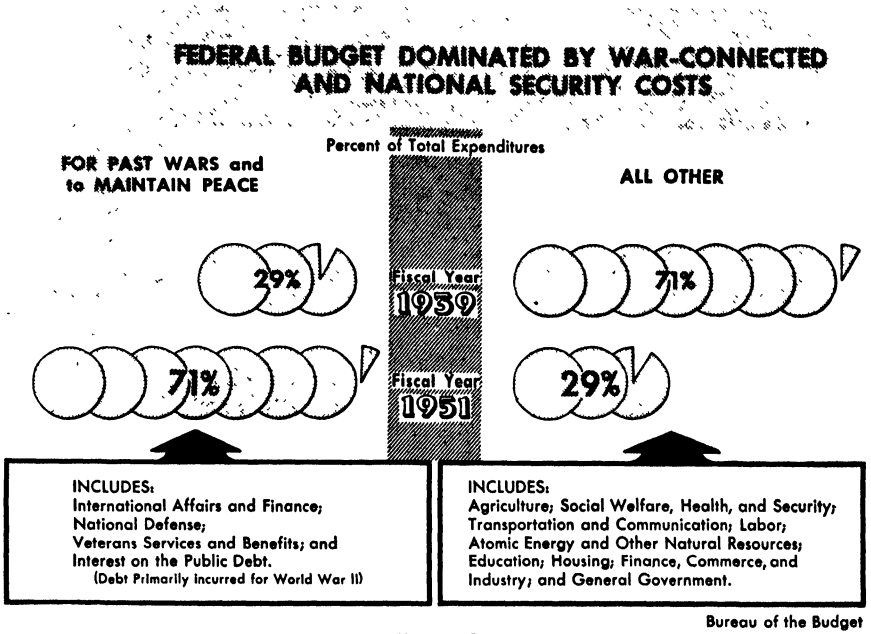


Figure 9.

000,000 and they were later reduced to the point of thirteen or fourteen billion dollars per year. With the international system so disturbed in 1950, they jumped to forty or fifty billion dollars and it is difficult to predict future totals.

Veterans' Services and Benefits Closely related to the national defense are the expenditures for veterans' services and benefits. Pensions, hospitals, educational benefits, insurance, and service and administrative costs aggregate a large sum every year and are likely to constitute an obligation of the government for many years. Educational benefit programs will presumably come to an end shortly, but the pension and hospitalization aspects may increase as the years pass. Considering that the final pension payment for those who fought in the War of 1812 has only recently been made, the possible cost of pension payments to the many millions who participated in World War II beggars imagination. In 1941 veterans' services and benefits accounted for just over half a billion dollars; they increased in 1947 to the point of $7,370,000,000. Since that time there has been a moderate reduction, but they still cost some six billion dollars each year.[8]

International Affairs and Finance A few years ago the United States devoted a relatively insignificant part of its resources to international affairs

[8] In 1949, a cut to $6,669,000,000 was made. In 1951, it has been estimated that the total will be $6,080,000,000.

and finance. Indeed as recently as 1941 less than $150,000,000 was paid out on this account. An expanded foreign service, various foreign relief programs, international reconstruction, development and monetary stabilization programs, membership in international organizations, and payments to the Philippine Republic to compensate for war damage now require large amounts of money. In 1949 in excess of six billion dollars was expended for these purposes. Some reduction in these items may be possible during the immediate future;[9] but even after the Marshall Plan has come to an end it will be difficult to avoid sizable outlays for international affairs and finance.

Social Welfare, Health, and Security Social welfare, health, and security programs have been the outgrowth of the legislation enacted by Congress particularly since 1935. Retirement and dependents' insurance, accident compensation, assistance to the aged and other special groups, promotion of public health, and crime control and correction all play important roles in present-day American life. Some of these are actually financed largely if not entirely out of payroll taxes paid by employers and employees; others have to be taken care of out of general funds. Expenditures for these purposes currently exceed two billions dollars per year [10] and there is reason to believe that they may soar steadily as the programs become fully effective even if increased coverage is not authorized.

Agriculture and Agricultural Resources For many years the United States has carried on more or less elaborate programs aimed at assisting the farm population. Development and improvement of agriculture, loan and investment programs to aid agriculture, conservation and development of agricultural land and water resources, and various other financial aids extended to the farm population account for amounts ranging from a billion to two billion or more dollars each year.[11]

Natural Resources Less well known perhaps are the programs in the field of natural resources which are not primarily agricultural. Conservation and development of land and water resources not primarily agricultural in character, conservation and development of forest resources, mineral resources, and fish and wildlife, recreational use of natural resources, general resource surveys, and the development and control of atomic energy have recently cost the national government in the neighborhood of two billion dollars in a single year.[12]

Transportation and Communication Transportation and communication activities are another major category of national expenditures. Promotion of a merchant marine, providing of navigation aids and highways, promotion of aviation, regulation of transportation and communication, and subsidies to meet the postoffice deficits require varying amounts. In 1944 a high point of

[9] Actual costs in 1949 were $6,462,000,000. Estimated costs in 1951 amount to $4,711,000,000.
[10] In 1949, $1,907,000,000 was expended, but in 1951, the estimate is $2,714,000,000
[11] During the period 1941 1949 expenditures ranged from $574,000,000 to $2,512,000,000.
[12] In 1951, an estimated $2,218,000,000

$4,343,000,000 was reached, but the current rate is between one and two billion dollars per year.[13]

Finance, Commerce, and Industry Finance, commerce, and industry have great influence in the national government, but the various federal programs in this field are far less costly than those which have been discussed above. Control of the money supply and private finance, loans and investments to aid private financial institutions, promotion and regulation of trade and industry, and business loans and guarantees cost the government approximately two hundred million dollars per year.[14]

Labor While labor sometimes complains that the national government has done far more to assist business and industry than to help labor, the cost of the labor activities of the national government is actually considerably greater than those noted above in the case of finance, commerce, and industry. Mediation and regulation of employment conditions, unemployment compensation and placement activities, training of workers, and labor information, statistics, and general administration currently cost the national government something like two hundred million dollars per year.[15]

Housing and Community Facilities The housing and community facilities activities of the national government require fairly sizable amounts, though nothing like as much as the major programs of national defense and assistance to farmers. Public housing programs, aids to private housing, housing administration, and provision of community facilities of various sorts have recently cost anywhere from one to three hundred million dollars per year, but new programs will materially increase the amount.[16]

Education and General Research Despite the emphasis placed on education in the United States, the expenditures of the national government in the field of education and research have been comparatively modest. If Congress approves the long-pending proposals to extend grants-in-aid to the states to improve educational standards, there will, of course, be a considerable change in the situation. Promotion of education, educational aid to special groups, library and museum services, and general purpose research have recently cost something like one hundred million dollars per year.[17]

Interest on the Public Debt Although interest rates are low on federal borrowing, the size of the national debt makes it necessary to set aside large amounts every year for interest. Interest on the public debt currently requires in excess of five billion dollars each year,[18] which is more than the total cost of the national government prior to 1930.

Economy in Government Despite the general apathy as far as federal finances are concerned, there are always voices in the wilderness calling for

[13] In 1951, the estimated amount is $1,682,000,000.
[14] The estimated amount in 1951 is $202,000,000.
[15] The estimated amount in 1951 is $243,000,000.
[16] The estimated amount in 1951 is $1,329,000,000.
[17] The estimated amount in 1950 was $125,000,000.
[18] The estimated amount in 1951 is $5,625,000,000.

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. That is not to say that it might not be worth while to conduct a careful survey of the situation and that reasonably substantial economies might not be effected. But no anticipation of large savings should be built around these traditional agencies.

Where Cuts Could Be Made This means that the principal fields remaining are those involving national defense, assistance to farmers, social security, veterans' benefits and 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? The national defense agencies maintain that they are being starved. The farmers complain that even as it is they receive less than their share of the national income. Veterans point to their patriotism and anticipate more, not less, in the way of government aid. Motorists, business men, and farmers want good highways. The United States was very slow in getting started on old-age security and child-welfare programs and any saving realized by dropping those activities would be doubtful wisdom. With the increasing demand for health and educational programs financed by the national government, there may be some reason to believe that the amounts expended for these services will even increase. With the international situation as threatening as it is, great pressure is exerted to maintain appropriations to strengthen the American position abroad.

Prospects It can hardly be disputed that a substantial economy achievement would require considerable courage on the part of a Congress and a President, for the interests affected would move heaven and earth to protect themselves. As long as large numbers of persons, both within and without the government, look upon public finance as largely a matter of bookkeeping, it is not probable that there will be adequate support for genuine economy. In 1941, Congress got to the point of setting up a Joint Committee on Reduction of Non-essential Federal Expenditures and the Bureau of the Budget prepared a table showing where cuts of $1,000,000,000, $1,500,000,000, and $2,000,000,000 could be made. Moreover, the President submitted a 1943 budget to Congress which involved a reduction of approximately $1,000,-000,000 in expenditures exclusive of direct war purposes and debt charges. But the national defense program made the problem of economy in expendi-

tures seem insignificant, not only because of the pressing task involved in defeating the Germons and the Japanese, but also because it was psychologically inappropriate to emphasize small savings in the civil agencies when billions were being poured out to the defense organizations. Nevertheless, the congressional Committee on Nonessential Expenditures remained fairly active and took credit for savings of $2,457,623,568 during the period 1943–1945. But about half of this amount resulted from the abolition of the Civilian Conservation Corps, the National Youth Administration, and the Works Projects Administration, which can hardly be considered as very significant, considering the fact that the war made them unnecessary for the time being. In 1947, a Republican Congress pledged substantial savings and actually cut the budget by amounts variously estimated at from one to five billion dollars. Public attention was focused on the problem by the report of the Hoover Commission which pointed out the bearing of economy on the future welfare of the country and noted possible savings of as much as three billion dollars in current expenditures without impairing the general effectiveness of the government.

The National Debt

The enormous deficits in federal financing since 1930 have contributed to a national debt which can easily claim first place in the entire world or indeed 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.[19] The closing months of the Hoover administration saw revenues fall off sharply and the debt began to rise. 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, which Congress had by law fixed as a maximum. With considerable reluctance Congress was led by the demands of the emergency to raise the maximum to $65,000,000,000, which it was estimated would be quite adequate. However, even before the declaration of war in 1941 the $50,000,000,000 mark had been exceeded. The $100,000,000,000 debt level was passed in 1943; the $200,000,000,000 in 1945. In 1945 Congress increased the debt limit to $300,000,000,000 and by early 1946 an actual indebtedness of 279 billion dollars had been reached. Then a trend set in which brought about a slow reduction in the debt to just over $250,000,-

[19] The lowest figure was $16,185,308,299 in 1930. See statement of Treasury Department.

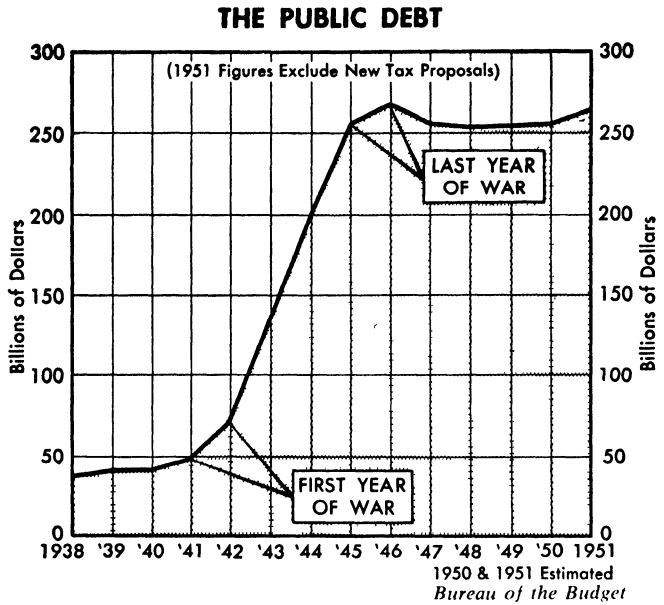


Figure 10.

000,000. Deficits in 1949 and 1950 again resulted in an increase in the national debt.

How High Can the National Debt Safely Go? The question is sometimes raised as to how high the national debt can be permitted to go without endangering the financial stability of the country. Unfortunately, there is no categorical answer, much as we might like to have one for guidance. For a decade or more the rapidly soaring debt occasioned great perturbation in many quarters, although it is fair to say that the majority of the people apparently gave little attention to the problem. Certain political orators have prophesied the almost immediate downfall of the country unless a halt were called: their rivals have told people that debt is a good thing for a nation and that in the last analysis it involves only bookkeeping transactions. We owe ourselves, the argument goes, so we have nothing to worry about. The most thoughtful people have found it impossible to agree on a safety limit. President F. D. Roosevelt once quoted an unnamed New York financier, who estimated for him that $55,000,000,000 or $60,000,000,000 might be considered the top. As the debt approached that point, Mr. Roosevelt conveniently discovered other authorities who advised him that $75,000,000,000, $80,000,000,000, or even $90,000,000,000 might not occasion genuine danger. The war years saw an increase far beyond the wildest predictions of a few years earlier. The truth is that no one knows what the limit is. Unfortunately, it is probable that there is only one reliable method of ascertaining the upper

limit: the method of experience; and it furnishes the information when it is too late to make any very great use of it.

"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 are presumably always solvent and can easily settle accounts by transferring assets to the credit column. Unfortunately the actual situation is far more complicated than it sounds. It is true that comparatively small amounts of the gigantic debt of the United States are owned by citizens of foreign countries. The greater part is held by banks, insurance companies, trust funds, and similar institutions. The deposits in commercial and savings banks and life insurance policies are secured to a considerable extent by government securities which these companies have purchased. If the "bookkeeping method" be applied as advocated by those who say that we owe ourselves and hence do not need to worry about indebtedness, it means that the bank deposits and the life insurance policies cannot be paid because the securities which back them have proved worthless. If everyone owned government bonds in equal amounts or according to their 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. But life insurance policies, particularly, constitute the financial lifesaver of the rank and file of American citizens who have through the years saved their hard-earned money to protect their families and their own old ages. It may be argued that the social security program is adequate to provide for these needs and it may be that American psychology can be adjusted to that point of view. However, under the system of private capital, still basic in the United States despite the operations it has undergone, repudiation of the national debt would appear to be catastrophic in its results.

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 particularly favorable to loans running for a few months, again because the issuance of long-term bonds would present certain difficulties, 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 contain a provision which permits the government to call them in for payment after a certain date. If interest rates are low at that time, it is more than likely that the Treasury will resort to refunding. During the past decade or two the United States has refunded on a very extensive scale, thus reducing interest rates from almost 4 per cent to about 2.5 per cent.[20]

The federal government issues both bearer bonds and registered bonds—the former may be sold by whoever holds them and are approximately as negotiable as currency, while the latter are registered at the Treasury in the name of their owner and cannot be disposed of without having ownership transferred. Although local governments have made extensive use of bonds which mature over a period of years rather than at one time, the federal government has not seen fit to experiment with serial or "annuity" bonds, as they are called.

Savings and Defense Bonds During the years immediately preceding 1941 the Treasury made increasing use of United States Savings Bonds. These were sold at post offices and federal reserve banks, registered in the names of their purchasers, nontaxable for the most part, payable in ten years, redeemable at any time with a reduction in interest rate, and bore a face value which included both principal and interest. Several billion dollars of these had been sold before the field was given over to defense, war, victory, and savings bonds, which differ very little except in taxability.

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. The Reconstruction Finance Corporation, the Commodity Credit Corporation, the Export-Import Bank, and the Tennessee Valley Authority are examples of government agencies which have been permitted to exercise this authority. Outstanding indebtedness of these government corporations has at times amounted to more than ten billion dollars.

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

[20] Short-term interest rates are considerably below this figure. In 1949 the ninety-one day bills offered weekly by the Treasury ranged from 0.923 per cent to 1.164 per cent. One-year Treasury certificates of indebtedness bore 1⅛ and 1¼ per cent interest.

government, while individual members felt quite free to try their hand at the game by introducing a multitude of other appropriation measures. As long as the requirements were relatively modest and the margin between outgo and resources was wide, this more or less haphazard arrangement worked without too great creaking, despite the criticisms that were hurled at it. 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.

Budgetary Practice from 1921 to 1933 Instead of expecting nine standing committees of the House of Representatives to draw up some sort of financial plan for expenditures, the act of 1921 provided for a Bureau of the Budget to be attached to the Treasury Department, although not an integral part thereof. A director was appointed by the President at his own pleasure and for an indefinite term. The first director, Charles G. Dawes, brought to the position great energy and a high degree of resourcefulness, thus starting the new agency off with a considerable impetus. There were many problems confronting the bureau which had to be at least partially solved and Mr. Dawes, with his flair for shoving aside tradition and pushing to the very heart of things, managed to do this.[21] A single appropriation schedule, substituted for the fourteen former measures, was presented to Congress shortly after it had convened. The role of the President was rather important under this system, though he was not expected to take away the entire responsibility of the Bureau of the Budget. There still remained the freedom of Senators and Representatives to introduce amendments and even entirely new appropriation bills which conflicted with the general tenor of the proposals made by the Bureau of the Budget. Needless to say, this constituted a very serious loophole through which all sorts of irresponsible financial practices could worm their way in. Nevertheless, the new arrangement proved that it was clearly superior to the old method and in general the bureau managed to achieve a considerable degree of prestige. The expenditures were adjusted to the income; a sizable excess of revenues over expenditures made it possible to retire a large amount of the public debt in record time.

Interval of 1933–1939 Franklin D. Roosevelt held a somewhat different concept of the role of a chief executive in directing financial affairs. Endowed with more than the usual vitality and desire for authority, Mr. Roosevelt was not long content to permit the Bureau of the Budget to maintain its independence. In his eyes a single official was best fitted to determine the general policies of the government; other officers were expected to accept what had been decided and proceed accordingly in managing their departments. Shortly

[21] Mr. Dawes wrote a book in which he detailed some of his experiences in organizing a budgetary system. See his *The First Year of the Budget in the United States,* Harper & Brothers, New York, 1923.

after Mr. Roosevelt had appointed Lewis W. Douglas as director of the budget, it appeared that a rift was developing between the two. Mr. Douglas was not disposed to grant that any single man could wisely be charged with the entire responsibility for laying down all policies; moreover, he was not willing to countenance the mounting deficits. Consequently he resigned in 1934, issuing a statement in which he sharply dissented from the President in his general financial views. After this abortive revolution in the Bureau of the Budget Mr. Roosevelt was wary about appointing a permanent successor and permitted the bureau to drift along year after year with an acting director at its head. Although still nominally a part of the Treasury, the Bureau of the Budget for all practical purposes was directly under the chief executive after 1934.

The Present Bureau of the Budget One of the first steps which Mr. Roosevelt took after he had been granted authority in 1939 to reorganize the administrative departments was to transfer the Bureau of the Budget to the executive office of the President, where it would be immediately under his supervision. Then he decided to abandon the policy of selecting a man of affairs as director and brought in Harold Smith, a career man in public administration.[22] As long as the bureau was entrusted with a certain measure of responsibility for drafting a financial policy, there was justification for appointing a well-known public figure as its head; but the concept of the bureau as a service agency which should only reflect the ideas of the President necessitated a trained administrator. Since July 1, 1939, the date of the transfer to the executive office of the President, the Bureau of the Budget has undergone a striking transformation. Its internal organization has been expanded and revamped, and numerous experts have been recruited to direct new activities and to carry on an elaborate research program not only in public finance but in the broad field of governmental efficiency. The major subdivisions of the Bureau are as follows: Division of Estimates, Division of Fiscal Analysis, Division of Legislative Reference, Division of Statistical Standards, and Division of Administrative Management.

No one can doubt the dependence of the Bureau of the Budget on the President under the new system. Whether that is desirable is a matter of controversy, depending to some extent upon one's political philosophy. It may not fit into the doctrine of separation of powers, nor reflect American psychology too well. But it is only fair to point out that it is the practice of almost all foreign governments, including England. Whatever one may conclude about the loss of independent status, it must be admitted that the Bureau of the Budget is now distinctly more energetic than at any previous time. Its studies of problems which have long deserved attention and its

[22] Mr. Smith has written quite lucidly of his experience in this connection in his *The Management of Your Government*, Whittlesey House (McGraw-Hill Book Company), New York, 1945.

intimate grasp of the various ramifications of federal finance are impressive.[23]

What Is a Budget? There seems to be more than the usual vagueness surrounding the term "budget." Critics sometimes become sarcastic when they hear "budget" applied to recent financial practices, for they maintain that there can be no budgeting if expenditures exceed income. This concept doubtless goes back to the days when budgets were always expected to balance—when the outgo and the revenue were supposed to be equal. If balancing is a primary requisite of a budget then it is true that the United States has had no national budget most of the time during a period of two decades. A more accurate definition places less emphasis upon the balancing aspect—though no responsible 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 even earlier.

Estimates During the summer the Bureau of the Budget requests estimates of their next year's expenditures from the various spending agencies of the government. The larger departments maintain officials who devote themselves entirely to financial matters, while the minor ones entrust the preparation of this information to employees temporarily relieved of other duties. Until the preparation of the budget for the fiscal year of 1951, these estimates required three general types of information: (1) expenditures for personal services, (2) expenditures for supplies, and (3) capital outlay. In the first category the budgetary officers of a department listed in detail the salaries and wages of the people employed, starting with the head and ending with the janitors, scrub women, and watchmen. Each type of job had to be entered separately—for example, one entry dealt with junior typists, another with class five clerks, etc. In every case the basic compensation received by each employee had to be indicated; the total amount requested for that class of position had to be given; the corresponding appropriation for the current and

[23] On the development and present activities of the Bureau of the Budget by one of its staff members, see F. M Marx, "The Bureau of the Budget; Its Evolution and Present Role," *American Political Science Review*, Vol. XXXIX, pp. 653 684, 869–898, August and October, 1945.

[24] President Roosevelt indicated in 1942 his dissatisfaction with the present arrangement and promised to try to effect a change to the calendar year.

one or two past fiscal years were required; and at the end of the personal service estimates there had to be a grand total of all of these figures.

The supply estimates were similar except that they listed office supplies, small equipment which has to be purchased at regular intervals, fuel, janitor supplies, and all of the thousands of items which are necessary for running a department. Under such a system it was often difficult if not impossible to see the mountain peak because of the jungle of growth—in other words the enormous amount of details relating to personal services and supplies obscured the general picture of federal finances. Beginning with the fiscal year of 1951 a functional or general-purpose budget was substituted for the older type. Under this system information in regard to personal services and supplies is necessary, but the emphasis is placed on the function or general-purpose to be performed by a given agency. Thus when the estimates have been revised and assembled into a proposed budget for submission to Congress, the new functional or general-purpose budget enables Congress to form a more realistic and balanced picture of the entire financial situation confronting the national government.

Review of Estimates 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 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. Here they are examined, compared, and added up to ascertain the total amounts requested. Invariably the estimates of the departments exceed government income or even any possible deficit that may be authorized. This excess results from several factors. In the first place, the desires are always greater than it is feasible to satisfy at any one time. In the second place, some departments, motivated by the "bigger and better" psychology, are very anxious to expand so that they can take on greater relative importance and confer greater prestige on their heads. A third rather curious factor may be attributed to the lessons of experience. A department requires the services of a dozen additional stenographers, but it knows that if it lists only that number it is likely to get perhaps three or four; consequently requests are apt to be "padded" so that when the Budget Bureau reduces them they will meet the approximate needs. Inasmuch as it is never possible to tell beforehand exactly what the cut will be, there is always the possibility of getting more or less than is actually wanted.

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 conferences 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 the Budget After the conferences and hearings have been finished—which is ordinarily by December 1—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 recent budgets have filled a volume of more than a thousand pages weighing several pounds.

The Budget in Congress After the President has laid the budget with his budgetary message before Congress, it is put through substantially the same process that has been noted in the case of an ordinary bill.[25] It starts out in the House of Representatives and the appropriation section goes to the Committees on Expenditures in the Executive Departments and Appropriations which break it down into a number of parts for consideration by subcommittees.[26] These subcommittees are organized on the basis of department lines, so that all appropriations for the Treasury Department or the Federal Security Agency, say, are considered by one subcommittee. The subcommittees go into the recommendations of the Bureau of the Budget and the President with reasonable care, although they can hardly give detailed consideration to every provision. If departments have not fared too well with the Bureau of the Budget they may urge their claims on the committees, which have the power to insert additional items. At one time this practice attained such proportions that it represented a serious evil, but the presidential dominance of the bureau and the administrative departments has served to reduce departmental lobbying. Outside pressure groups frequently seek to have their desires heeded by the committee. Altogether it is probable that substantial changes will be made while the various sections of the budget are in the committee stage either in the House of Representatives or the Senate.

[25] See Chap. 21.

[26] Prior to 1950 the number of sections approximated a dozen. In order to promote greater co-ordination in keeping with the functional or general-purpose budget adopted in that year, attempts were made to combine all operating costs into a single measure. Capital outlays would be handled separately.

Prior to 1950 after the budget had been referred to standing committees of Congress, it was never reassembled in a single bill. Instead, as the several large sections were ready for consideration, they were reported by committees, debated, amended, passed, and sent on to the other house. Under the general-purpose budget all operating expenditures will be included in a single bill. A conference committee is required to work out a compromise between the versions passed by the two houses. After the bill has finally been passed in identical form by both houses, it goes to the President who, except in very rare instances, signs it. Appropriation bills are supposedly disposed of during the spring, but they may actually have difficulty getting under the wire in time for the new fiscal year which begins on July 1. In 1949, certain of the great bills, including that relating to the national defense agencies, were not finally passed until late summer, and Congress was forced to authorize temporary extension of spending authority to keep the departments going.

Pork In many foreign governments only those proposals to spend money emanating from the executive branch can be considered by the legislative branch which finally has to appropriate the money. In contrast, the system in the United States permits any member of Congress to introduce bills calling for the appropriation of public funds, and as a matter of fact this privilege is exercised in generous measure. After the Bureau of the Budget has sought to work out an integrated financial plan which it has presented to Congress through the President, much of its effort may be canceled by the attempts of Senators and Representatives to have their own schemes accepted. The result of this freedom is generally deplorable, although it has some advantages. Items which do not appear to a narrow-minded chief executive can under this system receive attention from Congress. However, the most striking effect of the liberty is the establishment of the "pork barrel," under which vast amounts of public funds are poured out on projects that have little or no justification. Senators and Representatives want money to build post offices, construct dams, dredge harbors, and carry on other public works that will impress their constituents and assist them in re-election. Some of these are reasonably desirable, although in comparison with educational and health programs that are postponed for lack of available funds, they may be petty. On the other hand, not a few of these ventures represent almost complete waste of public funds. Millions have been spent to dig canals and dredge channels that are never used—it has been estimated that the cost of carrying a ton of freight along some of these amounts to twenty-five times what the freight could be hauled for by railroads or trucks which are not supported at public expense. In 1941, the President asked Congress for $25,000,000 to improve certain highways regarded as essential to national defense. Congress responded by appropriating five times that amount to be *apportioned* among the states—apparently every state was going to have its finger in the pie,

national emergency or not.[27] Hundreds of millions of dollars are wasted every year on "pork." While almost no one attempts to justify it, still the evil continues for political reasons. Strangely enough, much of the economy talk seems to be directed at doing away with health and welfare services and abandoning regulatory functions, though the effect on general public welfare would be harmful. Yet comparatively little is said about the pork barrel which could be discarded with scarcely any injurious results and with a saving of very considerable sums of public money.[28] Restricting the right to initiate appropriation bills to the Bureau of the Budget would go far in this direction; the itemic veto in the hands of the President might also be helpful.[29]

Executing the Budget It is a common notion that the task of a budgetary agency ends after the 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 supervision. 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 expanded bureau through its subdivision on Administrative Management is devoting a considerable amount of time to these supervisory duties after the fiscal year has begun and a budgetary plan is in operation.

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[27] This bill was vetoed by the President and just failed to pass over his veto.

[28] For a criticism of this system, see Charles Warren, *Congress as Santa Claus; Or National Donations and the General Welfare Clause of the Constitution,* University of Virginia, Charlottesville, 1932.

[29] For a discussion of the item veto, see Chap. 17 above.

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30. Money and Credit

In a highly industrialized economy it is obvious that money and credit facilities are of the utmost importance, while even in the simplest society some form of currency is required. The national government of the United States makes direct provision for both metallic and paper money and plays an important role in supervising and furnishing adequate credit facilities where private enterprise cannot be expected to cope with a situation.

The Monetary System

An Exclusive Function of the National Government It has been noted that many of the functions exercised by the national government are shared with the state governments. However, the national government is expressly given the authority to "coin money, regulate the value thereof, and of foreign coin," [1] 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." [2] It follows, therefore, that the monetary field is one which is occupied exclusively by the federal government. During the early history of the United States the states managed to evade this restriction imposed upon them by chartering banks and permitting them to issue bank notes which were, in effect, "bills of credit." But it was soon clearly apparent that it was not to the best interests of the country to have more than a single currency system. Some state banks used no discretion in the amount of notes put into circulation; others lacked the financial resources to back sound paper money.[3] Therefore, in 1865 Congress decided to make it impractical for state banks to engage further in the issuing of paper notes by placing a tax of 10 per cent on each note issued.[4] Since that time the currency system of the United States has been entirely under the national government, although for many years the national

[1] Art. I, sec. 8 of the Constitution.

[2] Art. I, sec. 10 of the Constitution.

[3] One of the most interesting chapters of American financial history is the shady operation of state-chartered banks. While, of course, many of them were reliable institutions, others were completely dishonest. It was, for instance, not at all uncommon to locate a state bank in a remote and inaccessible town in order that those who came into possession of paper money it issued would never take the trouble to ask payment in gold, which in most such cases the bank did not have.

[4] The Supreme Court upheld this act in *Veazie Bank* v. *Fenno*, 8 Wallace 533 (1869).

banks were allowed to supplement the paper money circulated by the Treasury.

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 the currency, being divided into 100 cents for purposes of petty transactions. It is generally felt that the dollar and cent have proved satisfactory units of money and various other countries, including Canada and China, have adopted a similar system. Several South American and European countries as well as Japan now make use of the decimal plan, although they designate their basic coins *pesos, francs, yen*, and so forth.

The Gold Standard One of the most bitterly debated questions in the history of the United States has been what standard should be the basis of the monetary system.[5] For many years both gold and silver were linked together to form a bimetallic foundation for the currency, but in 1900, after the defeat in 1896 of Bryan and "free-silver," Congress enacted a "gold standard" statute which designated gold as a single primary standard. Gold then became the basis of the monetary system. Silver was, of course, continued as a metal for secondary coinage, but it was subordinated to the rarer gold. Despite some objections, gold remained the unchallenged base of the monetary pyramid until 1933, when Franklin D. Roosevelt was persuaded by his advisers to embark on an experiment intended to increase prices, scale down indebtedness, and lead the country out of the valley of depression. The exportation of gold was forbidden except under license from the Treasury and all kinds of gold coin, gold certificates, and gold bullion were ordered turned into the government in exchange for other currency. On April 20, 1933, the President issued an executive order in which he announced the formal abandonment of the gold standard and three months later Congress passed a law which outlawed the promises of corporations and the government itself to pay bondholders in gold coin or its equivalent.[6]

Current Status of Gold Standard Whether or not the United States is now on the gold standard is a controversial question. Judging from the executive order and congressional act just referred to it is not; yet foreign observers

[5] For much additional material on this subject, see A. B. Hepburn, *History of the Currency of the United States*, rev. ed., The Macmillan Company, New York, 1924.

[6] The Supreme Court upheld the law abrogating "gold clauses" in private contracts in *Norman* v. *Baltimore and Ohio Railroad*, 294 U.S 240 (1935), and abrogating them in government bonds in *Perry* v. *United States*, 294 U.S. 330 (1935).

ordinarily regard the United States as the last stronghold of gold. For years the United States has purchased all the gold that other countries wished to sell at a price well above the world market, until now considerably over half of the entire gold supply of the world is owned by the government or banks of the United States.[7] Inasmuch as this metal for other than monetary purposes would be worth nothing like the amount which has been paid, the question may well be put as to why the United States has invested billions in gold if it is actually no longer the standard of the currency. The advantages and disadvantages of gold as a standard for internal monetary provisions and international trade have been and are still being argued, but they are too complex to be discussed here. Writers both in the United States and abroad sometimes prophesy that gold will be abandoned as a monetary basis. Others are certain that eventually the world must return to gold if international exchange is to be free. In the meantime the United States guards the billions of gold bullion which it has buried in Kentucky and foreign governments seem anxious to get possession of such gold as they can lay hands on.

Varieties of Currency Although the United States employs the simple decimal system it has, nevertheless, had until recently a great array of currency. Indeed prior to 1930 it was sometimes claimed that the United States had the greatest variety of paper money to be found in any country, with the possible exception of China. During the 1930's the Treasury made considerable headway in recalling certain types of paper money and hence at present there is a less varied array than for many years previous. Gold certificates, which once circulated fairly commonly in the larger denominations, have disappeared from the scene since the 1933 ban on gold circulation; national bank notes, which for some three quarters of a century following 1863 constituted a large proportion of the five, ten, and twenty dollar bills, have been called in. Federal reserve bank notes, never especially numerous, are now almost never seen. The Treasury notes of 1890 have likewise almost ceased to circulate. Gold coins are not, of course, permitted to leave the vaults of the Treasury except under license.

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 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. Needless to say, paper money

[7] The United States owned gold to the value of $24,247,000,000 in May, 1950. A peak of $24,608,000,000 worth of gold was reached in August, 1948. In 1950, the United States owned about 70 per cent of the world's supply of gold.

is now used for settling most transactions where bank checks or drafts are not employed.

Metal Coins At one time in the history of the United States 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 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 worked overtime during recent years to meet the demand and a new mint has been proposed.[8]

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 as well as occasionally currency for foreign countries. A special grade of paper, purchased from private firms, is consumed in large quantities. Skilled engravers laboriously turn out by hand the plates used to print the paper money. The time required to engrave a single plate is such and the demand for paper money so great that there arose a problem a few years ago of obtaining sufficient plates. The Bureau of Standards was called in for advice and after experimentation found that the life of a single plate could be prolonged appreciably by chromium plating. 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. Paper money is, of course, far less durable than metal and consequently is constantly being replaced.[9]

Mints The metal coins are manufactured by mints [10] 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 may wonder where the money already minted 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.

Devaluation of the Currency Early in his first administration President Franklin D. Roosevelt conceived the idea of devaluing the currency. He had

[8] The total amount of money in circulation as of May, 1950, was $27,051,000,000; in June, 1945, it was $26,533,000,000—in contrast to $10,421,000,000 in 1941.

[9] See W. A. DuPuy, "How Our Money Is Manufactured," *Current History*, Vol. XXIV, pp. 236–241, May, 1926.

[10] On the mints, see J. P. Watson, "The Bureau of the Mint," *Service Monograph 37*, Brookings Institution, Washington, 1926.

been advised that the American dollar was too costly in comparison with the English pound and other national currencies which had already been devalued and that in order to compete in foreign markets the United States ought to cut the value of its own money. Moreover, the advocates of inflation promised that cutting the value of the dollar would cause prices of general commodities to rise which in turn might be expected to restore a measure of prosperity. Congress authorized the President to devalue up to 50 per cent and he, in turn, finally brought the dollar down to 59 per cent of its former rating. The effects of the devaluation were much less pronounced than had been promised. Other countries neutralized the cut in the dollar by additional cuts in their currencies,[11] while much to the indignation of the "experts" the 59-cent dollar purchased about as much in the United States itself as had the 100-cent dollar.

Silver Purchases Although the United States has not been on a silver standard for many years, it has recently been engaged in the wholesale purchase of silver bullion. Led on by the repeated and insistent demands of the western Senators and Representatives who found themselves besieged by silver-mining constituents, the desire to win the favor of Mexico, and certain other factors, Congress authorized the Treasury to buy any silver offered at a price well above the world market until it totaled one-fourth of the gold supply. Tons of silver have come in, not only from the United States but from Mexico, China, and other foreign countries, which have found it an excellent opportunity to dispose of silver at good prices. Hundreds of millions of dollars of public funds have been expended on buying metal not needed for coinage and which would seem to have no purpose in connection with the monetary system at all. The Treasury has had to provide extensive storage quarters and employ guards for what large numbers of persons regard as an enormous white elephant, forced on the nation by the activities of a vigorous pressure group and a small bloc of "silver" Senators.

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.[12] 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,

[11] France, for example, devalued after World War I by 80 per cent and brought the franc from about 20 cents to 4 cents in American equivalent.

[12] For additional discussion of the Federal Reserve System, see S. E. Harris, *Twenty Years of Federal Reserve Policy*, 2 vols., Harvard University Press, Cambridge, Mass., 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, 1950.

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. At the same time the board is somewhat more dependent on the President than was the case prior to 1933 and tends to reflect the policy of the chief executive on monetary and credit problems.

Functions of the Federal Reserve Board The board has general supervision over the twelve federal reserve banks which embrace the entire United States, but perhaps more important than even that function is its power to formulate general credit 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.[13] 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 seems acute, the board may reduce the rediscount rate to say 2 per cent, 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, though since World War II there has been a reduction in this authority as far as government securities are involved as a result of the power given the Treasury Department to fix the public-debt policy.[14] In depression periods, the board can order federal reserve banks to buy commercial paper and bonds from privately-owned 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. The Federal Reserve Board also has the authority to fix stock-market margins and to impose various other controls intended to maintain financial equilibrium in the United States. Until 1949 the board could regulate consumer credit by fixing down payments and specifying the maximum duration of purchase contracts.

[13] 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.

[14] A subcommittee of the Joint Committee on the Economic Report of Congress in 1950 recommended the restoration of the Federal Reserve Board controls over national credit policies. See the *New York Times*, January 13, 1950.

Effectiveness of Federal Reserve Powers Prior to 1929 it was ingrained on the mind of every schoolboy that these powers were so great that, together with the authority to control the issuance of federal reserve notes, they would render impossible a financial panic or economic depression. However, despite the action of the Federal Reserve Board in raising the rediscount rate to more than twice its ordinary level in 1929, the United States, as everyone knows all too well, came in for the worst internal drubbing that it has ever taken. Likewise, when the board subsequently lowered the rediscount rate to a point below what it had ever before been, business activity was not materially increased for quite a long time. Amendments to the legislation governing the board have aimed at strengthening the controls enough so that the future may tell a different story, but it remains to be seen how well even a reorganized Federal Reserve Board can ward off or cope with a major financial catastrophe. Many people still have doubts that the powers of the board are even now adequate to control credit. The recent threat has been, of course, inflation, the possibility of which is heightened by circumstances over which the board has not very much authority. Commercial banks have built up huge reserves of money. All this could be the basis for a tremendous inflationary movement which the federal reserve banks would find hard to stop, since commercial banks, having plenty of money of their own to lend, do not need to go to the federal reserve banks for credit. Thus the latter might not be given an opportunity to exercise the deflationary influences of the rediscount rate and open-market operations.

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. Each one of these is under the immediate supervision of a governor and nine directors, three of whom represent the Federal Reserve Board in Washington and six the private banks which are members of the reserve bank and own a part of its stock. These banks maintain 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, as many do.

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 the 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. Most of these activities are self-explanatory, but the note issue is somewhat complex. Federal reserve notes are printed by the Bureau of Engraving and Printing for the federal banks and stored in their vaults until needed. Then when the federal reserve bank rediscounts the commercial paper of member banks, it furnishes either credits or federal reserve notes as payment. The notes must in every case be backed to at least 25 per cent by gold or federal securities unless the Federal Reserve Board permits a smaller reserve and to the remainder of their face value by commercial paper. By basing the issuance of currency on commercial paper, the amount of currency in circulation at any one time bears some relationship to the demand for money. Prior to 1913 the amount of currency was more or less the same whether or not business was active and whether the demand for money became large or vice versa. But now if business is slack the amount of currency in circulation is relatively small, with the remainder reposing in the vaults of the federal reserve banks, whereas if business is booming the demand for credit will be great and the circulation of federal reserve notes large.

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,[15] thus reducing the danger of theft; and that if the member banks desire they rediscount the commercial paper, thus making it possible for these local banks to meet the credit needs of their customers.[16]

National Banks Scattered throughout the country are more than five thousand privately owned[17] 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

[15] Reserve requirements vary from time to time, depending upon the financial conditions prevailing. They also vary in the case of city banks, country banks, and time deposits.

[16] Actually during recent years many member banks have not depended upon the Federal Reserve Banks to rediscount their commercial paper to any great extent, preferring to make other arrangements.

[17] 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.

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 [18] 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 with their funds 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 and in 1950 it was decided that the maximum be raised to $10,000). Congress passed the necessary legislation and the Federal Deposit Insurance Corporation came into being. Currently it insures deposits in more than thirteen thousand banks, collecting annual premiums of one twelfth of one per cent of total deposits from the insured banks. It is too early to evaluate this agency definitely with any degree of certainty. No one can doubt that it helped restore confidence in the banks and led to the speedy resumption of business with them. On the other hand, there has been no real test of the ability of the fund which is being built up to withstand the terrific onslaught of a national depression, though more than 1,000,000 depositors had been repaid in full up to 1950. The several states that have experimented with the insurance of state bank deposits have not found it possible to maintain solvency of their systems.[19] Some authorities in the field of banking predict trouble sooner or later in the federal scheme, but thus far all claims have been met promptly and without straining the resources of the corporation.[20] The large banks of New York City are especially critical of the compulsory character of the plan—they do not object to the arrangement per se except in so far as it affects themselves. They maintain that, though under the present provisions they must contribute something like one third of the premiums of the corporation, still they derive very little benefit from it because the bulk of their deposits are well over $10,000. Some of the more conservative bankers denounce the basic principle underlying the insurance, maintaining that it encourages the speculator and the daredevil banker by compelling the cautious banker to pay for the shortcomings of his less efficient colleagues.[21] Nevertheless, the general public is distinctly favorable to the protection afforded by the Federal Deposit Insurance Corporation, with the result that the current trend is toward increased coverage.

[18] 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.

[19] Among the states that attempted such insurance were Oklahoma, Nebraska, and North Dakota. Their failure has been explained away by pointing out that their systems were not broad enough to render them invulnerable to cycles of farming prosperity.

[20] In 1950, the Federal Deposit Insurance Corporation had repaid in full the $289,000,000 borrowed from the Treasury and had a capital surplus of $1,200,000,000.

[21] The F.D.I.C. recognized this problem in 1941 when it asked Congress for additional supervisory authority over insured banks. See *New York Times*, September 17, 1941.

Other Federal Credit Agencies[22]

Reconstruction Finance Corporation It is probable that the majority of American citizens think of the Reconstruction Finance Corporation as a New Deal contribution. Actually it was set up under the Hoover administration in 1932 although its authority and activities have been notably expanded since 1933. This corporation is managed by five directors appointed by the President with the consent of the Senate.[23] The chairman of the board of directors has had a large voice in the actual administration of the corporation and at times, particularly when Jesse Jones held the post, has actually exercised more or less complete control over its activities.[24] The Reconstruction Finance Corporation 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 was reduced to $100,000,000 in 1948. Its borrowing authority, which during World War II exceeded $10,000,000,000, has enabled the corporation to lend billions of dollars. During the years 1932 to 1942 alone it granted credit of $15,057,000,000 and actually disbursed approximately $10,000,000,000; its program during World War II was even more spectacular, with credit authorizations exceeding thirty billion dollars.

Functions of the R.F.C. The R.F.C. is charged with handling credit which cannot readily be furnished by private institutions and which does not come within the scope of other credit agencies. During the depths of the depression it assisted substantially in keeping cities, counties and other local governments from bankruptcy, loaning them anywhere from a few thousand to tens of millions of dollars for reorganizing their tottering finances. The board of education of Chicago received $100,000,000 alone on the security of lands it owned and thus was able to pay the salaries of its teachers which were months in arrear. For a time the R.F.C. was very active in assisting the state and local authorities to meet the unprecedented demand for relief. As the railroads sank deeper and deeper in the mire of depression until it seemed that their entire financial structure, once regarded as reasonably solid, would collapse, this corporation came to the rescue of those which had any likelihood of survival.[25] The cry went up in 1935 and 1936 that ordinary commercial banks were not meeting the legitimate demands for corporation and industrial credit. An investigation carried on by the Treasury Department

[22] See Chap. 32 for a discussion of agricultural credit.

[23] The size of the board has not been consistent. In 1950, there were five members, but during an earlier period the number was seven.

[24] For an account of some of the loans made by the former chairman, see Jesse H. Jones, "Billions Out and Billions Back," *Saturday Evening Post*, Vol. CCIX, pp. 5–7, 23 *ff.*, June 12, 26, 1937.

[25] On the railroad loan, see H. Spero, *Reconstruction Finance Corporation's Loans to Railroads, 1932–1937*, Harvard University Press, Cambridge, 1939.

seemed to point in this direction, but it also revealed that the regular banks could not extend the type of credit needed. Subsequently the R.F.C. was authorized to loan money to certain classes of these private businesses. In 1937 Congress authorized the President to restrict its operations to those borrowers which could not obtain adequate credit elsewhere. Banks, insurance companies, trust companies, agricultural associations, livestock interests, prefabricated housing manufacturers, rural electrification and telephone projects, as well as other enterprises have all at times been the recipients of R.F.C. assistance.

National Defense Role of the R.F.C. Despite the predictions that the R.F.C. might be wound up, its activities during the years of World War II 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. Some of these such as the immense bomber factory at Willow Run have received wide publicity; others are relatively unknown; but very few have any adequate idea of the vast magnitude of what was done.[26] 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. The story of running the German quinine interests out of Ecuador, involving the use of thousands of Indians as hijackers, as well as numerous other aspects of the supply program, should make fascinating reading to future generations. With the war over, R.F.C. had the far from small job of disposing of many of these government-financed and -owned plants and machine tools.

Federal Housing Administration The Federal Housing Administration [27] was created in 1934 in order to encourage home ownership by the many citizens who find it impossible to pay cash and yet who have sufficient resources to justify the acquisition of such property. Since its establishment Congress has extended its scope somewhat and it now is active in veterans' housing, housing repairs, multiple-family rental housing projects, the manufacture of prefabricated housing, and the general improvement of housing standards in the United States. It is authorized to insure ordinary residential

[26] The R.F.C. financed more than 3400 war projects and disbursed about $8,500,000,000 for this purpose. Its total national defense authorizations amounted to some $32,300,000,000. See *New York Times*, January 25, 1945.

[27] 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 placed in the Housing and Home Finance Agency.

building up to an aggregate of $4,000,000,000; with the approval of the President this amount may be increased to $5,000,000,000. By the Act of August 10, 1948, the Federal Housing Administration was given authority to insure veterans' housing projects to an amount not exceeding $5,750,000,000. Contrary to a rather popular impression, this agency does not lend money itself; rather it insures loans which are made by banks, building and loan associations, and other private groups. One cannot ignore the F.H.A.'s contribution toward the improved appearance of cities throughout the length and breadth of the country, the intangible value of home ownership to many who otherwise would not have ventured into such uncertain territory, and finally the improvement in the quality of home building as well as in architectural styles.

Federal Home Loan Bank System Less is heard of the Federal Home Loan Bank System which is supervised by the Home Loan Bank Board, consisting of three members. This system was authorized in 1947 [28] and has taken over the functions of 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 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.

Eleven regional Federal Home Loan Banks now constitute the base of the system. 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.[29]

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 is responsible for $2,750,000,000 of the $8,800,000,000 currency stabilization fund and $3,175,000,000 out of the $9,100,000,000 capital of the World Bank. The unusually confused situation prevailing after World War II has made the establishment and particularly the effective functioning of the World Bank very difficult. Rather than plunge into unsound credit risks, it has decided to move slowly with adequate attention to the future prospects of repayment. Nevertheless, substantial loans have been made to a fairly large number of governments.

Export-Import Bank of Washington The Export-Import Bank was created in 1934 on a rather modest scale to provide certain special types of

[28] This board is a subdivision of the Housing and Home Finance Agency.

[29] At the end of 1948 this corporation insured 2616 institutions with total assets of $9,728,000,000. It insures individual savings accounts up to $10,000.

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 of considerable importance, but its greatest activity has been in the years since 1945. It is administered by a board consisting of the Secretary of State and four full-time members appointed by the President with the consent of the Senate, one of whom serves as chairman. The Export-Import Bank has a capital of $1,000,000,000, may borrow from the Treasury up to two and a half times its capital, and in addition may make outstanding loans and guarantees up to three and a half times its capital stock.

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31. The Government and Business

Silence of the Constitution 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 some 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 so largely omit this sphere 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 responsibility for national defense. All of these had occasioned serious worry under the Articles of Confederation 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.

Growing Necessity of Governmental Participation 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 enterprise 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, at least in the most glaring cases.

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.[2] Thereafter, for more than a third of a century Congress found itself in a very weak position as far as regulating business was concerned. In so far as large businesses carried on activities in several states and sent goods from one state to another, they were engaged in interstate commerce and could be brought to task for any misdeeds, but it was difficult if not impossible to bring many of their practices into close enough relationship with interstate commerce to sustain regulation. 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[3] 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,[4] 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 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 practices which were detrimental to the public welfare, it must not be supposed that relations between the government and business were entirely lacking. 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 which was the power behind the throne so to speak. This allegation may be of dubious validity, but it is true that the influence of business on government actions was frequently notable.

[1] Art. I, sec. 8.
[2] *U.S.* v. *E. C. Knight Co.*, 156 U.S. 1 (1895).
[3] *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1 (1923).
[4] *Schechter Poultry Corporation* v. *United States*, 295 U.S. 495 (1935).

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. The tariffs of the period 1890–1930 contained thousands of items which were inserted for only one reason: to afford American business a substantial advantage over the foreign producers of the same product. It was sometimes argued that the tariff was aimed at protecting wage standards and it is doubtless true that it did contribute to that end, but its primary purpose was to strengthen American business. That is not to say that this was necessarily bad for the country as a whole. The farmer was not too enthusiastic about many of the tariff walls which were set up; consumers sometimes figured that the tariff ate up something like $600 of a $1,500 annual income of a family of five. Nevertheless, 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 during the early years of the republic. 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 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.

Early Attempts to Regulate Business Practices Yet despite the favors which business asked from the national government, it was not disposed to accept control from it. Nevertheless, there was a certain amount of successful regulation. Even 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 more effective, but it was not until Theodore Roosevelt became chief executive that vigorous steps were taken against the "trusts." The Supreme Court upheld the conviction in the Northern Securities case,[5] but later it assumed a more cautious attitude, holding that only "unreasonable" monopolies were to be prohibited. Corporate attempts to influence government action by the offer of bribes were made increasingly dangerous by the stiffening up of the law. In 1907 a law was passed which made it illegal for corporations to contribute to the campaign funds of political parties. This was not strictly enforced, but it served some purpose perhaps.

The decisions of the Supreme Court in the American Tobacco and Standard Oil cases [6] aroused a great deal of controversy which finally caused Congress to enact two additional statutes. 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 second statute created the Federal Trade Commission.

Difficulty of Controlling Monopolies Although Woodrow Wilson was enthusiastic about the Clayton Act, declaring that it would "check and destroy the noxious growth" of monopolies, it did not prove anything like as effective a control as was anticipated. The First World War centered the attention of the nation on more pressing matters; the succeeding Republican administrations were not disposed to "bite the hand that fed them." Finally, the National Industrial Recovery Act, one of the early loves of the New Deal, seemed to some persons to remove all restrictions from monopolies by giving almost a free hand to industries within a class to write their own ticket. Of course, the underlying theory of the New Deal was categorically opposed to monopolistic practices, but the actual administration of the act while it remained in effect was frequently divorced from the theory. Later President Franklin D. Roosevelt apparently realized the contradiction and pressed the Department of Justice to take vigorous action.

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 manifest 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

[5] 193 U.S. 197 (1904). [6] 221 U.S. 1 (1911).

interest. Others were willing to admit the menace of uncontrolled monopolies, but they were 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. In many cases the attorneys who were supposed to prosecute trusts took their cue from the Attorney General who had no desire at all to encounter the forces of the trusts in battle. No fair-minded person can deny the difficulties involved in handling this problem—perhaps it was no wonder that a handful of men in the Department of Justice asked themselves what they could possibly do to cope with forces that could muster battalions of the best legal talent in the country and were willing to spend millions of dollars to preserve their freedom of action.

Recent Antitrust Activities After the N.R.A. had been disposed of by the Supreme Court, President F. D. Roosevelt called a modern David from Wyoming and the Yale Law School to head the antitrust division of the Department of Justice. Additional funds were provided for staff and legal expenses and the division was transformed from a slumbering state of lethargy to bewildering activity. Driving up to the Department of Justice building every morning in his rattletrap of a Ford jalopy, Mr. Arnold stirred Washington to amazement and galvanized his staff into unprecedented vigor. Gifted not only with a flair for the unconventional but remarkable ingenuity as well,[7] the new assistant attorney general brought to his task resourcefulness which is not ordinarily associated with the traditional public official. It was his policy to keep the corporations which were guilty of monopolistic practices guessing what his next step would be. By threatening large-scale prosecutions and building up a supporting public attitude through the publicity given to the findings of his investigators, he was able to frighten some culprits into reform.[8] In other instances he went to the courts with his charges and obtained convictions. An effective weapon for the time being, at any rate, was to keep evidence on hand that could be used to scare trusts from proceeding with some ambitious scheme which would be executed at the expense of the public. The Department of Justice would learn of the plans and before they had been carried into effect and it secured grand jury indictments against the participants on the basis of the charges which had been held in abeyance. Fearing to arouse too hostile a public sentiment the monopolies usually found it expedient to abandon their new projects. Even after Mr. Arnold had left government service, the Department of Justice continued to display much greater interest in this field than had been the case earlier.

The N.R.A. Experiment The National Industrial Recovery Act of 1933 has been mentioned in several connections in this text. Rejected as it was in

[7] Some idea of the fertile mind of this man is to be obtained from reading his books, *The Symbols of Government*, Yale University Press, New Haven, 1935, and *Folk-lore of Capitalism*, Yale University Press, New Haven, 1937.

[8] In a single year 345 cases were instituted and almost three hundred completed, with the government winning 265.

1935 by a unanimous Supreme Court, it has no practical importance at the present time. Nevertheless, it remains significant to those who are interested in the relations existing between government and business, since in many respects it represents the most ambitious scheme ever projected by the national government in this area. Some idea of the dearness of this act to the hearts of the New Dealers may be derived from President Roosevelt's own characterization of the act as "the most important and far-reaching ever enacted by the American Congress." Intended to promote the industrial recovery of the country from the depths of the depression the act set up a National Recovery Administration which the President placed under that master of epithet, Hugh S. Johnson. Business was divided up into some five hundred classes, with administrators designated for each. Representatives of the businesses within a single class got together and framed a code which, when adopted by the majority of those affected and approved by the President, had the force of law and inflicted heavy fines for violation.

Certain general requirements were laid down as binding on all businesses: minimum wages, maximum hours, the abolition of child labor, collective bargaining, and so forth. Moreover, in certain instances considerable pressure was placed on code authorities to follow a designated course. The requirement of presidential approval was supposed to obviate any objectionable provisions in a code, but the President had his hands full with other matters which demanded attention and N.R.A. itself was confronted with such a bewildering task that it could scarcely know what was being done in every case. Indeed the confusion was so great that when the Supreme Court asked for copies of the codes, the government found itself unable to furnish a complete set. The result was that competition was discarded in large measure and control by the members of an industrial group was substituted. With the businesses themselves framing the rules which would govern their practices, it was, of course, entirely natural that such matters as restraint of trade and consumer interest received very little attention. Small units might complain at the codes which permitted the giants to entrench themselves even more firmly, but they were helpless unless they could muster a majority of the support. Certain businesses were well pleased with the protection which they gave themselves in their codes;[9] other businesses and the general public became very irritated at the burden imposed by the codes. Dissatisfaction had reached such a point that it was generally felt that the President would have to confess that N.R.A. had proved a failure and abandon all or most of its program when the Supreme Court relieved him of this problem by declaring the basic act unconstitutional.[10]

[9] For a review of the achievements and objectives of the N.R.A., see National Recovery Administration, *Report of the President's Committee on Industrial Analysis*, Government Printing Office, Washington, 1937.

[10] *Schechter Poultry Corporation* v. *United States*, 295 U.S. 495 (1935).

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 one of the youngest of the major administrative departments, but it has grown rapidly and at present is one of the more active departments. For a time its headquarters in Washington was publicized as the largest government building in the entire world. This department has an under secretary, several assistant secretaries, and employs large numbers of persons both in Washington and the field. It is subdivided into offices which deal with program planning, technical services, aeronautics, the census, coast and geodetic survey, industry co-operation, business economics, domestic commerce, and international trade. Under it are the Inland Waterways Corporation, the National Bureau of Standards, the Patent Office, and the Weather Bureau, while attached are a National Inventors Council, a Foreign Trade Zones Board, and a Textile Foundation.

Domestic and Foreign Commerce The Bureau of Domestic and Foreign Commerce is one of the most important subdivisions. Under Secretary Herbert Hoover this bureau was expanded to such a point that it dominated the entire department and carried on far-flung activities throughout the world as well as in the United States. The very identification of this bureau with a defeated President made it somewhat unpopular with the New Dealers and for a time its staff and appropriations suffered a severe reduction. More than half of the foreign offices which it operated were closed and large numbers of commercial agents found themselves without employment as a result of the drastic curtailment. In 1939 its Foreign Commerce Service was transferred to the State Department by the President's Reorganization Plans 1 and 2 in 1939. During recent years, particularly since 1948, this bureau has again received more attention and more adequate appropriations. One of its sections, the Office of Industry and Commerce, maintains some forty offices scattered throughout the United States and collects data relating to many phases of business conditions. Items in which it is interested include: national income, industry survey of new orders, shipments, inventories in manufacturing, retail sales and inventories, wholesale sales and inventories, corporation profits, plant and equipment expenditures, and estimates of public and private debt in the United States. This information is compiled in Washington and published at regular intervals for the benefit of those interested. Corresponding information

relating to over 800,000 foreign business concerns is furnished to the Office of International Trade by the representatives of the United States in foreign countries and this is analyzed and published from time to time so that American business men and other interested persons can keep informed as to external economic levels and opportunities.

Coast and Geodetic Survey The Coast and Geodetic Survey of the Department of Commerce is constantly at work charting coasts, harbors, and inland waters. It studies tides and currents and investigates earthquakes and geomagnetism. On the basis of its research and observation charts are prepared for mariners and for pilots of aircraft.

Census Bureau The Constitution provides that a census shall be taken every ten years.[11] For many years a new organization was set up every time a census had to be taken, but this proved unsatisfactory and in 1902 a permanent Bureau of the Census was created by Congress.[12] That is not to say that the bureau maintains a staff of thousands of full-time employees, such as is required during the few weeks or months when a census is being taken of the population, for that would entail great expense. However, a permanent headquarters is provided just outside 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, making special studies, and interpreting the information which deals with special problems. A series of volumes is published every decade setting forth the results of the population 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 1950 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. Monthly surveys of selected samples of the population are carried in such fields as: employment levels, unemployment numbers, occupation, and so forth and the results are published at frequent intervals. A census of agriculture is taken every five years and a census of irrigation and drainage every two years. Manufacturing and mineral industries censuses are carried on at five-year intervals, while monthly, quarterly, and annual *Facts for Industry* reports are issued. Monthly statistics are published for independent retail store sales, wholesale trade, and inventories. Weekly, monthly, and annual reports are made on imports and exports of the United States, including gold and silver, vessels entering and leaving. Through co-operation with other governments the Bureau of Census provides

[11] See Art. I, sec. 2.

[12] 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.

foreign census results to interested persons in the United States. Its reports on elections, public personnel, and the finances of states, counties, and cities over 25,000 population are of special interest to students of government. The census clock which estimates the total population at any given moment and the complicated machines for tabulating the census returns are well known.

National Bureau of Standards The National Bureau of Standards has for many years been the principal research agency of the national government in the physical sciences though the establishment of a National Science Foundation will expand research facilities. The National Bureau of Standards carries on basic research in physics, chemistry, mathematics, engineering, and the physical sciences.[13] Its platinum yardstick and other facilities determine measurements standards in the United States. Its work in testing materials and equipment has been outstanding. 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. For example, the Army was concerned at the discomfort of those soldiers who occupied tents during summer nights—the temperature within would be fifteen or twenty degrees higher than the atmosphere without. After extensive study the Bureau of Standards discovered that aluminum paint applied to the surface of the tent roof would reduce the heat to a considerable extent.

The reports of the Bureau of Standards are ordinarily not made public, though they might prevent housewives from paying 25 cents for a soap which is actually no better than another soap that sells for 10 cents. However, some of its findings get out and have considerable influence in commercial fields. The discovery that aluminum paint is a barrier to the passage of heat has had an important bearing on heating houses and buildings; a few years ago radiators painted with aluminum paint wasted 10 or 15 per cent of the heat produced by the furnace. The chromium plating of steel has been widely adopted by automobile manufacturers as a result of the efforts of the Bureau of Standards to assist the Bureau of Engraving and Printing.

National Science Foundation Though an independent establishment rather than a part of the Department of Commerce, the National Science Foundation may be considered at this point because of its relationship to the National Bureau of Standards. World War II focused the attention of the country as never before on the importance of scientific research and various proposals were made looking toward the creation of a body which would have the responsibility for representing the national government in this area. The Eightieth Congress passed a bill providing for such an agency, but the President vetoed it on the ground that it "contained features which were undesirable from the standpoint of public policy and unworkable from the standpoint

[13] For additional information on this bureau, see G. A. Weber, "The Bureau of Standards," *Service Monograph 35*, Brookings Institution, Washington, 1925.

of administration." In 1950, another bill was finally agreed upon by Congress and signed by the President. The National Science Foundation is directed by a National Science Board and a director, appointed by the President with the consent of the Senate. It has the assignment of developing "a national policy for the promotion of basic research and education in the sciences." It is expected to "initiate and support basic research in the physical, biological, engineering, and other sciences." Part of its program will involve the granting of scholarships and graduate fellowships for the training of scientists. It started off with an appropriation of $15,000,000 per year which is obviously a nominal sum considering the magnitude of its assignment. It is anticipated that its work will have an important bearing on industrial progress, though the national defense angle will be significant.

The Patent Office Another subdivision of the Department of Commerce, the Patent Office which goes back to 1802, 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 matter, or any new and useful improvements thereof" may be protected in their use during a period of seventeen years. Application must be made to the Patent Office, full descriptions of the discovery must be furnished, and a fee 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. Trade-marks and labels may also be registered with this office and confer protection for twenty years in interstate commerce.[14] Perpetual-motion machines are not considered by the Patent Office on the ground that natural laws rule them out. There is some feeling that a patent confers the right to manufacture and sell, but this is actually not the case. A patent protects its holder from the manufacture and sale of an invention by another; however, it does not grant the right to manufacture and sell if regulations based on the police power prohibit. Several million patents have been issued in the United States—more than in all of the rest of the world together! [15]

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.[16] More than five

[14] Trade-marks registered in 1948 numbered 16,530.

[15] The Patent Office had granted 2,268,539 patents from the time it started numbering down to January 1, 1942. It currently grants twenty to thirty thousand patents per year. In 1946, for example, 24,775 patents were granted; in 1947, 22,433; and in 1948, 28,096.

[16] See *Rathbun* v. *United States*, 295 U.S. 602 (1935), which upheld this law.

hundred persons, including lawyers, statisticians, and clerks, are attached to its staff which is organized in nine major divisions,[17] dealing with litigation, counsel, legal investigations, trial examiners, medical opinion, trade practices and wool labeling, industrial economics, and general administration.

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 it summons the accused person or firm to a hearing. 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 complied with, agents of the commission then proceed to invoke the aid of the courts in penalizing noncompliance. Appeals on points of law may be taken directly from the F.T.C. to a circuit court of appeals.

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 antitrust laws or notorious records of unfair business practices. Thus some years 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. Its findings and recommendations growing out of this one project required something like seventy printed volumes! Finally, the commission may undertake the study of foreign trade practices that affect business in the United States.

Record of Accomplishments There is considerable controversy over the accomplishments of the Federal Trade Commission.[18] Some of those who have observed its operations over a period of years express distinct disappointment that so little has been achieved, particularly in restricting monopolistic practices. On the other hand, there are those who are of the opinion that the F.T.C. has taken its tasks seriously and considering their almost staggering weight has done as well as could be reasonably expected. The commission has been directed by a fairly large number of persons and some of them have

[17] 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.

[18] This is reflected in the two standard books on the commission. See G. C. Henderson, *The Federal Trade Commission*, Yale University Press, New Haven, 1924; and T. C. Blaisdell, *The Federal Trade Commission*, Columbia University Press, New York, 1932.

been more capable and courageous than others.[19] No great dent has been made in monopolistic practices perhaps, but business standards are doubtless higher than they would be without the efforts made by the commission to investigate and order discontinuance of the most glaring evils. In the advertising field a considerable amount of progress has been made by the commission in eliminating misstatements. Thus goods made out of cotton cannot be labeled "silkolene" or "merino" which might imply that silk and wool had been used. Furniture made out of gumwood and finished to resemble mahogany or gum which has been veneered with mahogany cannot be advertised as "mahogany furniture"—in the former labels as imitation mahogany, or gum stained to resemble mahogany, and in the latter mahogany-veneered are required by the commission. Rebates, presents, expensive gifts, and elaborate entertainment are all outlawed by the F.T.C. as unfair business practices.[20] It may be pointed out that the Federal Trade Commission concerns itself largely with individual businesses, while the Antitrust Division of the Department of Justice watches combinations of business in restraint of trade.

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.[21] At one time the foisting of bogus or more or less worthless securities was mainly confined to confidence men, slickers, goldbrick experts, and shyster brokers, but during the 1920's it became so dignified that even some of the most important banking establishments tried their hand. For several years leading banks canvassed the South American countries, pleading with governments to float bonds which could be unloaded on the American public and even paying politicians to authorize such loans. An investigation carried on in the Senate following the crash in 1929 made it clear that well-known banks had sold securities which they knew would never be repaid. A president of one of the half-dozen largest banks in the country testified that he knew what advantage was being taken of investors but that when people wanted more than 4 per cent interest on their money they were suckers and hence fair game for anybody.[22] The indignation aroused by the disclosures

[19] For an interesting article on this subject, see E. P. Herring, "Politics, Personalities, and the Federal Trade Commission," *American Political Science Review*, Vol. XXVIII, pp. 1016–1029, December, 1934. See also his *Federal Commissioners; A Study of Their Careers and Qualifications*, Harvard University Press, Cambridge, 1936.

[20] These cases are reported in the *Federal Trade Commission Reports.*

[21] See *Senate Report 17*, Seventy-third Congess, first session, p. 2.

[22] These include the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

of the 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,[23] 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 for five-year terms, with one term expiring every year. Sizable offices are maintained in Washington, New York City, and Chicago and local offices in other large cities. Subdivisions of the commission deal with corporate finance, public utilities, and trading and exchanges and an adviser on foreign investments is retained.

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 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." [24] "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. The unscrambling of the holding companies has occupied a large amount of the commission's attention for some years and even as late as 1945 the status of some holding companies was not entirely clear.[25]

Pros and Cons of the Securities Acts There can be little doubt that investors are materially protected by the several acts which Congress has passed

[23] See *ibid.*

[24] For additional discussion of this provision, see C. C. Rohlfing *et al., Business and Government*, rev. ed., Foundation Press, Chicago, 1941, Chap. 12.

[25] The first real test of the "death sentence" holding company legislation involved the $1,000,000,000 North American Company. In 1942, an attempt was made to sell its Union Electric Company of Missouri, with assets exceeding $273,000,000, but the market did not respond. In 1946 the Supreme Court, after long delay, upheld the "death sentence" legislation as applying to the North American Company.

dealing with securities and exchanges. It is true that many of them will not bother to read the prospectuses which corporations issue, but the very fact that there is civil liability for false and misleading statements is enough to make greater care probable. The S.E.C. assumes no responsibility for admitting securities to registration, but it does attempt investigation and in a number of cases it has either refused to register or prevailed upon the corporations to withdraw their applications. The regulations dealing with stock exchanges may not make them particularly safe places for the uninformed, but their practices are unquestionably more aboveboard than was previously the case. Brokers, stock exchange members, and corporate officials sometimes complain bitterly at the rigidity of the regulations, maintaining that it is literally impossible to draft statements in regard to securities without making themselves personally liable for what may happen in the future. Brokers have alleged that their business was ruined by the strict rules and that many have had to abandon business. Stock exchange seats were sold at an all-time low for a time, with large blocks of stock being disposed not on their floors but outside. But the interest of the public must be regarded as paramount and there is little doubt that the Securities and Exchange Commission is here to stay.

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 National Bureau of Standards keeps 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 safeguard against unfair practices.

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. In 1949, there were twenty-eight government corporations important enough to be listed in the *United States Government Organization Manual.* By no means all of these engage in enterprises that can be compared with private business endeavors, though the Joint Committee on the Reduction of Nonessential Federal Expenditures set up by Congress has reported that they frequently offer "invincible competition to private business." [26] 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. This report led to the passage of the Government Control Act of 1945.[27] However, they are still not subject to the Bureau of the Budget, the Treasury, and the General Accounting Office to 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." Many of these corporations grew out of World War II and have been or eventually will be liquidated, but others, such as the Commodity Credit Corporation,[28] Federal Deposit Insurance Corporation,[29] Inland Waterway Corporation, and Reconstruction Finance Corporation,[30] are more or less permanent in status and present a significant development in government organization.[31]

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[26] The report of the committee was made public on August 1, 1944.

[27] For additional discussion of this act, see C. H. Pritchett, "The Government Corporation Control Act of 1945," *American Political Science Review,* Vol. XL, pp. 495–509, June, 1946.

[28] For additional discussion see pp. 606–607.

[29] For additional discussion see p. 573.

[30] For additional discussion see pp. 574–575.

[31] For additional discussion of the role of government corporations in the United States, see Merle Fainsod and Lincoln Gordon, *Government and the American Economy,* rev. ed., W. W. Norton and Company, Inc., New York, 1949, Chap. 19.

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32. The Government and Agriculture

Considering the predominance of agriculture during so much of the national history,[1] the pre-eminent position of the United States among the agricultural producers of the world,[2] and the strongly entrenched farm lobby in Washington,[3] it is not surprising that the national government has given much attention to this aspect of national life. Almost from the first there has been a demand that the public authorities give heed to certain agricultural problems and, since then, although at times the cry has been more insistent than at others, this has been the watchword in increasing measure. 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. That is not to say that he has paid a great deal of attention to all that the Department of Agriculture has advised him to do or that he has even invariably regarded with marked enthusiasm the vigorous efforts of that agency to improve his relative position in American economy. Indeed there are many farmers in any community who persist in making the same mistakes year after year despite the experiments of the federal department. Furthermore, it is commonplace to find farmers growling over crop-control programs that may bring them generous government checks. Nevertheless, the attitude of the farmer toward government is basically different from that of the industrialist who wants the public authorities to keep their hands off his affairs, though he is willing to benefit from tariff favors and of course expects his property to be protected against dangers.

Impressive Record of the Department of Agriculture No other administrative agency in the national government can match over a period of years the impressive record of the Department of Agriculture. Of course, it has made mistakes, put up with political influences, and viewed the farmer as being even more important in the American system than he probably deserves, but even

[1] Not until 1920 did the census figures show a majority of the people living in urban places. With the census definition of an urban place a population of 2500, it may be argued that the country was predominantly agricultural even after that time.

[2] 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.

[3] The farm lobby and its activities are discussed in Chap. 13.

so it has managed to maintain high standards. Long before other departments saw any particular need of employing highly trained technicians, the Department of Agriculture had recruited a staff of soil experts, agronomists, marketing specialists, agriculture economists, horticulturists, and a host of others. Not satisfied with merely bringing these scientifically trained people into its service, it gave them generous scope for research, made conditions so satisfactory that they remained for many years in public employment, and gradually built up a tradition of professionalism that played an important role in the entire agricultural program of the government. It was the Department of Agriculture which developed a modern personnel system long before most of the administrative agencies gave any thought to that problem. Moreover, this department blazed the way for in-service training courses [4] and even now its graduate school justifies recognition of its leadership in this field. One might not associate sound budgetary practice with a department administering various subsidy programs as does the Department of Agriculture, yet the budgetary record of this agency has been frequently praised.[5]

General Organization 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. It would serve no useful purpose to undertake a detailed consideration of this maze of subdivisions, many of which handle functions which are highly technical in character. However, it may be well to note that a Secretary of Agriculture is assisted by an under secretary and an assistant secretary and has a staff consisting of the chief of the Division of Agricultural Economics, director of Foreign Agricultural Relations, and an administrator of Research and Marketing Act together with the usual finance, information, legal, and general-service officers. The major program subdivisions of the department include the following: Agricultural Research Administration, Commodity Credit Corporation, Commodity Exchange Authority, Extension Service, Farm Credit Administration, Farmers Home Administration, Federal Crop Insurance Corporation, Forest Service,[6] Production and Marketing Administration, Rural Electrification Administration, and Soil Conservation Service.

Agriculture Production

Professors Gaus and Wolcott declare that "production has been the traditional major interest of the department," adding that, while there is no bureau of that name, the Bureaus of Plant Industry and Animal Husbandry have

[4] See Chap. 27.

[5] Mr. William A. Jump, the long-time budgetary officer of the department, was frequently called upon to address groups of those particularly interested in budgetary practices.

[6] The Forest Service is discussed in Chap. 35.

historically been the "very core of the department," around which "most of the other operating bureaus—and some of the auxiliary and general-staff services" have grown up.[7] Production includes soils, plants, animals, protection from hazards, equipment, and production goals.

Soil A number of the divisions of the Department of Agriculture, mainly in the Bureau of Plant Industry, Soils and Agricultural Engineering, and the 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, although the basic research in the chemistry of soils was done in Washington laboratories. 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. The state experimental stations are still operating, but since 1939 few additions have been made to them. Local soil conservation districts have been organized in many counties throughout the country by the Soil Conservation Service—there are currently more than two thousand of them—and these are now used for demonstration purposes.[8] Large areas of submarginal land are being purchased by the Soil Conservation Service to be improved for grazing, forestry, wildlife, and recreational purposes. More than eleven million acres had been acquired by 1949 and approximately seven million acres were being developed in seventy-seven land utilization projects located in thirty-one states.[9] 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 division of the Department of Agriculture noted in the previous paragraph. Much of this work is done under the important Soil Erosion Act which Congress enacted in 1935 after floods and sandstorms had caused great damage in large areas of the United States.[10]

Neglect of the Soil Soil has been designated the most valuable natural resource which the United States possesses. Certainly without the abundant fertile lands scattered over much of the country, it would be impossible to maintain anything like the national living standards which have long been associated with the United States. 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

[7] Professors John M. Gaus and Leon O. Wolcott have made the most authoritative study of the Department of Agriculture thus far available under the title *Public Administration and the United States Department of Agriculture*, Public Administration Service, Chicago, 1940. For the quotation cited, see p. 94.

[8] As of March 1, 1949, there were 2086 soil conservation districts embracing 4,465,904 farms and 1,147,078,491 acres.

[9] By 1949 such purchases had exceeded 11,297,000 acres; of this acreage 7,111,683 acres had been organized into the seventy-seven projects noted above in 1949.

[10] Other acts serving as a basis for this program are the Flood Control Act of 1936, the Farm Tenant Act of 1937, and the Case-Wheeler Act of 1939.

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. It is estimated that during the years 1895–1930 a full million acres of topsoil were lost every year at a cost of some four billion dollars annually. More than half of the nation's farmlands have been damaged to some degree by water or wind erosion. Since 1930 the rate of damage has been reduced by about half, but it still remains a major problem. 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 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. Large areas have been "mined rather than farmed" until now very little if anything can be done to save them, beyond perhaps planting trees and shrubs which will grow even under unfavorable circumstances.

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 topsoil 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 Bureau of Plant Industry, Soils, and Agricultural Engineering and the Forest Service [11] carry on elaborate programs which have a vital bearing on the agricultural prosperity of the United States. Divisions of the former deal with cereal crops and diseases, cotton and other fiber crops and diseases, drug and related plants, forage crops and diseases, forest pathology, fruit and vegetable crops and diseases, mycology and disease survey, nematology, plant exploration and introduction, sugarplant investigations, tobacco and plant nutrition, dry-land agriculture, and western irrigation agriculture. In co-operation with the land-grant colleges and state experimental stations, an effort is

[11] See Chap. 35.

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. One of the most dramatic functions carried on by this branch of the Department of Agriculture has been mentioned in connection with rehabilitating the wind-swept areas of the Southwest. Agents of the department have roamed throughout the world to discover plants that might be suitable for cultivation in the United States. Many of the specimens which they collect and send to the United States for experimentation do not prove to be of any particular value, but a comparatively long list of products, now more or less taken for granted, have been introduced by these means.

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 Husbandry and other interested agencies. Much attention has been given to animal nutrition, tuberculosis eradication, the use of serums, tick eradition, and the hoof-and-mouth disease.[12] 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.[13]

Protection from Hazards The aforementioned plant and animal services do concern themselves with diseases but rather incidentally to other activities. The Bureau of Entomology and Plant Quarantine concentrates on pests and parasites which cause serious damage to various crops. It conducts surveys to ascertain 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,[14] either hiring directly or granting funds to the states to employ persons to stop all cars and

[12] Publications of this bureau include: *Essentials of Animal Breeding, Livestock for Small Farms, Feeding Cattle for Beef, Swine Production,* and so forth.

[13] See its reports on *Dairy Herd Improvement, Dairy Cattle Judging,* and so forth.

[14] For additional information on quarantines, see *List of Intercepted Plant Pests,* published in 1939.

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 Bureau of Plant Industry, Soils, and Agricultural Engineering 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 Goals 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.

The A.A.A. 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. The Supreme Court ruled that this statute was beyond the power of Congress to enact and hence declared it null and void.[15] Inasmuch as the act is therefore primarily of historical importance at the present time, there is no justification for discussing it in any detail here. However, it may be noted that the government maintained that the low prices of farm products contributed to the depressed economic conditions of the entire country. The fact that farm prices were low, ran the argument, kept the farmer from buying relatively high-priced manufactured goods. The farmer was selling cheap and buying dear, both to his own and the industrialists' detriment. In order to raise farm prices to a level more nearly at parity with manufactured goods as during the period 1909–1914, there was devised an elaborate set of plans which were to limit the production of corn, wheat, cotton, hogs, and so forth. Farmers were persuaded to plow under crops already planted and to kill surplus pigs in return for subsidies paid by the national government from the proceeds of processing taxes levied on cotton goods, meat products, and cereals. Some three million farmers participated in the program, withdrawing about forty million acres from cultivation. After one year farm prices had increased almost 40 per cent and the purchasing power of the farmer had gone up about one fifth, according to the federal administrator.[16] But the cry that went up from legions of American people must have reached the very heavens. It was branded as little short of criminal to kill livestock and to destroy farm commodities at a time when

[15] See *United States* v. *Butler*, 297 U.S. 1 (1936).

[16] See C. C. Davis in the *New York Times*, June 4, 1934. Also on this subject, see S. C. Wallace, *The New Deal in Action*, Harper & Brothers, New York, 1934, Chap. 11.

large numbers of people were undernourished. A drought the next year was hailed as a sign from providence that a federal program of crop control was unhallowed.

After the A.A.A. After A.A.A. and its accompanying acts had been declared unconstitutional, the national government very shortly took steps to preserve as much of the ground that had been gained as possible. If a direct control plan could not be upheld, perhaps it would be possible to tie a program up with the Soil Erosion Act of 1935 which was generally regarded as a valid exercise of federal authority. In February, 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. This act was to be distinguished from the former in that it stressed positive rather than negative controls. 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 burdensome 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. An annual appropriation of $500,000,000 directly from the Treasury was provided to reward farmers who would plan their crops in such a way as to meet federal standards. Payments of something like $10 per acre were made to those farmers who agreed to take land ordinarily planted to wheat, corn, tobacco, and cotton out of such cultivation. But it should be noted that this land did not have to lie idle, for they were permitted to plant clover, alfalfa, and other legumes which have the effect of restoring and building up the soil.

The planting of 1935 was used as a base to remove from cultivation acreages of 15 to 35 per cent of the former crops in which a great over-supply had confronted the country. During the first two years of this program the national government entered into direct agreements with individual farmers and paid them subsidies out of the federal Treasury. Beginning with 1938, however, the states were used as agents and federal subsidies of 50 per cent were granted to those states which had approved soil-conservation crop-control programs. The states in turn signed up the farmers and disbursed the money. This act was upheld by the Supreme Court as valid.[17] In 1938, and again after World War II more extensive acts were passed by Congress which have had a large bearing on production, but these are more directly related to marketing and distribution and will be discussed in that connection. The program of the War Food Administration, set up in 1943, also had great importance in relation to agricultural production.

[17] See *Mulford* v. *Smith*, 307, U.S., 38 (1939); *United States* v. *Rock Royal Corp.*, 307, U.S., 533 (1939); and *H. P. Hood & Sons* v. *United States*, 307, U.S., 588 (1939).

Land Use

It is only within the last few decades that the American people have become at all conscious of the land-use problem. For more than a century the public lands were so vast that the government was only too glad to give land to those who would undertake to homestead it. As the frontier passed, the public lands suitable for cultivation ran low, but even so it required some time to bring the importance of land use to the attention of the government. In 1918, a division of land economics was finally established in the Office of Farm Management and this later became a part of the present Bureau of Agricultural Economics. In 1921, the Secretary of Agriculture appointed a departmental committee to survey lands not being used for crop production. In 1924, the Secretary devoted a section of his annual report to this problem, stating that "we are beginning to see that a healthy and prosperous rural life must be based on sound use of land." [18] In 1931, a National Conference on Land Utilization was called by the Secretary of Agriculture and the Association of Land-Grant Colleges to discuss the problem. Almost at once after 1933 several agencies, including the C.C.C., F.C.A., P.W.V., T.V.A., R.E.A., and W.P.A. were set up by the national government and developed programs relating to various aspects of the use of land. In 1935, Congress finally passed the first comprehensive law dealing with the subject—the Soil Erosion Act. Although soil-erosion work was originally placed under the Department of the Interior, it was moved in 1935 to the Department of Agriculture. Its labors have been described elsewhere.[19]

The federal and the state governments have recently displayed not a little interest in the problem of land use, although what has thus far been done is scarcely more than a drop in the bucket. A significant step forward was made when the Mt. Weather agreement was adopted in the summer of 1938. The Department of Agriculture and the land-grant colleges pledged themselves to co-operate in an effort to set up local organizations of farmers throughout the country. Agricultural land-use planning committees have already been set up in many counties and more are being arranged. The states provide guidance through the extension departments of the land-grant colleges for these local committees and the entire program is led and integrated by the Department of Agriculture. In 1938 the Department of Agriculture was reorganized with a view to "meet the increasingly urgent demands for better co-ordination of all land-use activities." [20]

[18] See the *Yearbook of the Department of Agriculture*, Government Printing Office, Washington, 1926, p. 113.
[19] See Chap. 35.
[20] See Gaus and Wolcott, *op. cit.*, p. 159.

Marketing and Distribution

As recently as 1922 a Joint Commission of Agricultural Inquiry set up by Congress stated that "there were practically no fundamental data of government or public character with respect to marketing and distribution," that it had had to "undertake a pioneering effort to secure from original sources the basic facts," and that it was "convinced that the problem of distribution is one of the most important economic problems before the American people." [21] For many years it has been apparent that the consumer needed the products of the farmer and ordinarily paid high prices for them, despite the fact that the producer sometimes could not get rid of his products at all and even when he could the prices were far below what the retail price would indicate. Then, too, there was the problem of undernourished people who could not afford adequate food despite the national surpluses. All of these have received the attention of the federal government during recent years and much has been accomplished.

Agricultural Adjustment Act of 1938 The Agricultural Adjustment Act passed by Congress in 1938 contained an elaborate provision for determining crop quotas for individual farms—and it may be added that, though a number of amendments have been added, it remains the basic law today. The local committees which had been set up in 1933 had collected large bodies of data in regard to the production of individual farms; on this basis individual quotas were to be imposed on each farmer under the terms of the act of 1938. Those farmers who observed these quotas would receive parity payments in addition to the amounts given for conservation practices. The 1938 act also authorized the Secretary of Agriculture to fix marketing quotas for tobacco, corn, wheat, cotton, and rice when it appeared that the total supply of a commodity would exceed the normal supply by a stated percentage. These quotas are apportioned among the states, counties, and farms on the basis of the records collected since 1933, but no quota can become effective if one third of the producers affected oppose it in a referendum. This act also created a Federal Crop Insurance Corporation to insure wheat producers 50 to 75 per cent of their normal production in return for premiums payable in wheat.

War Food Administration In contrast to the glut of farm products in the early thirties, the war years developed one of the most serious shortages of food known to the world in recent times. In order to cope with the problem as it affected the United States, the President in 1943 set up the War Food Administration which was given over-all responsibility for seeing that as adequate a supply of food as possible be made available. The activities of this agency were given top priority and it became so important that, though nominally a part of the Department of Agriculture, it actually more or less dom-

[21] *House Report*, No. 408, Sixty-seventh Congress, first session.

inated that department. The War Food Administrator received the authority to determine the "direct and indirect, military, other governmental, civilian, and foreign requirements for human and animal food, and for food used industrially." Then it was up to him to draft a program that would provide such food supplies as far as possible. Inasmuch as the demands were so great that there was little likelihood of their being wholly met, the War Food Administrator could allocate the food produced and give priorities to the various claimants. Moreover, he recommended what materials and equipment were necessary to carry out this production program to the War Production Board and had authority in the field of farm labor supply and farm wage and salary stabilization. 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.

Postwar Programs The ravages of war and a severe drought in Europe after the end of hostilities caused acute food shortages throughout the world during the early postwar period. American farmers were urged to produce to the very maximum in order that starvation might be brought under control as far as possible. Prices were high and the problem of crop surpluses and marketing was hardly apparent. However, as the European countries recovered and the food situation became more normal, the demand for American farm products naturally slackened. Bumper crops in the United States and a shortage of dollar exchange complicated the situation. Even with the heavy purchases made under the Marshall Plan, food surpluses had again become somewhat of a national problem by 1948 and by 1949 the glut had reached a high level. The Department of Agriculture had anticipated these developments and had warned the farmers to be ready as far as possible to deal with the problem. Backed by congressional legislation various support programs were put into effect to keep the farm price structure from collapsing. The Department of Agriculture fixed guaranteed prices on five basic commodities at 90 per cent of parity through 1950 and at 80 to 90 per cent during 1951. After 1951 a sliding scale of 75 to 90 per cent is to apply. Parity, it may be added, is a price calculated to give farmers a return in purchasing power comparable to the prosperous period of 1909–1914. Price supports are also placed under tobacco, rice, dairy products, and other commodities. In those cases, such as potato production, where prices crashed, the government took over great quantities of surpluses at a cost of hundreds of millions of dollars.[22] Some

[22] In 1950, the Department of Agriculture reported that the various price-support programs had cost the taxpayer only $517,000,000 since 1933, an average of $31,400,000 per year. The potato program was the most costly, accounting for a loss of $364,000,000. However, it should be noted that as of April 1, 1950, the government had more than four billion dollars tied up in loans, inventories, and crop-purchase contracts. Title had been taken to nearly 3,600,000 bales

effort was made to restore controls over acreage to be planted to certain crops, but after the prosperity of the war years it was not easy for the farmer to adjust to such regimentation. Moreover, the acreage limitations which were imposed did not always work out as was anticipated. Improved fertilizer, better strains of certain crops, and improved agricultural methods in general made it possible to produce great quantities on limited acreage.

As the surpluses of agricultural products became larger and larger and the government found itself with huge quantities beyond the capacity of existing storage facilities, a furious debate began to rage as to what sort of program would best deal with the situation without bankrupting the nation. Secretary of Agriculture Brannan came out in 1949 with the Brannan Plan which proposed permitting food prices to sink to comparatively low levels so that the consumer would benefit and then paying subsidies to farmers above such levels. Secretary Brannan maintained that such a system would be less costly to the Treasury and would have the advantage of assisting the consumer as well as the farmer. But the farm groups, particularly the Farm Bureau, displayed violent opposition to such a scheme, even to the point of refusing a hearing to the Secretary of Agriculture. It was their contention that the Brannan Plan would jeopardize the prosperity of the farmer. Others challenged Brannan's contentions that such a program would be less draining on the public funds and predicted that untold sums might be required to support the subsidy payments. The net result of such a division of opinion was unfortunate, since it prevented the clearcut action necessary to deal with the major problem presented by the heavy surpluses.

The Commodity Credit Corporation The Commodity Credit Corporation was created in 1933 and until 1939 it was affiliated with the Reconstruction Finance Corporation. In that year it was transferred to the Department of Agriculture and since 1939 it has played an important role in connection with the production and marketing programs. During the war years the Commodity Credit Corporation performed valuable services in financing the purchase of food for the Lend-Lease Program. In 1948 Congress passed the Commodity Credit Corporation Charter Act which conferred status on the Commodity Credit Corporation as an agency and instrumentality of the national government under a permanent federal charter. The CCC is managed by a seven-member board, with the Secretary of Agriculture as chairman. It also has a five-member advisory board to review its policies. Members of both boards are appointed by the President. The CCC has a capital of $100,000,000 and prior to 1950 it was authorized to borrow up to $4,750,000,000. In 1950 Congress added an additional two billion dollars to its borrowing authority.

of cotton which cost $608,000,000. These statistics should be taken into account in interpreting the 1933–1950 loss figures given above; otherwise an unduly favorable picture is likely. The comparatively low loss figure noted above was due in considerable measure to the ability of the government to dispose of crop surpluses which it held at very favorable figures during World War II.

Perhaps the major function of the CCC at present is to administer the price-support program of the Department of Agriculture as laid down by Congress. Price support was mandatory in 1950 for corn, wheat, rice, tobacco, cotton, peanuts, wool, hogs, chickens over 3.5 pounds live weight, turkeys, milk and its products, dry beans, dry peas, flaxseed, soybeans, American Egyptian cotton, potatoes, and sweet potatoes. Price support was permissive in the above year for other commodities in so far as funds were available. Another major function of the CCC involves the purchase of agricultural products to meet the requirements of various public programs, such as the Marshall Plan. The CCC also acts as the agent of the government in purchasing commodities abroad and has recently bought quantities of copra, rice, sugar, and canned meat. Finally, the CCC may make loans to the Secretary of Agriculture to carry out the soil conservation program as authorized by the Soil Conservation and Domestic Allotment Act.

Rural Life

While not so much has been heard of the current activities of the Department of Agriculture in improving living conditions in rural areas as about crop control, nevertheless the achievements have not been inconsiderable. Professors Gaus and Wolcott summarize the program in this field as follows: "various forms of assistance to various types of what were termed 'disadvantaged rural families'; loans and grants, with farm and home plans to assist in rehabilitation; some experiments in the resettlement of farm families in communities; assisting tenants to become farm owners or to obtain a better type of lease; and some effort to enforce minimum standards or conditions for farm laborers, including migratory farm labor." [23]

Home Demonstration Programs 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.[24]

Human Nutrition and Home Economics The Bureau of Human Nutrition and Home Economics of the Department of Agriculture carries on a broad program which is intended to improve standards of living in rural areas. On

[23] The resettlement programs have been abandoned.

[24] 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 nutritional side it seeks to persuade farmers to use types of food which will furnish adequate nourishment and to prepare such food so that maximum food values will be retained. It studies expenditures of farm families with an eye to promoting better educational opportunities among farm youth. It studies farm housing in order that house plans for functional living may be developed. It investigates clothing styles and materials best suited for farm use and prepares buying guides to assist the farm population in making wise choices.

Rural Electrification Authority Despite the high standards of living generally prevailing in the United States, rural dwellers have frequently hardly enjoyed minimum living conditions. Large numbers of farm homes have had no plumbing facilities, even so much as running water. The number of farms without electricity available has been far larger in the United States than in Japan and other comparatively poor countries. In order to promote the extension of electric lines to rural areas, the Rural Electrification Authority was set up by executive order in 1935 and authorized by act of Congress in 1936. In 1944, Congress liberalized the earlier legislation and in 1949 the program was extended to include telephones. Under the various acts relating to REA federal loans of 100 per cent can now be made to finance the construction of electric lines to serve the farm population. Interest rates are fixed at the low level of 2 per cent and a period of thirty-five years is permitted to amortize the loans. The war seriously hampered the program of REA, but by 1949 Congress had authorized loan funds approximating two billion dollars and more than a billion and a half dollars had been loaned to over one thousand borrowers. These loans were expected to result in the construction of over a million miles of lines which would bring electricity to some 3,211,000 farms and rural dwellings. REA also makes loans for the wiring of farm homes and the purchase of electrical appliances, plumbing, and telephones.

Agricultural Credit Facilities

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, the Reconstruction Finance Corporation 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, already

referred to on a number of occasions, deprived the Farm Credit Administration of its independent status and placed it under the Department of Agriculture.

Organization of Credit 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, all of which are under the Farm Credit Administration. The land banks, which have been in operation since 1916, lend money to groups of ten or more farmers organized into national farm loan associations on long-term arrangements, usually for the purchase of land, construction of buildings, and the purchase of farm equipment.[25] Loans of not less than $100 nor more than $50,000 may be made to borrowers to the extent of 65 per cent of property value. Interest rates are 4 or 4½ per cent. The intermediate credit banks furnish short-term credits to production credit associations, agricultural credit associations, banks for co-operatives, state and national banks, and other groups, but not to individual farmers, on the security of grain, livestock, and other farm commodities.[26] The banks for co-operatives assist the many thousand co-operative buying and selling associations among the farmers.[27]

Farmers Home Administration A Farmers Home Administration was set up under the Farmers Home Administration Act of 1946 in order to provide "supervised credit for farmers who cannot get the credit they need elsewhere at adequate terms and under reasonable conditions." This agency also assists farmers in making plans which "will promote success in farming." Loans are made through offices located in county seat towns throughout the United States. Local committees of three persons, two of whom must be farmers themselves, pass on the eligibility of individual applicants, appraise the value of the farm to be bought, and keep in touch with the borrower after the loan has been made in order that assistance may be given if necessary and the funds of the government protected. Operating loans not to exceed $3500 in any one year are made to farmers, livestock owners, and tenants or sharecroppers for the purpose of buying livestock, equipment, seed, fertilizer, feed, and other necessities, to finance family needs including medical care, and to assist two or more farmers in acquiring heavy machinery or high-grade breeding stock. Total loans for any borrower may not exceed $5000; loans run from one to five years; interest is 5 per cent. Farm ownership loans are made to farm tenants, laborers, sharecroppers, veterans, and owners of inadequate or under-improved farms to buy an efficient family-type farm or to improve or enlarge a farm to convert it into an efficient family-type unit. No loan can exceed $12,000; a period of

[25] These banks made loans totaling $150,514,060 in 1948, the largest volume since 1936.

[26] These banks made direct loans of $179,348,922 in 1948 to private banks and $1,366,733,731 to credit associations or banks for co-operatives.

[27] These banks extended credit of $494,678,097 in 1948.

forty years is permitted for amortization; and interest is at a rate of 4 per cent. The Farmers Home Administration also insures mortgages on loans made by private lending agencies for the farm purchases. Other functions of this Administration include the financing of water and irrigation facilities in seventeen western states and flood and disaster loans as provided by acts of Congress in 1948 and 1949.[28]

Federal Crop Insurance Corporation One of the principal difficulties of the farmer takes the form of hazards, such as drought, floods, hail, and other unavoidable afflictions, resulting in crop failures. As far back as 1938 the Federal Crop Insurance Corporation was set up in the Department of Agriculture under the Agricultural Adjustment Act of 1938. It has found the task assigned to it far from easy and Congress has made a number of modifications in the scope of the program. During recent years it has been forced to limit coverage rather severely because of the magnitude of the risks involved. Under an amendment made by Congress in 1947 it was authorized to provide insurance covering wheat in not more than 200 counties, cotton 56 counties, flax 50 counties, corn 50 counties, and tobacco 35 counties. Other agricultural commodities could be insured in not to exceed twenty counties each. Counties selected must be representative of the areas where the commodity is normally produced.

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. The powerful farm lobby has long been able to get out of Congress almost anything that it has desired and it has not been modest in its requests. A good many billion dollars have been advanced in the form of credits of one kind and another, the bulk of which have been or will eventually be repaid. Large numbers of farms were saved to their owners through such agencies of the national government as the Federal Farm Mortgage Corporation, which was set up in 1934 with a capital of $200,000,000 and authority to issue bonds backed by the government credit to the extent of $2,000,000,000. 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 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

[28] The Farmers Home Administration made operating loans of $59,991,090 to 108,930 families during the year ending June 30, 1948. During the same year it made farm ownership loans totaling $14,480,000 to 1904 farmers. Insured loans to the amount of $2,490,910 were made in 352 cases. Water and irrigation loans to the number of 880 amounted to $1,505,477.

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,[29] but a revamped bill, which extended many of the same advantages to farmers, was upheld.[30] 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.

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[29] *Louisville Joint Stock Land Bank* v. *Radford,* 295 U.S. 555 (1935).

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33. The Government and Labor

The national government has been active in the labor field for more than 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 department was organized into a Department of Labor which has since that time ranked as one of the major administrative departments of the national government. The Labor Department is even today distinctly smaller than the Treasury, Agriculture, and Commerce departments and being the most recently established has the least precedence. Nevertheless, its staff and appropriations have been increased as the years have passed, and more and more attention has been focused on its work. Though the years since 1933 have witnessed a notable expansion of the national government in the field of labor, for one reason or another much of the program has not been entrusted to the Department of Labor. The unsatisfactory character of this illogical situation has been increasingly recognized during recent years and some effort has been made to strengthen the Labor Department, but pressure groups have made progress in this direction slow.[2]

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 two decades. At a time when the government had a disposition to subject business to the most devastating criticism as well as increasingly stringent regulation, it gave 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.[3]

Basis of Favorable Attitude toward Labor Several explanations have been offered of the sympathy which the national government has recently displayed toward labor. There are those who attribute it largely if not entirely to politi-

[1] As early as 1882 Congress passed the Chinese Exclusion Act 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] An initial step was taken when President Truman by executive order transferred the War Manpower Commission, the War Labor Board, and the United States Employment Service to the Department of Labor shortly after V-J Day in 1945.

[3] Organized labor has grown since 1930 from a few million to some fifteen million members in A.F. of L. and C.I.O. alone.

cal considerations. Organized labor controls many votes and boldly proclaims that those votes are cast judiciously, rewarding those who have been its friends. Labor has recently aided the Democratic party both with its votes and its money, while business has for the most part been highly critical of and even bitterly opposed to the party in power. So it is argued, what is more natural than that labor should be favored? It is probable that the friendly relations between labor and the Democratic party have contributed to the official attitude. The cordial relations which existed between the President and certain powerful labor leaders in 1936 became somewhat strained by 1940 and it will be recalled that John L. Lewis went so far as to desert Franklin D. Roosevelt shortly before election day.[4] The majority of the labor-union members voted for Mr. Roosevelt in 1940, but there were important defections. Some observers believe that the official attitude toward labor goes much deeper than a mere return for support received at the polls. They see the government's attitude as a recognition of the vital role of labor in a country with democratic political institutions. Moreover, they account for the disposition to tolerate the irresponsible tactics of certain wings of organized labor on the ground that labor had not received fair treatment during the many years prior to 1933.

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. More recent appointees to the position have also marked a departure from the earlier tradition largely perhaps because of the deep split between A.F. of L. and the C.I.O. An under secretary and three assistant secretaries are provided for general oversight. For purposes of administration the Labor Department is subdivided into the following: an Office of International Labor Affairs, a Bureau of Apprenticeship, a Bureau of Labor Statistics, a Bureau of Veterans' Re-employment Rights, a Bureau of Employment Security, a

[4] A few days before the election in November Mr. Lewis purchased at heavy expense the radio facilities of one of the national chains and broadcasted his criticisms of Franklin D. Roosevelt and his reasons for supporting Wendell Willkie.

Division of Wages, Hours, and Public Contracts, a Bureau of Labor Standards, a Women's Bureau, and the usual budget and management, personnel, and information agencies.

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.

Office of International Labor Affairs Until recently the Department of Labor confined its attention rather largely to domestic problems, though beginning in 1934 the United States participated in the work of the International Labor Office. With the end of World War II, the United States found itself occupying a position of international leadership and responsibility which made it necessary to correct the earlier focus. In 1947 an Office of International Labor Affairs was set up in the Department of Labor to give its attention to the international aspects of labor. This office is responsible for the participation of the United States in the labor activities of the United Nations and its commissions and specialized agencies, particularly the International Labor Organization. It also represents the Labor Department on various boards and committees, such as the Board of the Foreign Service, the Executive Committee on Economic Foreign Policy, the Interdepartmental Committee on International Social Policy, the Trade Agreements Committee, and occupied areas bodies. It administers the programs of international exchange and co-operation through training programs, the exchange of technical materials, and the providing of technical consultants to foreign countries.

Bureau of Apprenticeship In 1937 Congress provided for a training program to increase the number of skilled workers in the United States. This was entrusted to the Department of Labor to begin with, but it was later transferred to the Federal Security Agency and subsequently to the War Manpower Commission. In 1945 it was returned by executive order to the Labor Department. Field offices are maintained in twelve regions into which the United States has been divided and in Hawaii to supervise the actual training program. Employers and labor are brought together in these regions to formulate an appropriate program of apprenticeship. The field staff furnishes technical and advisory assistance in the development and actual operation of the training programs.

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 many 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.

Few people have anything like an adequate idea of the scope of the work of the Bureau of Labor Statistics in collecting and compiling statistical material which is published in the *Monthly Labor Review* and in special bulletins. Regular or periodic reports are made as to the employment situation and the labor force in 154 manufacturing industries and in the basic non-manufacturing industries such as retail trade, construction, mining, and utilities. Statistics relating to gross average hourly and weekly earnings and average weekly hours are gathered from 125,000 plants and stores representing some 160 different industries. Annual surveys are made in seventy-seven cities to ascertain the wage rates specified in union contracts. Annual studies are carried on in five large cities to obtain data in regard to salaries of white collar workers in offices and this project is to be expanded to include eleven other cities. Special studies of the earnings of professional workers are made.

This bureau publishes analyses of union contracts and agreements in various industries so that information is available in regard to current matters such as vacations, overtime, and grievance procedures. Statistics in regard to days lost as a result of strikes and other labor disputes are published monthly. Various studies are made on an annual, quarterly, and special basis of work injuries, accident rates, and working conditions in numerous industries. One of the most important projects of the Bureau of Labor Statistics involves the collection of data relating to wholesale and retail prices, rent levels, and consumer prices. Retail prices are collected from some 10,000 stores for food and from 3500 establishments in thirty-four cities for clothing, household furnishings, and miscellaneous goods and services. Rent statistics are compiled on the basis of reports from 45,000 dwelling units in 34 cities. Indexes for consumer prices are issued every month for ten large cities and quarterly for another twenty-four cities together with monthly nation-wide indexes. The wholesale index reports primary market prices of some 900 raw materials, semi-manufactured goods, and manufactured goods on a weekly and monthly basis. Studies of consumers' expenditures and standard family budgets have been made from time to time. Data on building and other construction activity are published monthly in a periodical known as *Construction* and an annual report on construction trends is issued. In order to assist vocational counselors and others who advise students and veterans, the bureau publishes reports on the long-range employment outlook in various fields. The publication *Notes on Labor Abroad* deals with labor conditions in other countries.

Bureau of Employment Security Prior to 1949 the Bureau of Employment Security which is subdivided into two major sections dealing with unemployment compensation and employment services was a vital part of the

Federal Security Agency. Despite considerable opposition from various quarters, President Truman transferred the agency in 1949 under reorganization plans recommended by the Hoover Commission to the Department of Labor.

Unemployment Compensation The wholesale layoffs 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. 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 days. The state and local governments attempted to handle the problem and, when they found the demands too heavy for their resources, the national government came to their rescue. Even in spite of the billions spent, a great amount of hardship occurred. 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.[5]

Role of the States in Unemployment Compensation Instead of establishing a national system of unemployment insurance it was decided by Congress to entrust this matter to the states, 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-two unemployment systems, since all of the states plus Alaska, Hawaii, and the District of Columbia are engaged in this activity. With so many different plans, it might be supposed that there would be little similarity in various parts of the country, but actually the basic principles are reasonably uniform everywhere. Almost all of the systems are exclusively financed by a pay-roll tax on employees; and the usual base tax is 2.7 per cent. 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.[6] A plan of bringing the maximum weekly payment to $25 throughout the country by use of federal assistance has received wide attention, but no action has been taken in this direction. There is some variation in the number of employees required to bring a business under the system, but most of the states place the number at eight. The duration of benefits prior to 1945 was generally limited to eighteen weeks, but many states have now

[5] For further discussion of the provisions of the Social Security Act of 1935 in this field, see W. Haber and J. Joseph, "An Appraisal of the Federal-State System of Unemployment Compensation," *Social Service Review*, Vol. XV, pp. 207–241, June, 1941.

[6] The varying amounts paid by the several states are reported at frequent intervals in the *Social Security Bulletin*, published monthly by the Federal Security Agency. In 1949, a total of $1,194,000,000 was paid to 5,644,975 persons.

extended 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 somewhat more than $20. Approximately forty million employees are now under the program, although government officials, domestic labor, agricultural workers, and educational, religious, and charitable employees are not covered.

An Evaluation of Unemployment Compensation It is still early to evaluate definitely the worth of unemployment compensation. Several states were slow in getting started; political appointees were given charge of the administration of some of the systems; [7] and various amendments have been made in order to modify requirements. It should be noted first of all that unemployment compensation in the United States does not offer more than temporary assistance, for it ordinarily covers no more than twenty-six weeks of payments. Employers sometimes cannot see that they should shoulder the entire cost of the insurance. How adequate the funds will be to meet claims if another catastrophic depression descends is a question which only time can answer. It is evident that the present plans are ameliorative rather than permanent, but they would seem to serve a useful purpose as far as they go. One of the most important weaknesses of the system is its incomplete coverage. Proposals have been made for an extension to include some millions of other employees, particularly agricultural laborers who are among the first to suffer in a period of economic tension.

The Employment Service The Employment Service was set up by departmental order in the Labor Department as early as 1918 and in 1933, Congress gave it legislative status. In the reorganization of 1939 it was transferred to the Federal Security Agency and from there in 1942 to the War Manpower Commission. In 1945, it was shunted back to the Department of Labor, only to be moved to the Federal Security Agency in 1948. In 1949, it came back to its original home in the Labor Department. Few agencies have been quite as much like footballs and it may be wondered how the Employment Service has been able to function at all. To begin with, the Employment Service was primarily intended to assist the states in establishing and maintaining employment offices intended to furnish employment guidance without charge to those out of work. The manpower situation became so acute during World War II that it seemed essential for the national government to take over the direct administration of the numerous employment offices throughout the country. Shortly after the end of hostilities the pressure to return the employment offices to the states manifested itself and despite reluctance in Washington this

[7] See Walter Matscheck, "Administering Unemployment Compensation," *Social Security Bulletin*, Vol. IV, p. 149, November, 1941. "Perhaps every observer of unemployment compensation administration in the states will agree that personnel failures were the greatest single cause of confusion and delay. Too frequently employees were selected by purely political standards."

was done. At present, therefore, the Employment Service in the Department of Labor does not have direct administrative responsibility for the employment offices throughout the United States. Through a system of grants-in-aid it attempts to prescribe minimum standards to be followed by the states and it also seeks to co-ordinate the state employment services in such a fashion that a nation-wide integrated program is carried on.[8]

Wages and Hours and Public Contracts Division One of the most publicized subdivisions of the Labor Department during the last few years has been the Wages and Hours Division, which was provided for by Congress in the Wages and Hours Act of 1938. Although Congress has at various times attempted to regulate wages and hours, it has until recently been checked by the Supreme Court on the basis that manufacturing, mining, lumbering, and related fields are not included under the commerce power of the national government.[9] In 1933 the National Industrial Recovery Act, which President Roosevelt designated as "the most important and far-reaching ever enacted by the American Congress," sought to limit hours of labor, fix minimum wages, and otherwise regulate labor conditions, but despite its operation for some two years it finally had to be abandoned when the Supreme Court declared it null and void.[10] After this experience of many years of adverse decisions, it seemed that federal activities in this field were permanently ruled out. Then the Supreme Court became more liberal in its interpretation of the Constitution. Consequently in 1938 Congress again tried its hand at regulating certain aspects of this problem, establishing the Wages and Hours Division of the Department of Labor to administer the law. This time it was successful.[11] In 1942 this division was also given the responsibility of administering the Walsh-Healey Act of 1936 which stipulates minimum labor standards in public contracts.

Provisions of the Wages and Hours Acts of 1938 and 1949 The act of 1938 which is often referred to as the "Fair Labor Standards Act" applies to workers—approximately 22,600,000 altogether—who are employed in manu-

[8] For further discussion, see R. C. Atkinson and others, *Public Employment Service in the United States*, Public Administration Service, Chicago, 1939. During 1949 a total of 12,435,375 job placements were made, of which 7,543,508 were in agriculture.

[9] For example, see the following cases: *United States* v. *E. C. Knight Co.*, 156 U.S. 1 (1895), which though concerned with the Antitrust Act set the broad precedent that sugar refining in Pennsylvania was not in interstate commerce; *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918), concerned with the Child Labor Law held that cotton mills were not in interstate commerce; *United States* v. *Butler*, 297 U.S. 1 (1936), held the A.A.A. processing taxes invalid because agriculture was not in interstate commerce; *Schechter Poultry Corporation* v. *United States*, 295 U.S. 495 (1935), threw out the N.R.A. partly on the ground that retail selling was not in interstate commerce; *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936) concerned with the Bituminous Coal Conservation Act held mining not to be interstate commerce.

[10] *Schechter Poultry Corporation* v. *United States, supra.*

[11] The Supreme Court announced its decision upholding the new act in 1941. See *United States* v. *F. W. Darby Lumber Co.*, 85 L. Ed., 395, in which Justice Stone, speaking for the majority, specifically overruled *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918), and by implication overruled other cases which had removed manufacturing and so forth from interstate commerce.

facturing, 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. Agricultural laborers, clerks employed in retail stores primarily engaged in business within a single state, fishermen, domestics, professional people, and employees of interstate carriers are specifically excluded from its operation. 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. A forty-hour week and a minimum wage of 40 cents per hour are specified, although a period of three years was permitted for a gradual adjustment to these levels. Some attention was ordered paid to variations in living costs as well as to collective agreements between labor and management. The administrator is given discretion in determining the exact application within the general limits prescribed by law. An appeal to the federal courts may be resorted to in those cases where the decisions of the administrator are deemed in excess of legal authority.[12]

The act of 1949 extended the coverage of the provisions of the earlier act somewhat, though not as far as the President had recommended. It also increased the minimum wage from 40 cents to 75 cents per hour.

Bureau of Labor Standards The Bureau of Labor Standards has little direct authority, but it has exerted influence on state industrial commissions and labor departments in connection with labor standards. It also co-operates with civic groups, labor organizations, and employer associations in furnishing information. Its primary aim is to promote industrial health and safety, improve general working conditions, and encourage state legislation providing for such standards. It has been active in stirring up public support looking toward the employment of physically handicapped persons who are qualified. It also assists the Office of International Labor Affairs in arranging for the exchange of labor personnel and in providing training programs for visitors from other countries.

Women's Bureau As far back as 1918 the Labor Department set up a subdivision to give its attention to the role of women in industry; this was made permanent by act of Congress in 1920. The Women's Bureau is not charged with the administration of any regulations prescribed by law. It carries on studies of existing laws at the state and national level, recommends modifications in proposed legislation, and makes surveys of wages and conditions of work in particular industries. It is particularly interested in equal pay for women workers, minimum wage standards for women, hours of labor, and laws having to do with the political status of women. It concerns itself

[12] For additional discussion, see J. M. P. Donovan, Jr., "The Practical Administration of the Wage and Hour Act," *Georgetown Law Journal*, Vol. XXXI, pp. 115–145, January, 1943.

not only with women in ordinary industries but in household employment, farm work, the service trades, and the professions.[13]

The National Labor Relations Board

The Wagner Act After the Supreme Court threw out the N.I.R.A. with its guarantee of collective bargaining,[14] pressure on the part of labor for some other legislation which would protect its interests became tremendous. Almost at once the President sent to Congress a bill which provided for the creation of a National Labor Relations Board. Senator Robert F. Wagner of New York had much to do with the drafting and sponsored not only the original bill but certain amendments which were intended to correct defects; consequently it was quite appropriate that the bill should bear his name. The act specifically excludes the employees of the national, state, and local government and railroad workers covered by the Railway Labor Act of 1926. Its general purpose was stated to be encouraging collective bargaining and "protecting 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. . . ." Based on the power of Congress to regulate interstate commerce, the act was upheld by the Supreme Court.[15] In 1947, this act was modified by the Taft-Hartley Act.

Composition of the National Labor Relations Board The Wagner Act provided for the establishment of a National Labor Relations Board of three members to carry out its terms. The Taft-Hartley Act enlarged the membership 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. The board retains a sizable staff of investigators, clerks, examiners, lawyers, and other employees. The Taft-Hartley Act gave a more or less autonomous status to the general counsel, making him responsible for the prosecuting side.

Functions of the N.L.R.B. The National Labor Relations Board has diverse responsibilities. Two of its functions are outstanding. In the first place, it is expected to determine the bona fide representatives of employees for the purpose of collective bargaining when there is a dispute over which union has the right to speak for the employees. In the second place, it receives, investigates, and hears complaints both from employees and employers which are based on alleged violations of the terms of the Wagner and Taft-Hartley Acts. There has been some confusion and a certain amount of criticism resulting from the conflicting character of its responsibilities. Under the Wagner Act at least the board was expected to assume important duties in connection with deciding what cases to press and what charges should be made against an

[13] For a somewhat out-of-date study of this bureau, see G. A. Weber, "The Women's Bureau," *Service Monograph 22*, Brookings Institution, Washington, 1923.

[14] See *Schechter Poultry Corporation* v. *United States*, 295 U.S. 495 (1935).

[15] See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

employer charged with unfair labor practices. In other words it played the role of a prosecutor. Then as a quasi-judicial body it listened to the charges and evidence and defense and finally decided whether the charges had been sustained. In the eyes of many people this arrangement violated a cardinal principle of American jurisprudence. Under the Taft-Hartley Act some adjustment has been made by giving the general counsel primary responsibility for the prosecuting side.

Administrative Responsibilities The magnitude of the duties of N.L.R.B. has been increased not only by the C.I.O.–A.F.L. split 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. As many as 796 plebiscites have been conducted in a single month.

Quasijudicial Duties The difficult function of N.L.R.B. is that of deciding whether an employer has been guilty of unfair labor practices or whether employees have taken undue advantage of their employers. Until 1940 the N.L.R.B. restricted itself to hearing complaints raised by the employees, but after much criticism it extended this privilege to employers also.[16] 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 examine evidence the complaining organization has gathered, as well as to seek additional evidence and hear the rebuttal that the defendant may wish to make. These hearings may last a few hours or stretch over several days. When they are over, the examiner carries his findings to Washington. Here 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

[16] When President Roosevelt finally failed to reappoint Mr. Madden to the board, control shifted to a more moderate element which adopted this reform. The Wagner Act does not specifically say that employers shall not be permitted to bring complaints, but the board had ruled that only employees were entitled to redress. The Taft-Hartley Act definitely provides for both employee and employer charges.

accepted by the defendant. In case the defendant refuses to obey the order, the case is carried to the federal courts for final settlement. Several of the most important cases decided by the National Labor Relations Board have gotten as far as the Supreme Court itself.[17]

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. Moreover, the legal section of the board has been so competent that it has won almost all of the cases which have been appealed to the courts, even to the Supreme Court. Indeed its record is so superior that it was for some time the only legal section which the Solicitor General's office permitted to present its own cases before the Supreme Court.[18] 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, in each case maintaining that the board has unduly favored the other. The newspapers have sometimes depicted the board as inadequate. The tide reached such a high stage that the House of Representatives appointed the Smith Committee to investigate the N.L.R.B. The lengthy hearings of this committee were reported in great detail in the press, particularly when evidence portraying the shortcomings was presented. Out of the welter of testimony it came to light that the board had employed numerous young lawyers recently graduated from eastern law schools whom it was alleged had had little practical experience. Moreover, certain staff members were accused of playing politics within the board itself.[19] Perhaps the most damaging charge lodged against the board was that it openly flaunted its sympathy for labor, despite various quasi-judicial functions which it was charged to perform. Statements, letters, and other evidence purported to show that the staff of the board and indeed the members themselves had the prosecuting as opposed to the judicial attitude of mind and lacked judicial propriety; they were said to be contemptuous of employers and determined to find for labor even before a case had been heard or was introduced. After considering the testimony and evidence, the Smith Committee decided to recommend changes in the Wagner Act.

Reorganization of the Board Personnel After considerable delay President Roosevelt finally decided after the election of 1940 not to reappoint Mr. Madden to the National Labor Relations Board and kicked him upstairs to a seat on the federal circuit bench. At the same time the President announced the appointment of a moderate to the vacancy, which had the effect

[17] The Jones & Laughlin case was the first of a long line which involved among others the Ford Motor Company and the Republic Steel Corporation.

[18] This statement was made by then Solicitor General Francis Biddle to the Institute of Government held in Washington in April, 1940. Its head was appointed Solicitor General in 1941.

[19] The office manager was especially charged with this activity.

of shifting the control from the Madden-Smith combination.[20] The result was shortly apparent in the more cautious course followed by N.L.R.B. and for the first time since its establishment it was able to do its work outside of the limelight. Nevertheless, deep-seated opposition continued and the Eightieth Congress enacted the Taft-Hartley Act.

The Taft-Hartley Act Few congressional acts have been as controversial as the Taft-Hartley Act. Organized labor and many other individuals and groups have characterized the act as the height of foolishness, an insult to the working classes, and the sort of legislation that might be expected under a totalitarian state. Proponents of the act have denied such allegations and maintained that the Taft-Hartley Act merely corrected certain defects in the Wagner Act. Vigorous attempts have been made to repeal the act and the President has taken a firm stand in favor of repeal, but a combination of southern Democrats and Republicans prevented such a step in the first session of the Democratic Eighty-first Congress. The Taft-Hartley Act is very detailed in character and can only be summarized here. Labor unions are prohibited from making contributions to political campaign funds; the closed shop is outlawed. Secondary boycotts are forbidden. Labor unions are required to make periodic reports to the government in regard to their finances. When contracts are violated, labor unions are made liable and damages may be recovered in the courts. In order to bring cases to the National Labor Relations Board labor unions must certify that their officers are not Communists. Parties to collective bargaining agreements must give sixty days' notice of termination and cannot engage in a strike during that period.[21]

Other Labor Agencies

The Federal Mediation and Conciliation Service Prior to 1947 the Department of Labor maintained a subdivision known as the Conciliation Service which gave its attention to large numbers of labor disputes and was able to settle a large proportion before they reached the boiling point. Though many thoughtful persons believed that such a function belonged to the Labor Department, strong sentiment developed in favor of an independent agency to handle conciliation. In 1947 Congress finally took action and authorized the establishment of a Federal Mediation and Conciliation Service outside of the Labor Department. Headed by a director appointed by the President with the consent of the Senate, the Federal Mediation and Conciliation Service has been very active since its creation in dealing with an assortment of labor

[20] In 1941, the appointment of Mr. Smith was not renewed and the N.L.R.B. operated with an entirely new personnel.

[21] For a detailed discussion of the experience of the national government under the Wagner and Taft-Hartley Acts, see H. A. Millis and E. M. Brown, *From the Wagner Act to Taft-Hartley; A Study of National Labor Policy and Labor Relations*, University of Chicago Press, Chicago, 1950.

disputes. Many of its cases have been too routine to find their way into the headlines of the newspapers, but others, such as the coal and steel disputes, have drawn the limelight throughout the country for days at a stretch. One of the sections of the act of 1947 provides that employers and unions must file with the Federal Mediation and Conciliation Service a notice of every dispute affecting commerce not settled within thirty days after notice to terminate or modify an existing contract. Similar notice is required by the act to state agencies and the Federal Mediation and Conciliation Service seeks to co-operate with these state instruments. Emphasis is placed upon a preventive mediation program which seeks to improve human relations so that collective bargaining may be carried on in a favorable atmosphere and brings together officials of the Service with key persons in industry and organized labor so that information may be exchanged and mutual confidence developed. A National Labor-Management Panel, made up of six representatives of labor and six of management appointed by the President, advises the Federal Mediation and Conciliation Service on policies and techniques.

The National Mediation Board As far back as 1913 a United States Board of Mediation and Conciliation was created to mediate in complicated disputes arising between labor and management. In 1920, a Railroad Labor Board was created to perform that function in 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 [22] 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.

Labor and the Courts

Prior to 1932 Because federal courts have jurisdiction 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

[22] For an article on this board, see L. K. Garrison, "The National Railroad Adjustment Board," *Yale Law Journal*, Vol. XLVI, pp. 567–598, February, 1937.

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. Finally, the law provided for trial by jury in certain contempt cases. These safeguards, however, proved inadequate. During the 1920's, because of a too liberal 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.

The Norris-LaGuardia Act of 1932 In response to the vigorous demands of organized labor, Congress decided in 1932 to provide a measure of protection to labor against the certain types of court action. The declared purpose of the Norris-LaGuardia Antiinjunction 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. By this latter provision the loophole of the Clayton Act was effectively plugged.[23] Among other things the act throws safeguards around those charged with contempt of court in labor disputes and outlaws "yellow-dog" contracts.[24]

[23] For a discussion of this act, see M. G Ratner and N. J. Come, "The Norris-LaGuardia Act in the Constitution," *George Washington Law Review*, Vol. XI, pp. 428–472, June, 1943.

[24] 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.

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34. Social Security and Public Housing

Social Security

Although the United States has led the world in such fields as road building and agricultural programs, it was for many years almost callously 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. Indeed for many years there had been a keen interest in certain quarters in the German and the English programs in these fields together with advocacy of reasonable activity in the United States. 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.[1] 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 national government took cognizance of the situation and began to grant money for direct relief.

Emergency Efforts: 1933–1934 Federal assistance aggregating several billions of dollars [2] 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.[3]

[1] 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.

[2] 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.

[3] 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.

Three general problems received attention in this omnibus statute: old-age dependence, unemployment,[4] 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 impressive vigor in pushing toward goals that other countries have required decades to reach.

The Problem of Old Age 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 of 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 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 been until recently a very unhappy one, to say the least. Even when children do assist, support has often not been given cheerfully or in anything like adequate amount. The stringencies of the years following 1929 made it increasingly difficult for young people to earn enough for themselves, let alone support their aged dependents. Moreover, the savings which many people had counted on to relieve their declining years were swept away in the bank failures, the stock market crash, and the wave of bankruptcies.

State Pensions for the Aged Even before 1929 a number of states, beginning with Montana in 1923,[5] had set up old-age pension systems; by 1935 some twenty-nine states had such provisions. With rare exceptions it may be added that these state pension systems did not have sufficient resources to permit the payment of pensions that were even reasonably adequate.[6] 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 national government, for certain vested interests were loath to see the state plans shelved in favor of a single national system. In passing the Social Security Act of 1935 it was, therefore, decided to enlarge the state efforts by federal grants-

[4] Unemployment insurance is discussed in Chap. 33 under the Department of Labor which administers unemployment compensation.

[5] Arizona attempted aid to the aged as early as 1914, but its law was declared invalid on the grounds of vagueness.

[6] 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.

in-aid and at the same time to set up a new national program of old-age and survivors insurance which would eventually supplant the need for widespread public assistance to the aged.

Old-Age Program 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.[7] Inasmuch as the national government does not require that all of the states have exactly the same plan, there are many different systems, each of which serves as a separate financial unit. However, each state must meet certain general standards which the national government has stipulated. 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 only a fraction of those persons sixty-five years or over actually receive assistance, although the proportion varies widely from state to state, running from about 10 per cent to more than 50 per cent. The federal government contributes approximately half of the amount which is granted up to a specified maximum which has been increased on several occasions.[8]

Variation in Amount Paid Another common supposition is that all recipients of old-age assistance, within a single state receive the same monthly grant. For example, if a state is permitted by law to pay $50 per month, it is frequently assumed that all who benefit receive that amount. Actually the amount given is dependent upon the needs of the person and the $50 is merely the maximum that anyone can receive. So one person may be given $25 per month, another $35 per month, and still another $50 per month—all in the same state. States vary widely in the extent to which they grant the maximum amount, with some states rarely awarding it unless expensive medical care is required. The average monthly grant in the fifty-odd systems approximates $45,[9] but the individual states range from less than twenty to over eighty dollars.[10]

Noncontributory Character of Old-Age Assistance It should be stressed that old-age assistance, or pensions, to use the common designation,[11] depend

[7] There are actually fifty-odd old-age assistance systems in operation, for Alaska, Hawaii, and the District of Columbia supplement the states. A total of 2,735,000 persons received benefits aggregating $1,380,000,000 in 1949.

[8] The maximum was originally $30, but in 1940, Congress raised the amount to $40. In 1947, another increase was made to $45. The federal government pays two-thirds of the first $15 and half over that amount up to the maximum.

[9] It was $44 50 in November, 1949.

[10] In December, 1949, the lowest average was $18.81, and highest $83.00.

[11] Social Security experts do not approve of the term "pension" 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.

entirely upon public funds for support—recipients make no contributions. Consequently the granting of this assistance is interpreted as a favor rather than as a matter of contractual right. Inasmuch as only those who have virtually no resources [12] 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 to what extent 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. Nevertheless, there are fairly insistent allegations in some of the states that supporters of the party in power receive prompter attention when they apply and more generous pensions thereafter than those known to have affiliations with the minority party. The Federal Security Agency investigates the worst instances of abuse and in extreme cases may cut off federal funds for a brief period.

Pros and Cons of Old-Age Assistance It can scarcely be questioned that the lives of the aged people who currently receive old-age assistance are made easier by these grants. The recipients certainly do not live on the fat of the land, but at least they do not starve as the aged once did. Allowed to live in their own homes and rooms, they retain a pride which was rarely possible under the older system of enforced residence at the county poorhouse. Moreover the psychological boon is very great in many instances, for the plight was sad of those old people who had to surrender almost every vestige of independence and pride as the hangers-on of mean-spirited relatives. On the other hand, the drain on the national as well as on the state and local [13] purses is heavy, especially in those states that pay the highest rates. Inasmuch as the number of persons over sixty-five years of age is steadily increasing in the United States, the cost of a non-contributory system is bound to soar. For example, in 1870, only three Americans out of one hundred were sixty-five years of age or over; by 1940 that proportion had doubled; in 1950, there were 11,500,000 persons over sixty-five years of age; and it is estimated by the population experts that toward the end of the century as many as a dozen out of a hundred may fall within that age group.[14] Then, too, a system based on charity does not meet the need of large numbers of borderline cases. They cannot qualify for public assistance, even if they would be willing to swallow their pride and apply; yet they do not have enough to live with reason-

[12] 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 proceeds fom sale up to the amount which has been given in public assistance.

[13] States vary in caring for the 50 per cent that they must pay. Approximately half require local governments to shoulder some of the burden

[14] For an interesting article on the subject, see C. A. Kulp, "Appraisal of American Provisions for Old-Age Security," *Annals of the American Academy of Political and Social Science*, Vol. CCII, pp. 66–73, March, 1939.

able comfort. To meet this situation it was decided to supplement the old-age assistance systems of the states with a nation-wide annuity plan.

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 employed in agriculture, government service, domestic labor, and educational institutions,[15] employees of every sort were included under the original act; approximately 35,000,000 persons were covered and 21,000,000 remained outside.[16] Various attempts have been made to extend the coverage and in 1950, legislation was finally enacted which was expected to bring in some ten million additional persons: permanently located agricultural workers, household help, certain self-employed persons, and under an optional arrangement state and local government employees and employees of nonprofit organizations. 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 65 years. The amount which they receive is in general determined by what they have paid in, although many recipients will receive considerably more than their contributions would justify. The maximum monthly payment was originally $85, but in 1950 this was increased to $150 for families.[17]

The Problem of Rates The original act of 1935 provided that both employees and employers should start out by paying 1 per cent of wages or salaries into the federal Treasury.[18] 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.[19] Moreover, the practice of using the money paid in to meet a large recurring federal deficit was condemned on the ground that it was unfair to future generations who would have to pay to replace the money taken out as well as contribute to their own annuities. Finally, it was claimed that removing so much money from circulation was

[15] Government employees, of course, have their own pension system.

[16] As of June 30, 1949, 2,554,200.

[17] To qualify for the maximum one would have to receive an average monthly wage of $300 over a period of 40 years or leave a widow with two dependent children. The average monthly payment is approximately half of the maximum.

[18] 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.

[19] By 1950 a reserve of some twelve billion dollars had been built up out of tax payments; yet only $627,000,000 was paid out in benefits during the fiscal year ending June 30, 1949.

responsible for the recession in 1938. Largely as a result of these criticisms, Congress decided as 1940 drew near to keep the tax at 1 per cent instead of raising it to 1.5 per cent in accordance with the original provision. Similar pressure was successfully exerted during the war years to postpone any increase in rates and it was not until 1950 that the rate went up to 1.5 per cent.

General Acceptance of Old-Age Insurance On the whole, there has been general approval of the old-age insurance system. Both employer and employee may object to the burden of the payments to the Treasury; but since the amounts are collected at least every month, they are not large at any one time. The experience of Great Britain has indicated that the cost of an at all adequate noncontributory pension scheme is so high that it is a heavy if not intolerable burden.[20] Hence, realistic persons admit that, much as they may begrudge current levies, they are essential to a permanent system of old-age benefits. There are, of course, still some "rugged individuals" who believe that private initiative should provide for old age, but the experiences of the last two decades have gone far to convince the great majority of people either that individuals do not have the foresight and wisdom to make adequate preparations or that the economic system is so unstabilized and so cyclical that hard-earned savings cannot be depended upon.

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 has 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. In 1935 alone the enormous sum of $4,800,000,000 was spent for work relief by the federal government.

Criticism of W.P.A. The criticism of the W.P.A. was widespread and bitter. In addition to its cost many citizens complained that it developed a psychology among workers which made it very difficult to obtain them for agricultural labor and other seasonable work not paying too well. Political corruption was supposed to have accompanied W.P.A. in some states. Projects were sometimes regarded as so absurd that they deserved no serious attention. It cannot be denied that large sums were spent without absorbing all of those who desired work. Nevertheless, hundreds of thousands of men were kept busy through a long period when industry had no need for them.

[20] Under the early plans Britain did not require recipients to contribute, but the current system is based on contributions from both recipients and employers.

Some of the projects were not particularly impressive—the earlier made-work projects in which men moved earth from one spot to another and then back again were inexcusable. "Boondoggling," as it has been called, is perhaps as bad as the dole for workers' morale. On the other hand, many of the projects have been quite valuable in improving the appearance, the recreational facilities, the educational equipment, and the public works of urban places and the roads of rural sections. The list of accomplishments in a single city, such as New York or Chicago, is beyond the belief of the ordinary citizen who gets his impression from casual talk or newspapers.[21] The W.P.A. was defective in that it did not make it easier to leave the rolls, take temporary employment, and then be reinstated. In December, 1942 the President liquidated W.P.A. on the ground that it had served its purpose and there was no longer an unemployment problem. Another serious period of unemployment would doubtless see work relief programs of some sort reinstituted.

Children's Bureau One of the most efficient subdivisions of the Federal Security Agency [22]—indeed one of the top ranking agencies in the entire national administrative setup—is the Children's Bureau.[23] This bureau has had the good fortune to be directed by a succession of very able women whose names have been known throughout the county.[24] 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, the employment of children in industrial plants and mines, 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. Especially in the case of children living in rural districts and small towns far from a child specialist, the instructions and advice provided by this booklet have been of the greatest assistance to responsible parents. During recent years the Children's Bureau has been expanded in order to supervise the child-health program of the Social Security Act of 1935.

[21] 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.

[22] This bureau was long a part of the Department of Labor, but it was transferred to the Federal Security Agency in 1946.

[23] For a study of this bureau which is somewhat out of date but still useful, see J. A. Tobey, "The Children's Bureau," *Service Monograph 21*, Brookings Institution, Washington, 1925.

[24] Katherine Lenroot and Edith Abbott may be cited as examples of able heads of this bureau.

Security for Children Included in the Social Security Act of 1935 and its amendments are 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.[25] The federal government now assists the states and territories in making financial allowances to approximately one and one-half million children located in over half a million homes.[26] The several 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 or more of the cost is assumed by the national Treasury. Aid is regularly given children up to sixteen years and in some instances may be continued beyond that time. Monthly payments per family average approximately $45.00.

Child Welfare Service 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 organizations in areas predominantly 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 predominately rural." [27] This money does not go to maintain homes or institutions, but provides experts in child welfare, child psychology, and so forth to furnish services to children needing attention.

Health Security for Mothers and Children Still another provision of the extraordinarily important Social Security Act of 1935 charges the Children's Bureau with promoting the health of mothers and children and with diagnosing and treating crippled children. Several million dollars annually is distributed among the states and territories on a fifty-fifty basis for maternal and child health services. Prenatal clinics have been set up in more than five hundred places. Large numbers of immunizations and smallpox vaccinations are given annually; dental inspections exceed a million and a quarter; general health examinations of school children run to a million and a half a year; while more than twelve thousand midwives have been trained, largely among the Negroes. The crippled-children program allots several million dollars per year to those states that provide matching sums for the surgical services, hospitalization, and care of some 485,000 children.[28]

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 handicapped people as well as to maintain schools for their training. The federal government contributes half of state pensions up to a certain

[25] 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.

[26] In November, 1949, 1,486,404 children in 585,411 homes were recipients.

[27] See Mary Irene Arkinson, "Child Welfare Services," *ibid.*, pp. 82–87.

[28] See Katherine F. Lenroot, "Health Security for Mothers and Children," *ibid.*, pp. 105–115.

maximum in those states which have passed legislation meeting its standards. Almost one hundred thousand blind persons are receiving pensions which average about $45.00 per month.[29]

Security for the Handicapped There are more than 100,000 persons in the United States at any one time who need vocational rehabilitation because of physical handicaps. A program 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.[30]

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. President F. D. Roosevelt appointed an Interdepartmental Committee to Co-ordinate Health and Welfare Activities, which in turn has a subcommittee on Medical Care. 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." [31] A federal program of grants-in-aid which would eventually require the expenditure of several hundred millions of federal funds each year was proposed. 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.

National Institutes of Health Under the Public Health Service there has been set up during recent years a series of institutes of health which are intended to carry on research investigations relating to the causes, diagnosis, treatment, and prevention of physical and mental diseases to which human beings are subject. Basic research in biology and medicine is handled by the

[29] See Peter Kasius and C. E. Rice, "Assistance for the Blind," *ibid.*, pp. 95–99. In November, 1949, there were 92,160 recipients and the average pension was $45.99.

[30] See John A. Kratz, "Security for the Handicapped," *ibid.*, pp. 100–104.

[31] See G. St. J. Perrott and D. F. Holland, "Health as an Element in Social Security," *ibid.*, pp. 116–136.

Experimental Biology and Medicine Institute. Research in the field of microorganisms is entrusted to the Microbiological Institute. Other institutes whose responsibilities are self-explanatory are as follows: National Cancer Institute, National Heart Institute, National Institute of Dental Research, and National Institute of Mental Health. These institutes co-operate with universities, hospitals, and other research agencies in their fields. In 1948, Congress appropriated funds to build a 500-bed hospital and an experimental and clinical research center for these institutes.

Hospital Grant-in-Aid Program Various surveys have indicated that the United States is lacking in adequate hospital facilities, despite the fact that in numbers and equipment its hospitals are not surpassed anywhere in the world. While metropolitan areas may be well off in hospital facilities, small cities and rural areas frequently have little or nothing to offer. Beginning in 1948, Congress authorized a program on a five-year basis to assist the states in improving local hospital facilities. Under this legislation $75,000,000 of federal funds were available each year to be matched by state and local governments on the basis of $2 for every $1 of federal grants. The high cost of hospital construction has limited the actual results, but substantial achievements are hoped for. In 1949 the annual amount was increased to $150,000,000 and it was provided that federal contributions should range from one third to two thirds, depending on the per capita income of the state.

National Mental Health Act Beginning in 1949, the national government inaugurated a program aimed at assisting the states in improving their facilities for dealing with mental illness. Annual appropriations of $3,550,000 may seem hardly a drop in the bucket in tackling the difficult problem of mental health in the United States, but it is significant that the national government has recognized the prime importance of attempting to bring about improvements in the almost notoriously inadequate existing program. These funds are distributed on a population basis, with rural areas faring slightly better than urban places because of the higher cost of providing services. The terms of the National Mental Health Act stipulate that the federal grants may not be used for the care and treatment of patients in mental institutions but must be spent for preventive programs. Preference has been given to the strengthening of existing clinics rather than the establishment of new services.

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. During the 1890's 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. As the years passed, however, various evasions were apparent since cosmetic and patent-medicine manufacturers found it possible to promise

virtually everything under the sun for their wares. Some seven amendments were added to the act from time to time. 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. In 1931, the Food and Drug Administration was authorized by Congress and located in the Department of Agriculture. Under a reorganization effected in 1940 the Food and Drug Administration was transferred to the Federal Security Agency. This agency enforces the Federal Food, Drug, and Cosmetic Act of 1938, the Tea Importation Act, the Import Milk Act, the Caustic Poison Act, and the Filled Milk Act, giving its attention to safeguarding purity, protecting potency standards, and ascertaining that truthful and informative labeling of essential commodities is provided. The Food and Drug Administration also controls new drugs and must approve the placing of new drugs on the market. This agency maintains a field staff in sixteen districts throughout the United States and thirty-nine inspection stations.

The Office of Education The United States Office of Education, a subdivision of the Federal Security Agency, may seem somewhat outside of the social security field, but a long-range view will reveal the fundamental importance of education in connection with the welfare of the American people. Set up as far back as 1867, the Office of Education has had to work through indirection for the most part, since the national government has carried on few direct activities in the educational field. Proposals to establish a federal Department of Education would seem to indicate a rising sentiment in favor of enlarging the role of the national government in this field. Passage of an act which would provide for extensive grants-in-aid to the states to assist in the improvement of educational standards in the United States would be an important step in this direction. In 1951 such a program was actually provided for in the budget submitted by the President to Congress and the Senate approved the necessary legislation in 1950, only to have the House of Representatives bog down not over the general principal but the role of religious schools in such a financial assistance scheme. It seems probable that legislation will be forthcoming in the near future which will bring the national government into a grant-in-aid relationship to American education. Prior to such a time the Office of Education administers funds appropriated for the land-grant colleges under the Second Morrill Act, the Nelson Amendment, and the Bankhead-Jones Act. It also administers the national vocational education acts, such as the Smith-Hughes Act and the George-Barden Act, for the promotion of vocational training in agriculture, home economics, and trade and industry. In the international field the Office of Education has charge of student and teacher exchange programs and the evaluation of credentials issued by foreign educational institutions. For many years this office has given a great deal of attention to collecting statistics relating to primary and secondary schools and universities in the United States and to the carrying on

of research studies in educational administration and curriculum. These reports and studies are made available to the state and local school authorities and the Office of Education serves in an advisory and consultative capacity to these authorities.

Public Housing

Indifferent Record Prior to 1937 It is probable that no major country in the world has been so indifferent to public housing programs 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. The United States has some of the worst metropolitan slums in the entire world, while some of its 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 national government entered the field in a small way in 1933, when it appropriated $25,000,000 for subsistence homesteads. Although great publicity was given to this project and extravagant claims made as to anticipated results,[32] this project turned out to be a great disappointment. Plans were not drawn with much common sense, with the result that houses which were intended for people with incomes of $1,500 or less and announced as costing $4,000 or $5,000, actually finally ran to $12,000 or $15,000 in some cases.

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 former undertakings varied in their usefulness and general success; a Negro slum-clearance project in Indianapolis was left more or less abandoned for months while its brick walls cracked and sagged, while a huge project covering some twelve blocks in the Williamsburg area of New York City apparently achieved considerable success. Although several insurance companies responded, the efforts to assist 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

[32] The widely advertised resettlement of relief recipients on Alaskan farms was a part of this project, and similar experiments were also conducted within the several states.

housing. The Wagner-Steagall Act of 1937 provided for a United States Housing Authority with an initial borrowing 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 which it examined with care and either accepted or rejected. 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. No state was permitted to receive more than 10 per cent of the funds available. The amount expended per family dwelling unit was limited to $4,000 or $1,000 per room in cities under half a million—in larger cities it could go up to $5,000 per unit or $1,250 per room. These projects were intended for urban dwellers, were expected to displace an equal amount of slum dwellings, and could be rented only to those whose incomes did not exceed a stated sum, usually $1,500 per year.[33]

Difficulties Encountered by U.S.H.A. Applications poured in on the U.S.H.A. until the amount of money available was assigned. Construction started shortly thereafter and many projects were finished within a few years, although the war held up completion in certain cases. There was vigorous demand on the part of lower middle-class people for the new quarters, but the very poor found the prices rather stiff, despite the federal subsidies. It was alleged that new slums were created by the poor who were dispossessed from the tenements which had to be razed to make way for the new housing. Nevertheless, there was considerable sentiment to appropriate large additional sums for extending the experiment. The President requested new appropriations from Congress, but the opposition of private real-estate interests was sufficient to defeat the passage.

Defense Housing Problems The national defense program brought additional housing problems both to the national government and the local governments. Cities which had normally given residence to fifty thousand persons found themselves faced with the necessity of accommodating additional thousands brought in to 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

[33] For additional discussion, see Nathan Straus, *The Seven Myths of Housing*, Alfred A. Knopf, New York, 1944, and M. W. Strauss and T. Wegg, *Housing Comes of Age*, Oxford University Press, New York, 1938.

time to time appropriated 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 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. Some of them were trying to do one thing and others might be doing substantially the same thing or attempting something quite different; frequently their efforts were far from co-ordinated. Some of the building was so poorly planned that the workers for whom it was intended refused to occupy the new houses. The situation became so unsatisfactory that the President issued an executive order on February 24, 1942, creating 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. With the demobilization program underway following World War II, it became apparent that housing for veterans constituted one of the major problems confronting the United States.[34] In order to push the builders the President went outside of the National Housing Agency and appointed a housing expediter to do everything possible to see that 2,700,000 housing units were constructed during 1946–1947. Many difficulties were encountered and the housing expediter resigned.

The Housing and Home Finance Agency In 1947, the wartime plan of bringing the various housing activities of the national government together under a single agency was made permanent. For various reasons a new title seemed desirable and the Housing and Home Finance Agency took the place of the National Housing Agency. Headed by an administrator appointed by the President with the consent of the Senate, the Housing and Home Finance is subdivided into a Federal Housing Administration, a Home Loan Bank Board, and a Public Housing Administration. A National Housing Council, made up of *ex officio* members drawn from the Reconstruction Finance Corporation, Veterans Administration, Department of Agriculture, Department of Commerce, and the Housing and Home Finance Agency, is charged with co-ordinating housing activities of the government with other programs.

Public Housing Administration The Federal Housing Administration and Home Loan Bank Board are primarily credit agencies and have been discussed along with other national credit bodies in another chapter.[35] It remains here to examine the functions of the third subdivision of the Housing and Home Finance Agency: the Public Housing Administration. Headed by a Public Housing Commissioner appointed by the President with the consent of the

[34] For an official statement, see the National Housing Agency, *Housing Needs*, Government Printing Office, Washington, 1944.

[35] See Chap. 30.

Senate, the Public Housing Administration took over the work of the old United States Housing Administration as specified under the act of 1937. It was also given responsibility under the Lanham Act for administering the defense housing projects, being instructed to dispose of such property as expeditiously as possible. Thus it may be seen that prior to 1949 it had comparatively little to do. Various proposals were made in every session of Congress following World War II looking toward an expanded public housing program, but a combination of disagreement as to details and the opposition of real estate interests and private construction concerns prevented the passage of legislation despite the mounting pressure from veterans and other groups desperately searching for a place to live.

The Housing Act of 1949 In July, 1949 Congress finally agreed on a far-reaching new housing law which gave various housing bodies increased responsibility. Particularly significant were the sections relating to public housing. Two programs were authorized which deserve mention. Under the first federal contributions up to $308,000,000 may be made annually over a period of forty years to subsidize rents for low-income families and to enable local housing authorities to construct 810,000 housing units during the period 1949–1955. Local authorities are given the right to select tenants and fix the rents and the national government makes up the difference between what the occupants can pay and what the housing projects cost. The second program is directed at slum clearance and authorizes such projects over a five-year period to a total of $1,500,000,000, with the national government paying one third of the cost and loaning the local communities the remaining two thirds.

The Housing Act of 1950 Despite the achievements promised by the Housing Act of 1949 strong sentiment continued for additional legislation. President Truman took an active part in the movement and recommended that two billion dollars be authorized for financing low-income housing on a co-operative basis. Congress refused to approve the co-operative scheme, but it did pass a new housing act in the spring of 1950 which contributed to the public housing program in some respects though it was perhaps more directed toward assisting the Federal Housing Administration in meeting the demands of private home owners. Colleges and universities may receive loans under the act to the extent of $300,000,000 to assist in providing student and faculty housing.[36] Authorization was given to transfer to the states and local governments 145,000 units of Lanham Act housing built during the war years for use as low rental housing.

[36] These loans could run for as long as forty years at an interest rate approximating 2.55 per cent.

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35. Public Planning and Conservation

Perhaps no other important government has given so little attention to public planning and conservation as the United States. In general, the policy has been to live from day to day and from year to year, trusting that somehow or other the future would take care of itself. The same experiments, such as silver purchases, have been tried over and over again, despite the serious shortcomings which have been apparent. Great amounts of money have been poured into projects, such as the Passamaquoddy hydroelectric fiasco, that even had they been carefully planned would have been of questionable wisdom. Soil erosion has proceeded to the point where some alarmists predict that the American people will be starving in a quarter of a century. Timber resources which once exceeded those of any other country with the exception of the Soviet Union have been permitted to dwindle away in the most prodigal fashion, until an acute shortage seems in the offing. But with the hitherto abundant resources and great wealth of the United States, such a careless course has thus far not produced a catastrophe, though some observers believe that the United States narrowly missed such an experience during the early years of the nineteen thirties. How far such good fortune may continue is a hotly debated matter. During the last decade or so increasing attention has been given to planning for the future and conserving resources and this trend may continue.

The Problem of Public Planning

American Attitude toward Planning During the earlier part of its national history the United States was so generously endowed with natural resources that it seemed quite unnecessary to look to the future. True there were periodic panics which caused great upheaval along an 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 the population has doubled and redoubled, spreading from coast to coast, the generous margin of wealth which has been more or less taken for granted has diminished appreciably, until there is now some question as to how much remains. Nevertheless, despite the all too numerous indications of grave future troubles, the American people for the most part have been reluctant to plan steps that might at least keep the situation within

control, even if a complete preventive is out of the question. What is the explanation of this strange attitude? Some would say that the United States is 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, especially in these days of world turmoil. Moreover, though the New World was primitive, the American people did not start out as barbarians; they had the background of the English, German, Scandinavian, French and Italian stock from which they sprang and should have found a century and a half a long enough period for childhood and youth. To a considerable extent it is probable that the very richness of the American 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 not easy to transfer to a more responsible attitude, even when the surplus is rapidly vanishing, especially when scientific processes seem to counteract at least some of the losses.

American Planning Phobia A contributing factor, particularly during recent years, has been the phobia associated with public planning in the United States. Unfortunately public planning is identified in the minds of large numbers of people with the dictatorships, bolshevism, the appropriation of private property, mass "liquidation," [1] the abandonment of the church, and all manner of other evil. Just why public planning should be regarded as synonymous with these practices, it is not easy to determine. Doubtless the publicity which has been given to the Five-year Plans of the Soviet Union and the spectacular plans of the various dictators has served to convince some people that planning is totalitarianism. At any rate the mere mention of government planning is enough to send cold shivers down the spines of many American citizens. This is, of course, reflected by the suspicion with which Congress itself observes the planning agencies of the federal government.

Actually there seems no valid reason for associating public planning with any particular form of government. All governments, both democratic and totalitarian, capitalist and socialist, 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. Public planning in many instances is identified with a controlled economy and the abandonment of private enterprise and this probably accounts for some of the rabid hostility displayed in certain quarters. Of course, public planning is employed where such programs are adopted, but it is not justifiable

[1] "Liquidation" is the term applied to the practice of killing off large numbers of people who are suspected of being inimical to the persons or the programs of men who have seized the leading places in a government.

to conclude that the planning device is any more exclusive to these practices than are budget-making, taxation, pensions, and various other tools of government.

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. It may be, of course, that their program concerns the immediate future, but it is nonetheless a form of planning. In the democratic governments, especially in the representative form which we have, there is not the unifying force of a single strong man or a small group of dominant leaders such as the Politbureau in the Soviet Union. The President may try to furnish leadership, but even when a vigorous and ingenious man occupies the office, it is difficult for him to harness all elements of the government into a working team to the extent to be noted in certain other countries. 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. Adequate public planning may not entirely correct the situation, but it does make it possible to handle problems which if left unattended may lead to serious weakness in the body politic.

Difficulties of Planning in a Democracy 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 necessary to obtain the support of various powerful pressure groups and the consent of many jealous agencies and branches even before the plan can be accepted at all. Moreover, while a ranking administrator in a totalitarian state can be and often is sent to his death because he fails to carry out his part of a plan, in a democratic country the most severe penalty is likely to be removal from office.

The total result is that extensive planning is infinitely difficult under a democratic form of government. Indeed there are those who regard it as beyond the realm of possibility. However, as public problems become more complicated and as natural resources approach the point of exhaustion, it would seem that democratic peoples simply must regiment themselves enough to make feasible the necessary amount of long-range 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 private

enterprise and individual initiative. 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 United States.

Over-all Planning An over-all plan sometimes designated 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 full enough of holes that it cannot do more than keep afloat. The Five-year Plans which the Soviet Union has followed since the late 1920's are variously evaluated as far as accomplishments go, but there is considerable doubt whether it would be desirable for the United States to attempt anything so elaborate.[2]

Specific Planning Another form of public planning which may be designated "specific planning" occasions less publicity than over-all planning but it has, nevertheless, many advantages. 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 less organized opposition than would a master plan. Of course, one group is likely to object to one of the plans and a second group to see serious weaknesses in another, but all of these opponents will not focus on a single point.

The Problem of Co-ordination It must be admitted, however, that specific planning has its weaknesses. Planning of such a type may be so incomplete that it can do little to meet a critical situation. Also, one such plan may seek to bring about a certain end, while another plan may aim at the very opposite. Any one familiar with the early New Deal planning will perhaps agree that this was a serious fault in that connection. The plans of one agency called for increasing farm prices, while another corporation tried to beat prices down. One plan aimed at reasonable inflation of a general character, despite the fact that another seemed to attempt the *status quo* or even deflation. In contrast to schemes that would plead for the co-operation of private business and the restoration of confidence among businessmen, there were plans that undermined what confidence there was. 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

[2] For a more detailed discussion of planning in the Soviet Union, see F. A. Ogg and Harold Zink, *Modern Foreign Governments*, The Macmillan Company, New York, 1949, Chap. 39.

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 with responsibility and challenged by Congress that it is questionable, judging from recent experience, whether he could go far in this direction. A strengthened cabinet might be the best agency of all to undertake the necessary integration. Representing both Congress and the general executive departments, it should have a broad point of view, be reasonably free from selfish interests, and possess the prestige to carry its decision into effect.

National Planning Machinery

Types of Planning Agencies At the present time there is no over-all planning agency in the United States, although some citizens strongly urge such a body and during an earlier period, as will be noted below, the National Resources Planning Board occupied this position. There are however various committees and bureaus which carry on planning activities which are so basic to the country that they may be regarded as transcending departmental lines. Perhaps the most important of these is the National Security Council which has the very heavy responsibility of planning for the national defense.[3] The National Security Resources Board [4] and the Atomic Energy Commission,[5] although somewhat less broad in scope perhaps, would also seem to fall into this category. In the financial and administrative fields the Federal Reserve Board [6] and the Bureau of the Budget [7] are noteworthy as planning agencies. On the economic side there is the Council of Economic Advisers.[8] In the foreign relations field there is the Policy Planning Staff.[9] In the administration of justice there is the Judicial Conference of the United States.[10] Some would doubtless include the Liaison Office for Personnel Management [11] and the Civil Service Commission [12] in the list; there is some reason for considering the Joint Chiefs of Staff,[13] the Economic Co-operation Administration,[14] Central Intelligence Agency,[15] the National Advisory Committee for Aeronautics,[16] and the National Housing Council [17] as belonging to the supra-departmental type of planning body. Finally, there are the numerous departmental planning agencies. There is hardly an agency large or small of the national government which at present is not engaged in some planning. Some of them have special sections which give their attention to this function; others make no special provision but expect their staff to plan as well as administer.

[3] See Chap. 39 for discussion.
[4] See Chap. 39.
[5] See Chap. 39.
[6] See Chap. 30.
[7] See Chap. 29.
[8] See Chap. 15.
[9] See Chap. 38.
[10] See Chap. 23.
[11] See Chap. 27.
[12] See Chap. 27.
[13] See Chap. 39.
[14] See Chap. 38.
[15] See Chap. 39.
[16] See Chap. 36.
[17] See Chap. 34.

National Resources Planning Board While there is at present no single over-all national planning body, it may be profitable to examine briefly the provisions made during the Franklin D. Roosevelt administration in this connection. 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.[18] Experts were recruited on a full-time basis or called in from the universities and research institutions to undertake special studies. The formation of state planning boards was encouraged, until most of the states had at least paper agencies of this character. A committee of eight men [19] laid down policies which were put into effect by a full-time director and staff with offices in Washington. Regional offices sought to co-ordinate the efforts of the state planning authorities with those of the national committee. Congress, reflecting the popular distrust of planning, became increasingly 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.[20] For one reason or 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.

Nature of the Work of the National Resources Planning Board During its relatively brief life the National Resources Planning Board produced a number of valuable studies and worth-while recommendations. The whole problem of land use was investigated. Water use, energy, regional planning, housing, consumption, technology, and population also came in for attention.[21] The mineral resources of the country were studied. One of the most valuable reports was made by an urbanism committee which the central committee set

[18] 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.

[19] This committee was interdepartmental in character, including in its membership the Secretaries of Agriculture, Commerce, Labor, War, and Interior, Harry Hopkins, and two civilian members, Mr. Frederic A. Delano and Professor Charles E. Merriam. An executive committee of three members handled much of the work.

[20] This was done in connection with the administration reorganization authorized in the act of 1939. This particular change was announced in the Reorganization 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."

[21] For a list of its reports, see pamphlet entitled "National Resources Planning Board," pp. 5-10, May 1, 1941.

up to investigate the problem of cities.[22] How much practical influence these studies and recommendations have had it is difficult to judge. When certain legislation has been undertaken, the findings have been available as a foundation for drafting bills. Thus far it is probably accurate to say that the practical results have not been spectacular, but the very nature of some of the reports is such that a considerable period of time will be necessary to determine their influence. Early in 1941, the National Resources Planning Board set itself the task of drafting a plan and stimulating the interest of the state and local governments in planning for the period after the national emergency. The basic principles on which such planning should be based were set forth as follows:

> In accordance with the need for full employment and the decisions the American people have already made on the maintenance and extension of personal freedom, security, and opportunity, the central objective of our post-defense planning may be summarized as follows: (1) We must plan for full employment, for maintaining the national income at 100 billion dollars a year at least; (2) We must plan to do this without requiring work from youth who should be in school . . . and without asking anyone to work regularly in mines, factories, transportation, or offices more than forty hours a week or fifty weeks a year, or to sacrifice the wage standards which have been set; (3) We must plan . . . to use to the utmost our system of modified free enterprise with its voluntary employment, its special reward for effort, imagination and improvement, its elasticity and competition . . .; etc.[23]

The following fields were specified as requiring exploration and planning: demobilization, public works, industrial methods, service industries, including medical service, entertainment, travel, social security and work relief, financing, and the international scene, including the feeding, clothing, and furnishing of medical care to other nations.

Conservation of Natural Resources

The problem of planning is closely related to the conservation of natural resources, for without planning there is likely to be little or no activity in the conservation field. Even the national government cannot reforest all of the cutover land, reclaim all of the arid wastes, or develop all of the water power at one fell swoop. A step must be taken now and another when additional funds are available, but in any case plans must be drafted, even in the case of the work which is to be undertaken at once. The President's Committee on Administrative Management considered conservation so important that it

[22] 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.

[23] See a pamphlet issued by the board entitled "After Defense What?" (1941).

would have reorganized the present Department of the Interior into a Department of Conservation [24] that would rank as one of 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. The lumbering interests were by no means enthusiastic at the prospect of having lands that they might want to cut removed from the market, but public sentiment gradually neutralized their opposition. Theodore Roosevelt and his friend Gifford Pinchot were among the pioneers in the field and, as President, Mr. Roosevelt gave not a little attention to the realization of the plans which had long been urged upon the government. That part of the national domain which was timbered was gradually set aside into a series of national forests scattered over some forty of the states. At present there are more than 150 of these publicly owned forests which vary from comparatively small acreages to vast stretches surpassing the smaller states in area. Exceeding 180,000,000 acres in size, 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. Twelve forest and range experiment stations scattered over the country and a Forest Products Laboratory at Madison, Wisconsin carry on research relating to various problems of forest and wild-land management and the use of forest products. But the Forest Service is primarily entrusted with the administration of the far-flung areas of national forests and for this purpose is organized on the basis of ten regions. 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—in a single recent year 145,000,000 trees were planted on 151,337 acres. Under certain conditions ranchers are permitted to use the national forests for grazing purposes, but stringent regulations now control the

[24] See the committee's report, *Administrative Management in the United States*, Government Printing Office, Washington, 1937, p. 32.

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 movement has not prospered in the United States as it has in European countries. Despite centuries of lumbering, Germany, at least until 1939, had timber resources which, considering the large population and comparatively small area, were unmatched. Even on private property trees could not be cut without government permission, under public supervision, and them unless two trees had been planted for every one cut. 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 by some lumber companies 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.[25] Since World War II an encouraging start has been made on a long-range reforestation program which will extend over fifteen years and eventually reforest 3,200,000 acres of land at a cost of some $119,000,000.

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 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. The strip to be covered was approximately one hundred miles wide, although plantings were to be in spots rather than over all of that territory. The Forest Service was authorized to supervise the work of the needy residents in the area affected. Many million 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.[26]

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

[25] However, some of the more responsible lumber companies now carry on tree planting in areas which they control.

[26] See recent *Reports of the Chief of the Forest Service*, Government Printing Office, Washington, for additional information relating to the program.

Service [27] 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. Political considerations have at times 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 districts within 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 had to be 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, Boulder, Bonneville, Roosevelt, and Coolidge, are well known and not only have importance for irrigation purposes but also for the generation of power.

A Reclamation Paradox One of the current problems arising out of the reclamation of arid regions of the West is quite vexing—how to reconcile the preparation of more acres for cultivation when the Department of Agriculture is working to remove other acres from cultivation. The reclaimed land may not be exactly marginal land, but the size of the annual charges assessed against it sometimes makes it difficult to produce enough to pay for labor and equipment, to say nothing of a profit. From the national standpoint there seems no compelling reason for spending large sums of public money on projects that are not of the greatest importance. Most of the projects recently in progress have been justifiable from a national standpoint, but others are of interest only to the states and localities in which they are situated.[28]

Oil Control Although the United States has been one of the leading producers of oil in the world, it is estimated that even its supply may run out within three to five decades.[29] Considering the importance of petroleum products to industry and individual comfort, it has been argued that the national 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. Some of the orders issued by the administrator of the code were unnecessarily harsh perhaps; at least there was complaint among the small producers. The so-called "Hot Oil" case was appealed to the Supreme Court which decided that the federal government had exceeded its authority.[30] Congress then passed a statute which

[27] See anon., "The U. S. Reclamation Service," *Service Monograph 2*, Brookings Institution, Washington, 1919.

[28] For a discussion of the general justification of reclamation, see D. Lampen, *Economic and Social Aspects of Federal Reclamation*, Johns Hopkins Press, Baltimore, 1930.

[29] Estimates vary and are not very dependable because they are based on estimates of consumption and productiveness.

[30] *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935).

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 [31] which provides for uniform rules in regard to the amount of oil to be taken from wells.

Conservation of Minerals Attempts have been made by the federal government to regulate coal mining, but other minerals have been left more or less untouched. The N.R.A. set up a coal code which, of course, fell to earth with the other codes after the Supreme Court had declared the N.I.R.A. unconstitutional. Then Congress passed the Guffey Act of 1935 which provided for a Bituminous Coal Commission to supervise the production of soft coal. This, too, the Supreme Court threw out on the ground that mining was not included under the commerce clause of the Constitution.[32] Still undaunted, Congress passed another act which set up a Bituminous Coal Commission with more definite and restricted powers. In the meantime the Supreme Court had become more liberal and this together with the modified provisions of the new law served to secure the approval of the highest court. The coal commission, largely political in composition, got off to a bad start and spent much of its time in internal wrangling. The President finally had to intervene and the general record was such that Congress declined to extend its life in 1943.

Soil Conservation Many people do not think of the soil as the greatest of our natural resources, although actually it 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, he argues. 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 a very large amount of land to be ruined beyond easy repair; an even larger area has 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 steps toward coping with the problem.[33]

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. The passenger pigeon is entirely gone; only a small remnant of the great

[31] In 1950 twenty states had signed the compact.
[32] *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936).
[33] See Chap. 32 for a fuller discussion of this act.

herds of bison is left; nearly every important fishing area is dangerously near to being fished out—the cod and halibut fisheries of the Atlantic coast, the trout and whitefish of the great lakes, and the salmon, seal, and halibut fisheries of the Pacific coast do not produce nearly the volume they might if carefully preserved and intelligently fished. Of late years the national government has recognized its responsibility toward fish and game conservation. Under the treaty power and the authority to regulate foreign and interstate commerce, the national government has taken some steps toward control. The fur-bearing seal in Alaska have been protected by a national monopoly and the herd which prior to that time was nearly depleted has been restored to a million or so animals. Likewise, some effort has been made by the Fish and Wildlife Service to regulate the catch in all national waters. Migratory birds have been protected by the Migratory Bird Treaty with Canada which is enforced together with national game laws by federal game wardens. Approximately two hundred refuges are operated for the safeguarding of waterfowl. Herds of elk and bison are protected and in bad winters fed by national park employees and approximately one hundred fish hatcheries are maintained with which to restock streams and lakes. Also, by means of the grant-in-aid system authorized by the Federal Aid in Wildlife Restoration Act the states are encouraged to carry on similar wildlife programs.

Water Power The United States is fortunate in having many rivers providing large amounts of water power which can be used for the generating of electricity. As far back as 1920 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. Then Congress decided to reorganize the commission by providing five full-time members to be appointed by the President with the consent of the Senate. Still the commission did not make much headway until President Roosevelt appointed F. R. McNinch as the chairman of the commission. Under his vigorous and, in the eyes of the utilities, even savage leadership the Federal Power Commission labored energetically to meet the threats which certain privately owned utilities offered. It seemed to be the belief of some of these utilities that the water resources of the United States belonged to them rather than to the people. In 1940 the Supreme Court in the New River case [34] upheld the strict regulation by the commission of the use of public water power by private utilities.

The Tennessee Valley Authority It was argued by the government before the Supreme Court [35] that the Tennessee Valley Authority was intended to further flood control, to improve the navigability of the waters of the United States, and to add to the national defense. It might, therefore, be

[34] *United States* v. *Appalachian Electric Power Company*, 85 L. Ed. 201 (1940).
[35] See *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288 (1936).

appropriately discussed under several headings in this book, but from a practical standpoint it seems to belong to this particular chapter. 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. The original act relating to the T.V.A. was passed by Congress in 1933, but it has been amended and added to until it is far broader than was at first anticipated.

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.[36] 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, educates the rural inhabitants, seeks to prevent soil erosion, demonstrates the labor-saving devices made possible by cheap electric current, encourages the towns and cities to provide electricity to their inhabitants at reasonable rates, and maintains what it contends to be the best public personnel system in the United States.[37]

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 the well-written book by former Chairman David E. Lilienthal 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.[38] It is difficult to ignore the improvements that have been effected by the T.V.A. in farming, household appliances, educational methods, and public health.[39] On the other hand, if the utilities are to be believed, the price paid has been great. They say that millions of dollars have been literally stolen by the government from the pockets of the stockholders in private-utility companies and that the entire structure of private business is threatened by the unfair competition offered by the T.V.A. Some challenge the statistics which the T.V.A. directors produce to show what the generating of electricity has cost.[40] Certain politicians

[36] Main offices are at Knoxville, Tennessee.

[37] See C. H. Pritchett, "The Tennessee Valley Authority as a Government Corporation," *Social Forces*, Vol. XVI, pp. 120–130, October, 1937.

[38] See David E. Lilienthal, *Democracy on the March*, Harper & Brothers, New York, 1944.

[39] In a recent year the average T.V.A domestic consumer used 1707 kilowatts in contrast to 1117 kilowatts, the national average; he paid 1.88 cents per kilowatt-hour in contrast to a national average of 3.55 cents.

[40] The statistics break down the amounts spent for flood control and navigation improve-

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 governments 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.[41] 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.[42]

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 approximately 56,600,000 acres as Indian land. The Bureau of Indian Affairs in the Department of the Interior has been created to supervise these lands and in a general way promote the welfare of more than 417,000 Indians, including some 30,000 Indians, Aleuts, and Eskimos in Alaska under provisions of nearly five thousand statutes and treaties. Indian children have been sent either to special schools—which total some 400—or to regular state public schools. While some of the land has been held in trust and the mineral resources leased to private interests, much of it has been divided up into small sections and farming has been encouraged. The over-all record has been a rather striking and much publicized failure. Indian agents have sometimes been outstandingly corrupt and have frequently had little interest in their charges. Indian children educated according to white ideals have turned out to be complete misfits, held in contempt both by the whites and by the tribal circle. Individual Indians who had been given small plots of land made no attempt to cultivate and often sold out for enough money to finance a few months of dissipation. A few years ago, after it had for a long time been evident that the bureau's methods were a failure, the Indian policy was radically revamped under the Indian Reorganization Act of 1934. The new emphasis was not on "civilizing" the Indian but on a restoration of community

ment from those devoted to electric generation. It may be added that competent persons not unduly critical of the T.V A. find these figures somewhat unsatisfactory.

[41] Some differences are to be noted in the several studies that have dealt with the T.V A, though in general the conclusions have been distinctly favorable. See, for example, C. H. Pritchett, *The Tennessee Valley Authority*, University of North Carolina Press, Chapel Hill, 1943, and H. Finer, *The T.V.A.*, International Labor Office, Montreal, 1944.

[42] Proposals have been made to set up agencies similar to T.V.A. for other river systems, but various obstacles have prevented far-reaching action. Something has been done in this direction in the case of the Columbia River. There has been much discussion of a Missouri Valley Authority, but various factors, including rivalry between the Army Engineers and the Bureau of Reclamation, have combined to defeat the necessary congressional action. However, various programs are being carried on in the Missouri Basin which have some bearing on such a program. For example, seventeen contracts totaling $21,000,000 were recently awarded in Wyoming, Montana, North Dakota, and South Dakota for reclamation projects.

institutions and industries. The plan was to foster tribal institutions and to introduce some of the technical advantages of the white culture. The goal at present is not a swift transformation to modern life but a gradual development and redirection, stressing the economic and social rehabilitation of the Indians, the "adaptation of native Indian institutions and culture to modern conditions, and the organization of Indian tribes so that they can manage their own affairs."

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36. Transportation, Power, and Communications

In some countries the transportation, power, 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, such as England and France, 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 the railroads are government owned and operated. However, in the United States these facilities are very largely under private ownership and management. The Alaska Railroad, the Panama Railroad which includes both a railroad and steamship line, and the transmission lines of the Tennessee Valley Authority, are examples of public ownership, but the railroads in general and the air lines are privately owned.

Regulation Not Ownership the American Way 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 an earlier time even the regulation of these utilities was largely omitted, but their monopolistic character, the dependence of the public on their services, and the questionable practices in which some of them indulged made it necessary to impose a certain measure of government regulation. While there is some sentiment in the United States for public ownership of these properties, the bulk of the opinion seems to favor private status. At the present time there is, however, general admission that the public authorities must in the public interest undertake a certain amount of regulation of rates, service, financial practices, and political activities. The main debate is not whether there shall be regulation but rather how much and exactly what regulation is justifiable. Some would go very far in laying down detailed rules to guide the private owners, while others favor a bare minimum of public supervision. In general, there has been a trend in the direction of increased regulation, especially since the economic debacle starting in 1929, but even so the leeway permitted private management is considerable. An exact statement of the extent of government regulation in the United States is almost impossible. To begin with, the national government shares this field with the states and the latter

are by no means uniform in practices. Even within the federal sphere there is variation since the degree is contingent upon congressional authorization as well as upon the energy with which the supervising agencies operate. The legislation setting up the Interstate Commerce Commission is more than half a century old and with amendments confers extensive authority over the railroads. It is only within recent years that interstate bus and truck lines have been brought under federal regulation at all and as late as 1941 the Interstate Commerce Commission requested an expansion of its power so that it could establish uniform rules for the weight, height, and length of trucks and buses. Newer agencies rarely have the measure of power which the older ones exercise and hence must proceed more cautiously. Finally, the same commission operating under the same law will present divergent records under two sets of officials.

Basis of the Federal Program There are two clauses in the Constitution which have an important bearing on the activities of the national government relating to transportation, transmission, and communications. The post office is administered under the grant to Congress of the power "to establish post-offices and post-roads:" [1] but the greater part of the regulatory program grows out of the power "to regulate commerce with foreign nations and among the several states." [2] The former clause has required little interpretation, for it has generally been regarded as quite clear. However, the commerce clause, despite its apparent clarity and simplicity, has occasioned conflict between the Supreme Court and Congress during most of the history of the country. Pushed on by public opinion or political considerations, Congress has seen fit to attempt numerous excursions into the regulation of interstate and foreign commerce. In so far as these have concerned interstate railroads, steamship lines, truck and bus companies, telephone and telegraph companies, and other aspects of transportation, transmission, and communications, the Supreme Court has ordinarily been quite liberal in upholding their validity, but when Congress has sought to bring in industry, mining, and agriculture the court has until recently interpreted the clause rather strictly.

Agencies of Control It is interesting to note that Congress has created almost all of the regulatory agencies outside of the major departments and that, despite recent endeavors in the field of administrative reorganization, they remain independent establishments. The President's Committee on Administrative Management would have brought the commissions which now perform these regulatory functions into at least nominal relationship with the Department of Commerce, but Congress rejected that recommendation directly in

[1] Art. I, sec. 8.

[2] *Ibid.* Also some of the authority of the federal government, particularly in the field of water-power regulation, is derived from the clause: "the Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territory or other Property belonging to the United States; . . ." (Art. IV, sec. 3). The power to dispose of or lease public lands carries with it the power to make contractual regulations about those lands.

1937 and again indirectly in 1939 when it specifically excluded the most important independent commissions from the scope of the Reorganization Act. The Hoover Commission also favored a closer relationship between certain commissions and the great administrative departments, especially with the Department of Commerce. The post-office system is, of course, administered by the Post Office Department under the Postmaster General; the regulatory functions are primarily entrusted to such independent establishments as the Interstate Commerce Commission, the Federal Communications Commission, and the Federal Power Commission. Perhaps the best example of an exception is the Civil Aeronautics Board which is attached to the Department of Commerce, although the executive order which placed it there specifically stated that its rule-making functions and adjudications should not be controlled by the Secretary of Commerce.

Transportation

Several agencies of the national government exercise extensive authority over foreign and interstate transportation. The Interstate Commerce Commission is so well established that it ordinarily is given first place among all of the independent establishments. In 1950 an under secretaryship was set up in the Department of Commerce to supervise the several transportation subdivisions of that department. The Coast Guard in the Treasury Department performs important services relating to ocean transportation.

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 difficult to obtain a broad view of their net effect. However, the general trend has been in the direction of making the I.C.C. more important.[3] 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 more than 2500 persons and it occupies one of the newer buildings in Washington which in addition to numerous offices has several impressive chambers for holding hearings. It is organized into five main subdivisions which carry on the routine work entrusted to it. 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.

[3] Acts passed by Congress in 1906, 1912, 1920, 1935, 1940, and 1942 have extended the authority of the Interstate Commerce Commission.

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.[4] 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, 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 transportation companies, representatives of the public or industry, 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 had responsibility for the administrative work of the subdivisions into which the I.C.C. is organized.[5] Most of the staff members are engaged in carrying on the routine duties assigned to the commission, though the reports which they draft and the investigations which they carry on may finally be made the basis for a hearing before the full commission.

Difficulties Incident to Rate Fixing The task of fixing rates is always an arduous one, subject to differences of opinion as well as involving enormous amounts of intricate calculations. For example, in ordering a cut of coach fares to 2 cents per mile the I.C.C. encountered the opposition of many railroads which maintained that a reduction was not likely to assist them in improving their net revenues. Even after a trial period had demonstrated that a 2-cent rate would induce more people to travel, the railroads still were of the opinion that with a 2½-cent rate the demand would be just as heavy and in addition the fares more remunerative. So the commission reluctantly

[4] 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.

[5] Under one of the reorganization plans presented by the President to Congress in 1950, carrying out the recommendations of the Hoover Commission, the chairman of the Interstate Commerce Commission was to assume primary responsibility for the general administration, but this was vetoed by Congress.

approved a trial until it was demonstrated that people would not pay the higher rate in anything like the numbers that had been anticipated. During recent years it has followed a more conservative policy and permitted a number of rate increases despite evidence that a rate double that of prewar years leads to a heavy falling off in travel.

The Problem of Freight Rates Freight rates are possibly even more of a problem because they enter so intimately into the financial returns of most railroads. For years there has been a bitter controversy over the rate differential which divides the country into three parts. As recently as 1945 the I.C.C. made a decision which in some measure at least sought to provide uniform freight rates on manufactured goods throughout the country.

Regulation of Service The general service which interstate carriers render must be approved by the I.C.C. A record of trains which are consistently late in arriving may, after a time, call for investigation; cars which are not maintained in reasonably sanitary conditions also may, if they are prevalent, come in for attention. 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 an interstate line or dropping a train from the schedule, the railroad must receive the consent of the I.C.C.

Miscellaneous 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 with a par value exceeding $500,000, 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.[6]

Far-reaching Authority of the I.C.C. The authority of the I.C.C., over the railroads particularly, is so far-reaching that some observers have contended that it amounts to government operation despite the private ownership of the property. That the regulation is extensive can hardly be disputed, but even so the railroad managements are permitted sufficient leeway to rule out government operation.

Maritime Problems Although the United States leads the world in railroad mileage and possibly in railroad standards and ranks high in commercial aviation, it has for some time held an unenviable position in water transportation, especially in so far as a merchant marine plying between American shores and foreign ports is involved. During certain periods of history the United States has been widely known because of its merchant marine, but

[6] Much additional information on the specific functions of the I.C.C. may be obtained from a series of articles which appeared in the *George Washington Law Review* in 1937. See Vol. V, pp. 289–461, March, 1937.

after World War I the situation became increasingly embarrassing, until its vessels were the source of amusement in many quarters. To begin with, the United States had a very small fleet in comparison with England and Germany, especially in the passenger class. Perhaps more important than that was the fact that the vessels, both passenger and freight, were antiquated and slow. Suddenly in the middle 1930's the United States awoke to a realization that it had scarcely one modern vessel and that the new Japanese freighters with an operating speed of twenty knots or more were making American ships with a speed of only twelve to fifteen knots seem like horses and buggies in an age of motor cars. 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 It is probably obvious that 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 [7] and then proceeded to formulate a series of proposals for submission to Congress looking toward the construction of approximately fifty merchant vessels per year; on this basis substantial appropriations were made during the prewar years. 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. During 1942, some 700 vessels of 8,000,000 deadweight tons were delivered while the following years saw this rate of expansion increased, with all previous records broken. The end of the war left the United States with more than half of all of the world tonnage. 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.

Organization Problems The Maritime Commission had hardly proceeded to the point where it could be expected to deal effectively with the problem of a merchant marine when it was supplanted by the War Shipping Administration which was created to deal with the pressing demands occasioned by the war. When the Maritime Commission again took over after the war, it encountered a series of difficulties which proved embarrassing. Its accounting system found it difficult to handle the work to be done and occasioned serious criticism; it found it difficult to get the ear of the President in dealing with

[7] This report was published as *Economic Survey of the American Merchant Marine*, Government Printing Office, Washington, 1937.

major program items. When the Hoover Commission studied the administrative establishment, it concluded that the Maritime Commission should be abandoned as an independent agency and brought together with certain other transportation services under the Department of Commerce. One of the twenty-one proposals for reorganization submitted by President Truman early in 1950, related to the Maritime Commission and in May, 1950, such a transfer was effected. A Maritime Board was set up in the Department of Commerce to handle the regulatory functions of the merchant marine program; a Maritime Administration was created to deal with the day-to-day operations.

The Maritime Board and the Maritime Administration The three-member Maritime Board has a large measure of autonomy, but it is under the administrative control of the Department of Commerce. It has the responsibility for supervising rates, services, and various practices; it awards subsidies; it lays down policies; and it holds hearings to determine various facts which have a significant bearing on merchant marine operations. The Maritime Administration is the agent of the Maritime Board in seeing that the details of the merchant marine program are put into effect. On the basis of the policies and decisions laid down by the Maritime Board the Maritime Administration administers the operating ship program, the subsidy agreements with various companies, and the government-owned shipyards and terminals; it also maintains the reserve fleet.

Financing a Merchant Marine Prior to the act of 1936 the United States had subsidized its merchant marine indirectly on the basis of carrying mail, but it had refused to follow the lead of foreign governments in taking a more direct role in building up a merchant marine. Some of the mail subsidies were shocking in terms of the amount of mail carried—a breakdown revealed that a single letter on some runs might cost the government $1.00 or more. The adverse criticism generated by the exposure of the terms of some of the contracts helped to shift the government to a system of direct subsidization. The new program provides that the national Treasury pay half the cost of building vessels intended for foreign trade, that the remainder of the cost be financed by government loan, and that some share of the operating expenses may be assumed by the government. The plans for the vessels are drafted after consultation with the representatives of the companies that are to receive them.

Merchant Marine Difficulties The task entrusted to the maritime agencies is a difficult one. It is always hard to overtake competitors who have a decided head start. The cost of construction in the United States is out of all proportion to that in foreign countries. Labor costs, prices of material, the disposition of the building companies to look upon the government as fair game, all enter into the picture. The prices have been so out of reason that the government has at times been impelled to throw out all bids. After the boats have

finally been constructed, it is not always easy to find companies with enough resources and experience to operate them efficiently. The apathy of certain American shipping officials is a byword wherever ships flying the United States flag go. Finally, there is the labor problem which in many respects is the most serious of all. The labor organizations which control the employment of those necessary to the land and sea operations of a merchant marine are probably the most independent and excitable to be found. Moreover, the character of Americans who look to the merchant marine for employment is sometimes far from superior. Despite the nautical traditions of past generations in certain sections of the country, enterprising and able young men seem now to have little interest in going to sea. The result has been that the dregs of humanity have sometimes seemed to congregate in a ship's crew. The disciplinary problem has been acute and the service rendered on passenger ships has at times been almost incredibly bad.

The Coast Guard Though primarily charged with policing the coastal waters of the United States and thereby preventing smuggling, dope running, and other illegal practices, the Coast Guard performs various functions which are important in connection with transportation.[8] Its lighthouses, buoys, various aids to navigation, and life-saving facilities on the ocean shores as well as on navigable waters within the United States are essential to the moving of maritime traffic. Less well known perhaps are the activities of the Coast Guard in enforcing safety regulations on board ship and the inspection of both domestic and foreign vessels which enter the waters under the control of the United States. All types of American vessels must be regularly inspected by agents of this service to ascertain whether they are seaworthy, their boilers in proper condition, their lifeboats adequate both from the standpoint of numbers and preservation, and their other equipment in keeping with minimum standards. Foreign passenger vessels must also undergo inspection when they enter American harbors, although they are not usually checked as carefully as domestic craft. In cases of accident this agency holds investigations, attempts to discover the cause, and may fix a penalty on the master of a ship.

The Bureau of Public Roads The Bureau of Public Roads has had various homes during its fairly long life. Set up under the Federal-aid Road Act of 1916 it was placed in the Department of Agriculture where it remained until 1939. The reorganization effected by President Roosevelt in that year transferred the Bureau of Public Roads to the Federal Works Agency. In providing for a General Services Administration in 1949 Congress specified that the Bureau of Public Roads should be included. Shortly thereafter the President moved the bureau to the Department of Commerce in one of the first reorganization plans based on the Hoover Commission report. But irrespective of its exact location in the government hierarchy the work of the Public Roads

[8] The Coast Guard is administered by the Treasury Department during normal times, though during war it has been placed under the Navy Department.

agency has been of great significance. Starting out at a time when most of the highways were local in character to the point where it was commonplace to find them ending at state lines, markings were rare enough that motorists counted themselves fortunate if they did not lose their way, and surfaces were mostly of the crushed rock or dirt variety, the Bureau of Public Roads has seen the most elaborate system of highways in the entire world constructed in the United States. One of its jobs was to confer with state representatives and agree on an integrated plan for a system of national highways crisscrossing the country. More important has been the administering of a grant-in-aid program which has encouraged the states to construct such highways by paying half of the cost out of the national Treasury. In sparsely settled areas special arrangements have had to be worked out so that highway links could be constructed despite the slender resources of the states involved. Current appropriations administered by the Bureau of Public Roads run to approximately half a billion dollars per year. The states submit plans and if these are approved both as to location and standards of construction the Bureau of Public Roads authorizes the payment of federal funds to the extent ordinarily of half the total cost.

The Civil Aeronautics Administration Under the Civil Aeronautics Act of 1938 a Civil Aeronautics Authority was set up to deal with the increasingly important problem of non-military aviation. Consisting of five members, an administrator, and an Air Safety Board of three members, this agency had no more than gotten started when it was reorganized under the Reorganization Act of 1939. The Air Safety Board was abolished and a Civil Aeronautics Board was established to take its place. The Civil Aeronautics Administration was created within the Department of Commerce to administer the detailed program of providing assistance to civil aviation. Headed by a single administrator, the Civil Aeronautics Administration has carried through an elaborate program encouraging the development of civil aviation in the United States. It inspects both aircraft and ground facilities, examines airmen as to competence, and provides for aircraft registration. In addition, it administers the Federal Aid Airport Program under which more than half a billion of dollars is provided out of the national Treasury to assist local governments in developing adequate airports.[9] In this connection, it may be added that it not only approves grants-in-aid but advises in airport planning, construction, and management. A third important function of the Civil Aeronautics Administration has to do with providing navigation facilities. A Federal Airways System, which covers the United States and extends to Alaska and other possessions and totals some 57,368 miles, has been laid out and equipped with air navigation facilities for day and night contact and instrument flying. This

[9] See D. H. Green, "Co-operative Efforts of Federal, State, and Local Governments under a Federal Airport Plan," *State Government*, Vol. XVIII, pp. 75–78, May, 1945. Not more than $100,000,000 can be spent in a single year.

agency maintains seven regional offices in the continental United States and additional offices in Alaska and Hawaii.

The Civil Aeronautics Board The Civil Aeronautics Board, consisting of five members appointed by the President with the consent of the Senate, is an independent agency which handles the rule-making, quasi-judicial, and investigatory duties specified by the Civil Aeronautics Act of 1938. Four main functions are performed as follows: (1) regulation of the economic side of civil aviation, (2) prescribing safety standards, (3) investigation of aircraft accidents, and (4) encouraging the development of international routes. Thus it may be seen that the Civil Aeronautics Board decides on the routes and licenses aviation companies to fly these routes, prescribes or approves rates to be charged, fixes compensation for carrying the mail which means the administering of the subsidy system, lays down the safety standards to be put into effect by the Civil Aeronautics Administration, and investigates accidents and disasters with the view of improving safety in air travel.

Communications

Prior to 1934 the Interstate Commerce Commission was charged with regulating interstate telephone, telegraph, and cable companies, while a Federal Radio Commission gave its attention to radio broadcasting.

Federal Communications Commission In that year 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 and television.[10] 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 and television stations 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 public-service programs; while a third bans scurrilous, indecent, frightening, and other such programs not held to be in the public interest.

[10] For an excellent analysis of the problems presented by the radio, see L. White, *The American Radio*, University of Chicago Press, Chicago, 1947.

F.C.C. Difficulties The F.C.C. has engaged in bitter controversy with the broadcasting companies over many of its policies. The ownership of radio stations by newspapers has not been regarded as very desirable by the commission, which has taken steps to force a separation in certain cases. The monopolies enjoyed by chains, such as the National and Columbia systems, caused concern to the commission and in 1941 led to a pronouncement that the former should rid itself of either its Blue or its Red network. The attitude of the commission has been that radio is being used too frequently for personal profit rather than for the welfare of the people. The owners of the broadcasting stations complain that the commission is unreasonable, that it does not understand their problems, and that it fails to appreciate the efforts which they make to maintain the highest standards.[11] The situation became so tense in 1941 that the Senate received a resolution calling for a congressional investigation of the broadcasting industry and the Federal Communications Commission. The Senate Committee on Interstate Commerce held a public hearing on the resolution which excited a great deal of interest and brought forth a tremendous volume of criticism of the rules and regulations promulgated by the commission. The testimony revealed the outmoded character of the Communications Act of 1934 providing for the regulation of radio broadcasting and led to revision of certain of its provisions.

Power

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.

Authority of the F.P.C. 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 navigable waters of the United States. Though private interests have disputed its final jurisdiction in such matters, the Supreme Court in the New River case has ruled that the powers of the commission are determining.[12] 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

[11] 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.

[12] See *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377 (1940).

across state lines; more recently interstate pipe lines have been added under the Natural Gas Act. The Federal Power Commission also has certain responsibilities in connection with the sale of power generated at such public enterprises as the Bonneville Dam and the Tennessee Valley Authority dams. Various statutes confer authority in the flood-control field.[13] Like the Federal Communications Commission, the Federal Power Commission has been enveloped in bitter controversy with the private business concerns which it regulates. In 1950, for example, a vigorous campaign was launched to deprive it of regulatory authority over independent gas companies and it was only by a veto of the President that this was prevented.

The Post Office

During its entire existence the government has assumed responsibility for carrying the mails. Indeed for two decades before the Revolution a colonial post office was operating with a fair degree of success. In 1775 Benjamin Franklin was appointed Postmaster General of the revolting colonies and did much toward building up the system. In 1789 the government provided under the Constitution took over the post office bodily. However, it was not until 1874 that the present Post Office Department came into existence, although as early as 1829 there had been an informal status which gave to the Postmaster General membership in the President's cabinet.

Organization 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 extensive quarters 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 thousand local post offices serve as operating units. The latter are classified as first-, second-, third-, and fourth-class,[14] depending in large measure upon their annual receipts. They are headed by postmasters who at one time had little to do with actual operations because they devoted themselves to politics. An assistant postmaster in reality supervised the work of the clerks, carriers, and other employees. The recent legislation placing the

[13] See the Flood Control Acts of 1938 and 1944, the River and Harbor Acts of 1945, 1946, and 1948, for example.

[14] Approximately 70 per cent of the post offices are fourth class.

postmasters under the merit system is aimed at correcting this fault. It is too early to judge what the net effect will be, although the success of political leaders in getting their choices appointed indicates that postmasterships are still not far removed from politics.

Scope of 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. Its 41,700 post offices, its several hundred thousand employees, its yearly receipts of well over one billion dollars, and the billions of pieces of mail which it handles every year are impressive. It not only carries letters and other first-class matter, but huge quantities of newspapers, magazines, and books. Since 1913 it has transported vast 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 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 air-mail stamp provides especially speedy movement for first-class mail. Rural delivery routes 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 to the amount of some billions of dollars. Large numbers of patrons send money from one place to another through the medium of money orders.

Standards of Service The post-office employees in the United States are the most highly paid of any post-office employees in the entire world. They are not always able to secure increases in salary and reduction in hours, but their national organizations have been powerful forces in protecting their interests. Post-office buildings in the United States far surpass in elegance and quality of construction any corresponding buildings anywhere—indeed there is some feeling that too many handsome post offices have been built and at too great a cost to the public treasury. The range of services rendered is probably greater than that of any other post offices, particularly if the telegraph and telephone facilities of foreign post offices be excluded. Service is reasonably good although it leaves something to be desired in the eyes of many patrons. In contrast to the evening and Sunday deliveries in certain countries, deliveries in some cities of the United States are limited to five and one-half days each week, while when holidays occur on Monday, there is no mail delivery for two and one-half days at a stretch. Movement from one part of the country to another has been speeded up by air mail in many cases, but there are other instances where it seems to require longer now to get mail through than a decade ago.

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37. The Conduct of Foreign Relations

The Role of the President The Constitution imposes on the President the general responsibility for the conduct of relations with foreign countries. "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 . . . he shall receive ambassadors and other public ministers." [1] But the President has many other tasks to perform and he is after all a human being with only limited hours and strength. The result is that Presidents are compelled to delegate a large measure of authority in the conduct of foreign relations to the State Department, to the foreign service representatives of the United States, to the American delegates to the United Nations and its subsidiary bodies, and to such special agencies as the E.C.A. This not to say that Presidents do not have to give personal attention to international problems. They have always been expected to receive the representatives of foreign governments and to extend certain courtesies such as diplomatic dinners and receptions. If the heads of foreign states are visiting the United States, they are, of course, entertained at least at a luncheon at the White House. If a particular President has been especially interested in foreign affairs, he has gone far beyond the ceremonial activities noted above, perhaps drafting notes to foreign governments, again paying personal visits abroad, and on other occasions taking a leading role in the negotiation of a treaty.[2]

Every President is expected to consult with his Secretary of State to keep informed as to the current situation in the field of international relations. During recent years Presidents have been under compelling pressure to give more personal attention to international problems, irrespective of their own inclinations. The position of leadership which has come to the United States in world affairs has partially been responsible for such a shift; perhaps even more important as a factor has been the acute character of international problems since 1930. Hence Presidents have more or less been forced to attend international conferences, to appoint special ambassadors to deal with various

[1] Art. II, secs. 2 and 3.
[2] See Chap. 15 for additional discussion of the role of the President in international affairs.

matters, and to discuss the foreign situation at frequent intervals with their cabinets and particularly with their Secretaries of State.[3]

The Role of Congress Congress has less direct responsibility for foreign relations than the President, but that should not blind one to the important role which the legislative branch occupies in the current management of relations with other countries. The Senate has to approve appointments to the major posts in the foreign service; more important even than that it has to agree to treaties before they become effective.[4] Both houses of Congress have far-reaching power over foreign relations as a result of their control of the purse. Both the State Department and the missions and consulates maintained abroad are dependent upon appropriations which Congress makes; any special programs in the foreign field are likely to require money in large amounts and this is forthcoming only if Congress can be persuaded to favor the projects. Treaties frequently involve the expenditure of varying amounts of money and here again both houses of Congress enter into the picture.

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. Even in the case of countries far less important than the United States there is almost always a foreign office which devotes itself exclusively to the conduct of foreign relations. The United States has never seen the necessity of following this conventional pattern and from the very beginning of the commonwealth entrusted the supervision of its relations with foreign governments to the Department of State. It sometimes strikes foreign visitors as strange that a nation as powerful and wealthy as the United States 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 function. Inasmuch as this department was authorized to carry on the work which had been handled by an agency of similar character set up in 1781 by the Continental Congress, it is sometimes considered to antedate the Constitution itself. 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

[3] J. F. Green's "The President's Control of Foreign Policy," *Foreign Policy Reports*, Vol. XV, No. 2, April 1, 1939, may be profitably consulted for further discussion.

[4] For further discussion, see Chap. 20.

is the ranking administrative official in Washington. No other department can boast of so long a line of distinguished secretaries. That is not to say that every Secretary of State has achieved fame or indeed deserved outstanding recognition, for some Presidents have used the position to reward their mediocre friends and supporters. Nevertheless, a roster which includes the names of Thomas Jefferson, John Marshall, James Madison, Daniel Webster, John Hay, Elihu Root, Charles Evans Hughes, and Cordell Hull along with those of a good many other able men commands respect.[5]

The Changing Organization of the Department Until World War II or shortly before the State Department, though accorded prestige, was a comparatively modest department as far as size of staff or amount of appropriations went.[6] Indeed it was sometimes said that the department was so informal in organization that it really could be designated a "club." Certainly until fairly recently the senior officials were frequently thrown into one another's path and could transact business on a personal basis or at least with a minimum of red tape. The war and the postwar problems have necessitated the repeated expansion of the State Department, until by 1950 it had become a sprawling organization, overflowing a number of buildings in Washington and maintaining a staff of some thousands of persons.[7] It can readily be imagined how difficult this transformation has been. Not only has it been necessary to recruit large numbers of experts for various duties, but a more or less completely new system of handling business has had to be developed. No one could look upon the State Department of today as a gentlemen's club; no longer is it possible to do business in an informal manner with two or three associates; even the best hand-shaker would find it difficult to remember the names of the senior staff to say nothing of the multitude of secretaries and clerks. One reorganization has been undertaken, only to be succeeded by another a year or two later. Changes have taken place at such a rapid rate that no organization plan has remained intact very long. With so well-established a pattern of transacting business along informal lines, it is not surprising that the State Department has not found it an easy matter to develop a

[5] For biographical studies of these and other 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.

[6] On the various stages of State Department organizations, see Graham H. Stuart, *The Department of State A History of Its Organization, Procedure, and Personnel*, The Macmillan Company, New York, 1949.

[7] Some idea of the change may be derived from some statistical figures relating to personnel. In 1790 the State Department reported eight employees; in 1833 there were thirty-three persons employed; in 1870 the number had increased to fifty-two; in 1909 there were 209, in 1922 the number was 631. In 1938 on the threshold of the war there were still only 963 employees. By 1943 there had been a sharp increase to 2755 and by 1946 the staff had gone to 7623. Current employment figures approximate eight thousand. These statistics do not include foreign service personnel. In 1924 there were 3431 persons employed in the foreign service; this had increased to 4139 by 1939. In 1943 there were 5230 foreign service employees and in 1946 11,115. Including foreign service personnel State Department personnel therefore currently is in the neighborhood of twenty thousand.

satisfactory system under its greatly expanded size.[8] The Hoover Commission went into considerable detail in recommending a new organization for the State Department and Congress authorized such a move within a few months of the appearance of the Hoover Report. This setup corrected some of the weaknesses and in general made it possible for the department to handle its work more effectively, but it will be surprising if further changes do not have to be made. Indeed there may be some doubt whether the State Department can ever settle down to the point to be noted in other agencies as long as the international situation remains as changeable as has been the case during recent years.

General Organization The State Department bears some resemblance to the other major departments in its top organization. The Secretary of State is, of course, its head and there is an under secretary who has general responsibility and acts as the head of the department when the Secretary of State is absent. There are two deputy under secretaries, one who supervises the departmental and foreign service administration and control and another in charge of policies and procedures in the remainder of the department. The Secretary of State is aided by two special assistants and assistants in charge of research and intelligence and press relations. A counselor of the department, with the rank of an assistant secretary, advises in regard to problems of foreign relations of the United States. As of 1950, there were eight assistant secretaries of state who were responsible for various aspects of the program of the department. One dealt with congressional relations; another headed the economic subdivisions; a third handled the growing program of publicity and public relations abroad; and a fourth gave his attention to the relations of the United States with various international organizations. Four of the assistant secretaries headed the geographical subdivisions: Near East and African Affairs, American Republic Affairs, European Affairs, and Far Eastern Affairs. A legal adviser advises on points of international and domestic law. There is a Policy Planning Staff, headed by a director, to give special attention to policies to be followed in relations with other countries.

Offices Under the reorganization effected in 1949, the State Department was organized into nineteen offices which report directly to the Secretary and the under secretary or indirectly through various assistant secretaries. Some of these offices follow geographical lines; others are primarily economic and commercial; while still others have to do with such matters as internal administration, intelligence, research and public affairs programs. Prior to World War II the Department of State was considered by many observers to be built around geographical subdivisions which specialized on the problems of various areas of the world and maintained close contact with the American diplomatic and consular officials in these areas. The confusion of the war saw

[8] For a study of the recent organization, see Brookings Institution, *Governmental Mechanism for the Conduct of United States Foreign Relations*, The Institution, Washington, 1949.

the establishment of many new subdivisions in the economic and commercial fields and for a time the organization of the department seemed to shift to a functional arrangement with particular emphasis on economic problems. The reorganization authorized by Congress in 1949 to some extent at least represents a return to the earlier situation, with the geographical subdivisions regarded as key centers of activity. Nevertheless, it would be a mistake to assume that the new organization makes no place for non-geographical agencies, for alongside of five or six offices which are based on geographical considerations [9] there are offices of the following types: international trade policy, financial and development policy, public affairs, international information, educational exchange, consular affairs, intelligence research, and libraries and intelligence-acquisition.[10] These officers are each headed by a director.

Divisions The offices are in turn subdivided into anywhere from two to half a dozen divisions. Examples of the divisions may be of some interest. In the Office of Transport and Communications there are two divisions dealing with aviation and telecommunications respectively. In the Office of International Information there are three divisions charged with handling international press and publications, international motion pictures, and international broadcasting. The Office of European Affairs is broken down into six divisions dealing with British Commonwealth affairs, Eastern European affairs, Southwest European affairs, Southeast European affairs, Northern European affairs, and Western European affairs. Two of the older divisions, the Passport and Visa divisions, require further attention at this point.

Passports During normal times, when thousands of American citizens travel in foreign countries, the Passport Division of the State Department has sometimes resembled a madhouse. Such travel ordinarily has been particularly heavy in the summer months, with the result that there has been a wild rush for passports during the late spring. 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 photographs 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 upon application to the Passport Division and the payment of an additional fee. Although in normal times passports are not limited and may be used by their holders for travel anywhere in the world, recent events have necessitated restricting the use of most passports to the countries outside of the "iron curtain."

[9] These are as follows: European Affairs, Far Eastern Affairs, Near Eastern and African Affairs, American Republic Affairs, and German and Austrian Affairs. The Office of United Nations Affairs might possibly be included here.

[10] There are also the usual service subdivisions handling personnel and budgetary problems.

Visas Visas of passports are granted to foreign citizens who wish to visit the United States by the Visa Division of the State Department. For some years after the First World War the fees charged for visas were so high as to be burdensome in the case of the citizens of many countries. Realizing the injustice of such charges the State Department during the 1930's entered into reciprocal agreements with England, China, Egypt, and certain other governments which had imposed visa fees of $10 on American passports and whose nationals the United States had charged corresponding fees, with resulting reductions running from 50 to 75 per cent. Since World War II visa fees have been eliminated in certain cases. During the world emergency the Visa Division has had to handle large numbers of applications from European refugees. It can readily be imagined how difficult its task has been. On one hand is the desire to be humane, while on the other is the necessity of preventing the United States from being overrun by large numbers of persons not readily assimilable into the population and who in certain cases at least might be questionable security risks because of their political records.[11]

The Foreign Service

Relation to the State Department Unlike most of the governments of the modern world, the United States maintains a separate foreign service, which, while closely related to the State Department and indeed administered by the State Department, enjoys a considerable degree of autonomy.[12] Foreign service personnel may be brought back to Washington to serve in the State Department and State Department staff members may under certain conditions be ordered abroad to perform certain functions, but there has been a rather sharp dividing line between the two services. State Department personnel are under the civil service system which covers the greater part of federal employees; foreign service personnel are under an entirely separate system, with different grades, rates of compensation, and a separate retirement program. There has been an increasing amount of criticism of such a rigid arrangement for some years and in 1949 the Hoover Commission recommended steps which would ultimately have the effect of combining domestic and foreign service into a single service under which staff could be used as desirable either in Washington or abroad. The strong foreign service tradition, resembling in many respects that of the armed services, has made a unification difficult, but a special commission set up to study the problem recommended in 1950 the fusing of the Washington staff and foreign service personnel as far as prac-

[11] For additional discussion of the State Department, see Elmer Plischke, *Conduct of American Diplomacy*, D. Van Nostrand Company, Inc., New York, 1950, Chaps 4–5. Some idea of the scope of the work of the State Department may be gained from the fact that it receives or sends in a single month 22,900 telegrams or cables, 13,000 airgrams, and 33,000 written dispatches and instructions.

[12] For a recent study of the foreign service by a career diplomat, see J. Rives Childs, *American Foreign Service*, Henry Holt and Company, New York, 1948.

ticable and this will presumably be carried out during the course of the next few years.

Prior to 1924 Before the passage of the Rogers Act in 1924 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. Recently it has been popular to make such assumptions, with the result that certain of the senior members of the service whose entrance antedates 1924 feel quite sensitive. Nevertheless, it must be admitted that political considerations played an important part in the matter of appointments prior to 1924. Good people not infrequently received places, but they often had to seek favor at the hands of an administration Senator; promotion, also, commonly depended upon senatorial pressure. In all too many instances intolerably bad appointments were made because of political considerations. Henchmen of political bosses sometimes fell prey to the idea that it would be pleasant to retire at government expense in some foreign capital or commercial center. Of course, they had no knowledge of consular or diplomatic duties; moreover, they ordinarily were not interested in learning.

The Rogers and Moses-Linthicum Acts 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. The Rogers Act provided that promotion should be based on service records. A contributory pension scheme which permits retirement after thirty years of service and requires 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.

The Foreign Service Acts of 1946 The end of World War II saw the provisions made for the foreign service somewhat out-of-date. A Foreign Service Manpower Act was passed by Congress in July, 1946 to provide for a much-needed expansion in personnel. The Foreign Service Act of 1946, which came later in the same year, undertook a more or less complete reorganization of the service. The number of classes was sharply reduced; compensation was increased to the point where ranking ambassadors draw salaries of $25,000 per year together with allowances which in certain cases bring total income to approximately $50,000 per year. The various special staffs which had grown up during the war years to perform services abroad were dropped and a single integrated foreign service of the United States established. Two new categories were provided by the Act of 1946: that of career minister and that of foreign service reserve officer.

Ambassadors and Ministers The United States at present maintains diplomatic missions in some seventy countries of the world. Each of these is headed by a chief of mission who holds the title of ambassador or minister. During the first century of its existence the highest diplomatic representative of the United States abroad was a minister,[13] since it was not considered appropriate for a democratic country to confer higher titles. At present the great majority of the chiefs of mission—in excess of 75 per cent—are ambassadors, and ministers have become almost a rarity. While an ambassador enjoys a greater precedence than a minister and under international law represents his government,[14] the actual role of a minister and an ambassador is approximately the same. Ambassadors are sent to major countries or to countries which for one reason or another the United States is especially interested in; ministers are accredited to the remaining countries to which the United States sends diplomatic representatives. Neither ambassadors nor ministers are covered by the career provisions of the foreign service legislation; in both cases they are appointed by the President with the consent of the Senate. The result of this method of appointment is that politics has something 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. They do not always get what they expect, it is fair to say, but they do frequently manage to secure an appointment of some kind. This holdover from an earlier day has been severely criticized because it frequently means that the United States is represented in some capitals by men who may have succeeded in automobile manufacturing, the liquor business, newspaper advertising, or local politics but who have an inadequate background in foreign affairs. Of course, there are always counselors and secretaries of embassy or legation to advise such laymen on technical points, but this is not a satisfactory substitute for expertness.

Varying Character of Non-career Ambassadors and Ministers Some of these amateur diplomats manage to get along reasonably well, while others are so impossible that they occasion diplomatic gossip the world over. When the United States is unfortunate enough to have a succession of these diplomatic impostors in a single country, it attaches a reputation to its foreign program which is anything but desirable. A certain important 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

[13] Legislation authorizing ambassadors was not passed until 1893.

[14] Ministers are given credentials making them representatives of a head of a state.

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 the reputation of the United States 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 during the last few years. Another result of this system 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.

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 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 at a disadvantage. 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.[15] Furthermore, as long as the top pay for these posts is $25,000 per year and the expenses of such places as London run to several times that amount, there is some reason for choosing men of affairs rather than career men.[16] Nevertheless, the effect on the morale of the career men is not the best imaginable.

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. Inasmuch as the tenure of such places is at best uncertain, there is always a reluctance on the part of a career man to give up his security. Yet it should be noted that some holders of the ranking positions manage to survive over long periods. Hugh Gibson, after some years as a secretary in Honduras, England, Cuba, France, and Belgium held the position of ambassador or minister to Poland, Switzerland, and Brazil; Nelson Johnson served for ten

[15] This is particularly the case among those stationed in London and Paris.

[16] 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.

years or so as head of the mission in China and was then sent to represent the United States in Australia; Joseph C. Grew, perhaps the dean of the American ambassadors and ministers prior to 1941, handled the difficult embassy at Tokyo for almost a decade before the outbreak of war and prior to that represented the United States in Denmark, Switzerland, and Turkey. The creation of the career-minister class in the career foreign service may help materially in further improving the situation.

Foreign Service Officers Below the ambassadors and the ministers in the foreign service there are foreign service officers who are career men. Nominally appointed by the President and confirmed by the Senate, these officials are actually chosen in the first place as a result of competitive examinations and receive promotion on the basis of their records. There are at present seven classes of these officers—a career minister class and six classes below—and they constitute the professional staff of the approximately seventy embassies and legations and also are to be found in the some two hundred consulates which the United States maintains in many foreign cities. It is the practice to commission these officers as both diplomatic and consular officials and they may be shifted from one assignment to another. On the diplomatic side they usually hold the titles of first, second, or third secretary, while on the consular side they are consul-generals, consuls, and vice-consuls. Entry into the foreign service is limited to the years twenty-one to thirty. Salaries start at $3,300 and go to $13,500 per year exclusive of allowances for quarters and cost of living differential.

Foreign Service Reserve Officers In order to meet the varying needs of the foreign service the Foreign Service Act of 1946 authorized a foreign service reserve officer category. These officials are appointed in six grades corresponding to those of the foreign service officer class below career minister and receive the same compensation as foreign service officers in the same grade. Appointments are limited to four years of consecutive service and it is intended that the foreign service reserve officers include specialists who are needed for more or less temporary assignments. They are usually designated "attaches" rather than secretaries.

Foreign Service Staff Corps The diplomatic and consular establishments of the United States abroad require large numbers of administrative and fiscal officials, stenographers, filing clerks, code clerks, translators, couriers, and others. These are appointed by the Secretary of State without special examination. They are divided into twenty-two classes and receive a maximum of $9,150 per year exclusive of quarters and cost of living differential.

Other Employees It has been the custom to employ numerous persons of foreign citizenship to assist in the work of diplomatic and consular offices abroad. In the case of janitors, chaffeurs, and certain other categories it is more economical as well as more convenient to use foreign personnel. The use of translators, typists, and other clerical personnel may involve a security

risk, but nevertheless fairly large numbers of foreign nationals have been employed for these purposes.

Background of Foreign Service Personnel There is a widespread misapprehension that appointment in the foreign service depends in large measure on private means, social poise, and political pull. Mr. G. Howland Shaw, Chief of the Division of Foreign Service Personnel of the Department of State, has 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." [17] 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. However, the prevalent idea that foreign service officers spend their time largely at tea parties, flirtations, and playing polo is at the very least an exaggeration. It is true that some of those who enter the service have such interests, but most of them drop by the wayside before many years have passed. How much assistance may be rendered by influential political connections it is difficult to determine. Albert Bushnell Hart once told the young men at Harvard who were looking toward the foreign service that, while they could not depend upon pull and influence to get into the service or to stay there, still it would be very helpful in securing promotion if they had interested friends in the Senate. In general, promotions are based upon inspection ratings and length of service, but it is probably not harmful to have friendly Senators expressing an interest.

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; for example, the work of a first secretary is quite different from that of a third secretary. More than that, a great deal depends upon the post to which an officer is assigned; a second secretary in Lima, for example, may perform functions which are not required of a second secretary in London or Buenos Aires. 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

[17] See the *American Foreign Service Journal* for October, 1939.

social conditions in the country to which they 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, commercial, agricultural, scientific, public affairs, and other attachés during recent years, activities are distinctly broader now than 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 or executive agreement [18] of importance are being negotiated through regular channels, the work of the foreign service officers may be especially demanding. If an international conference 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 wireless 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, London, and Rome, for example, social life among the diplomatic circle has been a hectic and complicated affair. Almost every day brings invitations to dinner, 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. Even in Berlin where the social pitch probably attained less intensity during the early 1930's than in certain other capitals, Ambassador Dodd found the long-drawn-out dinners and receptions which he felt obligated to attend very trying.[19]

[18] An executive agreement supposedly covers relatively minor matters, while major items are dealt with by treaties. Senate ratification of the former is not required.

[19] See Martha Dodd, *Through Embassy Eyes*, Harcourt, Brace & Company, New York, 1939, and W. E. Dodd and Martha Dodd, *Ambassador Dodd's Diary*, Harcourt, Brace & Company, New York, 1941.

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 personnel who are attached to the approximately two hundred consulates of the United States have varied duties also, although they may not have 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 or located in the same city, social obligations may be greater than they would be otherwise. Consulates in large cities, such as Montreal, São Paulo, or Bombay, find themselves in the social picture to a greater extent than those situated in Antofagasta, Port Said, or Santos. In general, foreign service staff 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. Thus, the Singapore consulate during normal times is quite busy because of the tin and rubber shipments from Malaya to the United States and because of the large number of American vessels which call at that port. On the other hand, American consuls in such places as Nanking, Vienna, and Teheran have far less to occupy their energies.

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,[20] 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 mul-

[20] While Congress appropriates funds for sending home sailors who are stranded because of illness, and so forth, other citizens must rely on private funds.

titude 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 business conditions in foreign countries.[21]

Instrumentalities in the Conduct of Foreign Relations

In carrying on the foreign relations of the United States the State Department and the foreign service make use of numerous instrumentalities which are of interest to students of government. Some of these used are employed frequently and have been commonplace for many years; others are more recent in their origin. Some are somewhat routine in character, while others are more spectacular.

Treaties and Other Agreements In handling its relations with foreign governments the United States has from very beginning entered into treaties and various other agreements with one or more of the society of nations. Treaties are made in connection with peace settlements, alliances, mutual assistance, commercial matters, arbitration, and certain other political or quasi-political matters. They may be bilateral in character when only the United States and one other government are involved or they may bring in a number of governments. Other forms of international agreement include conventions, protocols, agreements, declarations, statutes, provisions, arrangements, and regulations. It is sometimes difficult to differentiate between a treaty and one of these other types of international agreement, and it is at times impossible to say why one form has been used rather than another. However, in general, it is probably accurate to state that treaties are more formal in character than other types of international agreement. During the early years of the republic treaties were employed more commonly than other forms—indeed out of a total of more than fourteen hundred international agreements to which the United States has been a party since 1778 more than nine hundred are formal treaties. During recent years the role of treaties has been less pre-eminent—during the decade following 1919, for example, there were but 18 treaties out of more

[21] For additional discussion of the foreign service, see Elmer Plischke, *Conduct of American Diplomacy*, D. Van Nostrand, Inc., New York, 1950, Chaps. 6–9.

than three hundred international agreements.[22] Treaties and certain other international agreements are negotiated by the executive branch of the government, but they must be approved by the Senate before they are ratified.[23] They have the general legal force of a statute within the United States and if a treaty and a statute are in conflict, the one most recently made takes precedence.

Executive Agreements Executive agreements differ from treaties and other types of international agreements in that they are not submitted to the Senate and hence rest solely on the authority of the executive branch. They are less formal than treaties and may be characterized as merely "international understandings." [24] There is considerable question whether executive agreements are authorized by the Constitution, but there is little objection to them as long as they deal with routine matters such as the International Postal Union, inspection of foreign vessels, pilot licenses, exchange of information, and the registration of trade-marks. Nor can the more important agreements made by the President in his position as commander-in-chief during the conduct of hostilities be subjected to great question as long as they relate to military matters. However, such agreements as those made at Yalta and Potsdam which involved highly important political matters are a controversial question in some circles. The difficulty is that it is increasingly difficult to draw the line between military items and political matters in total warfare and Presidents are under great pressure to commit the United States in regard to problems which later prove to have far-reaching political significance during times of peace.

Notes and Representation While international agreements play a vital role in foreign relations, they are not every-day activities. But the United States is constantly exchanging notes and carrying on relations with foreign governments through personal representation. Notes are drafted by the State Department to express American viewpoints and are transmitted to the foreign ministry of the country involved. They may be relatively routine in character, but they are likely to deal with matters of some importance. On complicated problems it is not unusual for a series of notes to be exchanged. Many other questions are discussed orally by the State Department officials in Washington with the ambassadors and ministers of foreign countries stationed in the United States or by the diplomatic representatives of the United States in foreign countries with the foreign ministries of those countries.

[22] The remainder of the three hundred were as follows: 123 conventions, 105 protocols, 39 agreements, 12 declarations, 9 statutes, 7 provisions, 5 arrangements, etc. For a table showing the situation from 1778 to 1945, see Elmer Plischke, *op. cit.*, p. 275.

[23] See Chap. 20.

[24] During the period 1789–1939 some 1182 executive agreements were made. As in the case of treaties and other agreements, the majority of these belonged to the period after 1900. See W. M. McClure, *International Executive Agreements*, Columbia University Press, New York, 1941, pp. 3–4.

International Conferences When travel was difficult and involved a great deal of time, it was not feasible to schedule international conferences except on momentous occasions such as the Congress of Vienna. But with the world circled by airways and almost any point within twenty-four hours distance, international conferences have become frequent occurrences. It has been discovered that many complex issues can be settled around a conference table that might require the exchange of many notes covering months of time, though even this technique hardly suffices to break down the barrier with the representatives of the Soviet Union. Perhaps the most important type of international conference currently employed is the foreign ministers' meeting. One of the outgrowths of World War II was the Foreign Ministers' Conference of the Big Five. More recently the foreign ministers of the United States, Britain, and France and of the North Atlantic Treaty countries have met together as occasion demanded. Another type of foreign ministers' meeting brings together the representatives of the Inter-American countries. Of course, there are numerous other international conferences called to discuss trade agreements, cultural matters, and almost every other conceivable subject, but the foreign ministers' meetings are especially important because they involve a sufficiently high level to deal decisively with many thorny problems. An even more august variety of international conference sees the heads of states in attendance, but these cannot be easily convened and the time factor is so limited as a rule that only the most important matters can be dealt with and then often only superficially.

International Organizations Closely related to international conferences as an instrumentality for the conduct of foreign relations are the many international organizations which are currently active. Everyone is familiar with the United Nations and some of its subsidiary organizations, but few people outside of official circles realize how many other international organizations are currently in operation. Without counting agencies of the United Nations and its Economic and Social Council which of course run to a considerable number, the United States is currently participating in more than seventy international organizations of one kind and another.[25] There are four international organizations in the agricultural and fisheries field, five in the commercial and financial field, fifteen in the educational, scientific, and cultural realm, a dozen in the political and legal domain, fourteen in the social and health area, and ten in the transportation and communications field. Most important of all there is, of course, the United Nations, with its Security Council, General Assembly, Economic and Social Council, Trusteeship Council, and United Nations Educational, Scientific, and Cultural Organization. The United States is well represented on all of these and maintains a major

[25] A complete list may be found in the government publication issued periodically under the title *International Organizations in Which the United States Participates.* Also see the *United States Government Organization Manual.*

subdivision in the State Department headed by an assistant secretary which devotes all of its time to international organization affairs. While membership in so many international organizations costs the United States many millions of dollars each year, there can be little doubt that the investment is a sound one. It is true that many of these organizations find progress slow, but despite the obstacles reasonable accomplishments are being achieved. And the cost of international organizations is usually no more than a drop in a bucket as compared to the cost of war. International organizations hold conferences and therefore possess the advantages noted above in the case of international conferences, but they often promise even more than the conferences, since they maintain permanent organizations which make careful plans for the conference sessions and then continue to carry out programs adopted.

Special Agencies During the emergency of World War II the United States set up a number of special agencies to carry on activities outside of the confines of the United States. The Foreign Economic Administration, the Office of War Information, and the Office of Strategic Services may be cited as examples. Many of these performed valuable work for the United States, but the State Department and the foreign service regarded them with some apprehension since they encroached at least to some extent upon their domain. In many instances there was conflict between the foreign service personnel and the staff members of these special agencies. At the conclusion of the war most of these special agencies were wound up and the Hoover Commission in 1949 warned against the future use of such instrumentalities except in the most extraordinary circumstances. The chief special agency during the postwar period has been the Economic Co-operation Administration created to administer the Marshall Plan. Headed by an administrator appointed by the President with the consent of the Senate, E.C.A. has been charged with the allocation of many billions of dollars to assist in the European recovery program and to a lesser extent in economic rehabilitation in other parts of the world. E.C.A. maintains a fairly elaborate organization in Washington, subdivided into fiscal and trade policy, food and agriculture, industry, strategic materials, transportation, and technical assistance sections. It has a special representative in Europe with the rank of ambassador for purposes of co-ordination and maintains missions in the various European countries that participate in the program. Under the congressional acts authorizing E.C.A: the program is to be terminated on June 30, 1952 or prior thereto if Congress so decides.

The Voice of America In order to let other people of the world know what is going on in the United States, especially in those countries where censorship is such as to shut out foreign publications, Congress has authorized the State Department to operate an international broadcasting service. Programs are beamed in a number of languages to various parts of the world which have been told many falsehoods about American aims, cultural stand-

ards, and institutions. Inasmuch as these programs go out over short waves and it is a criminal offense in many countries to operate short-wave radios without special license, it is unknown how many people listen to what is said, but the importance of making American views known to other people is such that the Voice of America is considered worthwhile even if its audience is not large.

International Information Supplementing the Voice of America the State Department is currently engaged in a program to provide information in regard to the United States through newspapers, magazines, motion pictures, libraries, and related vehicles. Even in the Soviet Union a periodical printed on fine paper and generously illustrated is published in the Russian language in order to make information about the United States available. American information centers are maintained in many foreign cities which provide selected books, periodicals, and newspapers. While some governments look with disfavor on such centers, many thousands of persons in other countries use these facilities every month.

Exchange of Persons Experience has indicated that one of the most effective methods of promoting international understanding involves the exchange of persons. Newspapers, radio broadcasts, films, and books may have a considerable influence in informing foreign peoples as to what goes on in the United States, but there is always the deep-seated feeling in many persons that these present a distorted picture, that they are propagandistic. If, however, people can go themselves to the United States or to a foreign country, they feel that they can judge for themselves what actual conditions are. In order to acquaint Germans, Japanese, and others where democratization programs are being carried on with American institutions, sizable numbers of students, journalists, public officials, and business men are being brought to the United States for varying periods. Unfortunately funds are not available to bring people from other countries here in large numbers, though E.C.A. undertakes to finance the visits of certain persons in key fields and private auspices make it possible to support a number of students. The Fulbright Act has inaugurated a program covering a period of some twenty years which will make it possible to send several hundred students, research workers, and teachers each year to Britain, France, Norway, Italy, Greece, New Zealand, Australia, and other countries which purchased American war surpluses.[26] The State Department includes an Office of Educational Exchange which promotes such programs, leaving the actual administration to the Office of Education, the Institute of International Education, and the Conference Board of Associated Research Councils.

[26] Fulbright funds may also be used to pay transportation costs of foreign citizens to the United States to the extent that such costs are payable in foreign currencies. Actual maintenance of foreign citizens while in the United States cannot be met out of Fulbright funds since dollars are not available. The State Department desires funds which will make it possible to pay the costs of sizable numbers of students, teachers, and others on visits to the United States.

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38. American Foreign Policy

Does the United States Have a Foreign Policy? It has been more or less commonplace during certain periods for various journalists and others to maintain that the United States has no foreign policy. If by foreign policy one has in mind an unchangeable and consistent set of principles which have endured over a period of a century and a half, then it may be doubtful whether the United States or any other country in the world can qualify. International situations change and give rise to new problems which in turn have their impact upon the attitudes of various governments. Moreover, internal situations are not static and it is to be expected that changes in the domestic scene will have a bearing upon the foreign programs of a country as large and diversified in character as the United States. With as many conflicting interests as exist within the body politic of the United States, it is difficult to follow an absolutely clear-cut course in the international field at all times and it is necessary to compromise points of view and to adopt somewhat opportunistic courses on occasion. Again the United States frequently finds itself so deeply involved in various complicated problems, usually of a domestic character, that a considerable lapse of time takes place before attention is focused on an important item of foreign relations. The result is that for a period of months or even several years there is something like a vacuum and it is impossible to tell exactly what course the country is following. Nevertheless, after due attention has been given to all of these factors, there is ground for maintaining that the United States does have a foreign policy or foreign policies. It is not always without flaw by any means; more often than not it may involve certain contradictions and inconsistencies. It is not the same at present as it was half a century ago. But that is not sufficient to justify a conclusion that the United States is without a foreign policy.[1]

How Foreign Policy Is Made in the United States Much of the misunderstanding that seems to characterize some of the statements of popular writers arises out of the lack of comprehension of the inner workings of American

[1] See S. F. Bemis, *A Diplomatic History of the United States*, rev. ed., Henry Holt & Company, New York, 1950, for a detailed account of developments over a century and a half. For other statements of American policy, see Vera M. Dean, *Europe and the United States*, Alfred A. Knopf, New York, 1950; John Foster Dulles, *War or Peace*, The Macmillan Company, New York, 1950; A. W. Griswold, *A Far Eastern Policy of the United States*, Harcourt, Brace and Company, New York, 1938.

government. Foreign policies of the United States are contrasted with foreign policies of certain foreign countries, with the American accomplishment belittled. A country which has become the victim of a totalitarian regime has far less difficulty in formulating a foreign policy than a country which is based like the United States on democratic principles. In the case of the former it is only necessary to have the dictator and perhaps his little coterie of henchmen draw up a course to be followed in the international field, whereas under a democratic system fundamental decisions are not made in that way. It would seem obvious that it is hardly fair to compare the two systems, at least without pointing out the differences. Of course, the policies under a dictatorship can be more clear-cut and consistent because they emanate from a single will. But though they be more spectacular they are not necessarily more sound; indeed the policies laboriously worked out by a democratic government in the long run are likely to prove wiser. It is not easy to perceive the exact method which is used in drawing up the foreign policy of the United States because of the complicated steps involved and the diversity of practices from time to time.

1. Role of the President Legally the president is usually considered to bear the primary responsibility for deciding on American foreign policy and at times an individual President may actually lay out a policy which will determine the position of the United States. However, it is undue simplication to attribute the foreign policy of the United States to its Presidents despite the legal assumption or the actual contribution of an individual President. Presidents certainly exert an influence in this field and in the last analysis may make the final decision after a great deal of preliminary work has been done. But however interested they may be in international problems, Presidents today simply cannot find the time to assume any large part of the detailed labor of drafting American foreign policy.

2. Role of the State Department A good many citizens apparently believe that the State Department and the foreign representatives of the United States are the spinners of American foreign policy. And it would be short-sighted indeed to ignore the role which they play. The State Department is the agency of the United States which is primarily charged with the handling of relations with foreign governments and the foreign service stationed in foreign countries maintains intimate contact with the officials of the governments of the world. Naturally both the State Department and the foreign service are influential in molding American foreign policy and at times may have a determining voice. The State Department during recent years has maintained a Policy Planning Staff, headed by a senior official in the department, and this agency has given most of its attention to the foreign policies of the United States. It includes a sizable number of experts in the field of international relations and can draw on the services of a much larger number of experts in the geographical and other subdivisions of the State Department as well as in other departments of

government. This Policy Planning Staff is quite capable of turning out a continuous flow of proposed policies, but many of these proposals die aborning while others are considerably modified before they are approved even by the Secretary and under secretary of State. Moreover, it should be noted that the Policy Planning Staff does not operate in a vacuum because it realizes that its effectiveness depends upon its analysis of the concrete situation confronting the nation at any time. In other words, this staff is not so much creative as it is analytical and co-ordinating. It gathers together technical information and then proceeds to combine such basic elements with the results of public-opinion sampling, congressional attitudes, and the points of view of influential pressure groups. If it achieves a satisfactory blend it is likely that the Secretary of State will be sufficiently impressed to affix his approval and transmit the proposal to the White House. If the President and his advisers regard the mixture as satisfactory, a foreign policy may result. But even at this final stage various forces may arise which will make it impossible to carry the policy into final effect.

3. Other Factors It is comparatively simple to evaluate the roles of the President and the State Department in the making of American foreign policy despite the secrecy which often enshrouds the process; the difficult task is to estimate the importance of other factors which enter in. How important is American public opinion in determining a policy? To what extent will attention be paid to the reactions of foreign people and governments in connection with a proposed course of action? How influential will the farm groups be if a policy relates to their domain or the oil companies or the forces of organized labor or certain sizable racial groups or the steel and automobile industries or the mine owners of the West or any one or a combination of other powerful pressure groups? What is the role of the Joint Chiefs of Staff and the military in general in vetoing if not determining the foreign policy of the United States? How compelling will the criticisms and constructive proposals of congressmen be in connection with adopting, rejecting, or modifying foreign policy proposals? [2] What is the influence of the leaders of the political party which is in control of the government? Any real understanding of the process by which American foreign policy is evolved will depend in large measure on an appreciation of the importance of these factors and yet it is far from easy to assess the weight of each. If every foreign policy followed the same pattern, it might be possible to work out a formula that could be applied, but there is no uniform pattern. There are occasions on which there is little interest among the rank and file of the people of the United States and consequently a particular foreign policy may be formulated with little or no attention to popular interest. Again a barrage of telegrams sent to the State Department, the President, and members of Congress may have a far-reaching

[2] See Robert N. Dahl, *Congress and Foreign Policy*, Yale Institute of International Studies, New Haven, 1949.

effect on a foreign policy of the United States. And the same thing may be said in connection with foreign opinion, congressional attitudes, pressure groups, and political leaders. To make the situation more complicated there are any number of possibilities in between an indifferent attitude and widespread and vigorous interest. To speak with authority on the exact combination of forces which has entered into every policy of the United States in the international field would defy even a Solomon. It is enough for students of American government to be aware of the various factors which may and do contribute to the entire process.[3]

Foreign Policy in the Past[4]

Isolation The warp upon which the United States wove its intricate pattern of foreign relations during many decades was isolation. From the earliest days of the republic, when George Washington delivered his famous words dealing with entangling alliances, to the attack made by Japan on Pearl Harbor in 1941, there was 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 long been fond of traveling outside of their own country and at times public opinion supported active participation by the United States in world affairs. But when the outcome of such participation proved disappointing and especially when it appeared that the United States was being duped, the net result was to strengthen the general suspicion of European diplomacy. The isolationist attitude was doubtless 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 made the country self-sufficient to a degree far beyond that of most other nations 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. The declaration of war against Japan, which was accomplished in a few minutes and with only one dissenting vote,[5] the subsequent unanimous reply to declarations of war made by Germany and Italy, the participa-

[3] For additional discussion of the process, see G. A. Almond, *The American People and Foreign Policy*, Harcourt, Brace and Company, New York, 1950; K. London, *How Foreign Policy Is Made*, D. Van Nostrand and Company, Inc., New York, 1949; Harley Notter, *Postwar Foreign Policy Preparation*, Government Printing Office, Washington, 1950 (a study by a State Department official); Lester Markel and others, *Public Opinion and Foreign Policy*, Harper & Brothers, New York, 1949.

[4] For detailed accounts of American foreign policy in the past, see Dexter Perkins, *The Evolution of American Foreign Policy*, Oxford University Press, New York, 1948; T. A. Bailey, *A Diplomatic History of the American People*, rev. ed., Appleton-Century-Crofts, Inc., New York, 1950; S. F. Bemis, *A Diplomatic History of the United States*, rev. ed., Henry Holt & Company, New York, 1950; *ibid.*, *The Latin American Policy of the United States*, Harcourt, Brace and Company, New York, 1942; A Whitney Griswold, *A Far Eastern Policy of the United States*, Harcourt, Brace and Company, New York, 1938.

[5] Miss Jeannette Rankin of Montana cast the sole dissenting vote. In the declaration of war against Germany and Italy she refrained from voting.

tion in the military government of Germany and Japan, and the speedy ratification of the United Nations Charter indicated that isolation had finally ceased to be the basic element in American foreign policy, at least for the time being.

Hemisphere Security Though the United States long regarded international relations with a wary eye—even to the point of being niggardly in appropriating money for the acquisition of embassies, legations, and consulates abroad—she 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. Later Presidents 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. The "Good Neighbor" policy of Franklin D. Roosevelt contributed toward reducing the resentment that long characterized the Latin-American countries toward the United States. Perhaps even more important was the refusal after 1933 to intervene to protect American investments in Latin-American 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. This phase of our national effort is discussed in some detail in connection with territories,[6] but it should be pointed out here that it influenced American foreign policy to a considerable extent during the period 1895 to 1930. Even after it appeared that territorial acquisitions occasioned more trouble than they were worth, 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.[7]

Desire for World Peace However suspicious they may have been of foreign governments, the people of the United States have long favored reasonable efforts to bring about a state of peace throughout the world. World War I

[6] See Chap. 49.

[7] 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 as a token of American interest in the Far East. The garrison at Peiping was intended to guard the embassy of the United States.

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. In 1921–1922 a conference on naval limitation was held in Washington, while in 1928 Secretary of State Frank B. Kellogg collaborated with Premier Aristide Briand of France in drafting the so-called "Kellogg-Briand Peace Pact."

Current American Foreign Policy

International Co-operation In spite of its long record of isolation the United States since World War II has followed a policy of vigorous co-operation with other nations in a wide variety of international organizations. That is not to say, that there is no isolationist sentiment among the people of the United States, for it would be too much to expect that a complete transformation from isolationism to internationalism would have taken place within a few years. Nevertheless, the United States is officially committed to a policy of co-operating with other nations of the world in the promoting of friendly relations, international understanding, and mutual trust. It is well known that the American leaders played a most important role in the organization of the United Nations;[8] indeed there may be some reason to doubt whether the United Nations would ever have gotten off to a start had it not been for the deep interest of American leaders and their patient efforts to persuade Great Britain and the Soviet Union that something of the sort must be set up after World War II. Not only was the organizing conference held in San Francisco, but the United States was made the headquarters of the United Nations because of its interest and key position. On occasion the United States has given the impression of bypassing the various international organizations to which it belongs and it has found the effort to work with the Soviet Union in the United Nations and its subsidiaries very discouraging because of the intemperate use which the Soviet Union has made of the veto in the Security Council and the generally suspicious attitude which seems to characterize the representatives of the U.S.S.R. Nevertheless, despite the great obstacles and the slow progress, the United States has continued to give its support to the various international organizations both within and without the United Nations. Indeed the annual contributions of the United States to the seventy or so international organizations of which it is a member amount to such a large sum that there has been some criticism to the effect that some pruning might be warranted.

[8] See Harley Notter, *Postwar Foreign Policy Preparation*, Government Printing Office, Washington, 1950.

Regional Co-operation The United Nations Charter recognized the need for both world-wide co-operation and regional efforts to promote peace. The United States had long taken a special interest in its relations with the Latin-American countries and was desirous of having a provision under which such special relationships could be continued. Its position was that regional groups if properly motivated could contribute to rather than hinder international understanding and confidence. As a result of developments which have taken place since World War II the rather informal grouping of states in the Western Hemisphere has been strengthened by an Organization of American States of which the United States is a prominent member. A charter which was drawn up at Bogota in 1948 provided for a council, Inter-American Conferences, and Foreign Ministers' Meetings, and made the Pan American Union the administrative organ. As many as forty or fifty subsidiary agencies are contemplated in the social, economic, transportation, agricultural, health, and defense fields. Provision is made for the settlement of disputes between member states and the prevention of hostilities. An even more recent example of an area or regional organization involves the North Atlantic states. The North Atlantic Treaty (1949) provides for a regional organization in which the United States and Canada are associated with Great Britain, France, Norway, Holland, Belgium, Denmark, Luxembourg, and possibly certain other states to be brought in as time passes in order to provide for mutual defense and promote understanding.[9] A military organ of this association of states began to function in 1950 and in the same year the United States began the delivery of substantial quantities of naval and air craft and other defense supplies.

The Truman Doctrine In addition to co-operation with the nations of the world in the United Nations and with certain nations in regional organizations, the United States also enters into agreements with single nations for purposes of mutual assistance. In his message to Congress on March 12, 1947 President Truman enunciated a policy which has since been known as the "Truman Doctrine." [10] Under this doctrine financial assistance and military aid have been given to Greece and Turkey to assist them in strengthening themselves in such a way that they would not fall prey to foreign aggression

[9] The North Atlantic Pact is frequently thought of as exclusively military in character, but its provisions extend to measures "to promote stability and well-being in the North Atlantic area." Article 2 specifies that "the parties will contribute towards the further development of peaceful and friendly international relations by strengthening their free institutions. . . . They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any and all of them."

[10] President Truman enunciated the doctrine as follows: "One of the primary objectives of the United States is the creation of conditions in which we and other nations will be able to work out a way of life free from coercion. Totalitarian regimes imposed on free people, by direct or indirect aggression, undermine the foundations of international peace and hence the security of the United States. I believe that it must be the policy of the United States to support free people who are resisting attempted subjugation by armed minorities or by outside pressures."

or communist underground movements. This action on the part of the United States has received sharp criticism both within and outside of the country. It seemed to many persons to constitute a withdrawal of support from the United Nations in favor of unilateral action. Moreover, the proximity of Greece and Turkey to the Soviet Union made such action by the United States especially delicate. Finally, the drain on the American Treasury is considerable and can with difficulty be brought to an end. The President has sought to assure his critics that there was no intention to bypass the United Nations. It is probably fair to say that the Truman Doctrine was the result of an emergency and that it received less careful attention before its announcement than would ordinarily be the case in general policies.

The Marshall Plan Somewhat related to the Truman Doctrine but more carefully formulated is the Marshall Plan which grew out of an address delivered by Secretary of State Marshall at Harvard University in 1947. Planners in the State Department had been at work on the problem of reconstructing Europe in such a fashion that normal conditions could be achieved some months before this address and the under secretary of state, Dean Acheson, had delivered an address which foreshadowed the major policy announcement of General Marshall. Instead of proceeding alone as in the case of the Truman Doctrine, the United States let it be known that it would favor a conference of European states to draw up a plan which would restore Europe to a position of stability under which peaceful conditions could be expected. The United States then promised to co-operate as far as it could in making it possible to carry out such a significant program. The countries of Western Europe hailed the proposal as one of the greatest importance and there was some indication of interest even among the Eastern European states until the Soviet Union took steps to veto participation.[11] After intense discussion and considerable paring of estimates the European governments produced a plan which was considered promising by the United States. Secretary of State Marshall requested a total appropriation of from twelve to seventeen billion dollars over a four-year period to underwrite the American contribution to the European Recovery Plan. Congress was impressed by the boldness of the plan and American public opinion was apparently favorable to a reasonable degree of American financial support. Nevertheless, Congress did not see its way clear to give a blanket commitment and there was lengthy debate as to the merits and drawbacks of such an undertaking. Eventually Congress agreed to authorize a contribution of $6,300,000,000, to cover the first fifteen months of the operations and to consider further appropriations at later dates, with the proviso that the entire plan would be brought to a conclusion in 1952. A supplementary appropriation of something over four billion dollars was made in 1949 and an additional sum of between three and four billion dollars was made available in 1950.

[11] Czechoslovakia went so far as to make an initial commitment and then had to withdraw.

The difficulties encountered in Europe have been both numerous and complicated and it was apparent before the plan would come to an end in 1952 that the complete recovery hoped for in 1947 would not be realized. Nevertheless, accomplishments under the Marshall Plan have been noteworthy and in many respects spectacular. A keen observer comparing the situation in 1947 with that in 1950 would find a great deal to credit to the combined efforts of the European governments and the United States. The relative strength of communist forces had been materially reduced in most of the countries and kept at a standstill in the least promising. Without exception economic conditions were improved and governments more stable. Nevertheless, the President and the State Department warned the American people that some type of assistance would in all probability be necessary after 1952 if the United States is to maintain friendly regimes in Western Europe.

The Point Four Program In a statement made in 1949 President Truman suggested as a fourth point that the United States might contribute to world stability by assisting in the development of areas of the world which had been more or less neglected in the past. Special emphasis was placed on tropical areas which might be considered important potential sources of food and other commodities in short supply and which had been held back by lack of technical experts of various kinds. Such a proposal caused an unusually favorable initial reaction in many parts of the world outside of the "iron curtain," but certain elements in Congress professed to believe that it was simply another scheme to spend vast sums of American funds. As the State Department and other agencies elaborated the proposal, it became apparent that it was not intended to devote large amounts of money, at least to begin with, to reclamation projects, the construction of transportation facilities, and other public works; rather attention was to be focused on providing experts in various fields to assist those areas which requested their services. An initial sum of $34,500,000 was approved by Congress to finance the new program during its first year and of this approximately one third was ear-marked for public health specialists. It will be interesting to observe the unfolding of this policy, though accomplishments are not likely to be spectacular to begin with. It is conceivable that major improvements in backward areas which will have far-reaching effects throughout the world may eventually result. The basic idea behind such assistance received strong support in 1950 in the so-called "Gray Report" made by a committee headed by a former Secretary of the Army.

Economic Co-operation Mention has been made above of the policy of the United States looking toward international and regional co-operation. Such co-operation involves many aspects, but it is perhaps fair to characterize it as primarily political. Since 1933 the United States has been embarked on a course intended to further economic co-operation with as many nations of the world as possible. Secretary of State Cordell Hull had arrived at the conclusion as a result of his extensive experience in public life that many of the world's

ills are the result of economic barriers which prevent anything like free movement of trade from one country to another. In his opinion the dictatorships which cursed the world during the nineteen twenties and nineteen thirties were in large measure the result of artificial barriers which stifled international commerce. During Secretary Hull's long career as Secretary of State he maintained a deep interest in what he called the reciprocal trade program and never lost an opportunity of trying to bring others to his point of view. In 1933 Congress authorized the President to negotiate trade agreements with foreign countries under which substantial reductions would be made in the tariffs imposed on goods destined for the United States in return for corresponding concessions to American products going abroad. Instead of being made on a bilateral basis, these agreements usually contained a clause which extended their benefits to other countries which met the conditions laid down.

Following 1933 agreements were made with Great Britain, Canada, France, Australia, Argentina, and many other countries and material progress was made in breaking down trade barriers. Congress has never been willing to grant permanent authority to the President in this field and consequently it has been necessary to seek extensions every few years. At times the opposition to such an extension has mounted high and following World War II there was some doubt whether the program could be continued because of unusually bitter criticism. However, public opinion has thus far supported the policy and it has been effective long enough to observe the achievements. In individual instances the reduction of high tariff walls has led to hardship, but the over-all result has without much doubt been advantageous both to the United States and to the other countries of the world.[12]

National Defense It was hoped that the organization of the United Nations would carry international relations to such a high level of cordiality that the problem of defense would become a minor one. Had it been possible to agree on a police force under the United Nations and had the negotiations looking toward the international control of atomic weapons been successful, such a happy situation might have eventuated. But with the deadlocks occasioned by the inability of the Western democracies to agree with the Soviet Union and its satellites, the problem of national defense reached an all-time high during periods when active warfare was not going on. As the Soviet Union absorbed nation after nation through direct or indirect controls, the United States naturally became increasingly apprehensive. Nor did the huge standing army of the Soviet Union contribute to dispel such concern. The North Atlantic Pact, though not exclusively devoted to defense problems, was undoubtedly primarily motivated by the desire of the United States to add to the military strength of its friends in Europe. Provisions in the charter of the

[12] For additional discussion, see J. D. Larkin, *Trade Agreements*, Columbia University Press, New York, 1940; G. Beckett, *The Reciprocal Trade Agreement Program*, Columbia University Press, New York, 1941.

Organization of American States have the same purpose, though this document has a scope far beyond military matters. The deep disappointment displayed throughout the United States when the Communists succeeded in taking over China found an outlet in the bitter criticism of the Far Eastern policy of the United States. This policy was largely based on national defense considerations, though it was far from clear-cut in character, complicated as it was by the historic sympathy of the American people for the Chinese, the tradition of an open-door policy in China, and other items.

Free-enterprise Systems of Democracy Another major element of American policy has to do with the desire to see a free-enterprise system of democratic character maintained in other countries. While the United States may give more publicity to certain other items, there is little doubt that this particular foreign policy is very near to its heart. Large numbers of American citizens strongly believe that our own type of economic system is not only best for the United States but best for the world. Conversely socialism, even in the modified forms to be observed in Britain and France, is frequently looked upon with deep suspicion despite the friendship with these countries. In Germany and Japan American programs have given emphasis to the building up of free-enterprise systems of democratic character along lines to be observed in the United States. At times it has seemed that the free-enterprise side was given even greater support than the democratic side, even to the point of maintaining the most cordial relations with political parties somewhat lacking in great enthusiasm for political democracy. There may be evidence that this policy is based on emotion rather than logic and that it is one of the weakest constituent elements of American foreign policy, but few can doubt its firmly entrenched position.

A Free World It would be possible to devote many pages to a discussion of other elements of the foreign policy of the United States, but space does not permit in a book of this character. In conclusion, it may be appropriate to mention the emphasis which has been given to such things as the "four freedoms," a free world, and the right of every people to manage their own affairs without interference from other countries. Much publicity was given to the Atlantic Charter which was drafted on a vessel in the Atlantic in 1941 by the late President Franklin D. Roosevelt and Prime Minister Winston Churchill and which was based on "their hopes for a better future of the world." [13] In a major foreign policy address made by Secretary of State Acheson at Berkeley, California in 1950 one of seven points sharply criticized the attempts on the part of Communist states "to overthrow by subversive means established governments" and their "indirect aggression across national frontiers." [14] Again and again the United States has expressed its concern

[13] For the text of the Atlantic Charter, see one of the numerous collections of documents available in most libraries These words are taken from the introductory statement.

[14] For the full text of this address, see the *New York Times*, March 17, 1950.

over the absence of free elections, the lack of a free press and free speech, and the disregard for majority opinion in such countries as Bulgaria and Roumania, even to the point of discontinuing its mission in the former in 1950. It was this policy which led the United States in 1950 to go to the assistance of the Koreans, and to join with the North Atlantic Treaty countries in a common defense force for Western Europe.

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39. 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. Independence from England had recently been won and that emphasized the importance of national defense. Moreover, there was the problem of coping with the Indian tribes of the West. The very future of the country in a world which even then was not too considerate of small and unprotected nations depended in no small measure upon the adequacy of the defense preparations. So 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. Theodore Roosevelt had a long ambition of sending the Navy around the world, but Congress refused to appropriate the necessary money; whereupon the President ordered the Navy to the Philippines and then informed Congress that funds were required to get the Navy home. Obviously the money was given. In so far as labor interferes with the defense program, the chief executive may take over control by sending in the soldiers, as he did in the North American Aviation plant in California. If management refuses to co-operate in national defense plans, the President may also occupy property, as he did in the Bendix Air Associates in New Jersey. 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 closed for ninety days; the eight-hour day can be abandoned 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; even after war was declared against Japan, Germany, and Italy some of these powers were not at once exercised. But the President may go far in dealing with a situation if he deems it prudent and necessary to do so. These powers, it may be added, are not in every case powers which are produced by war, though some of them would rarely if ever be used unless war threatened. The national defense powers of the United States may not be as extensive as those of a dictator—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 until recently at least not actually devoted any large part of its energy to military activities.[3] 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 after hostilities had ceased. At the close of the century a brief war with Spain ended with the insular possessions of the Philippines and Puerto Rico in American 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 finally, World War II broke. 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; certainly it is difficult to display any pride in such incidents as the Mexican and Spanish-American wars. And it must be admitted that this apparently bad record is all too familiar to Latin-American neighbors of the United States who have at times been victims and, irrespective of that, are inclined to regard the United States as ruthless and imperialistic.

[1] This was done in World War I.

[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.

[3] For a discussion of the peculiar problem of national defense in the United States, see F. M. Marx, ed., "National Defense and Democratic Society," *American Political Science Review*, Vol. XLIII, pp. 524–563, June, 1949.

Civil Emphasis But over against these historical events may be placed the general American antipathy for military dominance. Except when there has actually been a state of war, the civil departments have usually received more consideration than the military, despite the bitter complaints of the latter. Even the strictly military departments have been headed by civilians rather than Army, Air Force and Navy officers. Military training has been generally distasteful and except during emergency periods of brief duration has not 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 every nook and cranny without interference by the military and indeed without even so much as seeing military forces and activities. Anyone who has traveled widely in foreign countries will know what a contrast the American scene presents during normal times. In many foreign countries one can rarely escape the watchful eye of the military; military reviews lasting all day are commonplace; military police throng the places where people assemble; signs warning the visitor not to proceed further or to take photographs are frequently encountered.

National Defense Machinery

The National Security Council During most of its history the United States has not been forced to make elaborate provisions for national defense machinery beyond the service departments. However, the disturbed international situation following World War II and the development of total warfare has necessitated changes. The National Security Act of 1947 provided among other items for a National Security Council to give attention to the over-all problems of national defense. The President has the constitutional responsibility for seeing that essential steps are taken to safeguard the future of the country and Congress has the important task of making financial appropriations for such purposes, but neither has the time or the facilities for doing the planning which is highly important in this dangerous age. In periods of emergency the President has actually relied on various associates to assist him in carrying out his constitutional assignment; the National Security Council simply regularizes the informal practice of the past and makes a permanent rather than a temporary provision. Headed by the President himself, the National Security Council is made up of various *ex officio* members, including the Secretaries of State and Defense and the chairman of the National Security Resources Board. The President may designate various other secretaries of major departments, the chairman of the Munitions Board, and the chairman of the Research and Development Board to serve as members. A staff is headed by an executive secretary. The proceedings of the Council are naturally highly secret and consequently the details of its work are un-

known. However, the National Security Act of 1947 specifies that it shall consider the entire problem of national defense, advising the President in regard to policies, seeking to bring about the full co-ordination of all defense efforts, and assessing the probable risks which the United States faces. In this day and age of complications and disturbances it should be apparent how very important such a council is and what a heavy responsibility it bears.

The National Security Resources Board Total warfare requires the mobilization of all the resources of a country.[4] Large numbers of men and women are needed for the Army, the Navy, and the Air Force, but the strictly military forces are not enough to achieve victory under the conditions of modern warfare. Industry must be converted into war production; numerous scarce commodities must be stock-piled; provision must be made for civilian defense. The National Security Resources Board has been set up under the National Security Act of 1947 to give its attention to these matters. Headed by a civilian chairman appointed by the President with the consent of the Senate, the National Security Resources Board includes as members representatives of the major administrative departments and the independent establishments designated by the President. It has recently had as its members the Secretaries of State, Treasury, Defense, Interior, Agriculture, Commerce, and Labor. While it maintains a fairly sizable staff of its own, it is authorized to make use of the facilities of other agencies for much of its work. Less responsible for over-all defense policies than the National Security Council, the National Security Resources Board has to face some of the most difficult problems of a practical character that can readily be imagined. The task of preparing a national plan for the mobilization of industry alone is enormous.

The Problem of Decentralization One of the functions of the National Security Resources Board involves the consideration of plans for operating industry at maximum effectiveness during a war based on atomic bombs. With the industry of the United States centralized on the Atlantic Coast, the Great Lakes, the Ohio River, and the Pacific Coast, it has been maintained in certain quarters that a small number of properly placed atom bombs would paralize American industrial resources. Consequently it has been proposed by various interested persons that industrial establishments be moved from cities and scattered throughout the country, that provision be made for building cities and industrial plants underground, and that the national capital itself or at least a substitute capital be located far inland. The National Security Resources Board has carried on studies of this far-reaching problem and has concluded at least temporarily that any complete decentralization would be impractical. The cost alone would aggregate some hundreds of billions of

[4] For discussions of the mobilization program in World War II, see E. P. Herring, *The Impact of War; Our American Democracy Under Arms*, Farrar & Rinehart, New York, 1941; J. W. Fesler and others, *Industrial Mobilization for War*, Vol. I, Government Printing Office, Washington, 1947; Harvey C. Mansfield, *A Short History of O.P.A.*, Government Printing Office, Washington, 1949.

dollars and the effect on existing economic, social, and political institutions would beggar imagination. Doubtless some provision will be made for relocating certain key plants and a certain amount of underground construction may be undertaken, but unless the situation changes there will be no concerted attempt to decentralize.

Stockpiling Despite the warnings which the United States had of World War II, the entry into the war found the country lacking many of the commodities essential for the manufacture of highly important munitions. It has been reported that more lives were lost in North Africa as a result of malaria than from bullets and this in turn was due to the lack of quinine. A reasonable supply of raw rubber had been collected, but it did not begin to be adequate for the demands made. Various metals used for hardening steel were in very short supply. The National Security Act of 1947 stipulated that the National Security Resources Board should undertake to stockpile essential commodities so that any future emergency would find the United States better off than in World War II. Actually there have been numerous obstacles in the way of carrying through an adequate stockpiling program. World shortages have made some countries reluctant to sell quantities of certain items to the United States; other countries belonging to the Soviet orbit have naturally been unwilling to assist. It has been found that some important commodities do not lend themselves well to stockpiling because of deterioration. Despite these difficulties reasonable progress seems to have been made.

Civilian Defense During World War II the United States set up an Office of Civilian Defense to prepare for various emergencies, but it proved difficult to accomplish a great deal because of personal rivalries and various other weaknesses.[5] Fortunately there was no bombing of American cities by enemy planes and the lack of effectiveness on the part of the Office of Civilian Defense had no disastrous results. It would be pleasant to assure ourselves that a future war would see no bombing of American soil, but the evidence seems to point in the other direction. Adequate civilian defense measures therefore seem essential. Responsibility for civilian defense has been placed on a subdivision of the National Security Resources Board, the Office of Civilian Mobilization, though actual steps in setting up a program were not taken until 1950. It is already apparent that the task of preparing for civilian defense will not be an easy one; the officials in charge will require the talents of a paragon to solicit the necessary local co-operation, avoid the pitfalls, and achieve the co-ordination necessary for an effective system.

The Central Intelligence Agency In a somewhat different category but still highly important to a satisfactory national defense set-up is the Central Intelligence Agency which was also provided for in the National Security Act of 1947. Prior to 1947 the American record of intelligence was subjected to a

[5] For additional discussion, see W. D. Binger and H. H. Railey, *What the Citizen Should Know About Civilian Defense*, W. W. Norton & Company, New York, 1942.

great deal of severe criticism, some of which was probably deserved. A great deal of vital information which should have been available was lacking; intelligence officials were wanting in imagination; techniques were frequently obsolete; there was a considerable amount of competition and duplication on the part of intelligence sections of various departments of the government. The National Security Act of 1947 was based on the thesis that the United States needs a single integrated intelligence agency with adequate resources to do the job. Some opposition has been directed at the Central Intelligence Agency by departments and officials who prefer their own little kingdoms as well as by various other self-interested groups. The problem of finding the qualified people to carry on the program has not been a simple one. Congressional appropriations have perhaps not always been adequate. Nevertheless, the Central Intelligence Agency is gradually establishing itself as a vital part of the national defense machinery. It is not to be expected that its operations are carried on in the limelight, but it is public knowledge that the agency is under a director appointed by the President with the consent of the Senate. The general functions of the Central Intelligence Agency fall into four categories. To begin with, it advises the National Security Council on matters related to the intelligence activities of the various departments of the government. In the second place, it seeks to co-ordinate the intelligence activities of the various federal agencies. In the third place, it collects information of interest to the United States, and, finally, it has a subdivision which gives attention to analyzing the reports and information available.

The Defense Department Prior to 1947 the United States maintained a War Department and a Navy Department which were responsible for the ground, sea, and air defense activities of the United States. One of these at least claimed to antedate the United States itself because of its establishment before 1790; both had developed many traditions during their long life. At a time when warfare was more leisurely and less total in character, these agencies handled their tasks reasonably well, but they found it difficult to co-ordinate their efforts as the tempo of war heightened. Few citizens will soon forget the disaster at Pearl Harbor in December, 1941 which was at least partially the result of the lack of closely co-ordinated efforts on the part of the Army and the Navy. As an emergency measure during World War II a system was adopted under which a single commander, either Army or Navy, was made responsible in each strategic area. This largely corrected the weakness revealed at Pearl Harbor, but it was a stop-gap which was hardly designed for a permanent arrangement. After the end of the hostilities in 1945 a great deal of discussion was directed at a permanent provision which would have the effect of promoting a higher degree of integration within the armed forces of the United States. Many proposals were made and many objections were raised to these proposals. The service departments themselves were naturally apprehensive lest changes should be made which would have an adverse effect on

their future. The President displayed keen interest in a modification of the existing arrangement and perhaps more than any other person or group was instrumental in persuading Congress to take action. Finally, the National Security Act of 1947 which has been referred to earlier in this chapter was passed by Congress and a National Military Establishment was set up to co-ordinate but not supersede the existing Departments of War and Navy. An amendment in 1949 changed the title to the Defense Department and added a deputy secretary. Headed by a Secretary of Defense who holds a seat in the cabinet, the Defense Department is primarily a co-ordinating rather than an operating agency. Under it are three service departments as follows: Department of the Army, Department of the Navy, and Department of the Air Force; these departments have secretaries at their heads but the secretaries do not hold cabinet rank. To assist it in its task of co-ordination there are several important boards, such as the Joint Chiefs of Staff, the Munitions Board, and the Research and Development Board.

The Joint Chiefs of Staff During World War II it was necessary to set up an agency to make decisions in regard to the strategic movements, the use of armed forces, and other matters vital to a successful prosecution of war. Headed by Admiral Leahy, the chief of staff of the President, the war-time Joint Chiefs included General Marshall, the chief of staff of the Army, General Arnold, the chief of staff of the Air Force, and Admiral King, the ranking officer in naval operations. The contribution of this body was so outstanding during hostilities that it seemed logical to make it a permanent agency and this was done in setting up the National Military Establishment. Upon the retirement of Admiral Leahy the position of chief of staff for the President was not continued and in 1949 the position of chairman of the Joint Chiefs of Staff was created. The Joint Chiefs of Staff occupies a position at the very top of the military hierarchy and within the policies laid down by the National Security Council and the President it has full scope in both strategic and logistic planning, in providing for the direction of military operations, and in assigning unified commands in strategic areas. It is assisted by a sizable staff of officers who are organized into a Joint Strategic Plans Group, a Joint Logistic Plans Group, and a Joint Intelligence Group. Various committees are maintained to deal with special problems—the Joint Strategic Survey Committee, the Joint Strategic Plans Committee, the Joint Logistic Plans Committee, the Joint Military Transportation Committee, the Joint Munitions Allocation Committee, the Joint Intelligence Committee, the Joint Communications-Electronic Committee, and the Joint Meteorological Committee.

The Munitions Board Considering the existence of the National Security Resources Board and the sections of the Joint Chiefs of Staff dealing with munitions it might seem that there would be no need for a Munitions Board. Obviously the relations between the National Security Resources Board, the Joint Chiefs of Staff, and the Munitions Board are very intimate and the

Munitions Board is dependent on the policies and plans laid down by the former agencies. Its work therefore is somewhat more routine than that of the National Security Resources Board and the Joint Chiefs of Staff. Nevertheless, it is important, since after plans have been adopted it requires a considerable amount of activity to provide the actual munitions. The Munitions Board is primarily a co-ordinating body and seeks to bring about some degree of uniformity in the procurement, production, and distribution activities of the Army, the Navy, and the Air Force. One of its responsibilities is to promote standardization as far as may be feasible; it also has the authority to set up priorities for various parts of the military procurement program. The board has a chairman, a deputy chairman, three members representing the Army, the Air Force, and the Navy, and three directors in charge of staff, industrial programs, military programs, and military supply.

The Research and Development Board The tempo of modern warfare is such that methods are constantly changing. No country can safely depend upon the techniques and devices which have been demonstrated as effective in the past, for the enemy may have adopted new weapons or new types of warfare which make older methods obsolete. The development of atomic weapons is well known; not so well known perhaps are the significant devices of guided missiles and germ warfare. At any rate it is not enough nowadays to have National Security Councils, National Security Resources Boards, Joint Chiefs of Staff, and Munitions Board. The Research and Development Board is charged with the preparation of an adequate program of research and development which will keep the defense agencies of the United States abreast if not ahead of other countries. It also seeks to achieve co-ordination of the research and development programs of the Army, Navy, and Air Force and maintains contact with industrial research activities of interest to the defense problem. Headed by a distinguished scientist, such as Vannevar Bush and Karl T. Compton, the board has six members drawn equally from the Army, the Navy, and the Air Force and directors of program and planning divisions.

Progress Toward Integration It is too early to judge the full impact of the National Security Act of 1947 and the supplementary Act of 1949.[6] Any one who reads the newspapers or listens to the radio is aware of the criticism which has emanated from individual officers and groups both within and without the military services. Some of these apparently regard any move toward unification of the armed services as inherently bad; others declare their belief in the general principle of integration but sharply disagree with actual steps which have been taken. With tradition as well established as those in the Navy and to a lesser degree perhaps the Army, it is to be expected that a far-reaching program of integration will involve many difficulties. Personal factors play a particularly significant role in such a decisive modification in the exist-

[6] For an interim evaluation, see R. H. Connery, "Unification of the Armed Forces—The First Year," *American Political Science Review*, Vol. XLIII, pp. 38–52, February, 1949.

ing system. In a formal sense much has been accomplished, as has been indicated above in the discussion of various co-ordinating agencies. Real integration obviously goes beyond the setting up of new machinery, however important that may be. Some progress has been made toward genuine integration, but the process is a painful and laborious one which will require many years for full fruition.

The Atomic Energy Commission There may be some surprise that the Atomic Energy Commission has not been mentioned at an earlier point. The publicity given to the role of the atom bomb in future warfare would seem to justify a leading place among the national defense agencies for the Atomic Energy Commission. But the Atomic Energy Commission as set up by Congress under the Atomic Energy Act of 1946 is an independent agency of the government rather than a subdivision of the Defense Department. Many persons would have liked to see the Atomic Energy Commission placed definitely under military control, but the national sentiment favored civilian control for two reasons. In the first place, the tradition of civilian as against military dominance in the United States seemed to point in the direction of a civilian status for atomic energy, despite the vital interest of the military in such a field. And it should be noted that the Defense Department maintains a Military Liaison Committee with the Atomic Energy Commission. In the second place, atomic energy has great possibilities in the industrial and health fields in addition to the military application and it was argued that a civil agency could best develop an over-all program for its use. With a budget of several hundred million dollars per year, the five-member Atomic Energy Commission, appointed by the President with the consent of the Senate, carries on an elaborate program which is for the most part enshrouded in mystery. The Atomic Energy Act of 1946 stipulated four program divisions as follows: Research, Production, Engineering, and Military Application; two others, the Division of Reactor Development and the Division of Biology and Medicine, have been authorized by the commission itself. The Atomic Energy Commission carries on research activities at the Oak Ridge National Laboratory in Tennessee, the Los Alamos Scientific Laboratory in New Mexico, the Argonne National Laboratory in Chicago, the Brookhaven National Laboratory on Long Island in New York, and the Knolls Atomic Power Laboratory at Schenectady, New York. In addition it produces fissionable materials at Oak Ridge, Tennessee and at Hanford, Washington. Finally, the commission arranges with private research institutions to carry on certain projects.

Army, Navy, and Air Force Departments The basic national defense organizations are the departments of the Army, the Navy, and the Air Force. The Department of the Army, formerly the War Department, traces its history back to the Act of 1789 or even to a department existing before the adoption of the Constitution. The Department of the Navy dates from 1798. The Department of the Air Force was provided for in the already familiar

National Security Act of 1947. All three of these departments are at present constituent parts of the Department of Defense. Each service department is headed by a civilian secretary who prior to 1947 held a seat in the cabinet but at present is just below cabinet rank. Prior to 1949 the secretaries had direct access to the President, but the Act of 1949, in order to promote co-ordination, provided that the secretaries of the Army, Navy, and Air Force Departments must go through the Secretary of Defense when dealing with the President. Each department has an under secretary and assistant secretaries who are also civilians to assist in general administration. Below that level there are numerous operating, planning, and supply subdivisions which are usually headed by military personnel.[7]

The Armed Services

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." [8] However, this army except in war time has ordinarily been small when compared with the professional armies of even some of the smaller countries of the world. At a time when European countries thought nothing of regular armies of hundreds of thousands of men and officers the United States felt that a standing army of approximately one hundred thousand was adequate not only for the continental United States but to protect the Panama Canal, the Hawaiian Islands, and the Philippines. 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. As the Nazi menace became more and more apparent and the long-time friends of the United States, such as France, Holland, Belgium, Norway, Czechoslovakia, and Poland, became victims of Hitler aggression, the Regular Army was gradually increased by voluntary enlistment. In the fall of 1941, prior to the entry of the United States into the war, it consisted of 505,000 men and about 15,000 officers. An additional 16,000 Regular Army reserves and 74,000 reserve officers were in active service at that time. The international situation and the responsibilities of the United States in Germany and Japan arising out of World War II currently require a considerably larger Regular Army than prior to 1940, but until the Korean outbreak the total ran to slightly over 600,000.[9]

Reserve Components While the Army has long recognized the need of a Reserve Force, it has only been since World War II that the Reserve com-

[7] For additional information relating to the organization of the Army, Navy, and Air Force departments, see the current *United States Organization Manual*, Government Printing Office, Washington, issued annually.

[8] Art. I, sec. 8.

[9] As of February, 1950, there were 615,400 members of the Regular Army, organized in ten divisions, forty-eight anti-aircraft battalions, and various ancillary units

ponents have involved large numbers. Several hundred thousand officers who served in World War II retained reserve commissions after demobilization and a small number of enlisted men also agreed to serve in such a capacity. Efforts have been made to increase the number of enlisted Reserve members, though the relative number of officers is out of proportion to the total size of the Reserve.[10] College students who are members of R.O.T.C. units receive commissions as second lieutenants in the Reserve after supplementary summer training. For various reasons the Army has encountered more than ordinary difficulty in making satisfactory arrangements for the Reserve components since World War II.

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 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 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 even greater size.[11]

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. 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. As numbers are reached, the men are called before the boards and classified. Those who have dependents are placed in a deferred category as are those who are physically or mentally unfit for service. Original provisions called for one year

[10] In 1950 there were 255,000 members of the organized Reserve in drill-pay status.
[11] In 1950 the National Guard included 350,000 persons.

of this training, but Congress later authorized an extension to two and one-half years in case the President and War Department regarded it as essential, even though no state of war existed; with the declaration of war the service of the selectees became indefinite. 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. In 1948 Congress passed another Selective Service Act which required males between the ages of eighteen and twenty-six years to register and made those between nineteen and twenty-six liable for military training and service as far as was necessary to maintain the authorized personnel strength of the Army, the Navy, and the Air Force.

The National Army During wartime the Regular Army, the National Guard, and the selective service men together form what is known as the National 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. After the entry of the United States into World War II the War Department naturally bent every effort to build a large and powerful National Army, though it refused to commit itself to definite numbers. At the peak during the first part of 1945 a force of more than eight million men and women constituted the Army of the United States. As 1950 came to an end, another large National Army was in the process of being formed.

Organization of the Army The President is commander in chief of the Army in a legal sense, but he does not ordinarily actively exercise his prerogative. To begin with, he is rarely a professional soldier; furthermore, he has too many other burdens to be able to give his detailed attention to the Army. The Secretary of the Army, like the President, does not have a military background as a rule, and is somewhat more of a liaison man between the Army and the Department of Defense than its head. The General Staff has direct oversight of the Army and its head, the chief of staff, is actually the top officer in the Army with heavy responsibility for operations.[12] A vice chief of staff gives general assistance to the chief of staff and two deputy chiefs of staff for administration and for plans and combat operations have important roles. The General Staff is elaborately organized into various divisions to deal with personnel and administration, women's army corps, intelligence, organization and training, logistics, and plans and operations. Special staffs of the Army include national guard and reserve affairs divisions, an office of inspector general, an historical division, a civil affairs division, and an office of judge advocate general. Then there are administrative services such as the adjutant general's department, the office of chief of chaplains, the office of provost marshal general, and special services. Finally, there are the following technical services: medical department, chemical corps, corps of engineers, quarter-

[12] In 1950, this was perhaps not technically true, since the chairman of the Joint Chiefs of Staff, General Omar Bradley, outranked the chief of staff of the Army.

master corps, signal corps, ordnance department, and transportation corps. An office of chief of army field forces is in charge of the field operations within the United States which are organized on the basis of six armies and a military district of Washington.

The Navy The Constitution authorizes Congress to "provide and maintain a navy," [13] 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 the war. Some idea of growth may be given by comparing tonnage figures of 1940 and 1945. In 1940, the Navy consisted of 1,313,390 tons of fighting ships and 554,308 tons of auxiliary ships; corresponding figures in 1945 ran to 4,433,418 tons in the case of fighting craft and 9,000,000 tons in the case of other vessels. As the war with Japan came to an end, the Navy reported 10 first-line battleships, 45 cruisers, 139 carriers, and 370 destroyers. Prior to the defense of Korea a Navy of approximately four hundred thousand officers and men exclusive of Marine Corps personnel was maintained.[14]

The Marine Corps The Marine Corps, which expanded from 26,454 in 1940 to 51,203 officers and men in 1941, and was built up rapidly 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. In cases of emergency

[13] Art. I, sec. 8.

[14] As of February, 1950, the Navy included 401,900 officers and men. In 1950, a fleet of 652 ships, of which 238 were major combat types and the remainder auxiliaries, was operated. Naval and Marine planes totaled 8,415. The Navy and the Marine Corps maintain an organized Reserve corresponding to that noted in the case of the Army. In 1950 reservists who were being paid for regular drill totaled 256,000.

the Navy rushes to the spot and if land action is then required the Marines are landed to deal with the situation. During the period following World War II and prior to the crisis in Korea a Marine Corps slightly under one hundred thousand was maintained.[15]

Organization of the Navy The organization of the Navy in general resembles that of the Army, but there are differences in terminology and some of the functions are not the same. The ranking naval officer who corresponds to the Army chief of staff holds the title "chief of naval operations." He is assisted by a vice chief of naval operations, five deputy chiefs of naval operations, an inspector general, and various assistant chiefs. Naval technical assistants who are commissioned officers are in charge of subdivisions dealing with aeronautics, medicine and surgery, naval personnel, ordnance, ships, supplies and accounts, yards and docks, the office of judge advocate general, naval research, and the Marine Corps.

The Air Force Until quite recently the Air Force has not been recognized as on a par with the Army and the Navy, though it has been more or less autonomous within the Army. The National Security Act of 1947 remedied this situation by providing for a separate Department of the Air Force. The Navy continues to maintain certain air craft and one of the major points of controversy since World War II has been the exact distribution of responsibility between the Air Force and the air arm of the Navy. In general the Air Force has been given the primary task of air defense and thus was expanded rapidly to a point where before the events in Korea it consisted of more than four hundred thousand officers and men,[16] organized in forty-eight groups and some thirteen separate squadrons.[17] Plans at the end of 1950 called for approximately doubling the number of groups.

Veterans' Affairs

Case 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. In many cases the process is largely a routine one of transporting the soldier from a foreign theater to the United States, checking his records, and furnishing an honorable discharge. But in other instances the matter is not so simple. Hundreds of thousands of casualties have resulted

[15] The Marine Corps strength was 80,100 as of February, 1950.

[16] The Air Force strength was 415,000 as of February, 1950. This includes only "regular" personnel; in addition the Air Force has a reserve similar to that of the Army and Navy. This consists of some 118,000 in drill-pay status.

[17] In 1950, the regular Air Force operated some 8,800 planes. The Air National Guard and the Air Reserve operated about 3,400 additional planes.

from the war and many of these require hospitalization, rehabilitation, convalescent facilities, and other types of treatment. In certain cases veterans may have to be maintained more or less indefinitely in government institutions, while in others they can be returned to civilian status after artificial limbs have been fitted. After the return to civilian status has been effected, the responsibility of the government is far from completed. 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 armed forces have discharged veterans from active service. This agency administers the G.I. Bill of Rights which provides for various benefits, such as financing of educational training and monetary assistance in the purchase of businesses, farms, and the building of homes. It also administers the insurance program which was provided during World War I and World War II for those in uniform and which continues during peacetime if holders of policies maintain premium payments. 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 types of benefits, such as bonuses and pensions.

The Veterans Administration The Veterans Administration is an independent agency of the national government set up under an act of Congress passed in 1930. It is headed by an Administrator of Veterans' Affairs who is appointed by the President with the consent of the Senate. Starting out in a comparatively modest fashion, the Veterans Administration remained small until the end of World War II; then it began to mushroom at a time when many agencies were being liquidated or cut back. During the years following World War II it administered programs involving the expenditure of sums far larger than the total cost of the major departments—at the high water mark some seven billions of dollars was expended in a single year. Its central and field organizations are naturally very elaborate, employing many thousands of persons. The central offices in Washington include the following major subdivisions: Board of Veterans' Appeals, claims, construction, supply, and real estate, contact and administrative services, finance, insurance, legislation, medicine and surgery, special services, and vocational rehabilitation and education. Increasingly as the veterans' programs have been inaugurated, it has been necessary to decentralize administration in order to prevent long delays and serious hardship in individual cases. The Veterans Administration maintains district offices in every state in the union and in addition operates regional offices, hospitals, centers, domiciliary centers, supply depots, forms depots, a records center, and a publications depot in the field.

Declaration of War

Prior to the appearance of the totalitarian dictators, the world was not exactly peace-loving at all times, but there were certain forms which were usually observed when war was resorted to. Among these was the formal declaration to the enemy and to the world that a state of war existed. Dictators ignored many of these old forms for one reason or another and often did not see fit to declare a state of war. To some extent this was perhaps because they often followed *blitz* tactics and with lightning speed descended on their victim before he knew what was being planned. Again it suited their fancy to pretend, irrespective of the actual facts, that they were the ones being aggressed on rather than the aggressors.

Provisions in the United States 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." [18] 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, much as Hitler once did in Europe. But Presidents have been disposed to exercise that power with due care. Many people believed that the new pattern established by the dictators might lead to a general abandonment of the formal declaration of war. However, in December, 1941, war declarations were made by the United States and Great Britain after Japan [19] had bombed Hawaii and Malaya; the United States also declared war against Germany and Italy after they had taken such steps against us.[20]

[18] Art. I, sec. 8.

[19] The United States declaration of war against Japan ran:

Declaring that a state of war exists between the imperial Japanese government and the government and the people of the United States and making provision to prosecute the same.

Whereas, the imperial Japanese government has committed unprovoked acts of war against the government and the people of the United States of America;

Therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the state of war between the United States and the imperial Japanese government which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the government to carry on war against the Japanese government; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

[20] The Declaration of War against Germany and Italy were identic. The German Document read as follows:

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" [21] and this Congress has done in the form of military law.[22] Members of the armed forces are not immune from civil rules and regulations when they are away from military reservations,[23] 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 the military prison at Fort Leavenworth or in extreme cases condemned to death. The Army, the Navy, and the Air Force have legal branches headed by judge advocates general, and manned by professional lawyers who are attached to the various divisions and field areas. Under the supervision of these services, courts-martials are set up to pass on offenses which are committed by members of

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The President's Message

To the Congress of the United States:

On the morning of Dec. 11 the Government of Germany, pursuing its course of world conquest, declared war against the United States.

The long-known and the long-expected has thus taken place. The forces endeavoring to enslave the entire world now are moving toward this hemisphere.

Never before has there been a greater challenge to life, liberty and civilization.

Delay invites great danger. Rapid and united effort by all of the peoples of the world who are determined to remain free will insure a world victory of the forces of justice and of righteousness over the forces of savagery and of barbarism.

Italy also has declared war against the United States.

I therefore request the Congress to recognize a state of war between the United States and Germany, and between the United States and Italy.

FRANKLIN D. ROOSEVELT

The War Resolution

Declaring that a state of war exists between the Government of Germany and the government and the people of the United States and making provision to prosecute the same.

Whereas the Government of Germany has formally declared war against the government and the people of the United States of America:

Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the state of war between the United States and the Government of Germany which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the government to carry on war against the Government of Germany; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

[21] Art. I, sec. 8.

[22] For additional discussion, see John H. Wigmore, *Source Book of Military Law and War Time Legislation*, West Publishing Company, St. Paul, 1918; and A. A. Schiller, *Military Law and Defense Legislation*, West Publishing Company, St. Paul, 1941.

[23] In 1942 the War Department announced that only in extremely serious cases involving felonies disqualifying for military service would soldiers be surrendered to civil authorities. See the *New York Times*, January 10, 1942.

the armed services. It should be noted that military law applies primarily to members of the armed forces, though civilians serving with the armed 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." [24] 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. When a proclamation 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.[25]

Definition of 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.

Purpose of Military Government The immediate purpose of military government is to assist in the prosecution of war by relieving the tactical forces

[24] Much additional information in regard to martial law is available in Charles Fairman, *The Law of Martial Rule*, rev. ed., Callaghan & Company, Chicago, 1943.

[25] 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. See *Duncan* v. *Kahanamoku* and *White* v. *Steer*, 327 U.S. 304.

of many problems which have to be handled and which in the past have frequently seriously vitiated the vigor of military operations. Thus military government has the responsibility of seeing that the civil population keeps out of the way of the tactical units as far as possible. Moreover, military government is used to secure resources which are available in occupied territory and needed by the fighting forces. 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.

General Character of Military Government 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. This is not the result of any benevolent attitude, but because experience has conclusively proved that it is more effective to use what is already in existence as far as possible. Thus military government does not, except in cases of extreme emergency, operate the government itself, since this would require many more military personnel than are usually available. Moreover, military government officers do not have the familiarity with local conditions which is essential to operating directly. The incumbent officials are "vetted" and those not found satisfactory are replaced by new personnel acceptable to military government. Likewise, the old laws are retained in so far as they do not conflict with military government policy; in the latter case military government laws which supersede objectionable local regulations are issued by the Supreme Commander.

Development of Military Government Provision for the control of the population and resources of territory taken over by our armed forces during military operations has obviously always received some attention when the occasion arose. Thus during the Mexican War, the Spanish American War, and World War I officers of the Army were given the responsibility for controlling territory in Mexico, Cuba, the Philippines, Russia, and Germany. But the problems involved were comparatively simple in character; the areas were not extensive; and the period of control was fairly brief. The occupation of the Rhineland in World War I developed a system of military government more elaborate in character than any earlier instance, though it had to be carried on more or less *ex tempore* since little or no planning had been done beforehand. Difficulties of co-ordinating with the French and the British led to many problems which had not been solved when our troops were withdrawn in the twenties. One of the most important results of this first occupation of Germany was the *Hunt Report* which analyzed in a most incisive manner not only the immediate experience but the over-all problem of military government and has been called the "Military Government Bible."

Military Government Operations During World War II In contrast to earlier wars, it was decided at an early stage in World War II that special

provision should be made for military government. Civil affairs agencies were set up in the War and Navy departments; schools for training military government officers were established at approximately a dozen universities;[26] and recognition was accorded in the field by providing G-5 staffs at Supreme Headquarters, Army Group, and Army levels. Several thousand military government officers were organized into regiments and detachments and sent out to control German, Italian, Japanese territory taken over or to work with French, Belgian, Dutch, Norwegian, or Danish officials in the liberated countries. By and large these officers conclusively demonstrated their importance in modern warfare. Indeed the demand became so great that the supply of specially trained officers proved inadequate. While certain aspects of the military government program came to an end with the completion of hostilities, a great deal remained to be done after V-E and V-J Days. Military government in Germany actually continued until mid-1949 when it was succeeded by an Allied High Commission; in Japan the military government administration under General MacArthur remains in force at the date of this writing in 1950.[27]

Industrial Mobilization

Modern warfare requires the use of almost inconceivable quantities of supplies of one sort and another. Food, clothing, lubricants, fuels, chemicals, construction supplies, trucks, airplanes, tanks, machine guns, mortars, antiaircraft weapons, bombs, torpedoes, mines, projectiles, and hundreds of other items are needed in varying amounts and in a wide assortment of types. This means that a country which expects to defeat its enemies must organize its industrial system in such a fashion that adequate supplies of war materials are constantly at hand. At the height of World War II well over half of the greatly expanded industrial capacity of the United States was being dedicated to turning out war supplies. The critical international situation confronting the democracies in 1950 again made it necessary to gear American industry to production for national defense.

Control Agencies Industrial mobilization requires not only the plans which have been drafted by the National Security Resources Board and other agencies but a considerable quantity of administrative machinery for putting such plans into effect. During World War II a succession of agencies, includ-

[26] See Charles S. Hyneman, "The Army's Civil Affairs Training Program," *American Political Science Review*, Vol. XXXVIII, pp. 342–353, April, 1944.

[27] The literature on military government operations during World War II is voluminous. Among other convenient sources, see S. Connor, ed., "Military Government," *Annals of the American Academy of Political and Social Science*, Vol. CCLXVII, pp. 1–200, January, 1950; C. J. Friedrich and associates, *American Experiences in Military Government in World War II*, Rinehart & Company, New York, 1948; H. Holborn, *American Military Government*, Infantry Journal, Washington, 1947; Marshall Knappen, *And Call It Peace*, University of Chicago Press, Chicago, 1948; and Harold Zink, *American Military Government in Germany*, The Macmillan Company, New York, 1947.

ing the Office of Emergency Management, the Office of Production Management, the War Production Board, an Office of Price Administration, the War Manpower Commission, the War Food Administration, the Office of Defense Transportation, the War Shipping Administration, the Office of Economic Stabilization, and the Office of War Mobilization, were set up to control production, labor supply, prices, agriculture, land and ocean transport facilities, supplies of raw materials, and other important aspects of the industrial system. After the war these were liquidated either at once or after reconversion had been accomplished. The national emergency in 1950 led to the creation of another series of agencies for control purposes. An Economic Stabilization Agency, a National Production Authority, and a Price Stabilization Administrator came into being one after another and at the very end of 1950 the President set up an Office of Defense Mobilization to "direct, control, and coordinate all mobilization activities of the executive branch of the government, including but not limited to production, procurement, manpower, stabilization, and transportation." Thus unlike the divided authority which was characteristic of industrial mobilization during World War II, the national emergency of 1950 saw concentrated authority in the hands of a single agency, whose head could make decisions binding even on the Secretaries of Commerce and Labor and other high-ranking officials. Early in 1951 a Defense Production Administration was added to give special attention to munitions and other defense items.

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40. State Constitutions

Their Diversity It is to be expected that some fifty separate state constitutional systems will present a diverse picture. Even if the several states were uniform in population and economic interests, it is altogether probable that there would be considerable diversity in their constitutions. 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 most of the New England states are almost as old or even older than the federal Constitution itself; the constitutions of Massachusetts and New Hampshire are usually dated 1780 and 1784 respectively. On the other hand, the newest constitutions have been framed during the present century and in several cases in the course of the last decade.[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 constitutions of Vermont and Rhode Island require only a few printed pages for their various sections;[3] the constitution of Louisiana runs to more than 250 closely printed pages! Reflecting the popular will of the nineteenth century, a number of the state constitutions specify biennial election of certain state and local officials, while the newer constitutions tend to provide four-year terms for corresponding officers. Inasmuch as business enterprises were relatively small in size a hundred years ago, the older constitu-

[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. A Tennessee effort recently proved abortive. A number of other states have recently given attention to the question of revision. Formal or legal steps have been taken in California, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, New Hampshire, North Carolina, and Ohio. There have been active citizen groups working for constitutional revision in Florida, Illinois, Ohio, South Carolina, Texas, and Wisconsin during the last decade.

[3] The shortest original constitution is that of Vermont; then comes Rhode Island.

tions have very little to say about corporate structure and practices. In contrast the fairly 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, the basic agreement which they reflect on many aspects of government must not be overlooked. Indeed it may be asserted that in fundamentals they are more similar than they are divergent. Some of them omit elaborate provisions relating to the social and economic problems of the day; others may be filled with prohibitions of one kind and another directed at the legislative branch; a considerable differentiation may be noted in the terms of office stipulated for elective officials. However, 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—an intermediate court may, for example, be called a district, circuit, county, general sessions, superior, or oyer and terminer court. Nevertheless, there is a good deal of similarity in the general court structures of the several states. Provisions for local government are not the same in every detail in the various states, but the city and county are basic everywhere, except in Louisiana which prefers to maintain parishes but does not depart so far from the general functions entrusted elsewhere to local governments. Freedom of speech and of religion, the right to hold property, the historic writs of habeas corpus, mandamus, and injunction, 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 Napoleonic Code as a basis for a legal system.

A General Comparison of the Federal and State Constitutions Under the American 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 serve as a basis of such legislation; 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 some-

[4] A convenient table containing pertinent data relating to the state constitutions may be found in the various editions of the *Book of the States*, Council of State Governments and American Legislators' Association, Chicago.

[5] Of course, this has been liberally interpreted by the courts to include implied powers.

what more negative in character than the federal counterpart. The brevity of the federal Constitution makes for a general tone which is characteristic of the older state constitutions, but is 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 broader than those who are familiar with only the formal constitutions assume. 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 to 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 less important in the broad constitutional system than in the federal sphere.

Contents of a State Constitution

A constitution of twenty pages can hardly cover the same ground as one which extends over two hundred pages; consequently it might seem that it would be impossible to make any generalizations in regard to the specific contents of the state constitutions. As far as details are involved, it is almost, if not quite, out of the question to characterize the various constitutions in general terms, since one may devote several pages to a matter which is entirely ignored by another. Nevertheless, there are a few broad generalizations that may be safely made and which will throw some light on the subject. 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. These will now be examined individually.

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 to their citizens 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 of the federal Constitution. Thus freedom of speech, the press, and religion are everywhere

[6] For a detailed discussion of these, see Chap. 7.

guaranteed in principle, although they may not be fully observed in practice, particularly in times of emergency. Jury trials in the more serious criminal cases are stipulated, but the requirement of a grand jury indictment has been modified by many of the state constitutions so that the less cumbersome process of information may be substituted. The right to have counsel, to hear evidence produced against oneself, to be excused from self-incrimination, to have public assistance in subpoenaing witnesses, and to be free from "cruel and unusual" punishment are accorded almost without exception. The right to assemble for peaceable petition of the government is ordinarily extended, though it may be seriously curtailed in practice by the fondness of some state governors for proclaiming martial law. The right to hold property is everywhere admitted and compensation is ordered in those cases where private property is taken for a public purpose.

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 attention. 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 public 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 extensive spend many pages in specifying structure and duties. County and city governmental structure is also laid down at least in broad outline and may in some instances receive detailed attention.

3. State Finance Framers of state constitutions have usually 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 largely 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. The Virginia constitution devotes something like a dozen printed pages to corporations, while the more recent constitution of Oklahoma goes to an even greater length.

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 various general principles. The extent of state control over local public-school systems may be indicated; specific 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 ear-marked for educational use. In the field of public welfare it is possible 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. A reading of the New York constitution of 1938 will indicate to what extent a modern state constitution may go in taking cognizance of the complex social problems of the day.

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 drafting 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.

Types of Amending Procedure

Amendment by Legislative Proposal The traditional amending process looks to the state legislature for the originating of amendments. Proposals to amend 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 an 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 a proposal to amend has met the necessary legislative requirements—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 will suffice 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] 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.

Amendment by Convention 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 unwieldly. 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

[7] See H. W. Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 3, January, 1938.

[8] See Chap. 44.

[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, 12[illegible] undertook the complete revision of a constitution; 12 undertook revision through amendments and 3 failed to submit any proposals.

usually similar to that of ordinary lawmaking, with tentative drafts 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, as in the New York convention of 1938, be almost, if not quite, as definite as in any state legislature. However, there is a feeling in certain 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 then ask the voters to express themselves on each part. The New York Constitutional Convention of 1917 submitted its work to the voters in a single piece. Great praise was widely bestowed on the proposed text and it was generally taken for granted that the voters would accept as a matter of course what had been recommended. However, there were sufficient objections to various provisions to roll up enough votes to defeat the entire proposal and the convention thus had the embarrassing experience of seeing its work go for nothing. The 1938 constitutional convention in New York, profiting from the earlier experience, decided to follow the other course and consequently asked the voters whether they approved the several parts of the proposed revision—although it may be added that certain politicians who hoped for the defeat of the entire project did their best at the last minute to prevent seriatim submission. Two provisions, including a prohibition of the use of proportional representation which had been vigorously fought by advocates of progressive government from the very start, were rejected by the voters, but the remainder of the amendments were accepted.[11]

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,[12] while Illinois and Kentucky have adopted only seven and eight amendments respectively, though in both cases

[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] The proceedings of the New York convention are available in printed form and may profitably be consulted.

[12] See W. H. Combs, "An Unamended State Constitution," *American Political Science Review*, Vol. XXXII, pp. 514 *ff.*, June, 1938. Tennessee attempted a complete revision in 1948, but rural voters defeated the move by a small margin.

process, nothing is more important than the improvement of legislative procedure." [16] A popularly elected governor with a four-year term is given large administrative responsibility over a carefully integrated departmental setup. In order to relieve the governor of some of the very heavy burden that is involved in administrative supervision, the constitution recommended an administrative manager who shall have general oversight and be aided by a financial, a personnel, a planning, a research and statistics, and a public reporting and information assistant, though these positions are not specifically named as such. The courts should be organized in such a fashion that unification rather than decentralization is a primary characteristic. A general court of justice is provided to handle all of the trial and appellate functions, while the chief justice is made head of the judicial department, with general responsibility for the operation of the judicial system. A judicial council assists the chief justice in providing continuous supervision of the courts and is given the rule-making power. The chief justice is elected by the voters, but the other judges are appointed for terms of twelve years by the chief justice from a panel of names drawn up by the judicial council; after a judge has served four years he must come before the voters in an automatic recall election.

Administrative Provisions Inasmuch as the administrative aspect of state government is everywhere receiving major emphasis, it is to be expected that the model state constitution devotes a considerable amount of attention to these matters. Debt limitations, budget-making, expenditure control, post-auditing, purchasing, and taxing powers are all dealt with. The governor is charged with preparing the budget and has the authority to reduce expenditures under the amounts appropriated by the legislative branch where he regards it as desirable. All administrative positions except those which involve policy-making at the top, together with legislative, judicial, and local government employees, are brought under a merit system. Provisions relating to public welfare seek to give the state adequate authority to deal with education, health, public assistance, welfare institutions, conversation, and housing. To prevent trouble arising out of a strict interpretation of these grants of power by the courts it is specifically declared in the constitution itself that "the enumeration in this article of specified functions shall not be construed as a limitation upon the powers of the state government."

Miscellaneous An article on local government stresses the principle of home rule in so far as it does not conflict with ample authority on the part of the state to deal with problems of general importance. The article on intergovernmental relations is intended to remove barriers to federal-state and interstate co-operation as well as to encourage the consolidation and co-operation of local units of government. The question of whether a constitutional convention shall be assembled is to be submitted to the voters every twenty years.

[16] See Graves, *ibid.*, p. 916.

The Problem of Lengthy Constitutions

It is probable that there would be more or less 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 constitution may hold up action on an important matter for years. On the other hand, the very nature of the political process in the United States, the highly complicated economic system, and the diverse political psychology make more or less detailed constitutions almost inevitable. To those who look back with longing on the days when the role of government was comparatively slight and individual initiative relatively unfettered, the present trend will undoubtedly seem evil—perhaps on any basis of democratic political theory it is not to be approved. But practical considerations often call for developments which ignore theories.

Underlying Causes of Lengthy Constitutions There is no simple explanation of the movement in the direction of longer and ever more complicated state constitutions. At one period in the history of the United States it is probable that popular distrust of legislative bodies accounted for a great deal of the emphasis. Irresponsible and venal legislatures that disposed of public property to the highest bribers, dealt generously with some interests and harshly with equally deserving ones, spent public funds on divers unwise projects and incurred heavy debts without any adequate cause naturally did not inspire public confidence. To prevent these and other evils as far as possible, it seemed logical to insert provisions in state constitutions forbidding special legislation, limiting the power of the legislature to dispose of franchises, and specifying for what purposes and to what extent public indebtedness could be resorted to. Legislatures at present are more responsible than some years ago, but suspicion still remains in many quarters. Occasionally state legislatures have been so dominated by powerful corporations or pressure groups that they have ignored the demands made by the majority of the citizens. If the initiative is permitted, the voters may at least in theory take matters out of the hands of the legislature and deal with them directly through an addition to the constitution. Even if the initiative is not available, the resentment aroused by such indifference may eventually cause constitutional limitations aimed at minimizing the power of vested interests.

State courts have on occasion decided fundamental questions in a fashion that displeased the people. In order to nullify these judicial actions amendments have been drawn up and finally added to the constitution. During the

last two or three decades much of the trend in the direction of enlarged constitutions may be attributed to the popular will that the role of government should be given more prominence. In the case of the national government the elaborate statutes associated with the New Deal and the Fair Deal have served this purpose. In the states the distinction between constitutional provision and important statutory law has more or less broken down, with the result that an appreciable portion of the program involving public housing for the low-income groups, pensions for the aged, and so forth, has been handled either entirely or partially by constitutional amendments.

State Constitutions and the Courts

Both Federal and State Courts Active 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.

Strict Construction 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. Thus during the nineteen thirties the Indiana Supreme Court overturned two formidable barriers that had been a source of popular irritation for many years. After numerous attempts to amend the constitution in such a manner as to permit bar examinations had failed, that court interpreted the constitutional provision that candidates for admission to the bar should have a "good moral character" to mean that they should be adequately versed in the law. A little later the same court overruled a precedent of more than half a century which had made it virtually impossible to amend the state constitution by declaring that a favorable majority meant merely a majority of those voting on an amendment rather than a majority of all qualified voters.[17]

Political Influences The judges of state courts ordinarily hold their offices for limited terms and receive their positions to some extent at least on a political basis. Federal Supreme Court judges, on the other hand, receive their appointments during good behavior and ordinarily have not been as intimately tied up with political organizations. Even in the case of the latter there are those who believe that political considerations enter into judicial attitude. Hence it is not strange that state courts should at times allow themselves to be influenced by other than purely legal considerations. Political influence is likely to be more prevalent in the lower state courts than in the highest; when it does intrude upon the scene of the appellate courts it often does not relate to constitutional matters. However, there are cases in which the highest state courts have apparently interpreted a clause of a state constitution in such a manner as to make it impossible for a legislature dominated by political rivals to carry through a program. In other instances they have blinded themselves to certain constitutional prohibitions in order that projects dear to the heart of governors and legislatures of their own party might be upheld. A Democratic supreme court bench in Indiana managed to find no obstacle to the far-reaching and somewhat fantastic reorganization of the state government by their fellow Democrat, Governor Paul V. McNutt, in 1933, but when the Republicans came back to power and sought to accomplish their own reorganization in 1941, their attempts were branded as unconstitutional by the supreme court which was still controlled by Democrats.[18]

[17] The ruling of the supreme court in the nineteenth century almost made the Indiana constitution unamendable. Many voters did not trouble to vote on the amendments at all and hence despite more votes in favor than against, it was literally impossible to secure a majority of all voters.

[18] It is fair to state that the Republican reorganization had more weak spots than the Democratic one, although both were primarily political in character.

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41. The Office of Governor

Although the states may differ widely 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 carries with it exactly the same 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 very 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 are to a considerable extent independent of 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 requirement of that character. Almost any candidate can meet these rather simple qualifications, but there are others imposed 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 backing 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 have been cordial relations

[1] The most authoritative study of governors is Leslie Lipson, *The American Governor: From Figurehead to Leader*, University of Chicago Press, Chicago, 1939.

with the party organization. In many instances 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.[2]

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. Hence candidates who own farm land, live in small towns which depend upon rural trade, act as officers of country banks which deal with farmers, edit farm periodicals or newspapers, or have been active in the farm bureau or grange have an edge over rivals. 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; the people want someone like themselves in the office. As one voter 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 such as Governor Williams of Michigan or former Governor Stassen of Minnesota[3] 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, Connecticut, and Indiana that cling to the party convention method.[4] Election except in a very few states such as Georgia and Mississippi is by popular vote,[5] 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 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

[2] In a recent year nineteen of the governors then serving had served in state legislatures, nine had held various state offices, and four had occupied seats in Congress. See C. A. Beard, *American Government and Politics*, rev. ed., The Macmillan Company, New York, 1939, p. 578.

[3] Harold Eugene Stassen was thirty-one when elected governor.

[4] See Chap. 12 for a discussion of these methods of nomination.

[5] Georgia and Mississippi use a system somewhat like the electoral college, which is familiar in connection with the presidency.

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 larger number have entered the Senate of the United States—among these may be mentioned Governor Robert LaFollette of Wisconsin, Governor Hiram Johnson of California, Governor Huey P. Long of Louisiana, Governor Herbert Lehman of New York,[9] and Governor Leverett Saltonstall of Massachusetts. 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.

Types of Governors Almost every type of person has at some time or other held the office of governor, but there are several categories which are to be observed in the various states: (1) the strong leader, (2) the figurehead, (3) the man of the people, (4) the grafter, (5) the showman, and (6) the reformer.[10]

1. Strong-leader Type At any time there will be a few governors who are outstanding as leaders, but they are always a small minority. Some states have been more fortunate than others in securing the services of men of outstanding ability,[11] though most of the states have at times, accidentally or otherwise, elected such men as governors. This type of governor usually has more than average intelligence, attractive personal characteristics, a good understanding of human nature, a measure of persistence, an appreciation of the role of state government, and a substantial amount of courage and independence. He may come into more than local fame because of his achievements, but again the times may be such that he can do little more than butt his head against the stone wall of a machine, public inertia, or vested interests. A few of these outstanding governors have held office for a decade or so, while others have been defeated after a single term. Among the better known governors of this type during recent years may be mentioned Theodore and Franklin D. Roosevelt, Charles E. Hughes, Alfred E. Smith, Herbert Lehman, and Thomas E. Dewey of New York, Woodrow Wilson of New Jersey, Wilbur L. Cross of Connecticut, Robert LaFollette, Sr., of Wisconsin, Gifford Pinchot of Pennsylvania, E. G. Arnall of Georgia, Earl Warren of California, Leverett Saltonstall of Massachusetts, and J. W. Fulbright of Arkansas.

[9] Mr. Lehman did not go directly from the office of governor in New York to the Senate.

[10] For studies of governors falling into these several classes, see *State Government*, issues of December, 1935 to September, 1937.

[11] New York has perhaps been as fortunate in having this type of governor during the last three decades as any state.

2. The Man of the People It is probable that a majority of state governors at any one time belong to the third type. They are neither outstanding in their ability nor fools; neither men of great probity nor grafters; neither entirely the creatures of political bosses and machines nor men of commanding courage; neither originators of ambitious public programs nor completely satisfied to do nothing. In other words these are the governors who are mine-run in grade; they may be considered as fairly representative of the rank and file of the great body of voters. Under a popular government it is to be expected that this type will be commonplace. Some of them work hard at their jobs; most of them desire to fill their offices as acceptably as possible. The chief drawback is that at best they have no very definite ideas as to what a governor can do and hence they drift along from week to week, following a policy of opportunism. One cannot criticize these governors too severely, for they do as well as can be expected under the circumstances. Nevertheless, they are indirectly responsible for the mediocre character of much of present-day state government in the United States. Moreover, they represent a serious problem because it is difficult to perceive how they can be either obviated or improved. Inasmuch as they are typical of the American people and result from a psychological urge toward maintaining an average level, it does not seem likely that they will disappear from the scene or even become a minority rather than a majority. Considering that they do about as well as their talents permit, they are not promising material for in-service training. Nevertheless, something can be done to show them the best approaches to the problems of a state if the persons who have the necessary background are willing to take the time and do not yield to the temptation of impatience. It is not necessary to offer examples of this type of governor, since their number is legion and one has only to look about.

3. The Figurehead In contrast to the strong-leader type there is that weak, colorless, and stupid creature who is maintained in the state capital by a political boss or machine. Of course, not all of those governors who owe their seats to the bosses belong to this type, for the more enlightened bosses and machines realize that only the most bedraggled citizenry will shoulder such an insult for any length of time. But every now and then a governor of this type will be named by those who have usurped the power of the people in a state. Needless to say, this type of governor has no contribution to make, no courage, no ideas, and no leadership; he is put there purely to serve as a front to the activities of the man or men who run the government behind the scenes. Huey Long kept this kind of figurehead in Louisiana after he surrendered the post of governor to enter the United States Senate. Other examples might be cited, but fortunately the number of these governors is not large at any one time.

4. The Grafter The dyed-in-the-wool grafter does not find the office of governor a very safe place from which to operate. That is not to say that the

opportunities are not present, for the governor in those states which have centralized administrative authority could lay his hands on a great deal of bribe money, boodle, swag, and even on public funds to some extent at least. But the governor is so constantly in the limelight that it is difficult for him to make use of his opportunities, even if he has the inclinations of a crook. Nevertheless, now and then individual governors apparently believe that they can successfully surmount the attendant risk and consequently yield to the temptation of corruptly exercising their authority. Occasionally a governor will escape any legal penalty for such misdeeds, but there have been several instances where criminal prosecution or impeachment proceedings have followed. During the present century Colorado, Indiana, New York, Oklahoma, and Texas at least have suffered governors whose conduct led to trial on criminal charges or to impeachment proceedings. New York, Oklahoma, and Texas have actually removed governors from office by impeachment, while Indiana had the humiliating experience of seeing a chief executive incarcerated in the federal penitentiary at Atlanta.

More common than the outright grafter is the governor who cannot resist so-called "honest graft." The law does not render a governor liable because he fills the state offices with incompetents who are his friends or are recommended by political organizations, despite the tremendous damage that may be caused by such a policy It is often possible to purchase state supplies from friends, relatives, and political supporters at somewhat higher than market prices. Associates may be appointed to lucrative receiverships of state banks which are continued year after year. Nominees of vested interests may be named to commissions and agencies which are supposed to regulate the practices of those special interests, with the result that there will be hardly more than lip service paid to the law. The governor may not receive any monetary reward for all of these services, but his relatives, friends, and supporters may fare handsomely. Perhaps after he leaves office, he himself may be given a profitable legal retainer, a block of stock at a mere fraction of its value, or some other favor. The effect of this partisanship is usually very unfortunate as far as the standards of state government go, although it is openly less opprobrious than embezzlement, bribery, and related acts. The very pervasiveness of this "honest graft" in some states brings the whole state government to an inferior level.

5. The Showman Every now and then a state governor emphasizes the spectacular so greatly that he seems to deserve classification as a showman. Vaudeville, cowboy singing, boxing matches, hog calling, acrobatics are only a few of the tricks employed to attract attention. Some of these governors are fairly normal in much of their behavior and stand out only because of a single practice. Governor W. Lee O'Daniel of Texas, for example, carried on his public duties in an average fashion much of the time, but when he appeared

with his "hillbillies" he presented a strange sight. Governor F. W. Richardson of California displayed his eccentricity by discarding the silver plate of the executive mansion in favor of granite ware and appearing at the commencement exercises of the University of California in an old pair of golf knickers and cap.

Perhaps the best example of this type of governor during recent years was "Alfalfa Bill" Murray of Oklahoma. As a comparatively young man in the national House of Representatives "Alfalfa Bill" was told by his doctor that he would soon die. Determined to prove the doctor wrong, he hit on the idea that most human ailments are caused by eating poisonous victuals—to be exact by eating the roots of potatoes, carrots, beets, turnips, and so forth rather than their fine green tops. So Murray went on a diet of vegetable tops and soon felt so vigorous that he led a colony to Bolivia. After many conflicts and difficulties with the Bolivian government, Murray decided to abandon his colonizing enterprise and return to his old home in Oklahoma. Here he became active in politics again and after a few years got himself elected as governor. Almost at once after moving into the executive mansion he caused the lawn to be plowed up and planted to potatoes. Even after he had passed the half-century mark in age, he rarely spoke in public without removing coat, collar, and tie and putting on a few handsprings for the entertainment of his audience. No one doubted that he worked hard at his job, but his behavior was so strange that it was impossible to predict what he would do next to attract attention. And it may be added that this is the common experience with a showman governor; indeed he expends so much of his ingenuity and energy on entertaining the people that he has little left to devote to public affairs. Considering the fondness of Americans for a good show, it is perhaps strange that there are not more of these men in the office of governor.

6. The Reformer Occasionally a governor is elected on the basis of some reform which he has already carried through or which he promises. A prosecuting attorney gains a reputation by sending a political boss or corrupt public officials to penitentiary; then he capitalizes on this by asking the voters to choose him governor. Hiram Johnson came into the limelight when he prosecuted Abe Ruef and the San Francisco boodlers and sent them to prison.[12] Not long thereafter he became the governor of California. District Attorney Folk did the same thing in the case of "Colonel" Ed Butler and his Indians in Missouri, with subsequent election as governor.[13] Robert M. LaFollette, Sr., was elected governor of Wisconsin because he identified himself with breaking the political machine in that state and cleaning up politics.[14] Governor Frazier of North Dakota promised prosperity to the people through

[12] See Harold Zink, *City Bosses in the United States*, Duke University Press, Durham, 1930, Part II, Chap. 20.

[13] *Ibid*, Part II, Chap 20.

[14] See his *Autobiography*, LaFollette's Magazine, Madison, 1913.

his Non-Partisan League program of state-owned grain elevators, and so forth. After they ensconce themselves in the governor's office, these reformers may continue their efforts, they may rest on their oars, or they may take up other projects. At times they manage to bring about important changes in state government, although it is not uncommon for them to get so tangled in their efforts that they are discredited. Governor LaFollette certainly did not desist from his reform program after he took up his duties as governor; indeed it is doubtful whether during his long political career he ever surrendered his goal of improving the general standards of politics in the United States. Governor Frazier, on the other hand, discovered that his ambitious program of state socialism could not be kept afloat and eventually became a victim to public anger when he was recalled from office. All too often, those who march under the banner of reform are pseudo reformers who use this as a means of political advancement. Huey Long, for example, forgot many of the promises that he made in his "every-man-a-king," "chicken-in-every-pot" campaigns and built up one of the most powerful personal political machines which the United States has ever witnessed. In general, the reform governor is not so commonplace at present as was the case a quarter of a century or more ago. Perhaps this is due in part to the regularization of reform by President F. D. Roosevelt and his associates in the New Deal. Various recent governors have drafted and had enacted social legislation which was far more ambitious than most of the "reforms" promised of old, but few people think of them as reform governors.

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, such as New York or California, may be busier than his colleague in a less thickly settled commonwealth, for example Vermont or Utah, but he has more numerous secretaries to relieve him of certain duties. 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 burden; some states place more emphasis upon public speaking and formal ceremonies 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, depending upon whether they are regular in their habits or inclined toward restlessness. Much also depends upon how adequate a secretarial staff is maintained and upon how easily a governor delegates authority

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 meet and 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 some 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 responsibility for pardons and reprieves, the volume of documents of this character 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 which the governor represents, the many pressure groups in the state, the national government, and a host of other sources are constantly coming in and often call for careful attention. It is the custom in the more populous states at least 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 at 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,[15] to help inaugurate their presidents, and to address their convocations. In a populous state the public appearances alone constitute a heavy burden on a governor.

Social Activities Unlike the President of the United States, a state governor is not ordinarily accorded an official position which excuses participation in social functions. Consequently all sorts of invitations are received for dinners, luncheons, theater parties, receptions, weddings, fishing trips, week-end house parties, and almost innumerable other events. Any governor may expect to be invited to many social affairs, whether he is reputed to be socially elite or not; if his social standing is high, the opportunities may be even greater. A Democratic governor in a state capital whose society is dominated by Republicans sometimes finds that his family is not accorded first honors and vice versa, although if he is personally agreeable some recognition may be eventually extended. Some governors delight in the social life of their capitals and may be found almost every day of the week at various 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.

[15] The presence of the governor of the Commonwealth of Massachusetts at the Harvard commencements is stipulated by law.

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 make 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 period every two years. However, Indiana has made him a full-time state employee, giving him the headship of one of the major administrative departments and paying him a sizable salary in addition to the amount allowed for presiding over the state senate when it is in session.

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42. Major Functions of a State Executive

It might be supposed that all state governors would have substantially the same functions entrusted to them, with the necessary adjustment made for the especially complicated character of the populous and highly industrialized states. Theoretically this is the case in large measure, since all of the governors are charged with executive and administrative responsibility, legislative co-operation, and military leadership. However, an examination of the actual authority exercised by the forty-eight governors reveals that there is wide variation. Much depends upon whether a state has provided a centralized type of chief executive or whether it has allowed the office to remain unchanged, thus retaining the older decentralized type.[1]

Approximately thirty of the states [2] have now effected reorganizations of their governmental system in such a manner as to centralize a great deal of authority in the office of governor. The extent of the centralization varies somewhat from state to state, depending upon whether it has been accomplished by a thorough overhauling of the constitution or by legislative action.[3] The political psychology of the state has also entered into the picture, for public opinion in some places is still very sensitive to an abandonment of popular election of state treasurers, secretaries of state, and superintendents of public instruction or to a drastic curtailment of the doctrine of separation of powers.

A Classification of Gubernatorial Functions Despite the wide diversity in extent of authority, it is possible to classify the major 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] For a discussion of these two types, see Leslie Lipson, *The American State Governor*, University of Chicago Press, Chicago, 1939.

[2] Among the states which have centralized types of governors are the following: Illinois, Nebraska, Massachusetts, Idaho, Ohio, Washington, California, Maryland, Tennessee, Pennsylvania, Vermont, South Dakota, Minnesota, Virginia, New York, Maine, Georgia, Wisconsin, Indiana, Colorado, Kentucky, Rhode Island, North Carolina, Connecticut, Michigan, New Jersey, and Tennessee.

[3] Most of the states have proceeded by statutory enactment rather than by constitutional revision.

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 a much earlier period the state legislature was usually 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.

Department Heads Unlike the national 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, and state treasurer by popular election. Some states go beyond that and place the attorney general, 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 state administration. On the other hand, it is important to note that the chief executive of a state usually has the opportunity to appoint at least some of the 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.

Factors that Influence the Selection of Department Heads In choosing the policy-determining officers of a state, a governor is not always a free agent, even in those cases where legislative approval is not required. Political pressures are always present and except in rare instances dictate at least some of the appointments. Loyal supporters of the governor expect to be rewarded;

factions of the party in power that need to be placated also must receive due attention; recommendations of the party officials bear considerable weight in most states; while the public utilities and other vested interests that have contributed through underground channels to campaign expenses will raise a great howl if their desires are ignored.[4] So the problem of the governor is not one of scarcity but rather one of adjusting the conflicting interests in such a way that there will be as much satisfaction as possible. In most of the states there will at any time be one or more department executives who are personal friends of the governor, but they do not very often constitute a majority. In order to get his program accepted by the legislature a governor may have to promise various important posts to members of that body.[5] It will be strange if labor has not been considered in choosing the labor commissioner or if the farm bureau has not had a great deal to say about the choice of the head of the agriculture department. The electric, telephone, gas, and railway companies are almost bound to expect the appointment of at least one of the members of the public-service commission and it is not unknown to have their representatives constitute a majority.

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, technical consultation, and many other types of assistance. In the states that have adopted the principles of merit employment all or at least 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 and hence keep his finger very definitely on what is being done. 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 is not extensive where a merit system is in operation.

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.[6] If a party remains in power under a new gov-

[4] Such corporations are usually prohibited by law from making direct contributions but even so they manage to do it indirectly.

[5] Even a strong governor, such as Paul V. McNutt, had to bestow numerous important state positions on senators after the general assembly adjourned in return for support in putting through his program. The state constitution of Indiana prohibits legislators from receiving positions which were created during their service in the legislature, but little or no attention was paid to that limitation. The majority leader in the senate was named director of the department of public welfare, although that department had been set up during his term in the senate, to cite a single example.

[6] 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.

ernor, the displacement may not be wholesale in character, although it is not uncommon to find large-scale shifts under such circumstances. Even while a single governor remains in office, the 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 relatively small in comparison with the some two million in the national government—the larger states employ twenty thousand or more but a pay roll of ten thousand is much more typical. But even this number of jobs requires a great 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.[7] 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 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 process in connection with the filling of state jobs will be handled 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.[8] 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. Needless to say, 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,

[7] The welfare department, health commission, banking department, and public education department are sometimes given this special status.

[8] See Chap. 11.

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 are 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 doubt whether it is wise 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 make for party harmony and effective morale. Only a sadist could derive other than misery from the sad spectacle occasioned by dispossessed public employees whose chief fault is that they are not the favorites of the political organization in power or of the dominant faction of that party.

2. *Supervision of Administration*

The governor is the logical officer to supervise the administrative departments of a state. The power over the purse strings confers large control of an indirect type upon the legislature, but the legislature meets only a few months out of the year at best and by its very nature is hardly fitted to exercise detailed supervision over administrative agencies. The courts may check administrative action when it exceeds legal bounds; yet they are not in a position to give constant attention. Certain 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 state authority other than the governor equipped to assume the responsibility. Yet in the absence of supervision there is bound to be conflict, waste, duplication, inconsistency, inefficiency, and divers other weaknesses in the state administrative system.

The Role of the Governor under the Decentralized System When the older state constitutions were drawn up, public administration was relatively simple in character at the state level. Administrative departments were few in number and handled comparatively routine and uncomplicated 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 at the state level, 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 any large degree of co-ordination. Yet even under this decentralized system the governor is permitted to appoint some of the newer department executives. This together with his power of removal in those states where he has a free hand makes it possible for him to 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; 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 possibility 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 Role of the Governor under the Centralized Type In those states which have brought their governmental structures at least reasonably 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, where reorganization has taken place, the governor may be given the authority to fill all of the positions in these older agencies with the exception of the elective head and one personal deputy. Hence 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. Centralization also 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. However, 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 recruiting 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 can be readily 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 heads of the major administrative

agencies. 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 with these officials—even where a cabinet is used personal conferences are useful as a supplementary device. Telephone calls and formal communications addressed in writing to the administrative officials are also employed by governors in effecting a co-ordinated and smoothly operating system of administration.

Effective Supervision Not an Easy Task It is probably evident that the task of the governor even 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; yet superior administrative standards can rarely be achieved in the absence of effective supervision on the part of the governor.

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 consequently 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.[9] Various arrangements have been made by the states for handling these important necessities; some of them have recognized the governor only incidentally, but there has been a decided trend in the direction of placing the primary responsibility on the governor.

[9] See Chap. 47 for a more detailed discussion of state finance.

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 enough revenue to pay authorized appropriations. Practical experiences, often of an embarrassing character, demonstrated that this easygoing attitude toward state finance was pushing states in the direction of insolvency; consequently almost without exception some effort has been made by the states to establish more business-like practices. At the present time the states usually 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 office of chief executive responsible for preparing a budget. Of course, the governor does not do the detailed drafting himself, since that would be quite out of the question because of the large amount of routine work involved, but he is expected to lay down policies, to keep informed of what is being done, and to 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. In those states in which the governor is permitted an itemic veto in financial measures, his voice in finally determining expenditures may be almost decisive.[10]

Supervising the Operation of the Budget After the budget has been enacted into law by the legislature 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 if the budgetary system is to be at all adequate. 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 this purpose, but some agencies do not have evenly divided loads, carrying 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 departments which

[10] For a valuable study of the governor's role in one state, see J. A. Perkins, *The Role of the Governor of Michigan in the Enactment of Appropriations*, University of Michigan Press, Ann Arbor, 1943.

will spend their funds as they like, irrespective of the terms of the budget. On the other hand, the wisest minds cannot foresee what will transpire 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 to permit necessary departures.

4. Pardons

Current Role of the Governor 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 become apparent 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 state agency for investigation and recommendation. The governor then, like the national executive, carries out the advice which he has received, except in those rare instances in which there may be reason to believe that full and fair consideration has not been given to all of the important aspects of the case.

Problems Incident to the Pardon Power But there are still governors who give a considerable amount of their personal attention to reprieves, commutations, and full pardons. In a populous state the drain upon gubernatorial nerves will be great if the chief executive establishes the precedent of passing personally upon the appeals lodged by the friends and relatives of those sentenced to the more serious penalties. Especially where the death penalty is permitted, the tears, the impassioned pleas, and the agony of wives, mothers, and other relatives, to say nothing of the telegrams and letters that come in from friends and even from strangers who for sentimental or other reasons have become aroused, will almost incapacitate a governor who is reasonably

sensitive. Alfred E. Smith has related the harrowing experiences which he underwent as governor of New York in connection with those who were sentenced to the electric chair; for several days before the date set for carrying out such a sentence he might find it difficult to transact other business because of the appeals which came to him; the night before he rarely found it possible to sleep at all.[11] Yet with rare exceptions there seemed no logical basis for his interference after a trial court had laboriously sifted the evidence and an appellate court had found nothing justifying a new trial. If the lawyers, the judges, and the juries had concluded after lengthy investigation that guilt was probable, what could a single man in the governor's office, removed from the crime both by time and space, hope to do? Sentimental governors have at times granted pardons simply because of personal appeals; political governors have occasionally followed the line of expediency; but only in rare cases can a conscientious governor expect to contribute to the orderly operation of the law by granting a pardon.

Abuse of the Pardon Power It may be added that the record of some governors has been anything but enviable in this respect. A governor of Arkansas several years ago granted a blanket pardon which literally emptied all of the penal institutions, while the Fergusons of Texas did almost as much to interfere with the process of justice in that state.[12] Fortunately there is a growing tendency on the part of governors to exercise this power with reasonable discretion, if they continue to shoulder the primary responsibility rather than depend upon a pardon board.

5. *Legislative Leadership and Control*

The significant expansion of the role of the President in legislative affairs during recent decades has been discussed in an earlier chapter.[13] The record of the states is not uniform in this respect, but there has been a general trend along the same lines that characterize the national government. Almost everywhere governors exert more influence in lawmaking than ever before,[14] 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

[11] See his *Up to Now*, The Viking Press, New York, 1929, pp. 306 *ff.*

[12] Mrs. Ferguson as governor of Texas granted 3737 pardons during a two-year period. For an interesting article on the use of this power in Texas, see S. A. MacCorkle, "Pardoning Power in Texas," *Southwestern Social Science Quarterly*, Vol. XV, pp. 218–228, December, 1934.

[13] See Chap. 17

[14] 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.

recurring request for new laws; a governor who can lay down the policies for the administrative departments acquires an air of familiarity and 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. Some ambitious and power-loving governors have taken their cue from Franklin D. Roosevelt and managed to dominate their legislatures quite as completely as the President did in the case of Congress during the years following 1933.

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 gone so far as to use their extensive power to build up personal machines which have not always been motivated by the highest ideals. In general, it seems fair to conclude 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 denied that there have been constructive results, often of considerable magnitude. Delay in meeting pressing problems of the states has been drastically cut by strong leaders in the governor's chair; states in general are handling their functions with an efficiency probably never before equaled; and a great deal of most significant legislation especially in the public welfare field has been added to the statute books. Not all of this is the result of executive leadership, but much of it is.

Messages At the beginning of a legislative session the governor is expected to present a message in which he surveys the problems confronting the state, reports on recent accomplishments, and suggests what needs to be done immediately to meet new situations.[15] 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 especially complicated. Yet an able governor can accomplish a good deal even under such trying circumstances, judging from what has been done in certain states. In addition to a general message a governor will from time to time during a session send in messages on specific items, which may have considerable influence.

[15] For additional information relating to the contents of these messages, see the excerpts which are published annually in *State Government* in either the February or March numbers.

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 recent years have originated in the executive office and been pushed through the various stages by the governor.

Steering Activities The traditional pattern of state government has ordained that the governor should manage the affairs of his branch and leave the legislature free to function as it desires. However, if the governor is to direct the administrative departments with vigor, he has to depend upon support from the legislature in passing the laws which he considers necessary and in making the appropriations required. Under an ideal system the legislature would doubtless be all too glad to co-operate with the governor as a matter of principle, but in reality there are frequently 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. Paul McNutt, governor of Indiana during the early nineteen thirties gathered around himself what was informally known as a "kitchen cabinet," made up of some half a dozen of the leaders of the senate and the house whom he had managed to bring to his support through various means. This little body convened in the afternoon before each legislative session, decided what the order or business should be in each house the next day, agreed upon the leeway to be permitted in debate and the offering of amendments, and directed the attitude to be taken on the elaborate series of bills in which the governor was interested. 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 very difficult for a governor to carry through a very ambitious program of legislation in most states without making some use of the 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. Following the first biennial session of the Indiana General Assembly held in his administration, Governor McNutt gave approximately thirty of the most influential members of the legislature lucrative positions on the state pay roll. Others received the very profitable liquor monopolies which were placed at the disposal of the governor under the law regulating the sale of beer and liquor.[16] How many profited from state contracts or indirectly through relatives is not known, but it was generally believed that virtually all Democrats in the legislature were substantially rewarded.

Of course, such a system does not encourage the highest standards in government, for it sometimes 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 dependence upon patronage. A governor of great 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

[16] Some of these monopolies were reported to be worth at least $50,000 per year in profits.

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 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 or ninety 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 currently made of the power to summon special sessions.[17] On occasion the recalcitrance of the lawmakers may continue throughout one of these extraordinary sesions, but there is frequently enough limelight focused on the legislators to bring about reasonable co-operation with the governor. In many cases a compromise will be accepted, 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.[18] Approximately half of the states require a two-third vote on the part of all elected members of both houses of the legislature to override a veto; eleven states specify a two-thirds vote by those present; but other states make the veto barrier less of a hurdle, even to permitting repassage by an ordinary majority.[19] About half of the states make provision for the pocket veto of bills in cases 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 [20] 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

[17] See Chap. 44

[18] For a discussion of the veto power in general, see J. A. Fairlie, "The Veto Power of the State Governor," *American Political Science Review*, Vol XI, pp. 473–493, August, 1917; for discussions of individual states, see M. N. McGeary, "The Governor's Veto in Pennsylvania," *American Political Science Review*, Vol. XLI, pp. 941–946, October, 1947; H. M. Dorr, "The Executive Veto in Michigan," *Michigan History Magazine*, Vol. XX, pp. 91–110, Winter, 1936; G. R. Negley, "The Executive Veto in Illinois," *American Political Science Review*, Vol. XXXIII, pp. 1049–1058, December, 1939.

[19] Thirty-five states require two-thirds of those elected or present; Alabama, Arkansas, Kentucky, Indiana, Tennessee, and West Virginia require an absolute majority to override the governor's veto; Connecticut permits a majority of those present to override a veto; Delaware, Maryland, Nebraska, and Ohio specify a three-fifths vote of those elected; and Rhode Island requires a three-fifths vote of those present.

[20] This period varies from three to ten days.

forty-five 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 such a provision is made; or 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 but it ordinarily includes only appropriation measures.[21] Legislatures have not impressed the general public on the score of financial responsibility and hence there has been widespread authorization of the gubernatorial veto of individual items. At the very least 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 State governors make distinctly more use of the veto power itself than the President of the United States. Indeed where the national executives veto a fraction of 1 per cent of all bills passed by Congress, governors may veto 10 to 15 per cent and at times even 25 per cent or 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 executives exercised this power on only two occasions.[22] At the other extreme are governors who refuse to approve two or three hundred bills in a single year.[23] As in the case of the President, governors frequently escape 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

[21] For an informing article on this subject, see Roger H. Wells, "The Item Veto and State Budget Reform," *American Political Science Review*, Vol. XVIII, pp. 782–791, November, 1924. All but ten states confer the itemic veto on their governors.

[22] See A. N. Holcombe, *State Government in the United States*, rev. ed., The Macmillan Company, New York, 1931, p. 329.

[23] New York, California, Pennsylvania, and Virginia are among the states with the highest veto rate during recent years. Governors of New York vetoed an average of almost 23 per cent of the bills passed by the legislature during the period 1921–1940. Governor Dewey vetoed 263 bills out of 1059 in 1944.

and contempt and hence on occasion will desist from passing a bill if they know that the governor will veto it. 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 upon whether there is a desire to avoid open warfare. In one of the states, for example, the chief executive's threats were recently of little or no avail because the governor was a Democrat and the Senate and the House of Representatives were both dominated by the Republicans—consequently bill after bill was passed only to be vetoed and in most cases passed over the veto a few days later.

6. *Military Functions*

During Peacetime 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. When a river floods hundreds of square miles of territory, drives thousands of people from their homes, and destroys millions of dollars worth of property, the regular civil authorities may find themselves unable to cope with the many unexpected problems. The members of the National Guard are the logical persons to be called upon for assistance in these instances, for their training fits them at least to some extent to deal with emergencies of this character.

During Wartime or National Emergency 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 has little to say about its use. However, he is likely to be given certain responsibilities in connection with the defense program. For example. during World War II he was authorized to appoint local boards for administering the selective service system. The provisions made by the states as to the wartime powers of their governors vary widely, but in general they are sufficiently ample to warrant the Council of State Governments predicting that few special sessions of legislatures would be required in 1942, despite the entry of the United States into World War II. Many of these powers are conferred by state constitutions, while others are the result of legislative statutes enacted during times of national emergency. Governors have more or less complete supervision of civilian defense within their states and appoint state defense councils which draft programs designed to protect property and persons, conserve supplies, encourage industrial production of war supplies, bolster morale, co-ordinate the efforts of various

public and private agencies, and educate the people as to the necessities of war. A number of states empower their governors to organize all state resources, "whether men, property, or instrumentalities," while others authorize their governors to acquire land or other property for military use. More than half of the states permit their governors to send guard units to near-by states in response to requests for assistance.

Labor Troubles Coming under the military power of the chief executive is the use of National Guard for protecting and maintaining order during strikes and labor disputes. It is probable that nothing involving the governor has given rise to more bitter criticism and caused the chief executive more headaches. When a strike involving several thousand workers breaks out, the ordinary local police may find it difficult to handle the problems presented—they are usually burdened with routine duties to such an extent that they have little time or energy to devote to labor difficulties unless they are to neglect other duties. Almost immediately after an important strike is started, the owners and managers of the plant or properties affected will appeal to the governor for assistance; often they will bring pressure to bear on him if he seems reluctant to act. On the other hand, the forces of organized labor bitterly resent having the National Guard called out, maintaining that it actually brings the state into the conflict on the side of capital. During campaigns candidates for governors in all of the industrialized states are invariably called upon by organized labor to express their views on the use of the National Guard and other state forces in connection with labor disputes and unless they can satisfy labor on this score they will lose many of the votes controlled by the unions. Inasmuch as labor can often command enough votes to determine what candidate will be elected, candidates may feel called upon to pledge themselves not to send in the troops during a strike. Nevertheless, when the newspapers are complaining that the governor is derelict in his duty, the owners and managers are raising heaven and earth to get state aid, and public opinion may be aroused against the seeming unreasonableness of the labor tactics, the governor is under great pressure to send in the National Guard.

Pros and Cons of State Action in Labor Troubles The state is obligated to be neutral in a case where labor and capital find it impossible to agree. On the other hand, the protection of property from destruction is also a well-established responsibility of a state. Moreover, there has been a strong feeling in certain quarters that the state should protect those who desire to accept employment even in factories which are involved in a strike. The history of labor in the United States indicates that military forces have sometimes served to defeat the cause of labor and turn what would otherwise have been the defeat of capital into victory. Besides, a considerable amount of bloodshed has resulted from the use of inexperienced national guardsmen who in their own confusion have fired on crowds. The excesses associated with the proclamation of martial law make dramatic but depressing reading. Governor McNutt per-

mitted himself to become so provoked over a comparatively unimportant labor situation in Terre Haute that he maintained a state of martial law over that area for some seven months, ignoring the well-established rights of civilians. The creation of professional state police forces has helped the situation to some extent in that the use of inexperienced national guardsmen is no longer so necessary. Nevertheless, the problem remains one which is likely to cause difficulty for years to come.

7. *Relations with the National Government and Other States*

The National Government 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.[24] The handling of emergency relief following 1933 may also be cited as an example of federal co-operation with the states through the governors. In connection with the military duties of the governor, it has already been pointed out that the national authorities have depended upon governors to set up selective service machinery within their states.

The Sister States 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 of the states has marked an important step forward in interstate relations.[25] Nevertheless, governors continue to have several duties in this connection. It was noted earlier that they have important functions in connection with returning fugitives from justice to the state in which the alleged crime was committed.[26] 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. A number of governors have displayed personal interest in compacts which their states may be making with other states and have appointed representatives to negotiate agreements with other states.[27] Finally, the state 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

[24] Secretary of State Hull followed such a course in 1940.
[25] See Chap. 5.
[26] See Chap. 5.
[27] See Chap. 5.

personal contact among the governors does something to break down misunderstandings and jealousies; moreover, the exchange of ideas and experiences is often important in serving as a guide as to what is advantageous and what is to be avoided.

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43. The State Legislature

Although there has been a general curtailment of legislative freedom and a rather widespread disposition on the part of the American people to distrust the integrity of individual legislators, the state legislature remains a vital part of 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 legislaure was revamped into the traditional model. By the beginning of the twentieth century a considerable amount of support was beginning 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 routine affairs, with the result that the unicameral movement suffered a severe setback. However, after times had become somewhat normal the sentiment 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 in the Union for almost a hundred years and by all

[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.

of the states except Nebraska at present may be regarded as an impressive 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; moreover, it embodies the doctrine of checks and balances which is ingrained in many American political philosophies.

Arguments for the Unicameral System Most of the arguments in favor of the unicameral system arise out of practical 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: thus various interests are taken into account and domination either by the more populous states or the more numerous small states is ruled out. However, there is no unit of government within a state that can be regarded as sufficiently outstanding to serve as an adequate basis for 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 actual 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. Of course, the time element enters in here to a considerable extent—many bills might be accepted by the second house if they ever came to a vote, but adjournment comes before such an opportunity presents itself.

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 enacted under the bicameral system. The passage of contradictory legislation in a single session does not suggest too great responsibility or even familiarity with what transpires. Occasionally a second chamber actually serves to hold up important legislation that is desired by the majority of the people. The unicameral setup would not necessarily prevent the former confusion, but it would rule out a deadlock between two chambers. In theory, at least, the single-chamber legislature would save

[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. For articles dealing with the situation in certain states. see D. H. MacNeil, "Urban Representation in State Legislatures," *State Government*, Vol. XVIII, pp. 59–61, April, 1945; L. J. Dorweiler, "Minnesota Farmers Rule Cities," *National Municipal Review*, Vol. XXXV, pp. 115–120, March, 1946.

the people money because only one set of employees has to be maintained, the number of members would in all probability be reduced, and the expenses of two elaborate committee systems would be cut in half. Passing of the "buck" from one chamber to the other would, of course, be obviated, as would deadlocks, domination of one house by one political party and of the other by a rival party, and so forth. It is maintained that public attention would be focused more sharply on the single chamber, that a superior type of member would be attracted, and that the newspapers would 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 and some of them, such as Chicago and Philadelphia, spend more money than even the average states. 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 record covering such a relatively brief period may 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 entirely 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 interest 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.[7] In general, the people seem reasonably satisfied and a return to the traditional system during the foreseeable future appears unlikely.

The Future of Unicameralism The word that Nebraska had adopted a unicameral system stirred up considerable interest among civic organizations, university professors of the social sciences, and others throughout the land. Organizations were formed in many of the states looking toward the substitu-

[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. Also see his "Unicameralism Passes the Test," *National Municipal Review*, Vol. XXXIII, pp. 58–65, February, 1944.

[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.

[7] See the statements on this subject in E. C. Buehler, ed., *Unicameral Legislatures*, Noble & Noble, New York, 1937; and H. B. Summers, comp., *Unicameralism in Practice*, The H. W. Wilson Company, New York, 1937.

tion of a unicameral legislature for the traditional bicameral arrangement. In a number of states, including Ohio and California, petitions were widely circulated for the purpose of securing action in this direction.[8] World War II and the subsequent critical international situation have served to focus attention on other more pressing matters, but there is still a fair amount of interest in the plan. Whether the interest will prove sufficient to produce action in other states remains to be seen.

Membership

Size There is no uniformity among the states so far as the size of the legislature is concerned.[9] Perhaps 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. Thus New York, with approximately 13,000,000 people, has a lower legislative chamber of 150 members,[10] while Massachusetts, with less than half as many people, has more than 200. 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 43 representatives each, while New Hampshire, at the other extreme, has more than 300—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 the direct primary,[11] 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 this is not the rule and 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 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.

[8] The movement has been more or less active in more than twenty states.

[9] 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.

[10] New York increased the size of the lower house to take effect in 1945.

[11] For a fuller discussion of the direct primary, see Chap. 12.

However, in most states the division among the parties is such that it is not possible to determine the exact composition of a new legislature until the votes cast in the general election have been counted. A plurality is ordinarily sufficient to elect.

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 a considerable amount of attention to county lines.[12] 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 ordinarily 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 entitle them to.[13] Cook County (Chicago), Illinois, with more than half of the population of the state, elects 19 out of 51 senators and 57 out of 153 representatives, while New York City, with some 55 per cent of the population of the state, has 25 out of 56 senate seats and 67 out of 150 assembly seats.[14] Essex and Hudson counties in New Jersey, with approximately 40 per cent of the entire population, are apportioned less than 10 per cent of the senators in contrast to 13 counties with one fifth of the population which hold a majority in the state senate. Fulton County, Georgia, including Atlanta with more than 300,000 inhabitants, is entitled to 3 representatives; but 9 counties, with a combined population of less than 40,000, get 9 members of the Georgia House of Representatives.

Proportional Representation The shortcomings of the traditional method of selecting members of state legislatures have been severely criticized. Not only is there the discrimination against urban areas, but even rural inhabitants may find themselves with 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 despite that fact they 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,[15] though it has been blamed by Professor

[12] For a table showing apportionment requirements of the various states, see the current *Book of the States.*

[13] 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.

[14] Prior to 1945 the underrepresentation of New York City was even worse.

[15] 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.

F. A. Hermens for many of the ills of Europe as well as some of the weaknesses of Cincinnati and the small number of other cities which use it.[16] 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 device.

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 not 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. Thus if the first choice of a ballot cannot help elect, the second choice is counted; if that is impossible, then the third choice, and so on down to the last choice, though it be the seventh or eighth. After the votes have been cast, the ballots are taken to a central counting place and a tabulation made of their number. A quota is then computed by dividing the total number of valid ballots cast by the number of positions to be filled plus one and taking the next highest number. Thus if there are 100,000 valid ballots and 9 positions to be filled the quota would be 100,000 divided by 10 or 10,000 plus 1 which is 10,001. First choices of voters are counted at the outset and any candidate receiving the quota is declared elected, but it is improbable that first-choice votes will elect more than one or two candidates and perhaps not a single one. If any candidates have more than a quota of first-choice votes, the surplus is taken away and distributed on the basis of second-choice votes. Then the process of dropping the weakest candidates is started and their ballots are redistributed on the basis of second-, third-, fourth-, or lower-choice votes. Eventually the proper number of candidates will have received the quota or the list of those elected and those still in the running will total the number of positions. At first sight this system seems excessively complicated and there are actually many confused persons, who account for as many as 20 to 30 per cent spoiled ballots in the first elections. However, it does not require long to accustom voters to the new techniques and the bringing out of a voting machine for this form of

[16] See his *Democracy or Anarchy? A Study of Proportional Representation*, Review of Politics, Notre Dame, 1941.

voting would probably make spoiled ballots impossible.[17] Under the Hare system any group, whether it be political, social, religious, economic, or racial, can elect one representative to a legislative body if it controls as many votes as the quota. The quota may be fixed by law at some arbitrary figure which means that the number of positions will vary from time to time, depending upon the popular interest in a given election. Or the exact number of places to be filled may be set by law and the quota will then be calculated after the number of voters in a given election has been determined.[18]

Terms At one time it was the custom to elect members of legislatures for a single year, but 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.[19]

Re-election Re-election is ordinarily permitted by law and in many cases it is the custom to continue members in office more than a single term, although there is no uniformity among the states or even within a single state in this matter.[20] 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 a superior legislative record and consequently re-elect both representatives and senators again and again. In a recent year every senator in Maryland had had previous legislative experience and 93 per cent of the representatives fell into the same category. In the same year 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.[21]

Importance of Experienced Legislators It is hardly necessary to point out the importance of experienced legislators under a system such as exists in the

[17] Such a voting machine has been perfected.

[18] Cincinnati uses this plan and consequently always knows how many seats there will be on its council. During the period that New York City operated under proportional representation the former arrangement was used.

[19] Thirty-two states provide four-year terms for senators.

[20] 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.

[21] See Henry W. Toll, "Today's Legislatures," *Annals of American Academy of Political and Social Science*, Vol. CXCV, p. 5, January, 1938.

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. The average record of all the states is reasonably good—in the year mentioned above 70 per cent of the senators and half of the representatives [22] had had other legislative experience, but individual states presented a less satisfactory picture.

Qualifications The formal qualifications which are laid down by the states for members of the general assembly are more or less 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 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 certain of the legislators understand only Spanish and hence have to have interpreters at hand. It may be added that there are more arduous qualifications which are imposed by custom and usage.[23] Lengthy residence is almost taken for granted in most states; political backing is certainly very helpful if it is not an absolute requirement. Additional illumination will be thrown on this topic a little later when the personnel of certain legislatures is examined.

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. New York leads the list, paying an annual salary of $5,000. California comes next with $3,600 per year; Illinois and New Jersey follow with $3,000 per year. Massachusetts and Ohio pay $2,750 and $2,600 respectively. At the other extreme are such states as Tennessee and Kansas which allow their legislators only $4.00 and $15.00 respectively per day during the period that the legislature is actually in session and New Hampshire which pays $200 per term. It may be added that fifteen other states pay $10.00 or less per day during a legislative session.[24] The expenses incident to living in a state capital may exceed the compensation paid

[22] See H. W. Toll, *op. cit.*, p. 6.

[23] For an interesting article on this point, 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.

[24] These include Arizona, Florida, Georgia, Montana, New Mexico, North Carolina, Oregon, Texas, Utah, Vermont, West Virginia, Connecticut, Idaho, North Dakota, and Rhode Island.

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. Even the more generous salaries may not take into account the personal sacrifice which a member has to make in connection with his private business affairs.

Relation of Salary to Turnover and Ability Nevertheless, after due commiseration has been extended to those who occupy seats in our state legislatures, it is probable that the significance of the compensation 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 one of the higher salaries.[25] It is perhaps true that a state should be ashamed to pay lawmakers at so modest a rate in light of the amounts paid out 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 willing to sell their support to the highest briber are encouraged to seek seats? No one can speak with absolute authority on this point, although many people have expressed opinions.

The Prestige Value of Membership If one can take a tip from social psychology, it would seem that the prestige attached to legislative membership is fully as important as the monetary compensation involved. It is not difficult to find men who devote large amounts of time to service clubs, fraternal organizations, churches, educational projects, professional organizations, and many other social groups, even though no direct salary is attached to this labor. In certain cases there is, of course, indirect financial reward forthcoming, but that is equally true in the case of many legislators who find legal business and other profitable contacts resulting from their public service. But in certain cases there can be little or nothing in the way of the profit motive involved in activities noted above: these men give their time and energy because they receive prestige or are civic-minded. Professor Leonard White has written of the prestige value of public employment[26] and shown that this social attitude has a great deal to do with the attractiveness of government jobs. To what extent, it may be asked, is prestige attached to legislative service? Considering the widespread distrust which has been associated with state legislators for something like a century, it might be supposed that there would

[25] 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 year reported 68 and 57 per cent respectively, while Ohio could point to only 53 per cent in both cases.

[26] See his *Prestige Value of Public Employment in Chicago*, University of Chicago Press, Chicago, 1929, and *Further Contributions to the Prestige Value of Public Employment*, University of Chicago Press, Chicago, 1932.

be very little of this recognition. A perusal of the newspaper editorials as a legislative session comes to a close might also cast great doubt on any prestige value, since it is commonplace to refer to the shortcomings of the general assembly in the most uncomplimentary terms as well as to express great relief that the tribulation will soon be over because of approaching adjournment.

Divergent Attitudes 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 to say the least 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 often looked down upon and consequently the prestige value is low. Yet it is from these groups that many recruits are needed for legislative service.

The Personal Background of Legislators

The conventional discussion of the legislature confines itself to formal qualifications, organization, and rules of procedure. However, inasmuch as the practice very frequently departs from what is true on a theoretical basis, it is necessary to build up as much of a background as possible if a good understanding of the legislative process is to be obtained. Some knowledge of the personal background of those who make the laws is helpful in evaluating the actual practice.

Sex Although women have had the suffrage for more than a quarter of a century throughout the United States, they have not been frequently elected to serve as members of state legislatures. Out of 7,512 legislators in all of the states in a recent year only 141, or 1.89 per cent, belonged to the feminine sex. This represented a downward trend from the peak year of 1929 when the total ran to 149.[27] Considering the energetic work of the League of Women Voters and other groups of women, it is difficult to explain the small number of women legislators.

Age The typical member of a state legislature is in the neighborhood of fifty years of age. In 1931 the median age of all state legislators was 51.0; in 1933, 49.4; and in 1935, 48.4.[28] There is some variation among the states

[27] See Henry W. Toll, *op. cit.*, p. 4.

[28] See William T. R. Fox, "Legislative Personnel in Pennsylvania," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 34, January, 1938.

in this respect, with certain southern states showing a lower age average than the rank and file of the states, but it is clear that the majority of legislators fall in the category designated as "middle-aged." There are usually a small number in the twenty-one to twenty-nine age group, a larger number in the thirty to thirty-nine group, and then a much larger number in the forty to forty-nine and fifty to fifty-nine age-groups; after sixty the number tapers down and after seventy there are only a few again. With the median age about fifty, it is not to be expected that an ordinary general assembly will be particularly adventuresome, idealist, or progressive. Indeed one wonders how many of the members stand up under the strain which characterizes the closing weeks of the legislative session.

Nativity The great majority of legislators have had long association with the states which they serve; indeed the majority are natives of that state. Samplings taken of recent legislatures reveal that 87 per cent of the members of the South Carolina lower house were natives of that state; that 62 per cent of the members of both houses in New Hampshire were natives; [29] and that 74 per cent of the representatives of Indiana fell into the same class. Even in those cases where members are not natives, they tend to come from a near-by state. Thus 10 per cent of the South Carolina House of Representatives hailed from North Carolina, Virginia, and Georgia, making a grand total of 97 per cent from South Carolina and its immediate environs. In New Hampshire the senators who were not native sons claimed Massachusetts, Rhode Island, and Canada as birthplaces. Furthermore, it may be pointed out that with few exceptions those who cannot claim to be native sons can point to lengthy residence [30] within the borders of the state in whose legislature they serve. This association throughout a lifetime or at least many years with a single state is reflected in many of the attitudes of legislators.

Education More and more of the members of state legislatures are products of colleges and universities, though there are still large numbers who have had comparatively little formal education. A study of legislators in the state of Pennsylvania extending from 1881 to 1935 revealed 16.3 per cent reporting college training at the beginning of the period; 20.6 per cent in 1891; 20.1 per cent in 1901; 25.3 per cent in 1911; 36.9 per cent in 1921; 34.1 per cent in 1931; and 38.0 per cent at the end of the period.[31] In Missouri a survey showed that 57 per cent of the legislators during the years 1901 to 1931 had enjoyed some college training, that an additional 13 per cent had attended high school, and that 30 per cent reported only a common-school education.[32]

[29] See A. W. Edson and R. C. Hardy, "The New Hampshire Legislative Session of 1925," *American Political Science Review*, Vol. XIX, 773-784, November, 1925.

[30] In the California legislature of 1937 the median number of years spent in this state by nonnatives was as follows: senators, twenty-eight, assemblymen, twenty-five. See D. E. McHenry, "Legislative Personnel in California," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 51, January, 1938.

[31] See William T. R. Fox, *op. cit.*, p. 37.

[32] See Howard B. Lang, Jr., "They Legislate for Missouri," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 41, January, 1938.

In the Indiana General Assembly of 1937 just over half reported some college or university training, while in California 65 per cent of the members during 1927–1937 could claim some college background.[33] A recent South Carolina lower house had 50 per cent college graduates and an additional 23 per cent with some college training, but at the other extreme was the New Hampshire legislature of 1925 which included only 19 per cent college-trained men and 46 per cent with no more than common-school education. Considering the complicated matters which are entrusted to a legislature, it is not too reassuring to discover the limited formal educations which large numbers of members must confess.[34]

Legal Background It is widely believed that most members of state legislatures are lawyers, but this is not borne out by the facts, although the number of lawyers is large. In a recent year approximately 1,800, or 24 per cent, of the more than 7,500 legislators were classified as lawyers.[35] This includes the "constitutional lawyers" who are attorneys by courtesy much as are "colonels" in Kentucky, the professional politicians who have long forgotten the little law that they ever knew, the realtors and insurance agents who do a little law on the side, and others who are not closely associated with the legal profession. In individual states the ranking of lawyers may be either much higher or distinctly lower. For example, there were only 12 lawyers out of 421 members of the New Hampshire lower house a few years ago.

Agricultural Background The proportion of farmers in state legislatures is fairly large and is equaled only by that of lawyers. Throughout the country it is estimated that about one fourth of the members are farmers,[36] though in industrial states the percentage is ordinarily very much less. In a recent survey it was found that farmers constituted only 7.4 per cent of the legislators in Pennsylvania and only 7 per cent in the states of New York, New Jersey, and Pennsylvania.[37] In Missouri about one third of the members of the lower house were farmers during the years 1901–1931,[38] while in California just over 16 per cent of members of both houses during 1927–1937 were classed in this occupation.[39] However, in Iowa, Nebraska, and certain other states the proportion is much higher, running at times to approximately 50 per cent. In this connection it must be remembered that not all of those who report themselves as farmers actually engage in farming for a living. In agricultural

[33] See D. E. McHenry, "Legislative Personnel in California," *ibid*, Vol. CXCV, p 47, January, 1938.

[34] A sample survey of sixteen states by the American Legislators' Association showed that 46 per cent of state senators were college graduates during the years 1931–1935 and that an additional 11 per cent had attended colleges. In the lower houses 31 per cent had college degrees and an additional 11 per cent had attended college. In both houses 34 per cent were college graduates. See *The Reference Shelf*, Vol. XI, pp. 65–67.

[35] See M. Louise Rutherford, "Lawyers as Legislators," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 53, January, 1938.

[36] See William T. R. Fox, *op. cit*, p 36.

[37] *Ibid.*

[38] See Howard B. Lang, Jr., *op. cit.*, p. 42.

[39] See D. E. McHenry, *op. cit.*, p. 48.

states a premium is often placed upon the label "farmer" and hence all of those who can possibly qualify through hook or crook will call themselves "farmers." Thus a small-town banker, a real-estate man, a merchant, and others who own farm land may classify themselves as farmers. Nobody can dispute the influence of this occupational group in those state legislatures which have them in large numbers; if they cannot in every case put through the positive program which they have drafted they can certainly block anything that they oppose. It may be added that they often have the strength to enact any laws that they regard as desirable. Even in states which have important industrial interests, the influence of the farmer in the general assembly is often great and sometimes controlling.

Other Occupational Representation Aside from the farmers and the lawyers no single occupational group is ordinarily outstanding in a state legislature, although if the various businesses are grouped together they can show a strong contingent. Merchants held 14 per cent of all legislative seats throughout the United States in a recent year, while real estate and insurance claimed 5 per cent, manufacturing 4 per cent, and construction and maintenance 3 per cent.[40] The interests of these business groups is frequently so diverse that they are not agreed on many important measures; consequently they lack the cohesiveness which is to be observed among the farmers. Organized labor frequently has a number of representatives in those states which are industrial in character, though it has not fared so well as might be expected. Journalism, especially of the small county-seat variety, often has several seats; medicine, the church, and teaching not infrequently hold a seat or two, particularly in the eastern states. In general, it would seem that the law and agriculture are both more generously dealt with than can easily be justified; wider and more equitable occupational representation would be desirable in most of the states.

Religious Affiliations As a rule, members of state legislatures report loyal support of religious organizations. Out of twenty-four senators in a recent New Hampshire legislature twenty-three claimed some religious affiliation,[41] though in one instance it was described as "follower of the Golden Rule." Forty out of forty-six senators reporting in a recent Indiana General Assembly listed definite religious affiliations, while only six out of one hundred members of the lower house admitted that they were attached to no church. Conventional religious organizations ordinarily draw far more heavily than those which are looked at askance by some citizens: thus forty-four, or approximately half, of the representatives in a recent Indiana General Assembly indicated support of the Methodist, Presbyterian, Christian, and Baptist churches. The strength of the Catholic Church varies, but it is often comparatively great. In a recent New Hampshire lower house there were ninety-nine Catholics in contrast to sixty-six Congregationalists, the next

[40] See William T. R. Fox, *op. cit.*, p. 36.
[41] A. W. Edson and R. C. Hardy, *op. cit.*

largest group, while in that former stronghold of the Ku Klux Klan, Indiana, the Catholics in the lower house in 1937 claimed only one less member than the Methodists. It may be surmised that the affiliation in many instances is largely nominal, but nevertheless, the fact that so large a proportion report some connection seems to be significant. Even where the sect is a strange one, such as New Jerusalem Evangelist, there seems no hesitation in listing it in the biography which appears in the official *Manual* or *Blue Book*.

Fraternal and Civic Affiliations Fraternal and civic affiliations of legislators are quite as noteworthy as religious connections. In a recent Pennsylvania General Assembly 120 out of 258 members listed 285 affiliations as follows: 41 veterans, 130 fraternal, 36 business or service clubs, 10 farm groups, 17 civic associations, 20 professional, 13 labor unions, and 6 racial or hyphenated American.[42] Forty-four senators in a recent Indiana legislature reported membership in 70 organizations as follows: 22 Masons, 12 Elks, 10 Knights of Pythias, 7 Greek letter, 4 Eagles, 3 Odd Fellows, 3 American Legion, 2 Red Men, 2 Knights of Columbus, 1 Woodman, 1 Lions Club, 1 Rotary Club, 1 Boy Scout, and 1 Chamber of Commerce. Forty-five of the 100 members of a recent Indiana lower house and 154 out of 421 representatives in New Hampshire belonged to the Masonic order. The number of Rotarians, Kiwanians, and other service club members is somewhat smaller than might be expected, considering the claim of these clubs to enroll most of the leading urban citizens.

The Honesty of Legislators A legislature may appropriate public funds to the extent of tens and even hundreds of millions of dollars;[43] 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 hold the balance of power and determine what shall be done. To what extent dishonesty prevails in a single session of a state legislature 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. Theodore Roosevelt fought the "Black Horse Cavalry"[44] which had the New York legislature so completely under its control that it established a system of selling legislative favors to those who were willing to meet its price. This gang managed to fasten itself upon the people of New York for more than a decade and undoubtedly caused millions of dollars of loss as well as general inefficiency in public affairs. Other cases somewhat less notorious or less publicized might be referred to, for at times most of the states have had their tribulations. There is a belief in some circles that dishonest legisla-

[42] See William T. R. Fox, *op. cit.*, p. 38.
[43] New York State spends approximately $1,000,000,000 per year.
[44] See his *Autobiography*, rev. ed., Charles Scribner's Sons, New York, 1925, pp. 70–73.

tors are for the most part associated with the past, but unfortunately this is hardly the case. The Indiana General Assembly of 1937 had enough grafters among its members that a regular scale of prices was drafted for quotation to those who sought its favors. An unimportant bill could be conveniently "mislaid" for as little as $10; more important favors were listed at several hundred dollars each; the top prices ran into the thousands. But almost anything could be purchased at a price. How many bills were actually stolen from the files cannot be said, but some were missed even after they had been duly passed by both houses of the general assembly.[45]

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 legislative 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. In the majority of instances there does not seem to be any attempt on the part of the law-enforcing officers to control this type of conduct—perhaps because it is politically inexpedient, again because the prospects of successful prosecution are so slight.

Other Characteristics There are many other things that it might be helpful to know about those who make state laws and authorize the expenditure of state funds, but these are not of the type to be listed in connection with the biographical data which many legislatures prescribe; nor can they readily be obtained from casual observance of a legislature in action. Some of these are probably far more significant than the information which is reported; for example, what is the general attitude of a legislator toward his office? Is he in the general assembly to carry out the orders of a political boss or a very selfish pressure group? Is he there to have a good time? Is he there because of a political accident? Does he have any very definite ideas in regard to state problems or is he content merely to occupy a seat? Does he work hard at his job, attempting as best he can to ascertain whether proposed legislation is for the best interests of the state? Accurate answers to these queries would make it possible to judge the worth of American state legislators far more objectively than can be done at present.

Conflicting Opinions as to Adequacy of Legislators The newspapers often hold legislatures and their members up to ridicule—even as sober a paper as

[45] See the files of the Indianapolis papers for the period February–March, 1937, for additional details of the system which prevailed.

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." [46] Alfred E. Smith implies 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; [47] 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 indulge in the nonsense they do to maintain their poise and good humor and equilibrium." [48]

Conclusion Whether one would agree fully with Mr. Kettleborough or not, it is certainly fair to say that the reputation of legislators in the highways and byways where people congregate is better than the caustic jibes of critics would indicate. Even where the product is lacking in quality, it may be not so much the fault of the members of the legislature as a result of the inadequate time permitted, the unreasonably heavy burden imposed, and the worn-out character of some of the governmental machinery.[49] Even if there are inevitably a number of legislators who are out to make as much money as they can by fair means or foul, it is a very rare if not unheard of state of affairs for them to constitute anything like a majority. Under these circumstances it is fairer to judge the legislature on the basis of the caliber of the honest and conscientious members.

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[46] Quoted from W. Brooke Graves, *American State Government*, D. C. Heath & Company, Boston, 1936, p. 248.

[47] See his *Up to Now*, The Viking Press, New York, 1929, Chaps. 5–8.

[48] In a letter to Professor Graves, November 1, 1934.

[49] An illuminating treatment of this subject is to be found in W. Brooke Graves, *op. cit.*, pp. 244–249.

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44. The State Legislature in Action

Sessions

Frequency and Time of Sessions At one time it was customary for state legislatures to convene every year, but that has long since ceased to be the rule. Indeed there are only seven states in which annual sessions are still provided: California, Maryland, New York, New Jersey, Rhode Island, Massachusetts, and South Carolina. The legislatures of forty-one states meet every two years in regular session, with thirty-seven sessions in odd-numbered years and four in even-numbered years. In forty-five states legislatures regularly convene in January, while in Alabama, Florida, and Louisiana the time is set up to April and May respectively.[1]

Limitations upon Length of Session The distrust which has been generated by legislative action in certain states has led to constitutional limitations on the duration of regular sessions; nevertheless, there are still twenty-two states which permit their lawmaking bodies to meet as long as they deem necessary. The twenty-six 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 specifies 61 days; two, 90 days; and one, 150 days. The most common practice is to set the limit at sixty days—sixteen 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-six 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 circumstances wisely spend more than that time on its deliberations. Maryland and Minnesota, which set the maximum at ninety days, also are not too unreasonable unless a very unusual situation presented itself. The other twenty-three states are in a different category. It cannot be maintained that two months every two years is always an inadequate time for a legislature

[1] A table showing sessions 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.

to complete its labors, but it is certainly frequently not sufficient. It requires several weeks to get the legislative machine operating in such a manner that bills are ready to be voted on; moreover, political psychology tends to favor delayed action in many instances.[3] 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. 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. Legislative rules have to be suspended; deserving bills have to be shelved to make way for those which are politically expedient; the average member becomes so befuddled that he cannot begin to keep track of what is done. The result is that two or three conflicting bills may be passed; freak bills sometimes 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. It is difficult to deny that a considerable part of the weakness commonly ascribed to certain legislative bodies must be attributed to the insufficient time permitted for transacting business. Nevertheless, limited sessions still have their strong supporters.[4]

Split Sessions The constitutions of California and New Mexico provide for bifurcated or split sessions. Realizing that it is desirable to permit time for considering the bills which are introduced in large numbers as well as to sound out popular sentiment, these states have adopted 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, supposedly 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 does not seem to be too 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] A senator of considerable reputation and experience in a middlewestern state has informed the author that he wholeheartedly approves of the sixty-one-day limit in his state.

with either legislators or scholars. It causes a prerecess rush somewhat like the rush at the end of a session and it apparently has not produced a higher quality in laws passed.[5] There seems to be some sentiment to repeal the amendment to the state constitution which requires split sessions.[6]

Special Sessions Recent years have witnessed numerous special sessions of state legislatures; indeed during the years 1930–1937 Henry W. Toll of the Council of State Governments concluded that they were "more frequent than during any similar period in the history of the Nation." [7] During that period at least 216 special sessions were held, each covering from one day to four months or more. 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 a record high with forty-six special sessions. It may be added that many if not most of these special sessions of 1936 were for the purpose of enacting legislation which would make it possible for the states to take advantage of the federal social security program. By 1937 the situation had quieted down, but World War II gave rise to many special sessions—as a result of wartime problems almost all of the legislatures held special sessions in 1944. 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.

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. The national Senate goes on its way year after year with little change in organization unless there is a shift in political control. Even in the national House of Representatives there is likely to be considerable continuity unless a new party displaces the party which has enjoyed majority status. In New York, which continues the practice of holding annual legislative sessions, there is some similarity to the federal system, but that is the exception rather than the rule as far as the states as a whole are concerned.

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. The state party committee may take a hand in the making of arrangements, usually calling in influential legislators-elect who have had previous experience in the general assembly.

[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.

[6] New Mexico adopted an amendment providing split sessions in 1940.

[7] See Henry W. Toll, *op. cit.*, pp. 3–4.

It is quite possible that a caucus of the members of the dominant 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, although it is customary to have a minority slate put up also as notice that the minority party is on hand. 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 substantially the same types of officers that are to be observed 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 these officials do not hesitate to take an active part in the affairs of the chamber over which they preside, even to the extent of using their influence for partisan measures. In all of the states except Nebraska [8] the speaker continues to name committees, though his counterpart in Washington no longer can do that. Thirty-seven of the states have lieutenant governors who preside over the senate, but in the remaining states the senate has to choose a president for that purpose.[9] Even where there is a lieutenant governor it is customary to elect a president pro tempore who takes charge when the former is not present. 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.

Legislative Employees The number of legislative employees is larger than is commonly realized; as a matter of fact some observers believe that it is larger than is actually necessary. The total number of employees may be as large or even larger than the total membership of the general assembly. If all of the different pages and doorkeepers who perhaps are on the pay roll for only a week are included, several hundred persons will find in a single legislature a source of employment. Some of these employees are largely honorary in character; others have a great deal to do. Of course the majority party expects to benefit from most of these jobs, though every member may be permitted to name a page or two who serves during a week or so of the session. Most

[8] Nebraska has a committee on committees for this purpose.

[9] These states are: Arizona, Florida, Maine, Maryland, New Hampshire, New Jersey, Oregon, Tennessee, Utah, West Virginia, and Wyoming.

of these jobs carry modest compensation—the most lucrative may pay not more than $10 or so per day, but there is always a great demand for them from loyal followers of the party in power. Indeed it is the greediness of party workers which explains in large measure the numbers who are employed.

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 parties 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 these early caucus meetings considerable attention is sometimes paid to outlining the general strategy to be followed as well as to the program of legislation which is to be enacted. In general, the work of a state legislature is perhaps 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 may 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 looking toward improving its position; in such cases the caucus is likely to meet frequently to decide on what shall be done and what strategy shall be used. The steering committee appointed by the caucus may have a great deal to do if there is something of this kind on foot, for it has to see that members are on hand to vote and that the plans go according to schedule.

Committees There are several types of committees which are maintained by state legislatures. Standing committees are found everywhere and are ordinarily set up by each house, though six states make more or less use of joint committees which draw their members from both houses. 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 and Nebraska, have brought the number of committees in at least one house to reasonable proportions—the former recently had ten senatorial committees while Nebraska has fourteen committees in its unicameral legislature. In contrast, South Dakota recently had fifty-one senate committees; Arkansas fifty-three senate committees; North Carolina fifty-two senate committees; Kentucky, Michigan, and South Dakota seventy-one, sixty-nine, and fifty-one house committees; and Georgia

sixty-three house committees. Twenty-four senates have thirty or more standing committees, while twenty-six lower houses have thirty or more standing committees. There are not thirty or more different categories of bills which are important enough to justify standing committees and as a result, while a few committees have much to do under such a set-up, a larger number find themselves with little or nothing to occupy their attention. In a recent Ohio legislature the house committee on taxation had referred to it 134 bills and the judiciary committee 86 bills; in contrast the committees on libraries, federal relations, and universities and colleges received one, two, and three bills respectively.[10] But members want to be appointed chairman of a committee irrespective of whether it is important or not; moreover, they apparently like to be able to point to membership on numerous committees. Considering that certain state houses of representatives have many more standing committees than the national House of Representatives, despite their distinctly smaller size, it may not occasion surprise that a single member can report eight or ten committee assignments to his constituents.

Joint Committees Two states have largely abandoned standing committee systems in both houses for joint committees, while other states have made some headway in this direction. Massachusetts and Maine have recently had thirty and twenty-two joint committees respectively, with members drawn from both houses of their legislative bodies; Connecticut, New Jersey, Georgia, Rhode Island, and Virginia have thirty-three, nine, seven, six, and six of these committees respectively. 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 favorable attention from students of government and has worked out well in Massachusetts where it has had its most extensive use. Nevertheless, despite the arguments that have been advanced in its favor, it has not appealed to the states in general.

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 only 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. An appropriation of several thousand dollars generally

[10] See Mona Fletcher, "The Use of Mechanical Equipment in Legislative Research," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 171, January, 1938.

accompanies the authorization of one of these committees. 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. The Joint Legislative Committee on Taxation and Retrenchment in New York has been active since it was first set up in 1919 and has undoubtedly made a generous contribution to lawmaking in New York.[11] 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. No serious attempt may be made to study a public question with any care; indeed the employees of many committees are so lacking in training that they could not possibly carry on a valuable study. Even where good work is done, there is no guarantee that any attention will be paid to it. The members of the committee may not be re-elected; attention may shift to some other problem; the reports may molder away in the files of the capitol. The general lack of accomplishments of these committees has been mentioned as an argument in favor of the creation of a legislative council.

The Legislative Council Realizing the need for a continuing agency to study the complicated problems with which a legislature must deal, many states have established legislative councils. Wisconsin set up an executive council in 1931 which, although drawing its members from the executive branch rather than the legislative, still was intended to provide research facilities as a foundation for legislative action. Kansas and Michigan created distinctly *legislative* councils in 1933 and Virginia, Kentucky, Nebraska, Connecticut, Illinois, Maryland, Pennsylvania, Maine, Missouri, Indiana, and Alabama took similar steps during the years prior to 1945. In 1949 twenty-five states reported functioning legislative councils. There is difference of opinion as to how large the council should be—Kansas and Illinois seem to be convinced that a comparatively large body of more than twenty [12] members is desirable while other states prefer a smaller membership of ten or a dozen.

Importance of a Research Staff Particularly important is a "well-staffed research department" [13] which must do the actual work of investigating after the legislative council itself has decided what problems require attention.[14] This staff should be recruited on the basis of its ability to carry on searching investigations rather than on a partisan basis. This may seem at first sight an impossible expectation, considering the political character of state legislatures

[11] For a detailed discussion of the work of this committee, see W. Brooke Graves, *op. cit.*, pp. 259–262.

[12] Illinois has twenty-two members.

[13] Frederic H. Guild, "The Development of the Legislative Council Idea," *Annals of the American Academy of Political and Social Science*, Vol. CXCV, p. 146, January, 1938.

[14] Several of the states have been very fortunate in securing the services of distinctly able research directors. Kansas has long had Dr. F. H. Guild; Illinois started out with Professor C. M. Kneier and now has Dr. J. F. Isakoff; while Nebraska has Professor R. V. Shumate.

and the fact that the members of the council, though drawn from both major parties, are nevertheless partisan. However, many, perhaps most, of the really important matters with which a legislature must deal actually have very little partisan significance. There is no Democratic way to finance a welfare program; nor is there a Republican way of setting up a workmen's compensation system. What is needed is all the information possible as to how other states have handled similar problems, what actual results are likely to be produced by certain legislation, and what the most dangerous pitfalls are.

The members of a legislature cannot, with rare exceptions, depend upon their own backgrounds to furnish these data for they have not had experience which makes them authorities in these fields. Very frequently a proposal may promise good results, but the states which have tried similar schemes have been disappointed. The legislative council's research staff is in a position to find out what has been done in other states, whereas if the legislature depends upon its own resources it is likely to make serious mistakes. The fact that legislatures embark again and again upon projects that have been abandoned years before by states which have found them unworkable shows how necessary up-to-date and reliable information is.

An Evaluation of Legislative Councils A period of a few years is not a long time in which to judge the merits of an important experiment in state government. Moreover, 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 council has operated with considerable success, despite certain difficulties, for a long enough time to make it worthy of examination. Its research staff has made numerous studies which have been made the basis of important legislative action; the members of the legislature after initial suspicion apparently now rely in large measure upon the council for assistance; several costly mistakes have been avoided because of the expert advice which the council has furnished.[15] The legislative councils of Kansas and Maryland have on occasion at least gone so far as to draft legislative programs, while the Illinois council is primarily a fact-finding agency. It would seem that a legislative council has much to offer, particularly in those states which limit their sessions to sixty days or thereabouts, for instead of having to draft important bills and investigate problems after the legislature assembles this agency makes it possible to have that work done before the session convenes. Hence the marking of time during the first few weeks is minimized and congestion at the end may be reduced.

[15] For example, a bill proposing to tax liquor was estimated by its proponents to produce a certain amount which was necessary to balance the budget. The legislative council was able to show from the experience of other states that only a small fraction of this estimated amount would actually be collected. Other provisions were subsequently made and a serious deficit avoided.

Technical Services Although the legislative council idea is rather new, provision has been 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 over forty of them now maintain legislative reference services and with few exceptions all have public bill draftsmen. Legislative reference bureaus may provide both services to members of the legislature, although there has been a tendency to emphasize the bill-drafting function 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 special 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 several decades 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. To start out, the public bill drafters are usually regarded with suspicion and consequently have to prove their worth and reliability to the legislators. If there is a change in the personnel of a bill-drafting bureau the record in a single state may change radically in a very short time. 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,[16] while in other cases the relations between the members and the bill-drafting bureau may be so strained that comparatively few bills receive expert assistance.[17] Members who use this service—and it is often the policy to permit private citizens to ask for aid also during times when the bureau is not too busy—bring their ideas to the bureau and they are then incorporated into more or less 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

[16] Dr. Charles Kettleborough built up such confidence over a quarter of a century among the Indiana legislators that he actually boasted of drafting more than 100 per cent of the bills. What happened was that he prepared bills that were never introduced as well as perhaps 98 per cent of those that were.

[17] Some states employ brokendown lawyers who have political influence for this purpose. Of course, their "expertness" is usually not impressive.

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; however, their staffs are usually not sufficiently adequate to do a great deal of extensive investigation. Where 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 technical 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.[18]

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 fundamental importance. A careful analysis of the rules of several legislatures will reveal that their major principles have developed over a period of several centuries, often going back to English parliamentary practice. The colonial legislatures based their rules very largely on English experience and Thomas Jefferson was by no means uninfluenced by English rules in preparing his famous *Manual*, which has been widely used by the states. The three-reading rule which is almost everywhere observed [19] may be traced back to the days before the printing press had been invented. Many of the rules strike the student of modern legislative procedure as not too 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 employed. As the late Governor Alfred E. Smith once 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." [20] Again they are usually 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

[18] 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.

[19] Maine and North Dakota require only two readings.

[20] 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.

every two years—a member of a middlewestern legislature which cannot extend its sessions beyond the sixty-one days reported that approximately one third of the time of the lower house was taken up by the rules which provide for roll calls before electrical voting facilities were installed.[21] Some revision of the rules has been undertaken, but for the most part little has been achieved in this direction, despite the burden which is imposed. How much can be done in bringing the rules up to date is questionable. The parliamentarian of the California Senate during the years 1927–1937 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." [22]

Possible Improvements The California parliamentarian quoted above suggests several avenues of improving the situation. To begin with, he asserts that presiding officers should "never apply technical parliamentary rules when they will not aid in conducting legislative business," maintaining that "certain short cuts can be justified in legislative procedure." [23] Furthermore, he believes that it is not always a question of onerous rules, but perhaps more a matter of lack of acquaintance on the part of members with the rules; consequently he proposes an informal course, such as Congress has for some time offered, to familiarize new members with the basic rules.[24] Simplified manuals or handbooks, such as those prepared by the Bureau of Public Administration of the University of Alabama, might prove helpful in acquainting legislators with procedure. Several states have found it possible to modify the rules in such a manner as to expedite business; for example, the motion to postpone indefinitely has been given a higher order of precedence than it has had in the past and no debate on this motion is permitted. This change in parliamentary procedure makes it possible to defeat a measure without consuming any valuable time in debate. The speaker [25] of a lower house in a midwestern legislature a few years ago proposed a drastic revision which would limit the number of bills which could be introduced in each legislative session, but it seems unlikely that this would be either feasible or wise. No doubt there are too many bills in the legislative hoppers at the present time to permit adequate consideration. Reducing the number of measures has been suggested as preferable to the arbitrary termination of debate.[26] However, there is so much pressure put upon individual members to introduce bills

[21] 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.

[22] Paul Mason, "Methods of Improving Legislative Procedure," *ibid.*, p. 151.

[23] *Ibid*, p. 151.

[24] Arkansas has recently received publicity because of a school for new members of the legislature. Presumably attention is paid to the rules.

[25] Speaker J. M. Knapp of Indiana made this proposal after a very hectic session in 1941.

[26] See Paul Mason, *op cit.*, p. 152.

that a really effective curtailment would add substantially to their burden, even if some guarantee were forthcoming that the meritorious bills would not be shut out in favor of those more politically expedient.

Steps in the Making of a Law

Multitude of Proposals The quantity of bills and resolutions introduced in American state legislatures today is very large. In a single year as many as fifty thousand proposals [27] may be made looking toward legislative action of one kind and another. The number is indeed so large that, despite the numerous committees [28] which exist to assist in sorting out and investigating the meritorious bills, the legislative councils, the legislative reference bureaus, and other facilities, the legislatures often find themselves bogged down. Even if the most modern machinery were provided and the severe limitations on duration of sessions removed, it would still be a heavy task to dispose of so many bills and resolutions. As the situation is, even conscientious members find it difficult to know where to begin their efforts, while the rank and file may be well nigh as helpless as a ship adrift at sea. Most of these proposals involve bills, though more than eight hundred in a recent year related to constitutional amendments and a fairly large number urged resolutions of one kind and another.

Character of Legislative Proposals There is the greatest diversity in the many thousands of proposals that are brought to legislative bodies during the course of a single year. 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 may be 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) [29] have to do with financial matters or administrative technicalities and are actually not general "laws" at all.[30] In the second place, one may be sure that there will be considerable duplication, that a half dozen

[27] See Henry W. Toll, *op. cit.*, p. 3. 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.

[28] There were more than three thousand committees in a recent year.

[29] For a discussion of the general difference between a bill and various types of resolutions, see Chap. 21.

[30] See H. W. Toll, *op. cit.*, p. 3.

or more bills may relate to the same current issue.[31] 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. Thus railroad lobbies may be counted on to submit legislation calling for the repeal of the so-called "full crew" laws in those states which have enacted them. Finally, there are invariably a number of bills which embody the ill-conceived notions of certain individuals or organizations of the hare-brained type. Bills to permit telephone subscribers to use pay telephones without cost, bills to divide all commodities into twenty categories and to prohibit a merchant to deal in more than a single category, bills to pay every aged person a pension of several hundred dollars per month, are only a few of them. Some of these latter make their appearance only once, while others may be counted upon to come up every session.

Source of Bills There are many individuals and groups which desire 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 calling 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; naturally this interest leads to legislative proposals of one kind or another. There is great diversity among members in this regard, but even party wheel

[31] 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.

horses sometimes do not regard legislative hobbies as out of keeping with their role of party loyalty. 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 reasonably sure in such cases that the member himself had little or 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—in some instances the legislator makes it a practice to visit almost every farm and business establishment before the legislature convenes to inquire what the wishes of his constituents are—with the ideas but not the formal draft of a proposal. The member may consider it good strategy to take upon himself the burden of drawing up the bill along the lines suggested by the constituent. But after allowances have been made for all of these cases, there are still a reasonable number of measures which may be designated as "members' bills." One trained observer who has had good opportunity to reach a conclusion on this point states: "In general they (the legislators) take a thoroughly statesmanlike interest in proposing and securing the enactment of laws which they think will be of benefit to the public or to their districts." [32]

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.[33] With the exception of revenue 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.[34] 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.[35] 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 half-way mark, unless a two-thirds consent of the members is

[32] Paul Mason, *op. cit.*, p. 153.

[33] 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.

[34] A single legislative body usually uses only one of these methods.

[35] 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.

obtained. This limitation probably serves a useful purpose, though Professor Grant points out that about 90 per cent of the bills in California are delayed until they barely get in under the deadline.[36] However, it should be noted that it is not too difficult in many legislatures to get the consent of the members to present a measure after the date set for ordinary introduction.

Committee Reference The clerk of the house frequently decides which committee shall receive a bill, although the presiding officer usually has the final say. In most 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. Thus a bill relating to courts goes more or less automatically in most instances to one of the committees on judiciary; a bill modifying the authority of the state department of education is sent to the committee on public education; a bill having to do with workmen's compensation finds its way to the committee on labor. 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. Finally, in certain cases where an elaborate program is being planned by a party which has just been returned to power, it sometimes happens that a single committee having as members party leaders will be given almost all nonfinancial measures that pertain to that program. Needless to say, there is likely to be considerable ill-feeling among the legislators if bills are frequently referred to committees which have no claim to them, other than political considerations.

Committee Consideration The committee stage in a state legislature is not unlike that in Congress,[37] 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, where six or seven bills out of every ten never get beyond the committee state. In something less than half of the states every bill must be reported out by legislative committees, irrespective of whether the committee is favorably disposed or not.[38] Even in those states where there is no requirement of this kind it is customary to report out approximately one-half of all bills referred.[39] The constitutional rule requiring a report on every

[36] *Ibid.*, p. 119. Professor Grant states that "nearly 90 per cent of all bills are introduced in the last week of this first half (of the session), the final day being by far the worst."

[37] See Chap. 21.

[38] Some eighteen of them require a report on all bills, but in some states the rule is not observed always.

[39] 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.

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. This safeguard compels the committee to report a bill without recommendations even if it refuses to take a stand for or against, but it does not always prevent other moves which may have the effect of preventing enactment. There has been some criticism during recent years in the other direction—that is, that committees were too generous in reporting out bills even where they were given discretion. Apparently the committees in some states have become sensitive as a result of the criticism aimed at them and consequently report out so many bills that the calendars become 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 less common than in the national legislature. Massachusetts has scheduled a fairly large number of public hearings on important bills and many other states have been willing to permit public hearings occasionally on highly controversial bills of wide popular interest. Fifteen states require certain public hearings, while the remainder leave the matter to the discretion of the committees.[40] In light of the useful purpose served by public hearings in the national sphere it is unfortunate that the state legislatures do not make more use of this device. The location and character of some state capitals is such that the people cannot get to public hearings very easily, but there are many capitals so conveniently situated and with such sizable populations themselves that this should present no problem.

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. Thus a state bankers' association may almost invariably have a representative in attendance at the meetings of the committees on banks and trust companies; organized labor may work closely with the committees on labor; and the teachers' federation may be given an opportunity to express itself when the committee on education is considering a bill to license teachers. The influence of some of these agents in connection with committee deliberations is very great, although in other 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 during executive hearings; that listening

[40] For a tabulation, see the most recent *Book of the States.*

to an assortment of speakers is a waste of valuable time. The danger 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 and the rank and file of citizens may therefore suffer.

Pressure Politics In a previous chapter some attention has been paid to the numerous pressure groups that are represented in a state legislative session.[41] 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 contact 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. Many bills are on their very face of the crackpot variety and require little or no serious consideration. 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 serious attention. 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. Inasmuch as additional copies are not likely to cost a great deal after the type has been set up, it is questionable whether this practice is not unduly penurious.

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 to which it belongs, setting forth its recommendations. Important bills are 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 on its attitude, 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

[41] See Chap. 13.

and then must wait until the bill is called up for second reading. In order to expedite business some houses have adopted rules which require a committee to report within a specified period, say twenty days or a month. 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; consequently bills frequently die for want of attention despite the favorable attitude of the committees to which they are referred.

Debate and Amendments If the steering committee of the majority party 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. The pressure of time and the lack of familiarity on the part of many of the members does not encourage a high quality of debate; indeed a casual visitor may be so bored that he wants to leave the chamber at once and cannot see what use there is of having debate at all.

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. A dictatorial governor who wants action on large numbers of bills and wants it quickly may be irritated at the time required by debate, professing to believe that it is much more efficient to have large numbers of important bills steam-rollered through without discussion or change. And it must be admitted that a legislature which suspends the rules providing for debate and amendment may turn out a larger amount of work during a session. Nevertheless, the cost is a high one in the long run, for it breaks down the fundamentals of responsible government—the legislature might almost as well be thrown out entirely and laws made by decree if it is to be a mere rubber stamp. 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.[42] Ignoring this tradition is less dangerous than cutting out debate and the opportunity to offer amendments because members have

[42] 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.

printed copies at hand and the reading clerk ordinarily drones in such a fashion that it is difficult to follow if one wishes.

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 as to whether the bill will be permitted to pass to a third reading. If one fifth or so 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, are 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 on less essential roll calls may be great. One member of a lower house reported that his house during a recent year had 518 roll calls which consumed about 19 out of 61 days permitted for a biennial session.[43] However, the New York lower house often complies nominally with the rule by having the clerk call only four names out of the entire list.[44] 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 eighteen of the states have installed these systems as yet.[45] They are still costly and some legislators maintain that they can be improperly manipulated.[46]

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 latter stage. To begin with, the legislature may adjourn before a third reading can be ordered; then, too, some members may suddenly become cautious when they realize that their votes are to be recorded in a formal roll call which may be reported by the newspapers to their constituents. 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

[43] 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.
[44] See A. E. Smith, *Up to Now*, The Viking Press, New York, 1929, p. 89.
[45] Eleven of these have such devices only in the lower chamber.
[46] See Paul Mason, *op. cit.*, p. 138.

prepared copy, is signed by the presiding officer and is sent to the other house, where is goes through substantially the same process just described. 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,[47] may be a 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 detail unchanged and even a 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, so that the bill may not be lost. 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. In most instances the recommendations of conference committees are not subject to amendment and consequently must be accepted or rejected as a whole. There is often grumbling at the recommendations; yet majority acceptance is ordinarily forthcoming.

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, of course, not easy to achieve this end, particularly if the governor has any influence among the members. In the several 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 There are few business corporations, university faculties, or social organizations that would be willing to cumber themselves with the many rules and regulations that are taken as a matter of course by all state legislatures. The process is indeed so complicated and long drawn out that one wonders how any considerable number of bills is finally enacted into law. But 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 surmounting all of the obstacles, which, though perhaps not too favorable in principle, permits an impressive addition to the statute books every year. Out of approximately fifty thousand proposals submitted to forty-three state legislatures in 1937 more than twelve thousand

[47] See Chap. 42.

finally got themselves enacted! During 1947–1948, 28,530 acts were passed in regular legislative sessions and 854 in special sessions.

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 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—it may be broad daylight outside, possibly it is afternoon of the day after, but the clock shows 11:55 P.M.

But it is not the last-minute pressure which is most striking, for that is more or less to be expected. The noise, the confusion, sleepless nights galore, the strain of living away from home and eating the stale food provided by hotels and boarding houses, the hopeless task ahead, the prospect of returning to the humdrum of routine existence at home, all combine to induce a state of mind which is a combination of hysteria, hilarity, and irresponsibility. Members may shout, pound the backs of their colleagues, utter Indian war whoops, and engage in snake dances. Plentiful supplies of liquor are at hand either on the floor or near by and many members become so drunk that they can scarcely stand up. Entertainers are frequently brought in from the outside —swing bands blare out their melodies, dancers cavort, clowns circulate among the members, and crooners bring tears to the eyes of those who are maudlin. The floor of the chamber and all of the furniture is covered with confetti, streamers of paper, bottles, tobacco litter, and a conglomeration of odds and ends. One who reads the newspaper accounts imagines that the legislature has gone crazy or at the very least has set out on an orgy of debauch, but it is hardly fair to judge typical conduct on the basis of this one day. It would be as sensible to conclude that the frolics of Elks and Shriners, the roaring of Lions Clubs, the hell weeks of fraternities, and the antics of Legionnaires

at their annual conventions are characteristic of the business and professional lives of their prosaic members.[48]

Direct Legislation

The popular distrust of legislative bodies, the notorious control of the legislatures of certain states by powerful vested interests [49] over a period of years, and the lack of attention which some general assemblies display 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, though such states as Idaho and Utah have revised earlier provisions. 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 by those who fought so vigorously to further the spread of direct legislation, but those states which have established such devices have seldom abandoned them.

Constitutional Initiative Thirteen of the states permit amendments to their state constitutions to be made by the initiative. After interested individuals and organizations have drafted amendments deemed desirable, petitions are circulated which must be signed by from 8 to 15 per cent of the voters, depending upon the state—some states specify that these signatures must be secured from various districts of the state.[50] 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 is sufficient.

[48] Various proposals have been made to strengthen the process used by state legislatures. Perhaps the most significant proposal was drafted by a committee made up of members of legislative bodies; this has been published under the title *Our State Legislatures,* Council of State Governments, Chicago, 1946. It recommends twelve changes. Other informing discussions may be found in L. K. Caldwell, "Strengthening State Legislatures," *American Political Science Review,* Vol. XLI, pp. 281–289, April, 1947; L. B. Orfield, "Improving State Legislative Procedure and Processes," *Minnesota Law Review,* Vol. XXXI, pp. 161–189, January, 1947; J. A. Perkins, "State Legislative Reorganization," *American Political Science Review,* Vol. XL, pp. 510–521, June, 1946.

[49] For example, the Southern Pacific Railroad controlled the legislature of California for a considerable period in the early twentieth century.

[50] 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.

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 [51] 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 submit the measure to a vote if the legislature refuses to take action.[52] Some states stipulate that signatures must not be confined to a single section of the state: thus Arkansas asks for at least fifteen counties, Missouri specifies two thirds of the congressional districts, and Utah requires half of the counties. If the proper number of signatures [53] 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-one of the states.[54] 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 required to sign referendum petitions in sixteen of the states, while four states stipulate a definite number varying from seven to fifteen thousand.[55] Six states regard it as essential that signatures be secured from various sections of the state: thus New Mexico asks for 10 per cent of the voters from three fourths of the counties, while Montana and Nebraska mention 5 per cent from two fifths of the counties. 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.

[51] Ohio requires only 3 per cent to begin with, but if the legislature refuses to take action an additional 3 per cent must be secured.

[52] Nine states have this indirect form of initiative.

[53] Inasmuch as a good many signatures are invariably found invalid, a fairly wide margin over the minimum number required is necessary for successful action.

[54] See James K. Pollock, *op. cit.*, pp. 90–91, for the list.

[55] See James K. Pollock, *op. cit.*, pp. 92–94, for the requirements of the various states.

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. A recent study by Professor Pollock furnishes a good picture of the experience of Michigan during the years 1910–1939, which represent virtually the entire period that Michigan has operated under the system; other studies are available of California, Oregon, and Colorado. During the 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 was adopted by the voters.[56] Certainly Michigan has not used the machinery of direct legislation to add many amendments or ordinary laws. California, on the other hand, has used the device much more frequently, for during a period only slightly briefer 325 measures were submitted to the voters.[57] Oregon, too, has found it expedient to make distinctly more use of direct legislation, and during 30 years placed 214 proposals before the voters.[58] Colorado voted on 121 proposals during 1912–1938, with 43 submitted in 11 elections held from 1925 to 1939.[59] 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; how much 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.

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[56] See *ibid.*, pp. 18–19.

[57] See V. O. Key and W W. Crouch, *The Initiative and Referendum in California,* University of California Press, Berkeley, 1939, p. 527.

[58] See Waldo Schumacher, "Thirty Years of the People's Rule in Oregon," *Political Science Quarterly,* Vol. XL, p. 243, June, 1932.

[59] See State Legislative Office of Colorado, *The Initiative and Referendum in Colorado,* State Printer, Denver, 1939, p. 26.

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45. 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 Although the federal Supreme Court is often in the limelight and other federal courts have a considerable amount of prestige, 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 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 The early colonists from England brought with them the justice of the peace courts which for centuries have been an essential part of the English court system. The development of these tribunals has proceeded along different lines in various states, but in general they are at present rather unlike their prototypes in England, having jurisdiction over both civil and criminal cases. At one time these 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. Even in these areas 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 of the peace courts are not only presided over but are largely identified with the justice of the peace. Higher courts have their clerks, reporters, bailiffs, and other attendants, but in the justice of the peace courts the justice himself, sometimes flanked by a constable, performs all of these services in so far as they are performed at all. 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; it may be added that some of them have difficulty using even these handy compilations.

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. The marriage-mill justices across the state lines north and south of Chicago once aparently fared very well, while the speed-trap, "roadside" variety of justice sometimes profited to the extent of thousands of dollars per year. However, marriage laws have been made more stringent and automobile clubs have curbed the power of justices in traffic cases, thus removing much of the cream from the business. A study of incomes of justices in Hamilton County, Ohio, in which Cincinnati is located, computed the average annual income of all such officials in that county as

[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.*

$415.75, with a range of from $4.30 to $2,557.06. Approximately one fourth received less than $100 per year and more than two thirds received less than $200 per year and more than 75 per cent less than $300; only 8 per cent of the justices exceeded $1,000 per year.[4] This dependence upon fees is almost uniformly condemned by those who are expert in the field of the administration of 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. Is it strange that the justices so often assess costs against accused persons, even though they suspend the fine, thus proceeding on the principle of compromise which permits them to collect a fee without imposing the full penalty of the law? In all of the cases involving litigation there is a striking tendency to find these 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.[5]

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 them concentrate their attention upon performing marriages.

Magistrate or Police Courts In sizable cities there are magistrates, 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 often the creatures of political bosses and machines and if they are not personally venal they find it expedient to decide cases on the basis of recommendations received from party leaders rather than upon their merits.[6] In 1935 twenty-seven out of twenty-eight magistrates in Philadelphia were indicted on various charges. Professor Salter has vividly described the role of the political organization in determining their decisions.[7] The atmosphere in many of these courts is indescribably bad:

[4] Paul F. Douglass, *The Justice of the Peace Courts of Hamilton County, Ohio,* The Johns Hopkins Press, Baltimore, 1932, p. 70.

[5] 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.

[6] Denis Tilden Lynch, *Criminals and Politicians,* The Macmillan Company, New York, 1932.

[7] J. T. Salter, *Boss Rule,* McGraw-Hill Book Company, New York, 1935.

noise, filth, confusion are frequently prevalent.[8] Their jurisdiction is usually somewhat more extensive than 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.[9]

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. These may be organized on a geographical basis, as in New York City, where some twenty-eight districts have been arranged, with a section of the municipal court in each. Or they may be built around the functional principle, as in Chicago and Philadelphia, where there are divisions dealing with civil cases, juvenile cases, domestic relations, misdemeanors, traffic violations, and so forth. A chief judge is ordinarily given supervision over the entire system; judges may be elected or appointed. The jurisdiction of these courts is usually greater than that given magistrate courts, though it may not be equivalent to that of intermediate courts.[10] 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.[11] 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 consequently several divisions or sections of the court may be created. Intermediate courts are presided over by single judges[12] 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 prosecuting

[8] 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.

[9] Quoted from W. Brooke Graves, *American State Government*, D. C. Heath & Company, Boston, 1936, p. 515.

[10] 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.

[11] For a discriminating discussion of the achievements of the Chicago municipal court, see Albert Lepawsky, *Judicial System of Metropolitan Chicago*, University of Chicago Press, Chicago, 1932, especially Chaps. 6 and 7.

[12] 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.

attorney is on hand or represented by deputies when criminal cases as well as certain civil cases are being heard.[13] 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. Pennsylvania has courts of common pleas to hear civil cases and courts of oyer and terminer to give attention to criminal cases; a number of states provide for separate probate courts to oversee the settlement of estates and the carrying out of wills. 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 an offense.

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 elaborately organized into trial and appellate divisions. Single judges sit in a trial division, while several judges attached to the court sit together when an appeal is being heard from an intermediate trial court. 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 tribunal. These states frequently create a single 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 validity of laws.

Supreme Courts The highest court of a state, whether it be designated the supreme court, as is customary, the court of appeals, as in New York, or the supreme judicial court as in Massachusetts, is always made up of a bench of

[13] 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.

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. Such courts as the court of appeals of New York and the supreme judicial court of Massachusetts have achieved so great a reputation over a period of years that they rank only just beneath the Supreme Court of the United States itself and their opinions are referred to by judges throughout the country. Unfortunately traditions in some of the states permit the position of supreme court judge to be disposed of on political grounds rather than on the basis of achievement, thus condemning the courts to mediocrity or in a few instances even notoriety ensuing from absurd or politically dictated decisions.

Special Courts The courts which have been discussed above constitute the regular court system of the states. Population and concentration of wealth may necessitate more elaborate provisions in some states than in others, but the broad outlines of judicial structure are quite similar throughout the country. In addition to the traditional courts, there are sometimes special courts which deserve mention. 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. It is recognized by most authorities that ordinary courts are not well suited for the disposal of juvenile cases. 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. The general policy in the past has been to allow each

court to go along about as it pleased, subject, of course, to the rules laid down by the state constitution and statutes and with the always looming check of appellate courts on points of law. The result has been that some courts have kept well abreast of their dockets while others have been three or four years behind; some courts have kept careful records while others have been very neglectful in this matter; some courts have interpreted rules rather liberally while others have applied them most strictly. During recent years 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.[14] Well over half of the states have now seen fit to set up these councils,[15] 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.

Composition of Judicial Councils Judicial councils are variously constituted, but they are usually headed by the chief justice of the state supreme court and include in their membership judges from the lower courts, practicing attorneys, representatives of the attorney-general's office, law-school professors, representatives of the judiciary committees of the two houses of the general assembly and laymen.[16] A full-time office staff performs the routine work under the direction of the chief justice; the council itself meets at stated intervals for a day or two and may be called into special session by the chief justice.

Role of Judicial Councils The judicial councils of some of the states exist largely on paper; others have had to proceed cautiously because of the opposition which they have encountered from vested interests. In those states where the movement has gone far, the council has the power to transfer judges temporarily from courts which have little to do to courts which are far behind with their dockets. Court rules have a great deal to do with the efficient handling of cases; yet in many places they are far from modern in character. State legislatures sometimes attempt to lay down rules for the courts, while in other

[14] 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.

[15] One state provides for such a council in its constitution; more than 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.

[16] Texas includes the following on its judicial council: the chief justice of its supreme court as president, an associate justice of the supreme court, the chief justice of the courts of civil appeals, the presiding judge in each administrative judicial district, the attorney general, the chairmen of the legislative committees on civil jurisprudence, four practicing attorneys, one member of the law faculty of the state university, and three laymen. Kansas has a smaller council: one justice of the supreme court, two judges of different judicial districts, four lawyers, and the chairmen of the judiciary committees of the legislature.

states the supreme court has been given general responsibility in such a field. Legislatures are not well suited to draft rules because of the time element, the many pressures that operate, and the emphasis placed on political expediency. Supreme courts are more logical, but they are occupied with their cases, may not see all of the issues involved, and represent only the appellate point of view. A judicial council, bringing in representatives from the appellate and trial courts, the practicing attorneys, the law-enforcing officers, the legislature, and the public is in a better position to handle this significant task. It might be supposed that accurate statistics relating to courts would be available in all states, but that is not the case and judicial councils, irrespective of their other powers, almost invariably attempt to collect data of this sort.

The Judges

It is a truism that human institutions depend very largely upon the people who direct them. Courts are no exception to this rule. 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 able judges are 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 state 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 at present by popular election, despite the federal practice of filling such positions by appointment.

Appointment versus Election There has been a great deal of discussion of the relative merits of appointment by a governor 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. In Wayne County (Detroit) Michigan, for example, more than one lawyer out of every ten was a candidate for a judicial office in a recent election —there were actually 308 candidates for some 20 positions. Every sort of

promise was made by the candidates; blaring posters set forth the claims of various aspirants; attempts were made to appeal to hyphenated American groups, especially the Poles, on the ground of political recognition.[17]

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. Prosecutor T. E. Dewey charged in 1941 that "two or three men sit down and select candidates for the bench and have them elected," adding that politics still dominated the general sessions, supreme court, and city court benches in New York City.[18] If there is a tradition pointing in the direction of able and courageous governors in a state, the appointment of judges has much to be said 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.[19] 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.[20] Sufficient time has not elapsed to evaluate the California plan in detail—one appointment, involving Professor Max Radin of the University of California, to a post on the state supreme court was refused by the commission and caused a great furor.[21]

Are Able Judges Available? It is sometimes alleged by political workers and others that the quest for able judges is a hopeless one because first-rate lawyers can make so much more money out of private practice that they spurn judicial office. This assertion ignores the presence of a good many able judges now on the bench; moreover, it ignores the fact that the profit motive is not always determining. Judicial temperament is somewhat different from practicing-attorney temperament; several of the European countries go so far as to recognize two professions, making it difficult to cross the dividing line. At

[17] For an interesting article on this election, see S. H. Perry, "Shall We Appoint Our Judges?" *Annals of the American Academy of Political and Social Science,* Vol. CLXXXI, pp. 97–108, September, 1935.

[18] Quoted from *New York Times,* November 29, 1941. He added that conditions had improved however, stating "Under the old system the czars, if they cared to, could pick and elect Dopey Benny Fein" (one of the worst gangsters in New York City at one time).

[19] Superior court judges may be brought under this amendment by statutory action.

[20] 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.

[21] The new constitution of Missouri provides for a somewhat similar arrangement of selecting judges. This system was actually instituted as early as 1940 in Missouri and then incorporated into the new constitution in 1945.

any rate there are men of legal knowledge and superior character who find the life of a judge more stimulating than the competition of a lawyer's office. Moreover, the judicial office affords experience which may be of great value to a lawyer or at least to the legal firm of which he is a member. The salaries paid judges may not be strikingly high, but they are usually near the top of the scale which public officials receive. The statements made by political henchmen may have some foundation, but they would seem to be intended to mislead the layman who does not have any personal knowledge of the situation. After certain Chicago judges had been revealed as personal friends and probably even political associates of notorious gangsters and mediocrity among the judges of Cook County had been repeatedly demonstrated, popular criticism ran high. The excuse offered by the political machine was that good lawyers would not accept the posts. A group of public-spirited attorneys then canvassed the field and put up for election a slate of thoroughly qualified and reputable attorneys for judicial offices. Strangely, not a single one was elected, the machine putting in its henchmen as usual. It is certainly not easy because of the political relationships that are involved to secure judges who stand high in their professions, but able judges are to be had if a way can ever be found to get away from partisanship in electing judges. Some progress has already been made and campaigns aimed at this goal are being waged in a number of states.

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 some states;[22] 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 $6,500 per year to more than $20,000.[23] Salaries of from $10,000 to $15,000 are customary—twenty-nine states allow $10,000 or more. 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;[24] even in a single state

[22] 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.*

[23] For a table showing salaries paid by all states, see the *Book of the States.*

[24] New York pays up to $28,000.

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. Considering that public employment is regularly more modestly compensated than private employment, particularly at the upper levels, it does not seem that the present salary scale of judges presents a major problem.

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 and consequently is not of the greatest practical importance. Seven of the states permit judges to be recalled, though this is less common in the case of judges than other state officers. State supreme courts occasionally have the authority to remove judges of lower courts from office, while certain states make provision for removal by legislative or executive action.[25] All in all, the removal of judges is not made easy, even in those instances where it is probably desirable. Fortunately the number of venal judges is not large, though it is not uncommon to find those who deal generously with former law partners, political friends, and relatives in so far as favors are to be given out.

Law Applied by State Courts

State courts are bound by the constitutions of the United States and of their respective states, which they take an oath to uphold. 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 which extend equal educational and business opportunities to the nationals of those countries, for a state law is ordinarily not permitted to infringe upon a treaty.[26] 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 at least conceivable that the provisions of an interstate compact might come up for application in a certain case.

Statutory Law As has already been noted in discussing the legislative branch of state government,[27] there is seldom any reluctance on the part of

[25] In twelve states a judge may be removed by legislative resolution; in nine others by the governor at the request of the legislature.

[26] 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.

[27] See Chap. 44.

general assemblies to place upon the statute books large numbers of enacted laws. While the number of statutes passed varies from state to state and even in a single state from time to time, the recent figure of a total of more than twelve thousand for all of the states, or an average of approximately three hundred for each of the states whose legislatures held sessions, is probably not far out of line. 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 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. But even in these states there is a remnant of the common law remaining because the most carefully drafted code is not likely to include every point which may in the future be brought to the courts. 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 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. The National Conference on Uniform State Laws [28] and the American Law Institute [29] have both been active in promoting the transfer of certain territories from the common-law field to the statutory category. Students of the law sometimes raise an objection to wide-scale codification on the ground that it makes for rigidity rather than adaptation to ever changing conditions, that it tends to add to the differences between the laws of the various states, and that even the most carefully prepared codes cannot make provision for every future contingency.

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 [30] 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

[28] A great deal of pertinent information relating to this body will be found in W. Brooke Graves, *Uniform State Action,* University of North Carolina Press, Chapel Hill, 1934. Some fifty acts have been proposed and more than six hundred state adoptions have been achieved.

[29] The American Law Institute is interested in several projects, the first being a restatement of the common law so as to provide "orderly expression." It also has worked out a *Model Code of Criminal Procedure* which has had considerable influence on state statutes.

[30] See Chap. 23.

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, even where an effort has been made to codify criminal procedure, civil procedure, real-property law, and so forth, common law still occupies an important field. In England it is sometimes stated that approximately two thirds of the legal field is covered by common law and one third by statutory law; the situation in the United States is so diverse that no general estimate is possible. In Louisiana the legal system is based on the Napoleonic Code, thus apparently giving no recognition at all to the common law; but it may be added that even in this state there has been an indirect influence exerted by the latter. In California and certain southwestern states codification has reduced the sphere of common law to a small proportion; in other states a large number of the cases may be decided upon the basis of common law.

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 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 though not always considered felonies.

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 the 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. Almost every one of these branches of the civil law is sufficiently complicated to warrant a separate course extending over a semester or year in a law school, while some of them account for several courses.[31]

Court Procedure

A casual visitor to the courts of various grades in a single state, to say nothing of all of the states, would take away a bewildering series of impressions. In the justice of the peace courts, frequently held in the most unseemly places—a farm kitchen, the parlors of an undertaking establishment, the back part of a general store, a moldering room upstairs over a business establishment—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 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

[31] 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.

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 transpired a warrant may not be necessary, but if there is a question as to guilt a warrant is sworn out by a private person or by 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,[32] which will have the effect of bringing him before a judge to hear the charges against himself. Where he is jailed, he may frequently secure bail,[33] 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. In the former event the accused may have to wait for several weeks until a new grand jury has been called or until a grand jury already serving gets around to a consideration of his case. If he has been released on bail, he may welcome this delay, but if he has to languish in jail, his attitude is likely to be resentful.

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 [34] that there are reasonable grounds for trial, the accused is indicted and bound over

[32] For an explanation of habeas corpus, see Chap. 7.

[33] 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.

[34] Grand juries do not have to vote unanimously to indict.

to await the attention of a trial court. More than half of the 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 A trial may be forthcoming within a few weeks or even within a few days of the offense, but 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 [35] and have the judge act as a jury. If the jury is elected, the first step is to select its members. This can ordinarily be done in a few hours, but it sometimes requires several weeks in a hotly contested case where the accused is able to employ a battery of able lawyers. At times more than a thousand persons have been examined by the prosecutor and the counsel for the defense before twelve were found who had no connection with the case, declared that they had not read about the case in the newspapers, and in the capital cases stated that they had no scruples against the death penalty.[36]

The Trial With a jury chosen or a decision on the part of the defense to entrust his fate to the judge without a jury, 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.[37]

Verdict and Sentence If a jury is used, it retires at this stage to a room set aside for its deliberations and proceeds to discuss the case and to ballot.

[35] This right is not always accorded. For example, in cases involving capital punishment a jury trial is ordinarily required.

[36] For a good article on this subject, see J. A. C. Grant, "Methods of Jury Selection," *American Political Science Review*, Vol. XXIV, pp. 117–133, February, 1930.

[37] For additional discussion of juries, see Chap. 7.

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 after full discussion it asks to be discharged. If the judge serves as judge of both facts and law, he 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 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 near-by 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.[38]

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 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 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 and consequently less time is consumed;

[38] 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, 1949; Raymond Moley, *Our Criminal Courts*, Minton, Balch & Company, New York, 1930; and *Politics and Criminal Prosecution*, Minton, Balch & Company, New York, 1929.

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 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. This is very frequently what happens in a case arising out of an automobile accident if there is no insurance.

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. Nevertheless, in general, American courts are very liberal—far more so than 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.[39]

[39] For additional discussion, see J. W. Hurst, *The Growth of American Law*, Little, Brown & Company, Boston, 1950, Chap. 9.

Current Problems Relating to the Courts

Several important problems arising out of the administration of justice have been examined in connection with the creation of judicial councils, the selection of judges, and judicial procedure. It remains here to consider several other items which have occasioned discussion.

Court Costs The costs of bringing cases to states courts are, of course, distinctly smaller than has been pointed out above in connection with the Supreme Court of the United States.[40] 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 only $2.00, in Baltimore they are $2.40; in Boston they are $2.65. Since there are vast numbers of disputes which involve only $5.00, $10, or $20, it must be evident that where the minimum court costs amount to $5.00 or more and lawyers must be retained at additional expense, it is scarcely feasible to resort to the courts.[41] 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 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 a number of 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. Lawyers sometimes disapprove of these courts on the ground that they represent unfair competition, but it seems probable that in most of the cases the amounts are so small and the plaintiffs are so poor that little profit could be expected by the legal fraternity.[42]

[40] See Chap. 24.

[41] See R. H. Smith, *Justice and the Poor*, 3rd ed., Charles Scribner's Sons, New York, 1924.

[42] 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.

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 of 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 welfare organizations. Law students sometimes volunteer for work of this kind,[43] 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 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. They have not received the support of certain lawyers who claim that the people going to them could afford to hire an attorney. Nevertheless, while they fill only a fraction of the need and are rarely found outside of sizable cities, they serve a useful purpose. A few states, recognizing the importance of the problem, have provided public defenders paid out of the public funds.

Delay An old adage states that "Time is money"; this applies to delay in settling litigation as well as to other human activities. If a person injured in a railroad accident has to wait several years before collecting compensation, he may be sorely embarrassed by lack of funds to pay hospital bills and meet family needs. A corporation may have to delay plans entailing millions of dollars until the courts get around to passing on controversial points of law. A survey made in New York City a few years ago revealed that most of the courts in that center of business required 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—in the supreme court of Bronx County, New York, a nonjury case could recently be given attention in two months, while a jury case required two and a half years. 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. A study of the supreme and circuit courts of New Jersey during the period 1900–1930 revealed that the population increased 168 per cent, the number of judges 27 per cent, and the number of cases 935 per cent during that time.[44]

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

[43] The students in the Harvard School, for example, maintain such a bureau.
[44] *Third Report of the Judicial Council of New Jersey*, 1932, p. 91.

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. The preparation and presentation of a case requires time even if the docket of a court permits attention within a reasonably short time, whereas application could be made for a ruling on the vague point of law easily and speedily. Approximately three fourths of the states have now made some provision for declaratory judgments with the result that numerous cases are kept out of the courts. There is some opposition to this cutting of red tape on the ground that a court is not able to pass on a point of law as a matter of principle, since in the absence of an actual case it is difficult to perceive all of the implications. Lawyers also may display slight enthusiasm for a short cut which has the effect of hurting their business, although some of the farsighted lawyers believe that the long-run effect is not injurious to the legal profession.

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.[45] 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. This is due to the fact that experts in the real estate field arbitrate in cases between realtors; hardware dealers serve when there are disputes involving the hardware business.

Technical Emphasis There are few if any other countries in the world where technicalities receive as much emphasis in connection with judicial procedure as in the United States. Considering the pride which Americans take in their business techniques, their dislike of red tape and general impatience, and their 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. The legal heritage from England also perhaps enters in, though it is interesting to note that England has abandoned the grand jury

[45] For a table showing provisions in the various states, see the current volume of the *Book of the States.*

system, simplified procedure, and cut delay to a fraction of that characteristic of American courts. But whatever the cause, it remains true that the courts of the United States are regarded with envious eyes by lawyers in the rest of the world because the very emphasis on technicalities adds to the importance of members of the bar in no small way. When a really ingenious lawyer whose heart is in a criminal case has exhausted all of the technical motions that are permitted in most of the states, a considerable amount of time and expense have accrued. Then there is the exhaustive examination of prospective jurors which may require several weeks. If a judge permits a question to be put to the witnesses which brings out the truth but at the same time violates some rule of evidence, a new trial is not uncommonly ordered. The omission of a single "l" or "r" by a clerk or typist who is copying an indictment or some other part of the record in a case has more than once been made the occasion to throw out the work of weeks and even months on the part of a court.

Appellate Courts and Technicalities The appellate courts have at times made almost incredible decisions on some obscure point which has nothing to do with the guilt or innocence of the parties involved. In civil cases the appellate courts have been known to send a single case back a half dozen times to the lower courts on some more or less insignificant grounds. Of course, this works a great hardship on the plaintiff who may discover that court costs and lawyers' fees have more than eaten up the $3,000 or $4,000 which he originally set out to collect. If general statutes are involved in these technical displays, there may be grave uncertainty over a period of years as to some highly important matter which concerns thousands of people. Thus the supreme court of Michigan, ruling on whether the owners of land abutting on Lake Michigan enjoyed title to the high-water mark or only to the meander line, which in some instances was removed hundreds of feet from the water, reversed itself four times in less than a decade.

Recent Progress There has been encouraging progress in some of the states toward reducing the more or less meaningless incidentals in connection with the administration of the law. Revised rules of procedure have made their appearance; pretrial negotiations make it possible to settle large numbers of civil cases out of court. It would create a considerable commotion at present if a supreme court reversed a trial court because the word "robbery" in the indictment was in one instance spelled with a single "b" due to the oversight of the grand jury clerk or because the clerk of the court in which a case originated neglected to sign the transcript when a change of venue was taken to an adjoining county.[46]

[46] For additional discussion of recent changes, see Francis R. Aumann, *The Changing American Legal System*, Ohio State University Press, Columbus, 1940.

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46. State Administration

It has already been pointed out in several connections 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 depend upon the diverse socioeconomic backgrounds of the various states as well as upon their peculiar 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 least well-to-do of the states are currently carrying on fairly elaborate administrative programs.

Administrative Development Among the 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 this 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 more commonly left in the hands of private toll companies or local 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 As states became more populous, their administrative responsibilities increased as a matter of course. But even more significant

than that were several other factors which increasingly became apparent toward the end of the nineteenth century. As the century opened, education was largely in the hands of private individuals and institutions, which, of course, depended upon those who were able to pay for instruction. Broadening democracy was accompanied by a widespread demand for public educational facilities. The greater part of this burden fell upon the local governments, but the states, encouraged in many instances by the 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 satisfactory working conditions, others who were less socially conscious 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 enacted statutes providing for safeguards and eventually for workmen's compensation. The enforcement of such regulations necessitated appropriate 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 institutions for the insane.

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. At least the activities of this sort which were carried on by the states during the early and middle periods now seem so modest that they are frequently ignored. The financial problems dating from the very earliest days became increasingly intensified and finally led to elaborate accounting systems, tax commissions, boards of review, budget bureaus, and state supervision of local finances which will be dealt with in some detail 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

[1] Some state universities had been established before the national government passed the Morrill Act in 1862.

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 practices of the railroads, electric and gas utilities, telephone companies, and other public-service enterprises necessitated the establishment of state commissions for their regulation. The highest crime rate among civilized countries and a rapidly increasing insanity rate made the old institutions obsolete and resulted in expanded state departments of corrections 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 pressures 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. Prior to the grand rush of recent years legislatures had more time to weigh the matter of where to place the responsibility for a new function. But when several new administrative fields were taken in during the course of a single legislative session of a few weeks and numerous changes made in already existing agencies, it was difficult for even the most conscientious members to keep in mind the important essentials of co-ordination and unity. 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 otherwise adding to the confusion.[3] Other states had not gone so far as New York because their populations and problems hardly justified it, but 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.

[2] For a good 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, 1948, Chap. 2.

[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

Reorganization Efforts

Though people are in general long-suffering, they finally became cognizant of the unsatisfactory character of the system in many of the states. As early as 1891 the governor of Massachusetts prepared a message for the legislature of that state in which he called attention to the helter-skelter character of administrative organization and urged that consolidation be undertaken. But he was a voice crying in the wilderness and it was not until 1909 or thereabouts that any general movement got under way. 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 of state government 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. Governor F. O. Lowden, one of the really able governors during the last half century, became much interested in a more orderly and centralized administrative system and in 1917 succeeded in persuading the legislature to adopt a fairly comprehensive reorganization plan. 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] Well over half of the other states have followed Illinois in undertaking complete or partial reorganizations of their administrative machinery. Approximately a dozen states accomplished reorganizations during the single decade of 1930–1939, while a number of other states made changes supplementing earlier efforts.[5] The period following World War II also saw great interest in the reorganization of state administrative systems. Some twenty-five states, perhaps influenced by the action of the national government, set up "Little Hoover Commissions" during the period 1947–1949.

[4] For a more detailed discussion of the Illinois reorganization, see A. E. Buck, *The Reorganization of State Governments in the United States,* Columbia University Press, New York, 1938, pp. 86–92.

[5] For a current discussion, see the most recent *Book of the States.*

Legal Basis of Reorganization States have accomplished their reorganizations both through constitutional amendment and statutory enactment, but the latter method has been far more commonplace. Only four states [6] have followed the constitutional amendment route. 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 officers 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. The legislature may be convinced that a reconstruction is desirable, but it does not want to tie itself down by writing detailed changes into the constitution. Inasmuch as conditions are constantly changing, there is a real objection to freezing administration organization in a 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 shaking up of administrative agencies, whether arrived at through careful studies or not, constitutes reorganization. And it is only fair to note that the statistics offered in preceding paragraphs do not differentiate among the states, despite the fact that some of them have done their work well while others have proceeded in a slipshod manner. The Illinois reorganization followed to a greater or less extent a thorough analysis and study which Professor Fairlie and a staff of trained experts carried on during a period of months. In contrast the Indiana reorganization was rushed through by Governor McNutt without any serious attempt to survey the problems involved. Professional experts were not consulted; political expediency determined decisions; the greatest secrecy enshrouded the deliberations; and the result has been described by fair-minded persons as "fantastic." Mr. A. E. Buck of the New York Institute of Public Administration, who speaks with authority in this field, has laid down six fundamentals [7] which he maintains actual experience of the states has dictated as part of any satisfactory reorganization. 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.

[6] These states are New York, Massachusetts, Missouri, and Virginia.
[7] A. E. Buck, *op. cit.*, pp. 14–15.

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.[8] In the chapter succeeding this one the importance of an independent audit is pointed out.[9] Later in this chapter the board type of organization will be discussed.

Importance of Functional Integration 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 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. Almost any politician can make the governor the residuary of authority; a cabinet is easily understood; boards have a wide reputation for inefficiency where decisive action is required; and an independent audit is familiar even to amateurs as something to be desired. 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

[8] See Chap. 42.

[9] See Chap. 47.

reorganize their administrative systems and then rest on their oars, but have carried through successive reorganization programs. Considering the changes which have taken place in the state governments during the last few decades, this attitude on the part of a state impresses the observer as a wise one, for even the best reorganization is likely to become obsolete after a few years have elapsed. Moreover, legislatures are at work at least every two years grinding out new laws which relate to administration, and it is probable that in most states the residuum of a few years of legislative action will be enough to slow the ship of state, much as barnacles interfere with the rapid movement of an actual ship. Mistakes may be made even by the best of experts, thus pointing the way to corrective modifications in the future.

Proposals for Other Types of Reorganization Some students of the subject are of the opinion that the reorganizations that have been effected in the past are hardly sound even on the ground of fundamentals. Thus Professor Kirk Porter objects to the consolidating of all administrative agencies into eight or ten general departments which are directly responsible to the governor, arguing that the governor will have enough to do supervising the finance, personnel, and other staff agencies. He proposes placing the line services, such as public welfare, conservation, and public health, under independent boards made up of laymen who have long terms which are overlapping.[10] Professor Read Bain would go even further in the direction of relieving the governor of general administrative responsibility; he has advocated a state manager chosen by and responsible to a small unicameral legislature which would be in session more or less continuously.[11] The governor under his plan would hardly be more than a figurehead to represent the state on formal occasions. These proposals are interesting and indicate that there is a difference of opinion as to what the present should emphasize as well as to what the future will bring forth. The transplanting of the council-manager principle, which has demonstrated its effectiveness in city government during a period of several decades,[12] into the state field would go far in bringing about the changes proposed by Mr. Bain. However, in so far as one can judge from the actual experience of the states the trend is still strongly in the direction of strengthening the governor, concentrating authority in his office, and making him generally responsible for state administration.

Types of Administrative Organization

There are three principal types of organization structure 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

[10] See Kirk Porter, *State Administration*, F. S. Crofts & Co., New York, 1938.

[11] See *American Political Science Review*, Vol. XXXII, pp. 495 *ff.*, June, 1938.

[12] For a recent discussion of this plan, see Harold A. Stone, Don K. Price, and others, *Council-Manager Government in the United States*, Public Administration Service, Chicago, 1940.

in operation, thus contributing to the 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, though they are not unanimous in their opinion. However, 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 supervision is feasible. Moreover, a single head can be expected to follow a more or less consistent policy in contrast to the compromise decisions which usually 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. In a single-head department it is not to be expected that the conservative, the liberal, and the middle-of-the-road ideologies will be represented in the policies adopted, for a single director is responsible.

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 today. 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 supposedly 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 unsatisfactory compromises will eventually determine the policy. Where prompt and clear-cut action is required, for example in an agency charged with maintaining law and order, the delay and conflict so often incident to the board type of organization 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 purely 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 features 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. Unless the authority of each can be more or less clearly defined, serious trouble may be expected; furthermore, there is a question whether any advantage is to be gained over what could be realized under the single-head or the board type. If the board is to be regarded as purely advisory in character, then it is relatively simple to detail the functions of the administrator, since he is really not dependent upon the board at all unless he chooses to follow the advice given. But if the board is to be given an actual voice in the operation of the agency—and that is more or less fundamental if the combination type of organization is to be more than purely formal—then the problem of division of authority becomes most difficult. This plan of organization has been used most commonly in connection with education, public health, and public welfare activities.

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. Inasmuch as some of these directors and board members will be elected, others appointed by the governors, still others named by judges, administrative officials, or boards, it may be readily seen that the entire system is by no means orderly.

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.[13] 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. Departments of public welfare, health, and education are frequently given such a type of organization even where centralization has been achieved. The board in its pure form is ordinarily less popular under the centralized system, though it usually 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 can hardly be abandoned and yet at the same time 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. In such instances they are responsible to the single head of the department in so far as routine matters, such as purchasing of supplies, budget-making, personnel, and reporting, are concerned, but they are independent in the exercise of their quasi-judicial functions, which relate to the fixing of utility rates, the review of local government expenditures, and so forth. The fact that the members of these commissions are appointed by the governor rather than by the director of the department in which the commission is placed for purposes of routine control makes this independence possible.

Staff and Line Agencies

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 to its inhabitants: for example, educational facilities, protection of person and property, old-age

[13] For additional discussion of the centralized system and its problems, see H. A. Simon, D. W. Smithburg, and V. A. Thompson, *Public Administration,* Alfred A. Knopf, New York, 1950, Chaps. 12 and 13.

assistance, and the regulation of public-utility rates. In the remainder of this chapter and the next chapter attention will be given to the staff services which are being carried on by the various states. In a succeeding chapter an attempt will be made to examine some of the many line activities which states are now engaged in.

Public Personnel Administration

Though all of the states together do not have anything like as large a pay roll as the national government alone, they do employ large numbers of persons in various capacities—currently the number approximates a million.[14] The approximately 80,000 employees of New York, to take the most sizable pay roll, constitute a small army, while the 10,000 to 25,000 employees of a number of less populous states are by no means negligible.[15] The relationship between superior government 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.[16] All too many of the states have not realized this, or if they have their conduct has not indicated it. In the chapter devoted to the functions of the governor [17] 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 state employees in favor of the proteges 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" 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 unsatisfactory 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 and it seemed at the time that the movement in this direction might spread rapidly. But unfortunately the other states 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 Jer-

[14] In 1949, a total of 982,000 persons were employed by the states, including school employees. Omitting the school employees the number was 688,000. This represents an all-time high.

[15] In 1949, thirty-three of the states employed 10,000 or more persons.

[16] For discussion of this problem, see W. E. Mosher and J. D. Kingsley, *Public Personnel Administration*, rev. ed., Harper & Brothers, New York, 1950.

[17] See Chap. 42.

sey [18] had joined the group. But only three states, California, Maryland, and Ohio,[19] 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 approximately a dozen states to make provision for public personnel systems during the years following 1937.[20] The net result is that about half of the states have made provisions for public personnel systems which cover all or a considerable portion of their state employees below the rank of agency chief.[21] 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.

Variation in Public Personnel Standards It might be supposed that the 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 when it is stated that about 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. At times so-called "merit" systems have been so weak and so thoroughly under the thumb of politicians that it has been an exercise in irony to refer to merit appointments at all. During recent years there has been a rising sentiment among the people in favor of modern personnel practices in public employment and that has done a good deal to bolster up the state systems. Though there is much room for improvement even in the states now operating under the merit principle, to say nothing of those still under any outright spoils system, it is encouraging to note that standards have recently reached an all-time high.

Legal Basis Some half a dozen states which have modern personnel practices have written provisions into their state constitutions relating to such services. In some instances the amendment merely authorizes legislative action

[18] Colorado and New Jersey established systems in 1907 and 1908 respectively.

[19] California and Ohio made provision for such a system in 1913, while Maryland did not take action until 1921.

[20] These states include Alabama, Connecticut, Kansas, Louisiana, Maine, Michigan, Minnesota, Rhode Island, Virginia, and Tennessee.

[21] For a table showing the provisions in these states, see the current *Book of the States.*

—in Louisiana, for example, the legislature is given the power by a two-thirds vote to amend or repeal the provision requiring a merit system. In Michigan, on the other hand, the people, looking back upon a recent experience in which an unfriendly legislature virtually wrecked a public personnel program, adopted a constitutional amendment which firmly establishes the merit principle and gives the civil service commission authority to proceed without legislative action. The states which depend entirely upon statutory authorization have had diverse experiences. 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 Several of the states, following the national example, have established civil service commissions to administer their personnel programs. A larger number provide civil service departments, while a few prefer state personnel boards.[22] In most cases a board of at least three members, representing the two major political parties, is created to determine policies and supervise the general operation. The members of these boards are usually not full-time state officials, though in Ohio they are appointed on that basis. The general 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. In a number of the states [23] the state personnel agency is authorized to assist the local governments in drafting examinations and preparing eligible lists.

Procedure There is a considerable diversity among the states providing modern public personnel facilities as to the powers and duties of the central personnel agency. In those cases where many exemptions are specified, the classified service is, of course, more limited than in other states where all state positions except those which determine policy are covered. In almost every instance examinations are given and eligible lists prepared by the personnel department; frequently, though not always, responsibility for position classification, service records, transfer, disciplinary action, vacation and sick leave, and similar matters is entrusted to this agency. Some of the states have established enviable reputations along these lines, while others have been satisfied with mediocre records.[24] In general, the states have not been so progressive as the national government in providing retirement systems and in certain other respects. However, the examination procedure,

[22] For a table showing the provisions made by the various states, see the current *Book of the States.*

[23] These include: California, Louisiana, Maryland, Minnesota, New Jersey, New York, Rhode Island, and Wisconsin.

[24] For a statement on this point, see the current *Book of the States.*

certification of eligibles, and related practices are similar to those which have been discussed in some detail in connection with the federal system.[25]

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, public utilities, and highway construction, 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. The induction of these technically trained people has had a wholesome effect, improving standards even in those departments which are most intimately tied up with politics.

Records, Planning, and Miscellaneous 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 in the next chapter; it remains here to look briefly at the functions of the office of secretary of state. Every state maintains such an office which in most instances is filled by election, though a few states provide an appointive secretary of state.[26] The office which this official presides over has long been a sort of odds-and-ends department, which is given duties which do not seem to fit into any other agency; consequently there is considerable diversity. In virtually all of the states election laws are administered by this department; likewise in most of the states this department acts as custodian of legislative bills, acts, records, and so forth. In some three fourths of the states the secretary of state publishes the statutes which are enacted by each session of the general assembly, while in an even larger number of states he attests executive documents. In most of the states this department keeps a register of motor vehicles; in several states it registers securities; and in two thirds of the states it has charge of the state archives.

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,

[25] See Chap. 27.

[26] These states include: Delaware, Tennessee, Maine, New Hampshire, Maryland, New Jersey, New York, Pennsylvania, Texas, and Virginia.

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.[27] The National Resources Planning Board had a great deal to do with the creation of these state planning agencies and worked through them in numerous instances. State planning agencies have recently engaged in studying land use, water use, minerals, transportation facilities, public works, economic and industrial resources, educational facilities, recreational facilities, health and welfare, public finance, local planning, and civil defense. 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. With very few exceptions, the boards have received such niggardly appropriations that they have found it almost impossible to accomplish what they have set out to do, even making allowance for federal assistance. 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.[28]

Law Departments All of the states maintain legal departments which are headed by attorneys general. In some forty states [29] these officers receive their positions at the hands of the voters and consequently may not co-operate very closely with the other departments of state government. Much of the work of these departments relates to the courts and is dealt with in that connection,[30] but in addition general legal services are performed for 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 now make provisions for

[27] There were 41 such agencies in 1949.

[28] A few states are exceptions to the rule. For example, Montana in 1945 provided $4,500,000 for a long-range program.

[29] The exceptions are: Maine, New Hampshire, New Jersey, Pennsylvania, Tennessee, and Wyoming.

[30] See Chap. 45.

central purchasing agents or bureaus, though in some instances these are not given authority over all departments.[31] 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. 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. Central purchasing agencies have to do the best they can despite the pressure extended by politicians and other vested interests. In many states they are hampered by legislation forbidding out-of-state buying if local prices are within 10 per cent or so of the prices quoted. The federal and the state legislation which permits manufacturers to set prices which cannot be cut and which authorizes commissions to fix the price of coal has also hindered the accomplishments of state purchasing agencies. Nevertheless, the advantages of honest central purchasing of supplies used in quantities are above debate.[32]

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[31] For example, Florida uses this system only when purchasing supplies for institutions. For a table showing the coverage in the various states, see the current *Book of the States.*

[32] For additional discussion of this topic, see Russell Forbes, *Governmental Purchasing,* Harper & Brothers, New York, 1929.

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47. State Financial Administration

General Problem The record of the various states is far from uniform on the score of general financial administration. During recent years some of them have found it difficult to meet current expenses and consequently have sought eagerly for new sources of income; 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 concern to those who bother themselves about such matters. At the other extreme there are a few states which for one reason or another have very small indebtedness and find it a simple matter to meet interest and principal payments. In general, states have frequently found their financial problems rather serious despite the fact that they have been assisted 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 the states, though not all of them have been equally successful in discovering springs that produced abundantly. 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 very fortunate inasmuch as there has been much 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 three or four billion dollars [1] on the part of the states may appear almost insignificant in these days when the national debt has reached almost astronomical figures, but it is actually a relatively heavy burden.[2]

Sources of State Revenues

Multiplicity of Sources 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

[1] The gross debts of the states amounted to $3,592,000,000 at the end of the 1948 fiscal year. This compares with $2,367,000,000 in 1946. However, in 1922 the total was only $1,162,651,000. See the current *Book of the States*, Council of State Governments and American Legislators' Association, Chicago, for the most recent figures.

[2] For additional discussions of this general problem, see the standard texts in public finance by H. L. Lutz, M. H. Hunter, C. C. Plehn, M. C. Mills, J. P. Jensen, G. W. Starr, and A. G. Buehler.

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

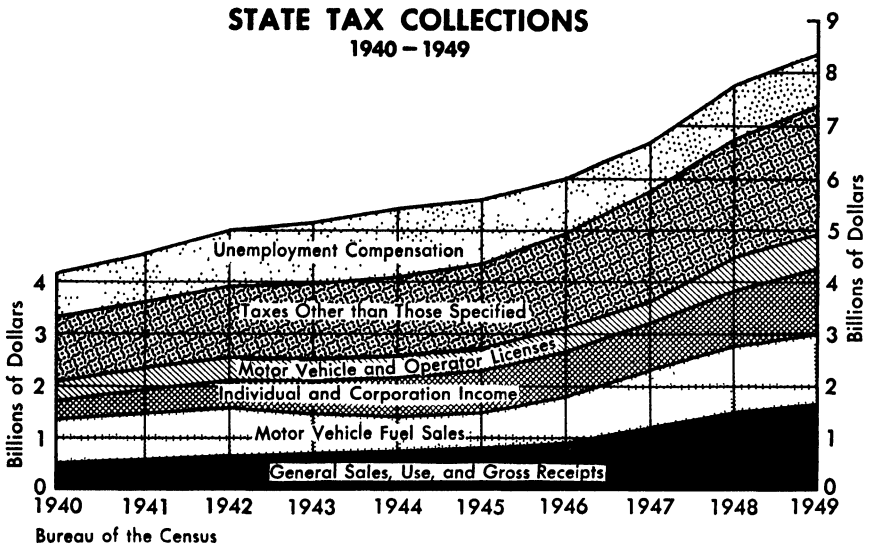


Figure 11

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 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 may be regarded as a major source of income 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 tax collections currently exceed $8,000,000,000 per year.

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

[3] Illinois and New York, for example, do not depend upon this tax at present.

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 less than 5 per cent of the total receipts.[4] A number of other types of income exclusive of payments from the federal Treasury are now far more important than the time-honored general property tax in point of total amounts involved.[5]

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.[6] State tax commissions often perform this task in connection with the holdings of railroads and other 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, biennially, or every four years by most of the states, though there are cases of five-year, six-year, ten-year, and indefinite assessment. The national association which includes the various kinds of assessors recommends that assessment be divorced from any regulations having to do with frequency on the ground that it should be a continuous process entrusted to professionally trained persons [7] Assessments ought to represent the current value of property [8] and hence in a neighborhood where there is frequent change assessment may be desirable every year, whereas in those sections where values are stable an assessment every five or even ten years might be sufficient.

[4] Out of a total tax collection of $8,342,000,000 in 1949 all property taxes produced only $280,000,000.

[5] These are: sales taxes, unemployment compensation taxes, taxes on specific businesses, both individual and corporation income taxes, motor-vehicle licenses, gasoline taxes, alcoholic beverage taxes, and tobacco taxes.

[6] A number of states, including Iowa, Nebraska, and Minnesota, have given attention to the problem of assessment during recent years and have enacted new legislation on the subject.

[7] See *Assessing Principles*, rev. ed., National Association of Assessing Officers, Chicago, 1939.

[8] Some corporation attorneys oppose current-value assessments on the ground that the older cities would face bankruptcy if they reduced assessments on much of their downtown property to anything like actual value. This view was expressed by several of those participating in the panel discussion on assessment held in connection with the American Bar Association meeting in Indianapolis in October, 1941.

Assessment Difficulties Many assessing officials are part-time employees of the local governments who have had little or no training for their jobs, while even the head assessors are often political rather than professional in character. Considering the difficulty of ascertaining the value of a piece of land or a building, to say nothing of art objects, jewelry, and corporate stocks, it is perhaps surprising that assessing is done as well as it is. There are architects' tables available that are useful in arriving at the construction cost and depreciation rate of buildings; the keeping of land-value maps based on the actual prices currently being paid for land assists in avoiding mere guesswork in assessing land. However, many assessors make little or no use of these devices. The result is that assessments vary markedly within a city or county, with attendant unfairness to the property owner as well as weakness in the tax structure. What is more serious perhaps to the state which depends upon these local assessments is that there is often considerable variation from one county to another. A study of Pennsylvania assessments some years ago revealed that the median ratio of assessed values to sales values fell below 50 per cent in three counties, while in Philadelphia it stood at 110.2.[9] When the situation becomes sufficiently bad, the state tax commission may order reassessment in certain local areas and attempt to review assessments throughout the state in such a way as to bring about equalization.

Fixing the Tax Rate When the proper state authorities have 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. Automobiles are apparent enough if they are located where the assessor is; however, they are, of course, movable. Jewelry occupies little space and is ordinarily not kept in such a place that it will be seen by the assessor; even if inquiry is made, people are reluctant to report the ownership of jewelry because it does not bring in any income and seems to them quite different from land and buildings which have definite utility. The result is that as far as the tax records can be depended upon to tell the story populous states 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

[9] See E. B. Logan, *Taxation of Real Property in Pennsylvania*, State Printer, Harrisburg, 1934, table 1.

state would do well to exempt personal effects below, say, $500 in value and some states do follow such a practice.

Intangibles The problem of intangible personal property is even more perplexing than that of tangible personalty. A certain amount of jewelry is displayed on the persons of their owners, while clothing, furniture, cows and horses, and farming implements are usually not easily concealed. But who ever heard of a man wearing stocks and bonds, notes, or bank-deposit books? Nor are these evidences of property, which may amount to tens of thousands of dollars, ordinarily left around on mantels or dining-room tables. 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 neglect 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 very low.[10] 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 been demonstrated again and again that a tax of 25 cents per $100 value in the case of stocks and bonds will actually produce more revenue than the ordinary general property tax of say $2.50 or $3.00.

Attempts to Limit General Property-tax Rates As tax rates have approached a point where owners of property have found them very burdensome and in certain cases almost confiscatory, there have been tax strikes, widespread tax delinquency, foreclosures, and other manifestations of trouble. The tax strike in Cook County, Illinois, some years ago produced financial consequences of the greatest magnitude, leading to complications that required several years to iron out. During the depth of the depression more than half of all real property was delinquent in several of the states that were the worst hit. One of the results of this situation has been a movement in the direction of placing maximum limits on the total tax rate to be imposed by states and by states and all local governments. Approximately half of the states have established limits for the state share of the general property tax, ranging from less than $1.00 per $1,000 assessed valuation to Colorado whose constitution fixes the rather meaningless maximum of $50 per $1,000 assessed valuation.[11] Dela-

[10] In a recent year the value of watches, clocks, and jewelry, including diamonds, in Chicago was only $1,171,782 according to the tax records. In downstate Illinois counties as few as three persons in an entire county admitted having time-pieces. See O. L. Altman, "Taxation of Intangibles in Illinois," *Illinois Law Review*, Vol. XXXIII, pp. 623–647, February, 1939.

[11] For a table showing the tax limits imposed in the various states, see W. Brooke Graves, *American State Government*, rev. ed., D. C. Heath & Company, Boston, 1941, p. 407.

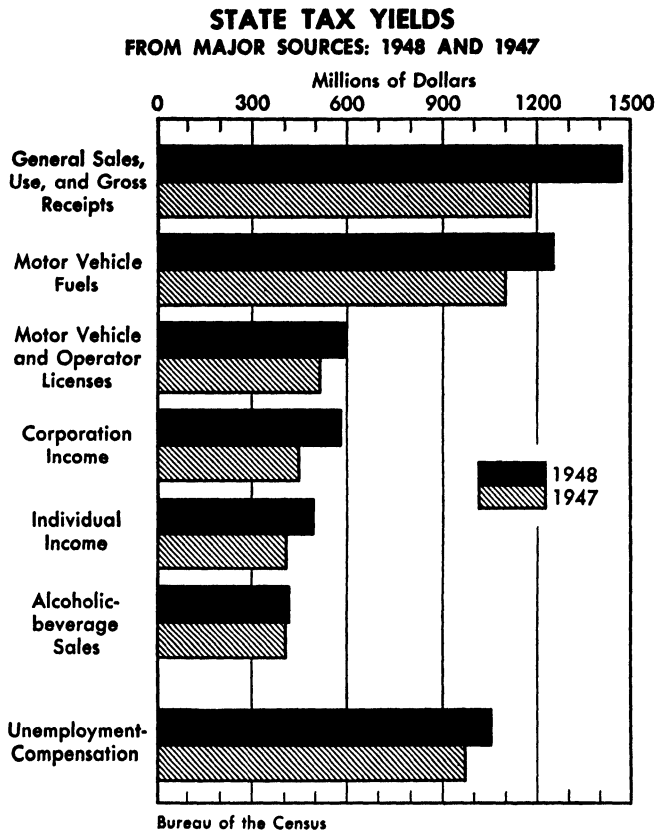


Figure 12

ware, Oklahoma, and Oregon have ceased levying state general property taxes at all. A number of states have stipulated that the over-all tax levied by the state and the local governments therein shall not exceed $15 or so per $1,000 of assessed valuation, adding, however, that in case of emergency or to meet social security expenses an additional levy shall be permitted. In almost every instance the over-all maximum has been fixed so low that it has been impossible to operate the governments at anything like a satisfactory level on the revenues available; consequently actual tax levies are frequently double what the law purports to permit. If the success of the tax-limitation laws is to be judged by the adherence to them, they have usually failed. However, it may be that these laws have kept the tax rate at a somewhat lower level than would otherwise have been the case.

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 more than thirty states now have corporation-income taxes, an almost equal number have personal-income taxes, and only one fourth of the states have neither.[12] Income taxes as defined 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 type of income tax, there is what is known as the "gross" income or receipts tax which is based upon all income received. The net income tax has been the more popular and at present takes in well over half of the entire population of the United States. Individuals have recently contributed approximately half a billion dollars each year in this form of tax, while corporations have paid in an even larger amount.[13] Thus income taxes account for about 15 per cent of state tax collections, or more than four 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 the net and gross 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 inheritances which are sizable. The majority of the states graduate the amount of the tax, basing the rate upon the size of the estate. Small estates of a few thousand dollars are usually exempt entirely from these taxes. The nearness of relationship to the deceased has a good deal to do with the exemption and rate in the case of inheritances. Thus thirty-seven states studied some years ago granted an average exemption of $16,310 to widows, $10,600 to widowers, $8,120 to children, $2,850 to brothers and sisters, $510 to uncles and aunts, and $290 to those not relatives. The rates imposed upon that part of inheritances taxed varied from 1¼ per cent to 6½ per cent in the case of widows and from 6 per cent to 16¼ per cent in the case of nonrelatives.[14] These taxes have produced almost $200,000,000 per year in the forty-seven states that collect them.[15]

The most profitable single category of state income is labeled "general sales or gross receipts taxes" by the Bureau of the Census. These have recently

[12] For the names of the states using individual or corporation income taxes see the current *Book of the States.*

[13] During the fiscal year 1949 individual income taxes produced $575,000,000 and corporation income taxes $661,000,000.

[14] See A. S. King and M. M. Davisson, "Inheritance Taxation," *Bulletin of Bureau of Public Administration,* University of California, 1934.

[15] The exact amount produced in 1949 was $178,562,000.

brought in almost one fifth of all state tax collections.[16] In addition there are various special sales taxes. The most important of these—and every state uses such a tax—is that on motor-vehicle fuel, the greater part of which is derived from gasoline. The states collect about one sixth of their tax receipts from motor fuel alone; more than $1,250,000,000 has been derived from this source in a single year.[17] 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, despite the criticism of the automobile associations which maintain that it is unfair to take more than is necessary for road repairs and improvements. Other types of selective sales and gross receipts taxes have been levied increasingly during recent years. Among these the alcoholic beverage tax and the tobacco products tax stand out because of their large receipts. All of the states now use the former and more than three fourths of the states the latter. Total receipts from these two sources run to almost one billion dollars annually and they account together for about 10 per cent of all state tax collections.[18] Less important types of selective sales and gross receipts taxes include levies on insurance companies, public utilities, parti-mutuels, and admissions and amusements. These produce in the neighborhood of half a billion dollars each year.[19]

Other Taxes and Licenses Motor vehicle license taxes and operator licenses are an important producer of state revenue, though less important than motor fuel taxes. They have been employed by all of the states for many years and currently bring in well over half a billion dollars per year.[20] Unemployment compensation taxes are heavy producers of revenue, but the sums which they account for do not go into the general state funds.[21] In the frantic search for new sources of income various other levies are now made by at least some of the states. These include severance taxes, soft drink taxes, licenses for corporations, hunting and fishing licenses, occupation taxes, chain store taxes, and documentary and transfer taxes. While no one of them may be regarded as major, together they account for more than half a billion dollars per year.[22]

Federal Grants-in-Aid Prior to 1933 the amounts which states received from the federal government in grants-in-aid were comparatively small,[23] but

[16] The amount produced in 1949 was $1,606,000,000 in 27 states.

[17] The amount in 1949 was $1,372,000,000.

[18] Alcoholic beverage taxes amounted to $426,000,000 in 1949; tobacco products sales taxes to $390,000,000.

[19] In 1949, insurance companies paid $211,000,000; public utilities $168,000,000; pari-mutuels $105,000,000.

[20] In 1949, these licenses brought in $663,000,000.

[21] In 1949, these taxes amounted to $973,000,000. In 1948 they brought in $1,059,000,000.

[22] Severance taxes brought in $200,000,000 in 1949, corporation licenses $160,000,000; hunting and fishing licenses $54,000,000.

[23] In 1915, grants-in-aid to the states amounted to $5,356,000. By 1925 they had increased to $113,642,000. In 1931, they amounted to $199,843,000. But by 1937 they had gone up to $564,807,000. See the *Book of the States, 1950–1951*, p. 62.

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 states. Altogether states receive something like one seventh of all their income from federal grants-in-aid, which total something like one and a half billion dollars annually.[24] Certain states fare much better than others proportionately, but all receive benefits, ranging from some three million dollars to over one hundred million dollars per year. If pending legislation is passed by Congress, these amounts would increase considerably.[25] Grants-in-aid fall into the following general categories: veterans' services and benefits, social welfare, health, and security, housing and community facilities, education and general research, agriculture and agricultural resources, natural resources not primarily agricultural, transportation and communication, and labor.

Expenditures

The demands made upon the several state governments have long been heavy, but the problems brought on by the economic depression following 1929 and World War II have added substantially to the load. 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. Highway construction and maintenance, educational grants to local governments and institutional costs have all contributed to the burden of state governments. Thus despite the success in searching out new sources of revenue which raised the per capita tax receipts from $17.27 in 1932 to $53.16 in 1948—a more than 200 per cent increase—many of the states have been continually beset by the problem of how to make ends meet. The total general expenditures of the states now amount to more than ten billion dollars per year.[26]

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 and more or less completely ignore

[24] In 1948, the actual amount was $1,398,948,000. 1949 and 1950 show sharp increases.

[25] In 1950, estimates place grants-in-aid to states and local governments at $2,458,202,454 in contrast to $1,622,068,338 in 1948.

[26] General expenditures of the states ran to $7,953,000,000 in 1947 and $10,221,000,000 in 1948. It is estimated that 1949 and 1950 totals will be appreciably higher.

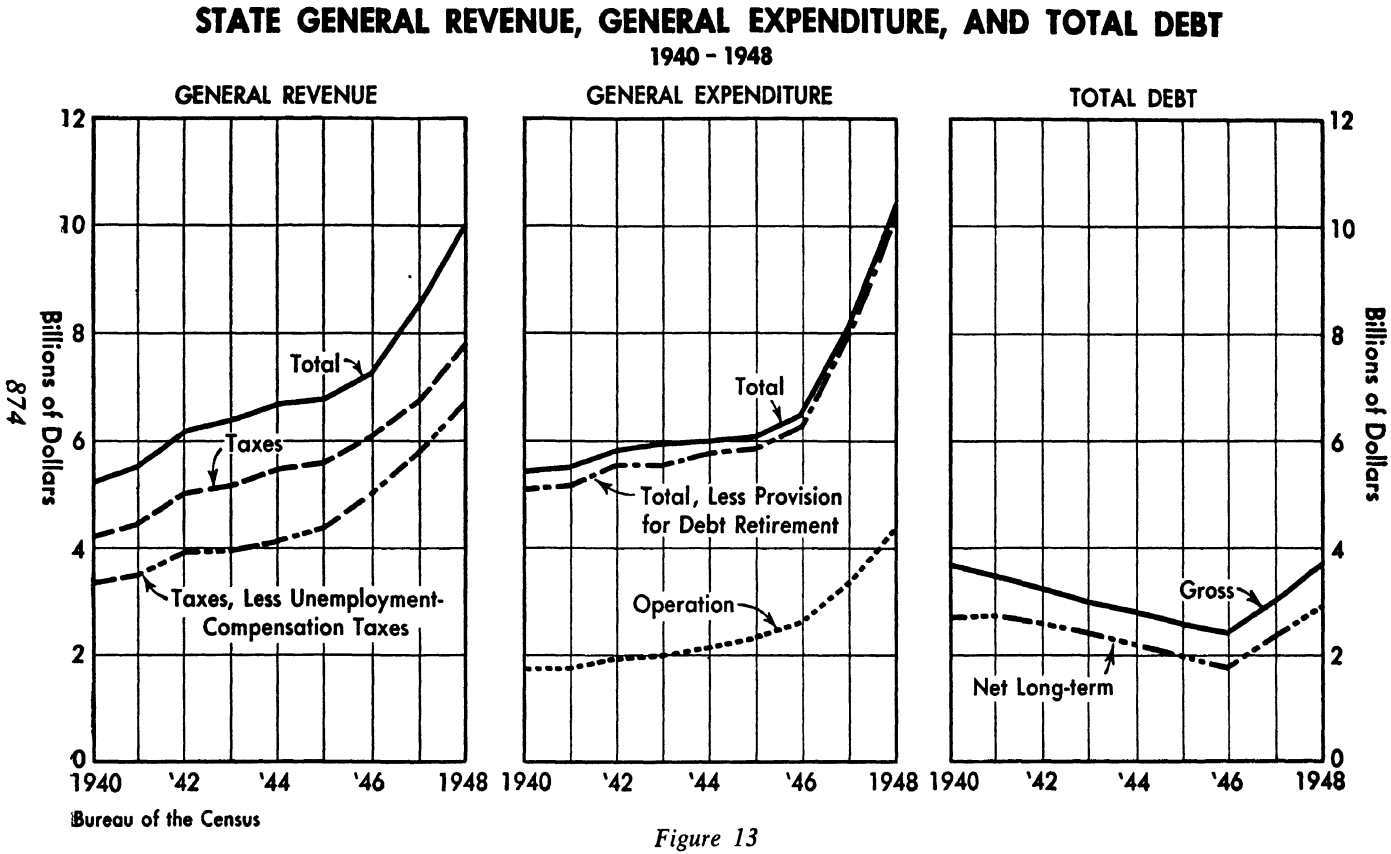

STATE GENERAL REVENUE, GENERAL EXPENDITURE, AND TOTAL DEBT
1940 - 1948
GENERAL REVENUE
GENERAL EXPENDITURE
TOTAL DEBT
Billions of Dollars
Billions of Dollars
Total
Taxes
Taxes, Less Unemployment-Compensation Taxes
Total
Total, Less Provision for Debt Retirement
Operation
Gross
Net Long-term
0
2
4
6
8
10
12
1940
'42
'44
'46
1948
Bureau of the Census

Figure 13

the problems incident to seeing that the terms of the budget are carried out. These states may be said to have "paper budgets," since for most practical purposes they do not operate under a carefully prepared financial plan. The general outlines of state budgetary systems follow those which have already been examined in the national government,[27] but there are certain differences which should be noted. In the first place, there usually is not the great gap between expenditures and income that has at times been so striking a feature of the federal system. Even if they desired to follow such a course, states do not have the ability to resort to deficit financing as does the national government.

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 and is the sole example at present of a state which uses the older legislative type of budget. A number of the states [28] maintain commissions of one kind and another, which usually draw their membership both from the administrative departments and the legislature; the governor may have an important role in connection with these commissions but he shares his authority. A few states name the comptroller as the budget officer.[29] In the remainder of the states there are budget directors, budget bureaus, budget commissioners, and other special agencies 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 budget [30] is followed by the more progressive states and does not require repetition here. However, there are several details that may be mentioned as especially related to the states. The dates upon which the estimates are required frequently coincide with the early fall date specified by the national Bureau of the Budget, but there are exceptions.[31] Instead of presenting the budget to the legislative body within a few days of its convening, a number of states, including Illinois, Indiana, Louisiana, Maryland, Massachusetts, Ohio, Rhode Island, and Utah, permit twenty days or even longer after the session begins. Perhaps the most

[27] See Chap. 29.

[28] Connecticut, Delaware, Florida, Indiana, Louisiana, Montana, North Dakota, South Carolina, Texas.

[29] Alabama, Iowa, New Hampshire.

[30] See Chap. 29.

[31] Arkansas delays until just before the beginning of a legislative session; Texas stipulates January 1 preceding the beginning of a new fiscal year on September 1. Ohio sets November 1, while West Virginia goes back to July 1, Three states, Maryland, Minnesota, and Mississippi, set no date.

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. However, with the exception of the several states listed, state legislatures have the same unlimited power in connection with a budget that Congress possesses. Finally, it may be of some interest that the fiscal years of the various states are not always uniform. Approximately forty states follow the federal practice and make July 1 the beginning of the new fiscal year; the remainder prefer April 1, June 1, September 1, October 1, or December 1.[32]

A Breakdown of State Expenditures The states have certain expenses which must be met year after year and these are known as operating expenditures. Out of the more than ten billion dollars which the states currently pay out every year, operation spending requires more than four billion, or roughly 40 per cent.[33] In addition to 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. Capital outlay involves the purchase of land, the construction of permanent buildings, and the improving of highways. Over a billion dollars [34] 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 a quarter of a billion dollars has to be paid out each year on this account.[35] Aid given to local governments amounts to more than three billion dollars,[36] while various trust funds and special state enterprises receive approximately $1,250,000,000 each year.[37]

Expenditures for Specific Purposes The fact that the functionalized general expenditures of the states accounts for several billion dollars per year is more or less meaningless because it gives little or no indication of the specific purposes for which the money goes. Therefore it is desirable to examine the various items which combine to make up what is designated the functionalized general expenditure of the states. To begin with, one perhaps thinks of the

[32] See the most recent *Book of the States* for a table showing the current practices in the various states.

[33] Operating costs amounted to $4,351,000,000 in 1948.

[34] The exact amount spent for capital outlays in 1943 amounted to $468,105,000; by 1948 this had increased to $1,425,000,000.

[35] Interest required $71,000,000 in 1948, while provisions for debt retirement ran to $179,000,000.

[36] In 1948, the states spent $3,167,000,000 on aid to local governments, or 30.5 per cent of all state general expenditure.

[37] In 1948, the exact amount in millions was $1,206,000,000. Of this amount $1,059,000,000 went for unemployment compensation trust funds.

legislature, the governor's office, and the system of courts; these are much in the limelight and perform important functions, but they are not responsible for any large portion of the several billion dollars lump sum which is being torn apart. Even if there is added to these branches the general administrative

PER CAPITA STATE EXPENDITURE FOR SELECTED FUNCTIONS:
1948 AND 1947
(OPERATION, CAPITAL OUTLAY, AND AID TO LOCAL GOVERNMENTS)

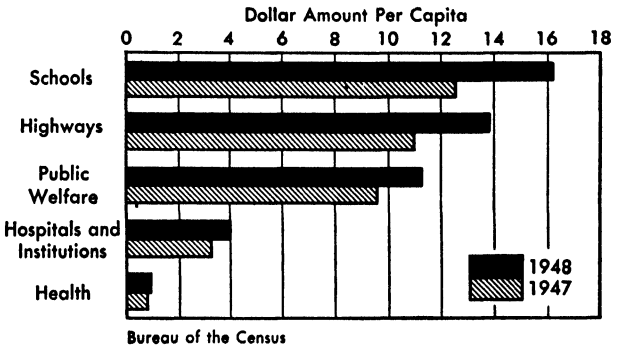


Figure 14

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 $250,000,000 per year, or approximately 5 per cent of the total.[38]

Education For many years one of the largest items among the costs has been that labeled "schools." This requires more than half a billion dollars annually in direct appropriations. If the approximately one and a half billion aid to local governments for school purposes is added a total of over two billion dollars results.[39] 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 Approximately one billion dollars is paid out every year for various direct 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. In addition, more than half a billion dollars is given to local governments for this purpose every year.[40]

[38] In 1948, this ran to $257,000,000.

[39] In 1948, states paid out $652,000,000 directly for schools and contributed an additional $1,490,000,000 to their local governments for this purpose.

[40] In 1948, welfare expenses were $956,000,000; local grants $646,000,000.

Highways Another large item of expenditure involves the construction and maintenance of highways; approximately half a billion dollars per year [41] 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.[42]

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 half a billion dollars is devoted to this purpose annually.[43]

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 $200,000,000 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.[44]

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; wild life is being protected; coal, oil, and other resources are being examined with a view to conserving what remains. Approximately $250,000,000 [45] 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 [46] and distribute a smaller amount 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 items which occasion the expenditure of state funds. Bonuses to veterans cost the states over half a billion a year.[47] Recrea-

[41] In 1948, $491,000,000.
[42] In 1948, $481,000,000 was contributed to local governments for this purpose.
[43] In 1948, $492,000,000.
[44] In 1948, public safety cost the states $200,000,000, while corrections ran to $130,000,000.
[45] In 1948, $244,000,000.
[46] In 1948, $106,000,000.
[47] In 1948, bonuses cost $616,000,000.

tion and state libraries, each receive several million dollars annually. A multitude of activities are put in an omnibus class entitled "other and unallocable," which in a single year occasions the expenditure of more than $200,000,000 [48] by the states themselves as well as a distribution of more than $500,000,000 among their various subdivisions.[49]

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 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 1922, $16.35 in 1930, $16.37 in 1932, $18.90 in 1937, $19.28 in 1939, $15.96 in 1944, and $19.47 in 1948.[50] The total gross debt of the states amounted to $3,592,000,000 in 1948, 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 approximately three billion dollars results.[51]

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 strikingly diverse record among the various states.[52] New York owes more than $600,000,000,[53] or approximately one fifth of the amount admitted by all of the states together, while Florida, Georgia, Indiana, Iowa, Nebraska, North Dakota, Oklahoma, and Wisconsin, have no net full-faith-and-credit indebtedness at all. Illinois is indebted to the extent of some half a billion dollars; Michigan owes a quarter of a billion dollars; Massachusetts is in debt to the extent of more than $150,000,000.[54] At the other extreme are: Arizona, Florida, Georgia, Idaho, Iowa, Nebraska, Nevada, Utah, Vermont, Wisconsin, and Wyoming which in 1948 had debts in each case of less than $5,000,000, which is more or less nominal in these days.[55] In certain cases state debts are made very difficult by state constitutions [56] and this doubtless accounts to some extent for the current situation; yet there are states that do not take advantage of the leeway which

[48] In 1948, $207,000,000.

[49] In 1948, $539,000,000 was spent by the states in assisting local governments in miscellaneous enterprises.

[50] See the *Book of the States, 1950–51*, p. 245.

[51] In 1948, it stood at $2,827,000,000.

[52] A table showing the gross and net debts of all the states will be found in the *Book of the States*.

[53] New York had a net debt of $612,636,000 in 1948.

[54] The exact amount of the net long-term debt in 1948 was $167,655,000.

[55] The exact amounts are available in the *Book of the States, 1950–51*, pp. 246–247.

[56] See Chap. 40; also C. C. Rohlfing and E. W. Carter, "Constitutional Limitations on State Indebtedness," *Annals of the American Academy of Political and Social Science*, Vol. CLXXXI, pp. 132–133, September, 1935.

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. During the last century a number of states found that their sinking funds were not large enough to retire the bonds as they became due and consequently if they could not issue new bonds to raise the necessary money they sometimes defaulted and even repudiated their debts.[57] 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 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 some 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

[57] Twelve states during the years 1840 to 1883 repudiated bonds to the amount of $77,650,000 and scaled down to the extent of $83,137,500. For a table showing these states and the amounts in each case, see W. Brooke Graves, *American State Government*, D. C. Heath & Company, Boston, 1936, p. 452.

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 will be apparent at any time exactly what debts are outstanding and what balances are 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 any given moment what the exact condition of the treasury was.

The Collection of State Funds In the horse-and-buggy days of state government a treasurer received the various moneys due a state. Inasmuch as the great portion of the income was derived from the general property tax which was collected by local governments, the state treasurer had very little to do in the way of actual collection beyond receiving amounts transmitted by the county and city treasurers. Now state revenue comes from a hundred different sources and the general property tax is not even used at all by some of the states; 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 and monuments, he has to set his accounting system upon the basis of a number of special funds. To add to the complications, various statutes may 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. However, as the movement toward centralization increases, the treasurer is increasingly charged with general responsibility for the receiving of all state revenues.

Custody of State Funds After the money has been collected, there is the problem of keeping it securely until it has to be paid out.[58] Few states have the facilities to safeguard large sums of money in their own vaults and consequently the practice has been to deposit the funds in banks. That makes it necessary to decide which banks shall receive public deposits and what security shall 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. Matthew Stanley Quay as treasurer of Pennsylvania deposited state funds in those banks which would loan him money without interest to speculate on the stock market; once he dispatched a famous telegram to a bank which read: "Buy 150 Met. and I will shake the plum tree," meaning that the bank was to purchase 150 shares

[58] On this subject, see M. L. Faust, *The Security of Public Deposits*, Public Administration Clearing House, Chicago, 1936.

of stock for him and he would furnish it additional deposits of state funds. It may be added that his speculations were disastrous, that the bank was left with large losses on its hands, and that the president of the bank shot himself. 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 complicated by 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, often 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 except in a few instances are elected by the voters. Some states, notably Georgia, Maryland, and Mississippi, not content with an auditor, go a step farther and permit the governor to check the auditor and treasurer by making examinations of their accounts at his pleasure and without previous warning.

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 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 to 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. Milk is delivered daily to a dozen state institutions scattered over the state and in every case it is possible for the dairyman to give short measure or to furnish a product with less butterfat than the contract calls for; obviously the agents of the auditor cannot be at every one of these places and numerous other points receiving supplies and personal services. 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. How many persons there are on the state pay rolls who visit their offices only to receive their salaries, otherwise devoting themselves to party work, it is difficult to say; evidence points to a considerable number in some of the states. Preauditing is not likely to catch this leak because the head of the department in which such a person is

theoretically employed signs a pay roll which certifies that the work has been done.

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 large sums of money either because of someone's carelessness or dishonesty. An alert auditing department is constantly engaged in studying the financial system of a state with a view toward its improvement. Unless it can supply the budget authority with up-to-date and accurate figures relating to the financial condition of the state, it will be very difficult to make a satisfactory budget in the first place and almost impossible to supervise the carrying out of the provisions of the budget after it has been passed by the legislature.

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.[59]

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

[59] For 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. 326 *ff.*, June, 1931; Carl Dortch, "The Indiana Plan in Action," *ibid.*, Vol. XXVIII, pp. 525 *ff.*, November, 1938; and Edwin E. Warner, "A Study of the Indiana Plan of Budgetary Review," *Legal Notes on Local Government*, Vol. IV, pp. 279 *ff.*, March, 1939.

if it is a matter of carelessness, but if embezzlement has taken place criminal charges are usually filed. One middle-western state saved the public approximately $7,000,000 over a period of some thirty years as a result of these examinations of local financial accounts. In this connection 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. Hearings are usually held in either of these instances by representatives of the state and upon the basis of the arguments presented for and against the proposed item or excess in tax rate the proper state agency decides what shall be done. 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.

There is considerable difference of opinion as to the desirability of controlling local expenditures to the extent which some of the states now go. Proponents point to the waste which is obviated—one state slashed more than $30,000,000 from local budgets in approximately twenty years. Those who oppose the control maintain that it violates a cardinal principle of home rule, that it encourages irresponsibility on the part of local authorities, and that it is usually handled by state officials who have very little understanding of local problems. The critics add that the savings are negligible in comparison with the damage done and the improvements prevented.

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. Representatives of the appropriate state department preside over hearings at which both sides are heard; final decision as to whether the bonds can be issued is reserved to the central agency, which as a rule follows the recommendations of its examiners. Certain states have vetoed borrowing proposals running into the tens of millions of dollars over a period of years. Whether the school houses, city halls, basketball gymnasiums, roads, and other improvements involved in these vetoes should have been built to meet local needs, despite the expense, is a matter of violent difference of opinion. Sport fans who want to give every

encouragement to the local basketball team are incensed when cautious citizens put taxes above a fine new building for holding basketball games and tournaments. Patrons of schools who resent antiquated school buildings accuse their neighbors of being penny wise but pound foolish because they oppose a bond issue to finance a modern school plant, claiming that the few dollars saved will be at the expense of the eyesight, health, and future usefulness of the children of the community.

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48. Major Administrative Services

Although a great deal of effort and money are required to collect revenues, keep records, maintain a personnel system, provide legal advice, and handle other staff functions, the chief emphasis of state government is naturally on the services which are rendered to the people. Many of these are undertaken directly by the states, while others are shared with the counties and cities under a system of state aid. But in any case the importance of these services to the individual as well as to society is great. They relate to almost every aspect of human endeavor and interest and are so fundamental that many of them are literally taken for granted by the majority of the citizens.

Education

From the standpoint of money expended as well as general significance the educational activities of the forty-eight states have 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: physical equipment is excellent, teachers are reasonably well trained, the curriculum is carefully planned, and the length of the school year is such that sufficient time is available for good work. 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. It is this marked variation which has persuaded many thoughtful people that the national government should embark on a grant-in-aid program in the field of education.

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 states maintains an administrative agency in the field of education. Most of them have departments of education, but several prefer to use boards of education; this distinction is perhaps less important than it might seem on its face since even where there are departments of education boards are often set up for advisory purposes. Inasmuch as the board members are usually drawn from schools and universities or are *ex officio* in character, it is necessary to employ a full-time official to direct the work. These officers are usually given the title of State Superintendent of Public Instruction or Commissioner of Education and receive their positions through popular election or through appointment. They are assisted by sizable staffs which include professional educationists and clerical workers. 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 Almost 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.[1] Most of the states also 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.[2] Many states are active in sponsoring or carrying on directly adult programs of education.[3] A number of the states dedicate the revenues from certain state taxes, including liquor licenses, income taxes, sales taxes, and corporation taxes, either entirely or in part to the support of the public schools. In such cases financial assistance is given to every local school system which meets standards specified by state departments, irrepective of financial necessity. This type of aid differs from that mentioned in connection with equalization funds in that it goes to all schools rather than only to those which might otherwise be unable to keep open. More than half of the states now specify minimum salaries to be paid to teachers, even paying sizable amounts out of the state treasury toward the salary of every teacher in approved schools.[4]

Licensing of Teachers One of the most important activities of state departments of education has to do with the licensing of teachers. About three fourths[5] 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. Before a teacher can be given employment it is necessary for

[1] For a list see the current *Book of the States.*
[2] See the most recent *Book of the States.*
[3] See *ibid.* for their names.
[4] See *ibid.* for a listing.
[5] For a list, see *ibid.*

a license to be secured from the state department of education. Various grades of these are given: primary, secondary, vocation, life, five-year, and temporary. In addition to a minimum preparation beyond high school, it is now customary to require candidates for licenses to offer courses in education, practice teaching, and psychology as well as a minimum number of hours in the subjects which they expect to teach. A number of the states go so far as to protect teachers against dismissal after they have given satisfactory service for a specified period through the medium of permanent tenure laws.

Other Activities State departments of education invariably carry on studies which it is hoped will be valuable in promoting educational standards. They are organized to offer advice and to furnish printed material on educational problems. If the state has requirements in regard to length of school term, physical equipment, library facilities, and attendance, it is probable that the state department will be expected to inspect the local schools to see that the standards are met. If there is a state equalization fund or if general grants are made for educational purposes, the state department is in a position to compel compliance upon the part of local school authorities; otherwise it may be difficult to bring about the enforcement of the state regulations. Schools may be refused a place on an accredited list, but local school authorities can hardly be jailed for failure to maintain state standards. 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; this is based on the assumption that all schools throughout the state should give at least the same basic work and that uniform texts are required to accomplish that end. Some states, realizing that politics will probably enter into state-wide adoptions, follow an intermediate course and draw up a list from which local authorities may select textbooks. In some instances the state department goes so far as to prepare the examinations which are given to all eighth-grade students and high-school seniors.

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 occasionally elected by the voters. All of the states now furnish some educational opportunities beyond the secondary-school level. All of the states [6] operate teacher-training institutions and virtually all have full-fledged state universities. Some of these universities and colleges have already celebrated their centennials, while others do not antedate the present century —legislation providing for a state university in New York has been passed since World War II. In several cases the status of already existing institutions has been changed recently—thus the Massachusetts and Connecticut State

[6] Though New York has not had a state university until quite recently, it has contributed financial aid to universities, including Cornell and Syracuse.

Colleges have been renamed the Universities of Massachusetts and Connecticut. The states do not follow a uniform policy in co-ordinating their efforts in the field of higher education, though it might 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 separate universities, schools of agriculture and mechanics, mining colleges, and occasionally even military and various other types of schools.

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 contact virtually every inhabitant of the state, especially those who live outside of large cities. Institutes, radio broadcasts, forums, clubs, publications, and many other programs are planned for this purpose. One university has constructed an auditorium equipped with elevator stage and theatrical properties of one kind and another which seats several thousand people and puts on grand opera, symphony concerts, Broadway plays, Russian ballet, and other entertainments intended to attract not only the students but people from all over the state. 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. Wisconsin has developed a program of citizen training and induction, while other state schools have prided themselves on their services to state penal institutions and various state departments. All in all, the institutions of higher learning operated by the states are extraordinarily alert, particularly when they are compared on the basis of scope of programs with foreign universities which receive public support.

Public Welfare

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.[7]

Developments in Public Welfare In so far as states gave their attention to this field in the past, emphasis was for the most part placed on institutional, or indoor, rather than home, or outdoor, services. Poorhouses, poor farms, almshouses, orphans' homes, and old folks' homes abounded a few years ago, though in most instances they received comparatively little aid directly from the state government beyond perhaps inspection. At present such institutions are more strictly supervised by states if they remain in operation, but the outdoor relief and old-age assistance programs have gone far toward emptying many of them. No longer do unfortunates have to leave their relatives and friends behind and, confessing that they are failures by every worldly standard, move to a poorhouse or old-folks' home to spend their remaining years in a dreariness beyond description. The various social security programs are aimed at making it possible to live out one's years in the midst of friends and if old-age insurance, old-age assistance, aid to dependent children, or other coverage is not available direct relief at home is ordinarily given.

State Social Security Activities The social security program in general has already been discussed in connection with the national government.[8] 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. As has already been noted, the states ordinarily act as intermediaries between the Federal Security Agency and the county departments of public welfare which carry 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 government for this purpose, finally paying the accumulation to the recipients.[9] In addition, the states supervise

[7] For detailed discussion of these agencies, see Marietta Stevenson, *Public Welfare Administration*, The Macmillan Company, New York, 1938.

[8] See Chap. 34.

[9] This money may be turned over to counties to be disbursed, but states often make the payments themselves.

and offer expert advice to the local welfare departments, being responsible to the national government for the maintenance of stipulated standards.

Other Welfare Activities In addition to supervising much of the federal social security program, the states frequently assume responsibilities in connection with direct poor relief. Approximately three fourths of the states appropriate money to be used in assisting the counties, cities, and other local governmental units in meeting the cost of poor relief, though in several cases the amount may be far from generous.[10] Several states, including Pennsylvania, Ohio, and Arizona, assume the entire burden of poor relief, administering such a program directly through branches of the state department of public welfare scattered over the state. While most of the states do not follow a course of taking over the direct administration of poor relief, they do authorize the state department of public welfare to supervise the local authorities. Various arrangements are made for this supervision, but the most common one involves county departments of public welfare, which receive instructions and inspection from the state departments. The adequacy of the assistance given varies widely from state to state; the current range is from less than ten dollars to more than seventy dollars average monthly payment.

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 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,[11] but it remains here to note what the states are doing. A few states, Massachusetts, New York, Wisconsin, and North Dakota, for example, 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 state housing agencies, though some of these may exist largely on paper. 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

[10] For a list of the states, see the current *Book of the States*
[11] See Chap. 34.

one locality could deal effectively with the problem because after the contagion had become general it was too late to cope with the situation. In 1849 Massachusetts created a committee to investigate public health and sanitation and to report on what steps should be taken by the state to control outbreaks of disease and improve health generally. This commission did an excellent job and its report gave impetus to the establishment of public health agencies throughout the country.

Public Health Organization At the present time every state maintains some sort of agency which is charged with promoting public health. More than half of the states have departments of public health, but a sizable number prefer boards of health, and two combine public health and welfare under a single agency.[12] 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 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.

Specific Activities of State Public Health Agencies It might be assumed that after almost a century all of the states would be well organized to meet problems arising out of public health. However, the record is an uneven one, with some states displaying impressive activities and others doing comparatively little. There are few functions which every state health department in the union carries on, but most of them sponsor programs related to maternal and child health, give attention to sanitary engineering which includes the disposal of sewage and other wastes injurious to public health, operate laboratories for the analysis of various specimens and samples, and regulate the nursing profession. Many health agencies give attention to safeguarding the milk supply, carry on programs related to dental hygiene, regulate industrial hygiene, and stress the prevention and control of epidemics. A large number are organized to give special attention to tuberculosis, assist crippled children, carry on cancer-control programs, and inspect food and drugs to safeguard the people.[13] From this list it may be realized that the activities of state health departments are varied; but it is not reassuring to note that certain agencies report no programs in fields that are currently regarded as highly important. This, of course, does not necessarily mean that no work is being done along those lines by a given state, for it is always possible that some department other than that dealing with public health is entrusted with the task. The recent Lanham Act has stimulated interest among the states in the construction of health centers.

[12] For a breakdown, see the most recent *Book of the States.*

[13] See the most recent *Book of the States* for further information relating to activities of state health agencies.

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 various states: tuberculosis hospitals, hospitals for mothers and children, epileptic centers, industrial farms, schools for problem children, penitentiaries, and homes for feeble-minded. In the following paragraphs only two general types will be considered: hospitals for the care of mental cases and correctional institutions.

Mental Asylums and Hospitals In so far as institutions seek to treat those who are mentally ill but not incurably insane, they are closely related to the work of health agencies. The more progressive states have provided psychopathic hospitals for some years because private facilities have been inadequate and beyond the purse of large numbers of people. Some of these, for example the psychopathic hospital in Massachusetts, have accomplished rather remarkable results and returned numerous persons to society who might otherwise have become hopelessly insane. Public opinion in some states has not demanded that programs of this character be undertaken and in general comparatively little attention has been given to this phase of the work. The other type of mental institution is intended to care for those who are definitely insane and who are regarded as dangerous to society. All of the states have been forced to take cognizance of these cases and provide facilities for their care. It may be added that the financial support provided is frequently so small that crowding reaches disgraceful proportions, little can be done in the way of treatment, and adequate supervision becomes difficult. In some states facilities are so lacking that insane persons who are not regarded as dangerous have been lodged in poor farms. Where politics has entered the insane institutions—unfortunately not a rare occurrence—conditions sometimes become shocking. Superintendents know nothing about the administration of an institution; physicians, often without training in mental illness, who have failed at private practice perhaps because of inordinate drinking, receive appointment because they have influential friends; trained nurses are almost entirely lacking.

Administration of Mental Institutions There seems to be no uniform system of administering institutions for the mentally ill. Approximately half of the states maintain departments or boards for supervising their asylums

and hospitals; others place these institutions under the department of public welfare or provide general departments which have oversight over all mental, charitable, and correctional institutions.

Correctional Institutions With the highest crime rate in the world and approximately as many homicides every year as the remainder of the western countries put together, it is to be expected that the United States would have an elaborate system of correctional institutions. The national government assumes responsibility for offenders against the federal laws; cities and counties maintain jails for minor offenders or the care of major offenders who are awaiting trial. However, the heaviest burden falls to the states, which have frequently found their resources taxed to the utmost. After building prisons and more prisons, the facilities are frequently far from reasonably adequate.[14] Penitentiaries in many states now house approximately twice as many inmates as they were intended for, which not only makes adequate care difficult but sometimes leads to riots. Most of the states now recognize the desirability of segregating prisoners on the basis of their offenses and consequently maintain penitentiaries for long-term prisoners, reformatories for the intermediate cases, and farms or other types of institutions for those sentenced to a few months. In addition, separate prisons for women offenders are frequently encountered, while industrial schools for juvenile cases are commonplace.

The Cost of Prisons The cost of constructing penitentiaries, such as Sing Sing in New York, San Quentin in California, and Charlestown in Massachusetts, is so great that there has been some agitation in favor of less formidable walls, guard houses, and cell houses. The per inmate cost of building one of these forbidding prison fortresses amounts to many thousand dollars, or enough to build a reasonably comfortable house for a family of four or five persons. Those who emphasize protecting society against criminals argue that less expensive construction of prisons is poor economy in the long run, but those who stress rehabilitation reply that after a prisoner has served a term of ten years or so in iron cages surrounded by high walls he can rarely take a place again as a member of society. The newer prisons may be less safe; yet they seem to be able to graduate their inmates back to normal existence more successfully.

Prison Labor One of the chief problems in state penal institutions is that of giving the inmates something to do. At times the legislature will not appropriate money for shops, machinery, and instruction; more serious than that is the vigorous opposition displayed by organized labor toward the sale of prison products. If the goods made by the prisoners cannot be disposed of, it is obvious that work cannot be given; if work cannot be given, there will be a deterioration which will probably make the prisoners more dangerous to society when they are released than when they entered. The shortsighted policy

[14] See F. E. Haynes, *The American Prison System*, McGraw-Hill Book Company, New York, 1939.

of organized labor has resulted in the passage of numerous laws restricting the sale of prison-made goods, thus condemning many prisoners to social destruction. Nevertheless, a considerable amount of work is being provided in connection with the making of license plates for automobiles and the furnishing of equipment for state institutions and offices.

Administration of Correctional Institutions The political organizations in many states regard the correctional institutions as especially their own, not because their leaders who resort to bribes and stuff ballot boxes sometimes end up there, but because there are a fairly large number of positions which can be used to reward the faithful. Modern penologists are of the opinion that prisoners require the services of psychologists, sociologists, social workers, psychiatrists, and others who are professionally trained and the politicians are being forced to surrender a monopoly in the correctional institutions; yet even so it is probable that the majority of wardens, guards, and other employees still receive their places on a political basis. This means that politically minded governors like to keep the prisons under their immediate control, even if separate departments are provided for their administration. Most of the states place their correctional institutions under prison boards, departments of correction, departments of institutions, boards of parole, and so forth, but a number follow what seems a more logical course of integrating correctional activities with the efforts of the department of public welfare.[15]

Security of Workers

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 been alert to the relationship between reasonable hours and minimum wages and good health and morals for many years. 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,[16] the way became open for state action. Most of the states now have on their statute books maximum-hour legislation, while many states have set up minimum-wage standards for women or women and children.[17]

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 circum-

[15] See the current *Book of the States* for a breakdown.

[16] See *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937). In this case the court specifically overruled the earlier Adkins case.

[17] See the most recent *Book of the States* for detailed information.

stances, but with the shrewd legal counsel retained by the employer to raise questions this became almost impossible in many instances. Companies frequently followed the policy of spending thousands of dollars for attorneys' fees and court costs rather than pay a few hundred dollars to an employee injured during the course of employment. The result was that incapacitated workers became a charge on society, frequently having to be supported at public expense by a state or local governmental agency. Public opinion after long lethargy finally became aroused to the iniquities of this situation and the result is that every state has now abandoned, at least in part, the common-law principle.[18] However, there is much diversity in the statutes which apply to injuries. Some of the states have compulsory systems, while the others permit companies to avail themselves of the state facilities, make arrangements with private insurance companies, or run the risk of suit in court.[19] A number of the states maintain their own funds into which employers pay in assessments based on the number of persons on their pay rolls.

Coverage of Compensation Laws In several states the provisions of the law apply only to those workers in business employing ten or more persons, while in the other states more generous coverage exists. Some states limit workmen's compensation to industrial workers, while others include clerical and indeed almost all types of employees. A case in Ohio a few years ago involved a college professor who had been invited to deliver a high-school commencement address. During the exercises he was handed a rose by one of the class members; he pricked his finger and later died from blood poisoning. His heirs claimed compensation from the school board and the state workmen's compensation board found in their favor. It must be remembered that the injury must arise out of course of employment; consequently one state refused an award to relatives of workers who were run over by a train on their way to work. In general, negligence on the part of a worker during working hours does not affect compensation—even if an employee sticks his hand into a machine the assumption is that he was too weary to know what he was doing. However, in some states reasonable care is expected. For example, in California a clergyman who had lost his voice through shouting in delivering sermons was refused compensation.

Miscellaneous Many states promote the security of workers by regulating conditions under which industrial work, such as the making of men's clothing, can be done at home. Some states authorize the labor department to collect wages for workers in cases of difficulty. Approximately half of the states limit the use of injunctions in labor disputes and outlaw yellow-dog contracts. About two thirds of the states have separate departments of labor; others combine labor administration with commerce, agriculture, and other functions.

[18] 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

[19] *Book of the States.*

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 national government. Senator Joseph C. O'Mahoney and others have sponsored legislation which would transfer this responsibility from the state sphere to the federal, but despite all of the arguments which have been advanced little progress has been made in this direction. Federal chartering and regulation of corporations would almost certainly mean that corporations would lose some of the freedom which they now enjoy and consequently it is vigorously opposed in certain quarters. As it is, 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 liberal policy. The result is that while some corporations are as carefully controlled as would be the case under federal auspices, others manage to do much as they please. A number of the largest corporations which are active throughout the United States are chartered by Delaware, though they have no factories there, maintain their principal business offices elsewhere, and indeed do no more than keep modest offices in that state in order to meet the requirements of the law. Most of the states charge the secretary of state's office with licensing corporations; others give this duty to corporation departments or commissions or even to the public-utilities commission.

Banking 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. Approximately three fourths of the states operate separate banking or banking and insurance departments; the remainder authorize the state auditor, department of finance, corporation commission, or other agencies to supervise banks.

Insurance 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.[20] 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. More than half of the states provide separate departments

[20] For a discussion of changes that have taken place, see Council of State Governments, *Revision of State Systems for Insurance Regulation*, The Council, Chicago, 1946.

of insurance or insurance and banking to administer their insurance regulations, while the others depend upon the auditor, the secretary of state, the attorney general, the corporation department, and other agencies to handle this work.

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. Central Park in New York City and the Common in Boston are "purchased" several times every year by unsophisticated persons who do not realize that public property is not to be disposed of by slickers who prey on human sheep. Of course, these are extreme cases, but large numbers of people lose their money by investing in schemes which at best involve grave risk and at worst do not offer the slightest chance of paying out. There are numerous Ponzis who go about throughout the country promising to double, triple, or even quadruple the money of those who will seize the golden opportunity. 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 and issue relatively large amounts of stocks or bonds. This leaves a large field for which the states must assume responsibility, 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. No one can doubt that the situation has been improved in large measure as a result of this regulation, though much remains to be done in the less progressive states.

Public Utilities In many business enterprises it is possible for the customer to choose the particular merchant or store which he will patronize. Where competition prevails, businesses engaged in the same field are forced to keep their charges within reasonable limits and to maintain certain standards. 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 ordinarily 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.[21] 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. The utility companies themselves have sometimes taken advantage of this requirement by trading political support and campaign contributions for control of the membership of the commissions, thus making it possible for them to avoid unpalatable dicta-

[21] For detailed treatment of this topic, see W. E. Mosher and F. G. Crawford, *Public Utility Regulation*, Harper & Brothers, New York, 1933.

tion. In other instances they have retained an array of the best legal talent to present their cases to the commission, hoping that this would win them a victory. The consumers, on the other hand, are not well organized and usually can do little more than employ the least expensive counsel to represent them. The result has been that rates have sometimes been considerably higher than was justifiable. The more responsible utilities do not take unfair advantage, while public sentiment has done something to improve the quality of public-service commissioners. Some states have furnished at public expense full-time counselors to represent the public interest. Thus while there is room for improvement the present situation is probably better than at any previous time. Most of the states charge public-utility commissions, public-service commissions, railroad commissions, and corporation commissions with regulating public utilities. A few states prefer departments of public service and public utilities respectively or give this duty to the department of business regulation or the department of law.

Miscellaneous Activities

State Police For many years the 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 highways, while most 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 finger-print files as well as laboratory facilities for analyzing blood stains, photographing clues, and otherwise identifying guilty persons.

Highways In this connection it should be noted that 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. Something like half of the states place their highways under highway departments; a sizable number use highway boards or commissions; while a few maintain public works departments which among other functions have charge of highways.

Aeronautics To supplement the work of the federal government and the cities, approximately three fourths of the states support agencies which exercise varying authority over aviation.

Agriculture In addition to land-grant 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. Approximately two thirds of the states recognize the importance of agriculture by providing separate departments of agriculture, while several others have boards of agriculture. In a number of states agriculture is combined with labor, commerce, and other fields into a single agency. 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. All of the states give protection to fish and game and license those who fish and hunt, but the record in other conservation activities is less uniform. Three fourths 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.

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Section VI

TERRITORIES AND LOCAL GOVERNMENT

49. 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 publicity seekers and extremists 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. At the conclusion of World War I, when the United States had an opportunity to assume the responsibility for mandates and certain persons in high places apparently entertained the idea of entering into such a relationship with certain parts of the Near East, the storm of public protest soon put an end to any remote possibility of this being done. Some years later when colonies were being eagerly sought by Italy and Japan, the United States consented to the independence of its largest colonial possession: the Philippines. 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; the United States is regarded the "colossus of the North," a gigantic ogre which has a well-developed taste for gobbling up the smaller countries which are in the Western Hemisphere.

Reasons for Our Reputation Abroad It might appear at first sight that this fear which foreign people have of us is too ridiculous to warrant attention. However, the very fact of its existence is sufficiently serious to justify self-examination. Some of this distrust abroad is doubtless caused by the irresponsible utterances of a few public officials who make sensational and ill-considered speeches which are reported in front-page headlines throughout the territory from the Rio Grande to the Straits of Magellan. However, the difficulty is more basic than this; the main effect of current utterances from those who speak so sensationally is to add fuel to the flames already kindled. There are two aspects of our history which are perhaps better known outside of the United States at present than remembered within and which contribute very largely to the unsavory name as an aggrandizing nation.

Our Past Record In the first place, it is constantly remembered in the Latin-American countries that generous portions of the present continental

territory of the United States 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 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 taking of the Panama Canal Zone was handled more shrewdly and from behind the scenes rather than in public, but there is a widespread feeling in the Latin-American countries that it represents another case of seizure by the United States, irrespective of the justice or niceties involved. Perhaps even more significant has been the American intervention in and economic exploitation of certain Central American countries. On several occasions armed forces have been sent to these countries when the United States has not liked what transpired; at times these military forces have been maintained in a single country for several years, though disorder had apparently ceased to threaten. When repayment has not been made of money loaned by American banking firms, the government of the United States has sometimes in the past taken vigorous steps to compel payment, even if it required the appointment of American agents to receive customs duties over a period of years. If the United States has not liked a certain head of state in Central America, it 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 or so has been different; indeed the United States has leaned over backward in many instances to avoid the merest suspicion of interference in the affairs of sister states. However, recent relations with Argentina have occasioned criticism in some quarters. And steps taken by the United States since World War II, such as the North Atlantic Pact and Marshall Plan, have been branded by the Soviet Union and its satellites as proof of a desire on the part of the United States to control Western Europe.

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 either by extensive bodies of water or great areas of land from the homeland. Hawaii, Puerto Rico, Guam, Samoa, and the Virgin 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. The islands taken over from Japan following World War II are situated in the western reaches of the Pacific Ocean.

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

[1] See *Balzac* v. *People of Porto Rico*, 258 U.S. 298 (1922).

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 main types: incorporated and unincorporated.

Unincorporated Territories Unless Congress ordains by law 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] Samoa, the Panama Canal Zone, Midway, Wake, and other small Pacific islands fall into the unincorporated class. The Philippine Islands were regarded as unincorporated before their independence.

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 and the Virgin Islands have many of the characteristics of this type of territory. In the case of Puerto Rico 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 have been taken.

Other Territories In addition to the two main types of territorial possessions of the United States known as unincorporated and incorporated territories, there are some other areas which have a special relationship and do not fall easily into a definite category. Perhaps the most important of these are the islands which were taken over from Japan as a result of World War II. The exact status of these will not be determined in all probability until a peace treaty with Japan has been signed. The Japanese are anxious to recover at least some of the islands and the United States regards some of them as important to its Pacific defenses; pending a final decision they are being administered as trustee territories under the United Nations. The air and naval bases in the Atlantic and the Pacific which came to the United States under arrangements with Great Britain and other countries during World War II also do not fit into the regular territorial pattern.

[2] Art. IV, sec. 3.

[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."

The Question of Future Statehood for the Territories The small islands situated in the Pacific, with the exception of Hawaii, do not seem strong possibilities for admission as states. Some of them have so few inhabitants that statehood would hardly be feasible; others, such as Okinawa, may be populous enough, but their future status is uncertain and there are serious reasons for doubting their suitability as states of the United States. The Panama Canal Zone is in the same category because it is perpetually leased from Panama. It is probable that the other territories have some hopes of attaining statehood either shortly or at some remote time in the future. Hawaii has been engaged in an endeavor to acquire statehood for many 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.[5] Recent Presidents have pronounced themselves as favorable to Hawaiian statehood; both of the major political parties have pledged statehood to Hawaii in their platforms; and Congress seems to be on the verge of taking the necessary action. In 1950 Hawaii elected a convention to draft a constitution which might be used when statehood was conferred. Alaska has perhaps 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 their sparseness is a considerable barrier. As in the case of Hawaii, Presidents, political party platforms, and congressional committees have committed the United States to Alaskan statehood.[6] The only question is when such a promise will be carried out and in 1950 prospects appeared good for speedy action. Puerto Rico has been promised statehood by Congress at some future time if all goes well, but there is some question whether the majority of the Puerto Rican people desire this status rather than complete independence. Recent events in Puerto Rico seem to point to developments which might make statehood feasible in the not too remote future.

Central Administration of Territories No uniform provision has been made for the central administration of the several territories. The War Department has had general oversight in the case of the Panama Canal Zone and such areas as Okinawa; the Navy has assumed responsibility for Samoa,

[5] After the attack on Pearl Harbor Secretary Knox referred to "fifth column" activities in Hawaii as second only to those in Norway, but subsequent evidence seems to be in support of strong loyalty on the part of the population.

[6] It may be of interest to consult the arguments advanced by their governors in favor of statehood. See Ernest Gruening, "Why Alaska Needs Statehood," *State Government*, Vol. XXI, pp. 31–33, February, 1948, and I. M. Steinbeck, "Statehood for Hawaii," *ibid.*, Vol. XIX, pp. 243–246, October, 1946.

Guam, and other tiny insular possessions in the Pacific; while the Interior Department has had charge of what was not otherwise taken care of. For a number of years there has been a growing opinion that it is 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 is evidence that the primary consideration has been that of national defense rather than the welfare of the territories themselves. Nevertheless, the primary emphasis prior to World War II became increasingly centered on civil rather than on military problems and a 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. World War II interrupted this development in the direction of civil administration for territories, but in 1950 Guam, long under military rule, was given a civil government under the Department of the Interior.[7]

Hawaii

Of all the territories the one which is most familiar to the average citizen is Hawaii. Large numbers of people have visited the islands which constitute this possession; Hollywood has been fond of using the beaches, luxuriant vegetation, and colorful ceremonies as backgrounds in movies; and the soft music, hula dances, and picturesque costumes of the few remaining natives have attracted the attention of the rank and file of the people of the mainland. The prosperity of the islands growing out of the pineapple and sugar industries as well as tourist and naval activities has made it possible for substantial revenues to be collected by the federal Treasury.

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.[8] 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 delegate to the House of Representatives in Washington, and provides for the structure and functions of the territorial government.

Legislative Branch The organic set acts 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

[7] This does not mean that the Navy will withdraw entirely from these territories. The Navy will continue to maintain naval installations and control national defense activities, but the responsibility for local government is transferred to civil auspices.

[8] 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.

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. The problems of the islands are not such as to require the elaborate administrative setup encountered in states such as New York, Illinois, Pennsylvania, and California, but 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 one of the smaller states. The chief administrative officers are appointed by the governor with the consent of the territorial senate.[9]

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, which maintains its 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 very sparsely populated. Attempts have been made to settle it with subsistence homesteaders from the United States, but for one reason and another many of the original colonists have not remained.

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

[9] For further discussion of the framework of government see R. M. C. Littler, *The Governance of Hawaii*, Stanford University Press, Stanford University, 1929.

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.[10]

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 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 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 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 recent 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 and 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 govern-

[10] 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.

ment, 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 and therefore is not technically an incorporated territory; yet her people are citizens and except for the provision noted the Constitution applies to them. All in all, Puerto Rico has the fruits of incorporation without the legal status.

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 Until 1949 the President of the United States appointed the governor of the island with the consent of the Senate, but at present Puerto Ricans are permitted to elect their own governor by popular vote. Among the other officers there are the following: an attorney general, a commissioner of education, and directors of departments of finance, health, 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 and Special Areas

The remaining territories of the United States are comparatively minor in character as far as area and population are concerned, although they may have strategic significance from a military standpoint.

The Virgin Islands The Virgin Islands were purchased from Denmark in 1917 because of their strategic position in relationship to the Panama Canal. They were under the control of the President for some two decades until Congress passed an act in 1936 which gave them a considerable measure of freedom in handling their own affairs. Even before this in 1927 the residents had been given American citizenship. A governor, appointed by the President with the consent of the Senate, heads the executive branch of the government and reports to the Department of the Interior in Washington. There are elected municipal councils on the two principal islands of St. Croix and St. Thomas and St. John and these meet together as a single body to handle matters of interest to the islands as a whole. A district court and such other inferior courts as may be provided by law make up the judiciary.

The Canal Zone The Canal Zone which surrounds the Panama Canal is leased on a perpetual basis from the Republic of Panama. Consisting of an area only five miles wide, it can never expect to bulk large in area, but it has a population exceeding fifty thousand and its importance in relationship to national defense is outstanding. A governor appointed by the President with the consent of the Senate has the responsibility of full administration, since there is no legislative body. Laws are prescribed by Congress or the President. There is a district court and a system of local magistrates' courts. Though not an incorporated territory, the bill of rights of the Constitution is regarded as in effect.[11]

Guam Though Guam was acquired from Spain in 1898, it was not until World War II that it came at all into the limelight and even now it is probable that many American citizens have a vague idea as to its exact location in the Pacific. Guam is the largest of the Mariana Islands, with an area of about 225 square miles; its population approximates twenty-five thousand. Because of its fine harbor facilities, Guam has been of interest to the Navy as a naval base and has for many years served as a naval station. Largely for this reason it has been administered by the Navy Department through the years. While this department has taken its responsibility seriously, it has naturally been primarily interested in naval installations and the civil problems have taken a secondary role. Since World War II there has been an increasing sentiment in favor of more adequate provision for civil government and various recom-

[11] For further discussion of provisions made for the Canal Zone, see N. J. Padelford, *The Panama Canal in Peace and War*, The Macmillan Company, New York, 1942.

mendations have been made by official bodies looking toward that end. An organic act which confers American citizenship on the inhabitants and authorizes a considerable measure of self-government was finally passed in 1950.[12]

Samoa The eastern part of the Island of Samoa became a protectorate of the United States in 1899 as a result of the Anglo-German-American agreement of that year, but it was not formally received by Congress as a territory until 1929. As in the case of Guam, Samoa has been administered by the Navy through the years, largely because of its importance in American naval strategy. Though less populous than Guam, with some sixteen thousand inhabitants, there has been a growing desire for more liberal facilities since World War II. Recommendations similar to those noted above in the case of Guam have been made and it seems probable that Congress will take the necessary action in the not-too-distant future.

Former Japanese Territories As a result of World War II the United States came into possession of various Japanese territories located in the Western and South Pacific. The Marianas, Marshalls, and Carolines, with a total land area of less than one thousand square miles and a population of approximately fifty thousand, had been administered by Japan as a mandate under the League of Nations. Okinawa, the Bonin Islands, and other islands, owned outright by Japan, had been the scene of some of the bitterest fighting during World War II. All were occupied by American forces and for the time being at least had to be administered by the United States under military government. The ultimate disposition of some of these former Japanese territories is uncertain and will depend upon the terms of the peace treaty which the United States makes with Japan. The former mandated territories, however, will not be returned to Japan, in view of the record leading up to World War II. They have been organized into the Territory of the Pacific Islands and placed under the trusteeship of the United States by the United Nations. President Truman proposed such an arrangement to the Security Council of the United Nations in 1946 and in April, 1947 unanimous approval was given. Congress then ratified the trusteeship arrangement for the former mandated territories of Japan in July, 1947.[13] Both the Navy and the Army have been active in the military government of the former Japanese territories, but the responsibility of the Navy has been paramount. Plans are under consideration to transfer civil administration of the more populous of these islands to a non-military agency, leaving the military departments to give their attention to military installations and defense activities.

Leased Air and Naval Bases Though not territories, it may be justifiable to devote a brief space to the naval and air bases leased from various foreign

[12] For additional discussion, see L. Thompson, *Guam and Its People*, rev. ed., Princeton University Press, Princeton, 1947.

[13] For the terms of the agreement, see *Draft Trusteeship Agreement for the Japanese Mandated Islands*, Department of State Publication No. 2784, Government Printing Office, Washington, 1947.

countries. In 1940 the United States entered into an agreement with Great Britain under which she received eight naval and air bases [14] on leases for ninety-nine years in return for fifty overage destroyers. These bases, located in an area stretching from Newfoundland more than four thousand miles to the northern part of South America, are intended to strengthen the defenses of our Atlantic Coast. In addition to sections of Newfoundland and British Guiana, they include areas in Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad, and Antigua. A commission from the United States visited these English possessions for the purpose of selecting suitable sites for naval and air bases and Congress appropriated many million dollars for their fortification. Secretary Hull stated shortly after the lease was announced that they were to be used not only for the defense of the United States but by Latin American countries "on the fullest co-operative basis." These bases are administered directly by the military services of the United States.

The Philippine Republic

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 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.

[14] Two of these bases were gifts of the British people to the people of the United States and are to be held indefinitely.

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. This was regarded in Manila as the best that could be expected and consequently it was accepted and shortly became effective. The act of 1934 dealt chiefly with the governmental setup to be operative during the decade before final independence was granted. 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. The government set up under the new constitution began to function in 1935 and the United States discontinued the office of governor general, substituting a high commissioner as a representative in Manila.

Philippine Independence The Philippine Commonwealth achieved complete independence on July 4, 1946, and a Republic of the Philippines came into existence. An ambassador of the United States was substituted for the former high commissioner. Under an agreement with the Philippine govern-

ment the United States is permitted to maintain certain naval bases in the islands. In light of the sad plight of Philippine economy resulting from the Japanese occupation and the long dependence upon the United States Congress agreed in 1946, to permit free trade between the Philippines and the United States for eight years and a gradual imposition of tariff duties thereafter over a period of twenty years. A quota for sugar to be imported into the United States was fixed and a sizable amount of money to compensate for war damages was appropriated out of the American treasury.[15]

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. Both Philadelphia and New York served as the headquarters of the government for a time, but the constitutional provision giving Congress the power "to exercise exclusive jurisdiction 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," [16] indicates that the framers had other arrangements in mind as soon as they could be conveniently made. 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 government was moved to the District of Columbia on the Potomac in the year 1800. There has been lengthy discussion as to whether the decision to locate the capital in this place was a wise one. Obviously in light of the expansion of the United States from the Atlantic to the Pacific and from the Gulf of Mexico and the Rio Grande to the Canadian border, the District of Columbia is not at all conveniently situated so far as the majority of the people are concerned. A location in the Middle West, perhaps on the Ohio River, would be more logical, but it must be remembered that those living in 1800 did not foresee the rapid westward expansion. The excessive heat of Washington summers is frequently complained of; however, there is little to be done at this late date.

[15] For additional background on the Philippines, see J. R. Hayden, *The Philippines,* The Macmillan Company, New York, 1941; F. M. Keesing, *The Philippines; a Nation in the Making,* Kelly and Walsh, New York, 1938; Grayson Kirk, *Philippine Independence; Motives, Problems, and Prospects,* Farrar & Rinehart, New York, 1936; J. R. Hayden, ed., *The Philippines, Past and Present,* The Macmillan Company, New York, 1930; and W. C. Forbes, *Philippine Islands,* 2 vols., Houghton Mifflin Company, Boston, 1929.

[16] Art. II, sec. 8.

Early Provisions Major Pierre Charles L'Enfant, the famous French city planner, was given a commission to lay out the national capital according to the most approved European practices and furnished a street layout which is in considerable contrast to the traditional checkerboard or gridiron pattern so striking a feature of the American scene. This plan has not been followed in its entirety, but it gives to Washington broad avenues which, instead of running parallel, converge on the government buildings at the heart of the city. Having recently fought a war with England 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. The period of the Civil War and for some years after saw municipal government at perhaps its lowest level in the United States. These were the days of the Tweed Ring in New York and the Gas Ring in Philadelphia; political bosses and rings flourished more or less everywhere; corruption seemed to be the rule rather than the exception. These were the years immediately preceding the writing of the devastating account of city government in the United States by Lord Bryce.[17] 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 the 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 At the present time Congress makes the necessary ordinances, levies taxes, and appropriates funds for the District of Columbia, supposedly devoting the second and fourth Mondays of each month to this purpose. 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 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.[18] The congressional committees

[17] See his *American Commonwealth,* rev. ed., 2 vols., The Macmillan Company, New York, 1920, Vol. II, Chaps. 88–89.

[18] However, Congress does not always follow the recommendations of the district 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.[19] 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 district court of the district. 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, and so forth.

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 the 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,[20] maintaining that they are forced to pay for services which in all fairness should be borne by the government whose property benefits.

Proposed Changes Dissatisfaction among the inhabitants of Washington has reached such a high level during recent years that there has been much discussion of possible changes.[21] Various congressional committees have undertaken investigations and the Hoover Commission gave its attention to

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For example, it refused to accept recommendations made in 1940 which would have increased the share of the national Treasury in district expenses.

[19] 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.

[20] It amounts to approximately $12,000,000 per year.

[21] 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.

the problem. Recommendations have been made that if carried into effect would relieve Congress of its role as the city council of the District of Columbia and substitute an arrangement which would give the people residing there some voice in local matters. A recent recommendation would provide for the council-manager type of city government in Washington, with the members of the council elected by the qualified voters of the District. But though Congress has more than it can easily handle now, it is reluctant to surrender its prerogative as city council for Washington and the result is that nothing has been done to meet the situation.

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50. County Government

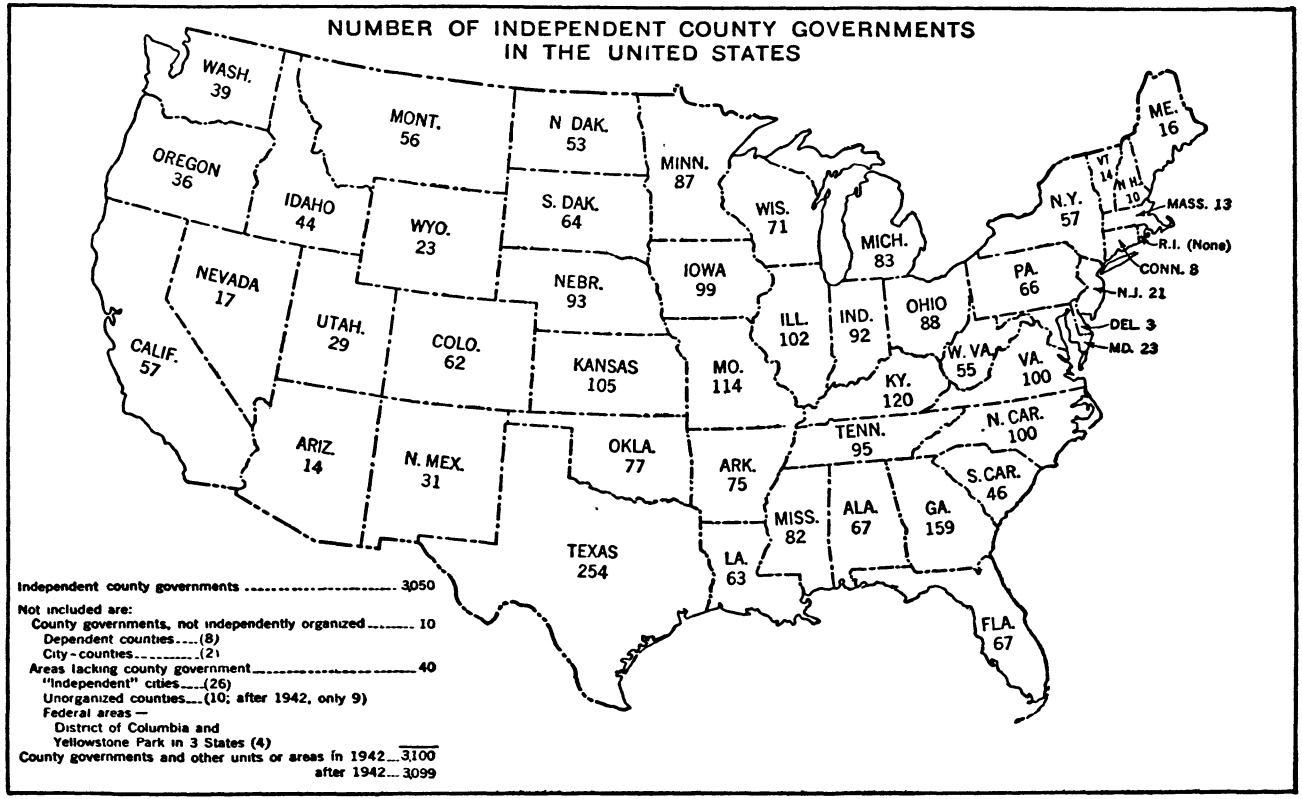
The county has been called the "jungle" of the American political scene. The merit system has hardly been able to get a toe hold in this unit of government until quite recently and still covers only a small portion of the field. Political practices in counties sometimes embody the law of the jungle—only the fittest survive in the battle of the tooth and the claw. Perhaps another basis of this comparison is the fact that county government operates in less limelight than the national, state, and city governments, thus suggesting the gloom of a tropical area which is thickly grown over with trees, shrubs, vines, and other vegetation. Again the governmental organization of counties has frequently been so unco-ordinated that it is difficult to find one's way about, again corresponding with conditions in a physical jungle. However, it is only fair to note that improvement has taken place all along the line in many counties and that the future may well carry developments to such a point that it will no longer be accurate to use this figure of speech in describing this unit of 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 3100 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. For example, Massachusetts has only thirteen counties, while states in the Middle West with smaller populations can claim as many as one hundred. The average county has an area of something like one thousand square miles and a population of almost fifty thousand. However, there are counties with as small an area as twenty-five square miles [2] and others such as San Bernardino [3] in California and Aroostook in Maine which exceed several of the states in area. In population there is an equally great variation among the counties. Cook County in Illinois, which boasts the largest number of

[1] Louisiana has parishes which bear some resemblance to counties.

[2] Bristol County in Rhode Island has this area.

[3] San Bernardino County, with more than twenty thousand square miles, is alone approximately equal to Massachusetts, New Hampshire, and Connecticut combined.



Redrawn from Bureau of the Census map.

Figure 15

inhabitants, is near the four-million mark, while sparsely settled counties in the West sometimes number their inhabitants in the hundreds rather than in the thousands or millions.

Varying Status of Counties The county is in general more important in the southern states than in any other section of the country, though it is relatively significant everywhere at present. In the colonial days two types of local government were established as the basic subdivision: the county and the town. New England colonies followed the latter pattern and for many years did not recognize counties at all. The southern states, on the other hand, with their widely scattered plantation populations, were not in a position to set up such a unit as the town, finding the county better adapted to their needs. As the westward movement took place, the two systems were transplanted from their original homes and established to a greater or less extent in the newer states. Settlers from Virginia and the Carolinas constituted the chief pioneer stock in Tennesee, Alabama, and other southern states and naturally the county has been given pre-eminent recognition in those states. New Englanders journeyed in large numbers to Ohio, Michigan, Indiana, and neighboring states and consequently the township was given some place in those states. In the Middle Atlantic states, New York, Pennsylvania, and New Jersey, the county and township systems met and a combination plan resulted. New England retains the town as a very important unit of government, superimposing the county thereon. The township remains of some consequence in several of the middle-western states where the New England influence is noticeable, but in most of the states it is the county which claims the chief place in rural sections, though cities frequently dwarf counties in urban areas.

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. Inasmuch as most counties owe their existence to general assemblies, it is necessary to consult the statutes of many years in order to ascertain how many counties have been set up, since additions are made from time to time as it seems expedient. Lest the impression be given that it is customary to create new counties in the older states, it should be added that the number of counties in those states is already so large that new ones have not been carved out of old ones for many years. However, in the western states, where populations are still growing fairly rapidly and original counties were sometimes several thousand square miles in area, occasional additions are still made.

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 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 hundreds of miles in a day, it is an anachronism to retain counties of a thousand square miles—to say nothing of those embracing only 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 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. Those who hold county offices and expect to hold these offices in the future resist any change with the greatest of determination because they fear that their positions will be jeopardized. Lawyers who are established in a county seat display distinct hostility when it is suggested that they could easily try their cases in a court twenty-five miles away. Owners of property and business men in the smallest county-seat town cannot be convinced that it would be to their interest to have four or five counties joined together. More adequate high schools and junior colleges might be possible; better court facilities, including special provisions for juvenile cases, might result; substantial sums of money ought to be saved the payer of taxes; but the opposition ignores such promises.

Fundamental Character of County Government In so far as form of government is concerned, counties do not fit very well into the American pattern. That is to say, they are fundamentally different from the national, state, and city forms of government. The typical American pattern divides government into three branches: executive, legislative, and judicial, and provides that each shall be separate. The executive branch, as has been noted, is headed by a President, a governor, or a mayor; the legislative branch has a Congress, a general assembly, or a city council. 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." Nevertheless, by and large county government follows a pattern which is strangely in contrast to that familiar in the nation, states, and cities.

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. Thus the constitution may provide that counties shall have sheriffs, clerks, treasurers, and other officials, but the legislature has the right to define the duties of these officials and to add new responsibilities as the occasion may arise. 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.[4] In some states the legislature has enacted a county code which attempts to lay down the general functions of counties, but almost every session of the general assembly will see that code amended or special legislation enacted which has the effect of adding new tasks to the list of those already performed.

General Character of County Functions States may authorize their counties to assume functions which are not to be found in the counties of other states. For example, some states provide that the assessing of general property shall be done by county officers, while others give this duty to township officials. Again many states make the county welfare department the direct agency for administering the old-age assistance, child welfare, and certain other aspects of the broad social security program, though a few states handle this function directly and several others have divers arrangements of one sort and another. 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 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. Counties are also ordinarily 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

[4] Much information in regard to the increase in county functions will be found in the articles contributed by C. F. Snider, under the title "County and Township Government," to the *American Political Science Review* almost every year since 1940. A briefer discussion is that of M. H. Satterfield, "The Growth of County Functions Since 1930," *Journal of Politics*, Vol. III, pp. 76–88, February, 1941.

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. In a rural county the town which can get itself made the county seat usually enjoys a distinct advantage over all other settled places in the county; the fact that farmers have to come there for paying taxes, recording deeds, and attending to other legal business naturally tends to make the county seat the center of trade. Consequently one city no more deserving than another may thrive while its rivals must bear the burden of economic doldrums and small-town lethargy. No wonder there is deep-seated antagonism, especially where a town has been the county seat only to be dispossessed by a more vigorous rival. 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

Composition With a very few exceptions [5] counties operate under the general guidance of boards, commissioners, or supervisors who are elected by the voters.[6] These are usually comparatively small bodies of from three to seven members,[7] 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.

Organization 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 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 an 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. Of course, 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

[5] Georgia and Rhode Island have no county boards.

[6] In Connecticut and South Carolina members are appointed rather than elected.

[7] 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.

county boards which may last a few hours or again in more populous counties several days are scheduled every month, while special meetings may be called at the pleasure of the members. In a few of the counties where business is heavy, the board may actually be in session the greater part of the time during fall and winter months, especially when the budget is being prepared.

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 in so far as possible 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—running into the hundreds or even thousands—of employees in connection with roads, public works, and related county functions. In several cases, Los Angeles County in California for example, 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. Actually it is likely that the county chairman of the dominant political party will have a great deal to do with the filling of these jobs, though commissioners may get in their relatives and friends also. But 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.

Public Works The county highways, institutions, and buildings are all usually directly or indirectly under the control of the county board. All of the public roads which are not included in the state highway system or located within city limits are sometimes considered county roads, though in some states the minor roads may be left to the care of townships. Thus in an average county there are likely to be several hundred miles of roads which fall within the control of the county board; some of these are paved highways which carry heavy traffic; other sections will be black-top or gravel which are intermediate

in character; while a considerable portion is likely to be purely for local farm use and may be only moderately improved. In a well-organized county there will usually be a public works department or a county highway agency which will have direct charge of maintaining these roads, but in small counties it is not unknown for the members of the county board to divide up the mileage among themselves, each assuming responsibility for the care of his section. In this way it is possible for the members to add to their incomes and to reward their friends and supporters with at least a few days of work each year if not full-time jobs. Even where there are county highways departments the board members usually find it possible to have a decisive influence, since they choose the head of that department. Moreover, appropriations for new black-topping, road widening, snow plows, and other road supplies have to come from the county board. The courthouse, the jail, the poor farm, the county hospital, and other county properties usually are placed under the control of the county board, though in some places separate boards of trustees are provided to manage hospitals and certain other institutions. The county board names the custodian of the courthouse and even in many cases the janitors and elevator operators; it also decides when a new roof is needed, when decorating is to be done, and what additional equipment is required. In general, the same authority is exercised in connection with other county buildings.

Purchasing The most progressive counties have established central purchasing agencies for the buying of supplies which are required for operating the poor farm, the highway department, the courthouse, and perhaps the county offices. However, in general, county boards watch the purchase of supplies with jealous eyes, regarding this task as one of their perquisites. Increasingly the states have limited the leeway of the county boards in making purchases by specifying that bids must be called for in sizable purchases and that contracts must be awarded to the lowest bidder. Therefore it is not so easy for board members to demand their rake-offs or to reward their friends and political followers as it once was, but there are still reasonably good opportunities, judging from the assiduous attention which some county boards, not known for their devotion to public interests, give these matters.

Financial In addition to making the tax levy, drafting the budget, and authorizing the borrowing of money, county boards often perform rather routine functions of a financial character. Even in those cases where the salaries of the sheriff, treasurer, and other county officers are fixed by state law no money may actually be paid out until the county board has given its approval. In many counties a large amount of the time of the board is devoted to "allowing" claims against the county; thus every tiny bill for personal services, supplies, and telephone and electricity must be presented to the county board before it can be paid. Following the monthly meeting of the board a long list of items which have been "allowed" is printed in a local newspaper. County boards sometimes act as boards of equalization in those cases where

assessing is handled by townships; again they hear appeals from taxpayers who feel that their property has been assessed at too high a figure. It may be added that some counties now have boards of tax review which relieve the county board of this task. In a few cases there is a second board, known as "county council," provided to check the financial actions of the commissioners; thus general appropriations and emergency appropriations not included in the regular budget must have the approval of the county council before becoming effective.

Election Administration There is a wide diversity of practice among the states in providing for election administration. The county clerk is frequently given large responsibilities in connection with printing ballots, while special boards of election commissioners may supervise elections in general. However, it is not at all uncommon for county boards to have at least some responsibility in this connection. They may have to make a contract for the printing of the ballots after the clerk has prepared the forms; they may appoint the election officials in the various precincts; they may divide the county up into precincts for voting purposes; they may decide where the polling places shall be for each precinct. The purchase of election supplies and the remuneration of the polling officials may have to be taken care of by the county board. After the ballots have been counted, it is sometimes provided that the ballot boxes shall be sealed up and sent to a central place designated by the county board, which, after a reasonable time has elapsed, orders the ballots destroyed. Election officers may send their official returns reporting on the distribution of the votes to the county board, which then tallies them and issues certificates of election to those who are winners. Although contested elections may be carried into the courts, it is sometimes the duty of the county board to order recounts of ballots where there is a question as to who has been elected.

Charities and Corrections Prior to the great expansion of the public welfare programs county boards frequently had considerable responsibility in connection with the granting of relief as well as for providing for the support of poor farms, orphanages, old-folks' homes, and county jails. At present there is so much to do in this field that county departments of public welfare, often with sizable staffs, have been set up by state law to administer the program. However, county boards still have to appropriate the county's share of financing old-age assistance and poor relief and may have some oversight over the welfare departments, though the federal standards specify merit appointments. In those states which do not undertake to supervise local poor relief, county boards may still have to take up each case of need and authorize monthly or quarterly payments to those who seem entitled to public assistance.

Miscellaneous Functions In addition to the items which have been discussed, county boards frequently have many other functions of more or less importance. Much depends upon the particular state and upon the legislation within a single state relating to certain counties; hence no general statement

can be made. Among the miscellaneous duties which are encountered here and there are the following: licensing liquor dispensaries and hotels and restaurants which serve liquor, drafting lists of jurors, providing for bounties to those who kill coyotes, wolves, and other animals which prey upon livestock, reimbursing farmers whose sheep are killed by dogs, and incorporating benevolent societies.

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, such as Cook County in Illinois, 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. Thus one department may be operated on relatively high standards with employees selected on the basis of their training and efficiency, while others in the same county may represent the worst aspects of the spoils system.[8] In those few counties which have reorganized and placed a manager at the head of county administration, this situation usually does not exist. Considering the lack of supervision and centralization, it is perhaps surprising that counties get along as well as they do.

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. After long agitation New York City in 1941 finally voted to abolish the five separate sheriff's offices in its counties and to create a single office which would attend to the little remaining work to be done. 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 rank first among all county officers. This is reflected in the number of candidates who throw their hats into the ring when an election is in the offing. To some extent it may be that the widespread interest in the office grows out of the salary and especially the fees which are often attached thereto—fees alone reach $50,000 to $100,000 annually in a number of counties; it is reported that there have been instances where the income legally allowed a sheriff ran to $250,000 per year. Sheriffs receive a comparatively modest

[8] Counties employed 486,000 persons in 1949. See Bureau of the Census, *Public Employment in October, 1949.*

salary which usually runs from $3,000 to $10,000 per year and in addition they often are entitled to fees based on mileage covered for serving subpoenas, making arrests, and transporting persons to penal and insane institutions. A few cents per mile may not seem very large when viewed abstractly; yet in a busy county the aggregate amount involved during the course of a year will reach impressive sums. There has been a great deal said in favor of abolishing the fee system, but it is very difficult to dislodge it because of the opposition of those who profit directly or indirectly from it. Even where it has been thrown out, it somehow or other sometimes manages to get back.

Duties of a Sheriff's Office Sheriffs ordinarily have two types of duties attached to their offices: public safety and court. They are theoretically responsible for maintaining law and order in their counties and in small rural counties they may actually do a considerable amount of this work. They and their deputies conduct raids on stills, seize gambling apparatus and slot machines, and arrest those who are charged with commiting murder, burglary, and other felonious crimes. They are responsible for keeping the county jail and frequently reside with their families in the quarters attached to that institution; indeed their wives may do the cooking for the prisoners. 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. Obviously the prosecutor has a great deal to do with the public morals and crime record of his county. If he is courageous and honest, it will be difficult for crime and commercial vice to flourish, since the risk is greater than the possible return in most cases. On the other hand, if he is derelict in his duty, content to let matters alone, or affiliated closely with a political machine, conditions will in all probability be bad. The underworld will know that it can operate safely, particularly if it makes proper arrangements with the right man in the prosecutor's office or with the political organization. Even the police cannot go far in making up for the lack in a prosecutor's office, for there is little to be gained by making arrests unless the accused are brought to trial and prosecuted with reasonable vigor.

In rural counties the perquisites attached to the office—sometimes no more than $100 per month—are such that experienced members of the bar are not interested in the position, with the result that a tradition grows up that young lawyers just starting out are elected. This sometimes handicaps successful control of the criminal element because the inexperienced prosecutor does not know how to proceed or fears to make powerful enemies. However, the crime problem is not sufficiently acute in many rural counties to make the situation serious. But in urban counties it is of the highest importance that an experienced, incorruptible, and courageous prosecuting attorney be elected. The achievements of former Prosecutor Thomas E. Dewey in New York have been much publicized and are an indication of what can be done even under very difficult circumstances.

County and Court Clerks Counties may provide either a county clerk or 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. Without such information it would be very difficult to carry on ordinary business. 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 few years 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 records and the case histories which are considered of fundamental importance. The far-reaching social security program of the national government has been discussed in connection with the study of the federal administrative agencies.[9] In connection with state government the state's role in social security came in for attention.[10] Now in the county there is found the office which directly administers much of the program. Old-age insurance is handled entirely by the federal authorities; unemployment insurance 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 public 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. The federal insistence that certain standards be observed in that part of the social security program involving the use of federal funds has been helpful in safeguarding these departments against the most vicious sapping.

Other County Departments In addition to the departments and offices which have been mentioned, counties frequently maintain a number of others,

[9] See Chap. 34

[10] See Chap. 48.

including coroners, assessors, surveyors, school superintendents, boards of tax review, election boards, and overseers of the poor. 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 coroner, who in England once headed the county officials as the chief representative of the crown, has been shorn of his authority until the very office itself has been abandoned in some counties. Coroners now have little to do except view the bodies of those who have died in unusual circumstances, attempt to discover the cause of death, and bring those guilty of murder to the attention of the proper authorities. Most of them are untrained and can do little more than go through the routine motions which may actually serve to hinder the efforts of the police in tracking down the murderer. In order to improve this process some counties have substituted professionally trained medical examiners for coroners. County superintendents of schools sometimes have important functions in connection with rural schools, particularly in the South and the West. However, in many counties their duties are largely routine and involve such matters as truancy. Surveyors check up on boundaries of land; assessors are responsible for the assessment of general property either directly or indirectly through supervising the township assessors.

The Council-manager Plan for Counties The lack of co-ordination 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 1949 fifteen counties had been reorganized and were operating with county managers.[11] The experience of these counties—located in California, Georgia, Maryland, Montana, New York, North Carolina, Tennessee, and Virginia—has not been sufficiently extensive to justify a detailed evaluation. In general, the few counties that use the plan seem to be quite pleased. 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.

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[11] See *Recent Council-Manager Developments*, International City Managers' Association, Chicago, published annually, for current statistics.

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51. The Government of Cities

Although long predominantly rural in character, the United States is at present one of the principal urban countries of the world. That is not to say that as a whole it is so highly urbanized as England and Belgium which have more than two thirds of their inhabitants in cities, though the Middle Atlantic and New England states compare favorably even with these countries. But more than half of the people of the United States now reside in urban places as defined by the Bureau of the Census; [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]

Unevenness of Urbanization Despite the impressive number of cities, the United States has sections which are quite rural in character. The Middle Atlantic and the New England states have more than three fourths of their inhabitants living in cities, while the Pacific coast states and the East North Central states have something like two thirds of their people residents of cities. The other sections are all more rural than urban; the East South Central states, including Kentucky, Tennessee, Alabama, and Mississippi, actually have hardly more than one fourth of their people living in places as large as 2500. The variation among the states is also striking. Rhode Island and Massachusetts both exceed 90 per cent in urbanization, while New York and New Jersey can show more than 80 per cent. At the other extreme are North Dakota and Mississippi which have less than 20 per cent of their inhabitants in urban places.

The Future of Cities in the United States In 1790 only 3.3 per cent of the population resided in cities of eight thousand or more inhabitants, there being only six places of that size altogether. Philadelphia, the largest city, had slightly over forty thousand people; New York City reported some thirty thousand; and Boston had less than twenty thousand. At present in contrast

[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.

to 1790 more than half of the total population reside in places of eight thousand or over, and more than twelve hundred cities of this size are to be found. New York City alone gives residence to more than seven million people, while Chicago claims well over three million. During the first 140 years of the republic urban population grew at a considerably faster rate than the population as a whole. Thus in the first decade ending in 1800 city growth amounted to 60.4 per cent, while the total population increase was 35.1 per cent; fifty years later the corresponding rates were 99.3 per cent and 35.9 per cent. During the decade preceding 1900 cities added 37.1 per cent and the country as a whole 20.7 per cent to their populations, thus indicating a narrowing of the gap between the two. However, as late as the decade ending in 1930, the rate of urban growth was almost twice that of the population as a whole.[3] For the first time in the history of the country cities reported approximately the same growth in the census of 1940 as the United States as a whole.[4] Indeed the larger cities hardly more than held their own, while Philadelphia, Boston, San Francisco, and a number of other places actually had to admit slight losses. Suburban cities which are satellites of large cities continued to show a healthy growth,[5] thus indicating that metropolitan areas as distinct from large cities themselves held up well. Nevertheless, the period of rapid city growth seems to be passed and there is much speculation as to whether cities will be able to maintain their present numbers in the future.

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 most of the states to handle municipal affairs by general statutes. This means that in states where special legislation is permitted still—this includes New England and several southern states—the legal basis of any particular city is likely to be the charter which has been drafted for that city. On the other hand, in most states there are municipal codes or general statutes relating to cities, which, together with amendments added almost every time the legislature meets, constitute the legal foundation for all cities within those states.

[3] Cities increased by 30.2 per cent while the population as a whole expanded only by 16.1 per cent.

[4] The census figures showed a 7.2 per cent increase in general population and a 7.9 per cent increase in urban population.

[5] Rural nonfarm population increased by 14.5 per cent between 1930 and 1940.

Charters The several 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 and does not fit into the political psychology of the United States. 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. The courts have permitted this even in those states which do not allow special legislation. 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.[6] Those states which permit home rule to cities authorize the people of a given 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.[7] 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—which may be selected by any city. This permits some local choice, avoids legal ambiguity, and rules out discrimination, but it has been less popular than was predicted a few years ago.

Relation of Cities to the Federal Government Although cities are the legal creatures of states and consequently maintain most of their formal relations with states, they also have important dealings with the national government.[8] The social security program, the housing acts, the highway activities, and the federal hospital projects have all been of immediate concern to cities, assisting them in no small way in dealing with their many problems. The greater part

[6] Quite frequently the largest city in a state is placed in a class by itself and this, of course, in reality permits special legislation for that city.

[7] For a 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.

[8] For a discussion of federal-city relations, see National Resources Committee, "Federal Relations to Urban Governments," *Urban Government,* 2 vols., Government Printing Office, Washington, 1939, Vol. I, part 2.

of the public works which cities constructed during the decade following 1930 were financed in whole or in part by federal funds. The municipal bankruptcy legislation enacted by Congress contributed to municipal solvency, while the work of the Federal Bureau of Investigation has gone far in keeping municipal crime under control.

Forms of City Government The several states may vary 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. The mayor-council type of government may be further subdivided into two forms which are different enough to deserve attention: (1) the strong-mayor and weak-council and (2) the weak-mayor and strong-council.[9]

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. During colonial days cities in the new world followed this pattern, expecting the mayor to preside over the sessions of the council but otherwise giving him relatively little authority. 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 reiterated 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 mayor-council 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

[9] For a more detailed discussion of governmental structure in cities, see Harold Zink, *Government of Cities in the United States,* rev. ed., The Macmillan Company, New York, 1948, Chaps. 15–18.

cities if mayors are reasonably popular. Records of more than two terms are not customary, though Mayor Daniel W. Hoan of Milwaukee held office for more than twenty years and Jasper McLevy of Bridgeport, Connecticut, has served for an even longer period. 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. Salaries ranging from $8,000 to $15,000 are not uncommon in the largest cities, but anything over the latter figure is the exception. 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. However, there are exceptions such as "Big Bill" Thompson of Chicago and Tom Johnson of Cleveland who either disliked offices or preferred to shut themselves away from public contact. 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 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 a 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 a few exceptional 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; some mayors spend hours and hours interviewing candidates for minor positions in the police or the fire department. 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 [10] 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 fity,[11] 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 [12] 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. There is no unanimity of opinion as to which system is preferable, though a poll of experts in local government conducted by the Bureau of Governmental Research of St. Louis a few years ago to guide in the reconstruction of the council of that city revealed that proportional representation had the largest support, election at large by ordinary methods the second position, and a combination of election at large and by wards the third place.

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. The city clerk may be available to keep minutes and records, or the council may employ its own clerk or clerks for this purpose if the city

[10] 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.

[11] Chicago still has a board of aldermen of fifty members.

[12] See G. H. Hallett, Jr., *Proportional Representation, The Key to Democracy*, Proportional Representation League, New York, 1937, for additional discussion. New York City made use of proportional representation for several years, but it has recently abandoned the system.

is sizable. Representatives of the police department usually furnish any oversight which is necessary to maintain law and order. In the case of small councils the committee 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, being entrusted with a great deal of the actual authority of the council. Meetings are held once or twice each month in the case of small cities and once each week in larger municipalities. In the former evening sessions may be held, inasmuch as the councilmen have their private affairs to attend to during working hours. In large cities, on the other hand, daytime sessions are the rule. Some visitors find council meetings 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. In New York City the council proceedings recently developed such impassioned debate and colorful behavior that the radio listeners decided that a vaudeville entertainment must be in progress. Criticism aimed at the council made the members sensitive to the point that they finally ejected the employees of the municipal broadcasting station sent to handle the transmission of the proceedings to the air.

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.[13]

[13] 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.

The Council-Manager Plan

In the second decade of the twentieth century there came into operation a plan of city government which is now used by almost a thousand cities scattered throughout most of the states.[14] This form has now become second only to the mayor-council system in popularity. It is probable that on the basis of publicity and widespread discussion council-manager government now occupies first place among all forms of city government in the United States.

Fundamental Difference between This and Other Forms As has been noted, the mayor-council type of government embodies 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 [15] and owe responsibility to voters, mayors, councils, courts, and even state governments, the council-manager plan brings all or most 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 candidate for 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. Their responsibility for supervising administrative activities is, of course, slight, since the manager assumes that task.

The Council There is some tendency to confuse the council under the council-manager form with the council under the mayor-council plan. Super-

[14] More than forty 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, and Maine top the list, with more than forty adoptions each. See International City Managers' Association *Recent Council-Manager Developments and Directory of Council-Manager Cities,* International City Managers' Association, Chicago, published annually.

[15] Even under the mayor-council form there may, of course, be co-ordination. The mayor of New York City, for example, has far-reaching authority over the administrative departments.

ficially 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 representation [16] 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: clerks are employed to keep minutes and preserve records; police officers maintain order; and a presiding officer, usually the mayor, performs the usual duties associated with that position. 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. During the early years of the system it was commonplace to employ managers from without a city, though slightly more than half of the thousand appointed up to 1926 were home-town products. As the great depression hit the country, the pressure to take a local man became almost irresistible—in 1933 less than one appointment out of five involved an out-of-town person. The situation has become less tense since that time, but even so local men frequently have a distinct advantage. From the standpoint of local psychology there is perhaps something to be said in favor of naming a townsman, for this serves notice on the world that home-town talent is equal to any and all demands; moreover, the money paid out as salary is devoted to the encouragement of those in the community who need jobs. 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 home-town 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,

[19] Cincinnati uses proportional representation to elect its councilmen, but most council-manager cities now use the ordinary plurality system.

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 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. 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 caliber 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, it is, of course, of the highest importance that the best possible person be taken.[17]

Background of City Managers Clarence E. Ridley and Orin F. Nolting of the International City Managers' Association place as the number one requirement of a city manager "executive or administrative ability as shown by experience in handling men and interest in them, by dynamic personality, and by scientific bent of mind." They add that the manager should have a "constructive conception of the destiny of the American city . . . and a broad social conception of municipal government as a result of training, experience, and reflection." [18] A study of those holding positions as managers some years ago revealed that about 20 per cent had been recruited from private engineering and approximately 25 per cent from various professions and businesses. About half of the managers at that time had come to their jobs directly from the public service, where they had held posts as city or county engineers, city clerks, financial officers, mayors, or members of a city council.[19] In the early days of the use of this plan emphasis was placed upon the physical aspects of city government—streets, public buildings, sanitary facilities, and so forth and consequently it was natural that professional engineers be taken as managers. More recently it has been apparent that other aspects needed more careful attention. This is reflected in the statements made by a majority of managers in cities of over fifty thousand to the effect that education in public administration with experience in municipal work is highly important.[20]

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

[17] 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.

[18] See their *City Manager Profession,* International City Managers' Association, Chicago, 1934, p. 41.

[19] *Ibid.,* pp. 83–87.

[20] *Ibid.,* p. 43.

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.

Assumption of Leadership in Municipal Affairs The proponents of the council-manager form have frequently stated that the manager should not attempt to furnish leadership in municipal affairs, since that is likely to be resented by the council and in any case belongs more to the policy-determining rather than to the administrative side of city government. The International City Managers' Association goes so far as to warn managers against the temptation of assuming leadership in civic affairs.[21] However, studies carried on under such auspices of the Committee on Public Administration of the Social Science Research Council of the actual operation of the council-manager plan in a substantial number of cities revealed that the successful managers do usually assume a considerable responsibility for leadership.[22] Indeed the evidence collected by those who made these studies leads to the general conclusion that irrespective of the theory a manager must furnish leadership in municipal affairs. The people who reside in cities have the general American yearning for personalized politics and under the council-manager form the manager is the logical person to undertake leadership.

Record of the Council-manager Form After several decades of experience it is evident that the council-manager form has a substantial contribution to make. 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 system. Nevertheless, this form encourages progressive city government and at a cost which is ordinarily no higher than distinctly mediocre cities pay. Only approximately thirty cities have abandoned this plan during some forty years of use.[23]

The Commission Form of City Government

In the year 1900 the city of Galveston, Texas, was laid waste by a tidal wave which rushed in from the Gulf of Mexico. Galveston had piled up a floating indebtedness of some $3,000,000 in the decade preceding this disaster

[21] *Ibid.*, p. 30.

[22] 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.

[23] See *Recent Council-Manager Developments*, International City Managers' Association, Chicago, published annually.

and its government was condemned for its corruptness; it was evident that drastic steps would have to be taken to meet the emergency. The legislature of Texas authorized a commission of five business men to take over municipal affairs from the mayor and council and to displace these conventional agencies in running the city. Under this system Galveston rebuilt itself into a finer city than it had been before; municipal affairs were conducted with an efficiency that had been unknown under the mayor-council form of government; and despite the heavy cost of reconstruction the finances of the city were put on a basis that contrasted notably with the shaky system prior to 1900. In short, Galveston discovered that it enjoyed such government as it had never experienced before and indeed had hardly dreamed of; therefore it applied to the legislature for permission to retain the commission system permanently. Other cities in Texas wanted the same privilege and before long the movement had spread to other states. By 1912 more than two hundred cities had adopted the plan and in 1917, when the movement reached its peak, approximately five hundred cities in the United States operated under the commission government. The spread of the council-manager plan has occasioned some loss in the commission ranks, while other commission cities have become disillusioned and drifted back to mayor-council government. At present all of the states with four or five exceptions make some provision for the commission form of city government, but only about 325 cities over 5,000 in population use this system.[24]

Basic Principles of the Commission Form 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. Commissioner government is supposedly the embodiment of business principles, but actually it differs from private business organization quite markedly in that it provides no director or manager to correspond to the single executive in a business corporation.

The Commission The notable feature 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 honorary one.[25] The commission holds public sessions once or

[24] For more extended discussion of the spread of the commission form, see William B. Munro, *The Government of American Cities*, The Macmillan Company, New York, 1926, pp. 307–309.

[25] 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.

twice a month, frequently in the evening so that the citizens may attend in numbers. One commissioner ordinarily presides; a clerk is provided to keep minutes and records; but there is little of the elaborate organization which characterizes large city councils. 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 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. The outbreaks and stormy scenes which have been staged by the commissioners in such cities as Camden, New Jersey, have become almost scandalous. There are instances where the commission plan has worked out well over a period of years, but in most cases the people lose interest and grow cold after a few years, with the result that inefficiency and even corruption return to rear their ugly heads. All in all, 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.[26]

[26] For a more extensive discussion of the weaknesses of this form, see Harold Zink, *Government of Cities in the United States,* rev. ed., The Macmillan Company, New York, 1948, pp. 311–314.

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52. Municipal Administration

The municipalities in the United States give employment to large numbers of persons [1]—indeed a single city, such as New York with approximately 150,000 on its pay roll, overshadows even the largest state. They have to raise something like $4,000,000,000 in revenues every year, which is, of course, no mean task in itself. They draft budgets which provide for the expenditure of about $4,000,000,000 and have gross indebtedness which exceeds $8,000,000,000. Of course, there are numerous records which have to be kept. The more progressive cities maintain planning commissions which are charged with various problems, often of considerable magnitude.[2] In addition to all of these staff functions, cities carry on numerous activities intended to meet the needs of their inhabitants and it is in this field that the relationship of cities to the people is especially intimate. The average man may have only a vague notion of what is done by the Department of State in Washington or the department of commerce and labor in his state government, but he can hardly escape some knowledge of the activities of his city in maintaining streets, providing parks, and furnishing a water supply. It is impossible to devote adequate space to these highly important activities here—that belongs to courses in municipal government—but a few generalizations may be made.

Public Works

Perhaps the most apparent activity of a city relates to public works, since the physical appearance of a municipality depends in large measure upon what is done in this sphere. A study of twenty-five representative cities some years ago revealed fifty-six functions which are performed by public works departments;[3] twenty of these functions are to be observed in a majority of the cities. Here are such activities as street design, improvement, and maintenance; street cleaning; sidewalks; street lighting; street-name signs; house numbering; bridge design, construction, and maintenance; sewer design, con-

[1] For current statistics, see Division of State and Local Government, Bureau of the Census, *Public Employment in the United States*, Government Printing Office, Washington, issued annually.

[2] For a detailed discussion of these, see Harold Zink, *Government of Cities in the United States*, rev. ed., The Macmillan Company, New York, 1948.

[3] C. E. Ridley, *The Public Works Department in American Cities*, Institute of Public Administration, New York, 1929, p. 31.

struction, and maintenance; sewage disposal; refuse collection and disposal; maintenance of all city-owned motor equipment; and inspection and construction of public buildings.

Street Design Most of the streets in cities have been laid out in a somewhat hit or miss fashion by amateurs, frequently by land promoters. In the old days new townsites were surveyed by those who hoped that railroads would be built as connecting links with the outside world or that industry would attract inhabitants. Land situated on the outskirts of existing cities has been subdivided into building lots in order to make a profit for realtors or owners and incidentally to furnish residences for city dwellers. A great many of these town sites and additions failed to attract settlers in large numbers and have either been entirely abandoned or exist as marginal communities, often of a very dreary character. Others have been more successful and now give residence and sustenance to thousands and even millions of people. But with few exceptions the men who laid out the streets did it in the quickest, easiest, and most economical fashion, eager to get rich by selling their lots to prospective buyers.

The Gridiron Plan It happened that the simplest and cheapest method of street design was the checkerboard, gridiron, or rectangular layout, where the streets crisscrossed at right angles running North and South and East and West. Hence most of the cities in the United States follow this pattern, which many foreign observers regard as uninteresting, complaining that with few exceptions cities in the United States lack individuality.

The Radial Plan In a few cases those who were responsible for designing the streets had more imagination. Major Pierre Charles L'Enfant was employed to prepare a street layout for Washington and he, having in mind the reconstruction of Paris, decided to base his plan on great diagonal avenues radiating from the Capitol. His plan was not followed entirely, with the result that the present city of Washington combines the radial street layout with the more conventional gridiron plan. In order to reduce distance from one corner of the city to another, several municipalities have superimposed radial streets on their gridiron layout, but this is about as far as the radial plan has been adopted in the United States.

Other Street Plans In numerous cities the newer residential sections are laid out irregularly. Perhaps the streets follow the contours of the land, thus running along hill tops or in valleys; at times they follow the course of a stream. No attention is paid to straightness; indeed the emphasis is placed on avoiding regularity as far as possible. In a few garden cities superblocks with cul-de-sac streets have been laid out in order to obviate the noise and menace of through traffic and to permit houses to front on open spaces of a parklike character rather than on streets.[4]

[4] For plates showing the several types of street layouts used in cities of the United States, see Harold Zink, *op. cit.*, pp. 568–569, 571.

No Single Street Layout Perfect Except possibly in a small garden city, it is not probable that any single street plan will be desirable. In the downtown areas which are given over to business there is much to be said for the gridiron layout; through highways which carry heavy traffic may represent the diagonal type; while residential sections may find it desirable to use a plan which capitalizes on the natural beauties and permits architects to use their talent in planning unusual houses.

Importance of Use One of the chief defects in many streets grows out of the fact that their width is not related to their use. Thus some streets are so narrow that it is dangerous to drive along them and indeed parking cannot be permitted on one or both sides. Other streets may be wide enough for local traffic, but they are not adequate to carry the heavy stream of cars which seeks to use them. At the other extreme there are streets in residential districts which are fifty or more feet wide, though they carry very little traffic. When most of the streets were laid out, horse vehicles were still in use and the amount of traffic was far less than at present. This, of course, accounts for the inadequacy of many streets, though it must be added that some streets were never planned with any idea of what use would be made of them. Unfortunately streets once designed cannot easily be redesigned and hence it is necessary to get along with narrow streets. However, in new additions or in reconstructing old areas it is exceedingly important that street widths be based on a careful study of the probable use that will be made of them. A purely residential street should make allowance for parallel parking on both sides and two traffic lanes and therefore will be thirty-six feet wide—eight feet for each parking area and ten feet for each traffic lane. Anything less will make the street dangerous; additional width will ordinarily serve no useful purpose but will add considerably to the cost of paving and upkeep. Downtown streets may be laid out on the same basis, except that additional traffic lanes will be essential and it may be necessary to allow for streetcar tracks.[5]

Street Surfacing Though in the old days people expected to suffer muddy streets in wet weather and dust in dry weather, today it is regarded as essential for cities to surface many and in some cases virtually all of their streets. Main streets are hard-surfaced even in very small cities, while residents of metropolitan centers and more progressive small cities look with critical eye on any street that is not given some protection against the elements. Several different types of surfacing are in current use and others have been tried in the past. Some years ago both brick and wood-block pavements were regarded with pride in many cities and it is not particularly uncommon to encounter these types of surfacing even now. However, no new wood-block pavements have been laid for some years and old ones are being replaced by other varieties of surfacing. Brick has more supporters, but it, too, is not

[5] On street layouts, see Thomas Adams, *The Design of Residential Areas,* Harvard University Press, Cambridge, 1934.

highly regarded now by most of those who are responsible for authorizing new paving. Concrete and asphalt stand at the top as far as permanent surfacing goes, though both are expensive and require adequate foundations. Granite block may be specified for streets in sections around docks or wholesale concerns where traffic is destructive of anything else. Various types of macadam, black-top, and heavy oil surfacing are popular for residential streets where little traffic has to be provided for and comparatively little money is available for improvements. These require less costly bases and materials can be laid rapidly; they have the disadvantage of rapid deterioration, with consequent necessity of frequent repairs. Pavements should be smooth, easy to clean, and durable; they should not occasion too much noise under use or be slippery when wet. Thus far no surfacing material has been found which meets all of these specifications and at the same time is cheap; concrete and asphalt are perhaps the most satisfactory if cost is not an important factor.

Street Lighting Almost all cities, irrespective of size, make some effort to light their streets at night. Until the middle of the nineteenth century such lighting as cities had was ordinarily furnished by oil lamps; that gave way to gas lighting; and gas in turn has largely surrendered to electric illumination. Two general systems of lighting are in common use: standard and suspension. The former requires a metallic or concrete standard, a frosted globe, and a high-candlepower bulb and usually is based on both sides of the street. This system is expensive to install and consumes more electric current than the suspension type, but it is superior from an aesthetic standpoint. Suspended lights are widely used for the illumination of residential and industrial districts and may be affixed to a bracket attached to a single pole or hung between poles on different sides of the street. Carbon arcs at one time had more or less of a monopoly, but they have given way in many instances to powerful incandescent bulbs of the mazda type. Being high over head these lights illuminate a considerable stretch of street and sidewalk. The primary purpose of street lighting are to (1) guide pedestrians, (2) discourage crime, and (3) enable motorists to drive safely. At present the last is ordinarily rated as the most important, though the glare produced by many municipal lights might not suggest that. Experiments have indicated that approximately half of the traffic accidents taking place on city streets at night can be avoided if lighting is adequate.[6]

Street-name Signs Progressive cities have recently given attention to the placing of street-name signs along their streets, though signs of one kind and another have been used for many years. But the ordinary street-name sign has been more or less illegible at any distance to begin with; moreover, it has been so located that strangers have often found it difficult to discover. Some cities have set up special standards; others have attached signs to utility

[6] See R. E. Simpson, "46 Per Cent Fewer Accidents on Hartford's Relighted Streets," *American City*, Vol. LIII, p. 55, October, 1938.

poles or lamp standards; sides of buildings have been made use of; names have been painted on the curbing at street intersections; while occasionally street names have been etched in the concrete of sidewalks. In all too many instances motorists have found it impossible even during daylight hours to read signs without stopping their cars and getting out to investigate; at night the difficulties have been intensified. By standardizing the location of signs, studying the importance of height above the street, experimenting with legibility, and utilizing street lights, several cities have accomplished worthwhile results in making their streets less confusing.

House Numbering Closely related to the problem of street-name signs is that of house numbering. If strangers are driving along a street which is regularly numbered, it is possible to count intersections and thus arrive approximately at the address desired. Those cities which ignore cross streets and go right on through the hundreds until all numbers are exhausted, not even making allowances for schools, parks, and other property not requiring numbers, are usually very difficult places to get about. Individual numbers are ordinarily affixed to houses and buildings themselves, but the general practice is regulated by ordinance or rule drafted by the department of public works. In many cities there is no common plan of locating these numbers, with the result that one may have to explore transoms, pillars, steps, curbing, and other parts of property before finding the numbers even during daylight hours. At night only those who delight in weird searches are likely to find any satisfaction in attempting to locate a house in a strange city, unless one of the new reflecting type of number plates is perchance set up near the street.

Sewage Disposal Sewage is by all odds the most dangerous waste product of a modern city; if it is not properly disposed of and contaminates the water supply it can cause a great deal of trouble. For many years cities did not realize the connection between good health and sewage disposal and consequently got rid of their sewage as easily as possible, usually emptying it into some near-by body of water. Where the quantity of water was large and the amount of sewage not too great, this method worked out reasonably well, for sunlight and air effected the purification of the contaminated water. But in many instances, as cities increased in size and added to their plumbing facilities, the quantity of sewage became so vast that no available body of water could be relied upon to protect against a menace. Some large cities finally reached the point where they were literally located in the midst of gigantic sewers. The situation became so serious that many cities, either of their own volition or because they were ordered by boards of health or the courts, have constructed sewage-disposal plants. The techniques employed by these plants vary widely and pertain to sanitary engineering rather than to government. Sedimentation, aeration, and chemical treatment are among the methods encountered. No categorical statement can be made as to what type of sewage disposal plant should be used by cities, since a great deal depends

upon the individual city. In other words, a system of sewage treatment that may be adequate for one city might be entirely out of the question for another because of the nature of the sewage, the quantities involved, and the location of a city in relation to large bodies of water and other cities.[7]

Collection of Garbage In addition to sewage, cities produce large amounts of other waste products, of which the most important is probably garbage. Garbage is composed mainly of organic matter from kitchens, hotels, and food-manufacturing establishments; during hot weather it decomposes rapidly and causes distinct unpleasantness unless promptly disposed of. Small cities sometimes expect householders to bury, burn, or otherwise make provision for their accumulated garbage, but sizable cities ordinarily either collect this waste themselves or enter into a contract with a private collector for this service. The most common method of getting rid of garbage, if private collections are taken into account, involves the feeding of hogs. Such a method is open to serious question, since the United States Public Health Service has discovered that garbage-fed pork is a major source of trichinosis. Cities frequently use garbage to fill in low land. Seaboard cities have resorted to dumping their garbage in the sea, but this occasions embarrassment when the tides carry the refuse back to shore and beaches become glorified garbage dumps. The large cities are increasingly depending upon garbage-disposal plants either of the reduction or incineration type. Reduction plants are not being built at present because they are costly to begin with, produce unpleasant odors, and seldom reclaim enough grease and low-grade fertilizer to pay expenses. Incinerators are less expensive to build and can be constructed in several localities so as to reduce the haul. Incinerating plants do not pretend to make a profit, but they dispose of garbage in a more sanitary method and largely eliminate the objectionable odors incident to reduction plants. Low-temperature incinerators apply the principles of ordinary combustion, while the more efficient high-temperature plants achieve a temperature of 1200 degrees Fahrenheit, require less fuel, less labor, and less space and completely consume the garbage.

Ashes and Rubbish Ashes make a reasonably satisfactory material for filling and may be advantageously used by cities to fill marshes, swamps, and shallow lake and ocean areas. Both New York City and Chicago have reclaimed by this method hundreds of acres of waterfront land, which has been used for parks, boulevards, beaches, and other public purposes. Rubbish may also be used to fill in waste land, but it does not prove too satisfactory for this purpose. Small cities frequently make no effort to collect either ashes or rubbish, depending upon their householders to hire these wastes hauled away. However, larger cities take their responsibilities more seriously and follow a variety of courses in disposing of rubbish. Municipal dumps may be main-

[7] For additional information relating to sewage disposal, see Leonard Metcalf and H. P. Eddy, *American Sewerage in Practice*, McGraw-Hill Book Company, New York, 1936.

tained for the accommodation of that part of rubbish which cannot be salvaged; incinerators may be constructed to receive the rubbish, though metals and glass do not receive very effective treatment by means of combustion.[8]

Public Utilities

Public versus Private Ownership of Water Systems Almost all cities make an effort to provide water for their citizens from a central system, unless a private company has taken over such a service. During recent years there has been a substantial increase in the number of municipal water works, perhaps primarily because of the assistance extended by the P.W.A. Dr. L. D. Upson goes so far as to declare that "public ownership is almost taken for granted in the field of water supply." [9] A study made by the National Resources Committee a few years ago revealed that some 7,800 out of 10,800 water systems are public-ownership projects, that all cities over half a million in population own their water works, and that approximately 84 per cent of cities over thirty thousand prefer public ownership of water facilities to private ownership.[10] On the whole, cities have found it possible to furnish water at a lower cost to the consumer than private companies. Inasmuch as an adequate supply of cheap water is a most important asset and has an intimate bearing on superior health, comfort, and general attractiveness, the mere matter of cost alone points in the direction of public ownership.

The Problem of Quantity The amount of water required per capita in cities of the United States is far beyond the expectation of the average citizen. Water consumption in the cities of certain backward countries may run to only a few gallons per day, particularly where aridity makes a large supply difficult. In the United States there is a variation from city to city, but in general our consumption is the highest in the world and usually runs from one hundred to two hundred gallons per person per day. Of course, domestic consumption does not begin to account for this heavy use, though the modern plumbing facilities commonplace in large numbers of dwellings do require considerable quantities of water. A good deal of water is undoubtedly wasted because many people have the notion that water is furnished by nature in inexhaustible amounts and without charge. In some cities it is estimated that as much as half of all water pumped is wasted—the amount of water allowed to run down the drain pipes to prevent freezing during a cold night in the winter in a northern city may actually exceed the rate of consumption during the day when people are using water for more legitimate purposes. Industrial users

[8] A source of additional information relating to municipal public works is D. C. Stone, *The Management of Municipal Public Works,* Public Administration Service, Chicago, 1939.

[9] L. D. Upson, *The Practice of Municipal Administration,* D. Appleton-Century Company, New York, 1926, p. 505.

[10] National Resources Committee, *Our Cities—Their Role in the National Economy,* Government Printing Office, Washington, 1937, p. 48.

account for large amounts of water in many cities; the fire department, public buildings, the street department, and parks require fairly large amounts of water, though fire departments use less than is commonly supposed—perhaps 2 per cent or thereabouts. During recent years air-cooling systems, which have been installed in large numbers, have presented a serious problem in connection with the water supply, since they must have large quantities and even if they do not depend upon the municipal water works often drain the subsurface to such a point that the city supply is threatened.

Water Sources Cities get their water supply from a variety of sources, including wells, lakes, and rivers, and watersheds. Many small cities and some large ones depend upon driven wells for all or part of their water supply. The cities located on the Great Lakes frequently draw their water from these great reservoirs, while cities along such rivers as the Mississippi and Ohio often depend upon river water, though it is ordinarily badly polluted. A few cities, Denver for example, are fortunately situated near mountain streams which furnish them with supplies of clear, cool, and reasonably pure water. In a number of cases no rivers or lakes are available and wells cannot be expected to produce adequate quantities of water; so it is necessary to acquire large areas of uninhabited land for the collection of surface water. New York City, Boston, Baltimore, and Portland, Oregon, are among the large cities that rely on watersheds. In order to make use of such a plan land must be obtained where the rainfall is reasonably heavy; dams and reservoirs must be constructed to collect the water and hold it until needed; and sanitary policing must be provided to prevent undue contamination.

Treatment of Water Except in the case of some deep-well water, very little untreated water available to a city possesses the qualities which good water should have: relative freedom from bacterial contamination, clarity, reasonable softness, and absence of unpleasant taste and odor. Consequently most cities have to treat their water supply before it can be distributed to the domestic and industrial users. Where hardness is a problem, lime and sodium carbonate are sometimes used to precipitate some of the objectionable matter; suspended particles of earth and sand can usually be removed to some degree at least by simple sedimentation. Iron and manganese, which cause discoloration and offensive taste, may be reduced by aerating water, but no inexpensive method practical on a large scale has thus far been worked out for treating salt water. The most serious problem of processing water involves the removal of bacterial and organic contamination. Aeration is employed to reduce organic contamination and has some beneficial effect upon bacterial content. A simple method of dealing with bacterial pollution calls for the addition of liquid chlorine or a chemical which when added to water produces chlorine, but this cannot be depended upon alone if the bacterial content is high. In those places where the raw water is far from satisfactory, cities frequently have relied upon filtration, constructing either slow sand filters or mechanical

filters which can handle from 125,000,000 to 250,000,000 gallons of water per acre daily.

Electric Utilities There has been spirited discussion in many cities of the desirability of acquiring electric utilities. A number of cities which have followed this course are most enthusiastic and sometimes report that they are able to abolish general property taxes because of the earnings of the electric utility which are diverted to the support of the city government. In general, municipal ownership has made nothing like the headway among cities of the United States that can be noted in European countries. Approximately half of the electric plants in the United States are publicly owned, but for the most part they are small affairs and generate hardly 5 per cent of the total power. The federal power projects in the Tennessee Valley and the Northwest are encouraging municipal distributing systems, with the result that during a recent period of two years 478,662 persons were added to the coverage of the publicly owned electric utilities. Yet even so only a small proportion of the population is served by these utilities.[11] The achievements of the municipal plants are diverse and depend to some extent upon the point of view which is held by the interpreter. Rates in general are lower under municipal ownership; service is sometimes not so satisfactory because of the size of the plant and the lack of the latest generating equipment. Municipal electric utilities do not pay taxes to the city and hence it has been claimed that their rates cannot be compared with those of privately owned utilities; however they do make contributions in lieu of taxes, which the Federal Power Commission has found to exceed the taxes paid by the private utilities.[12]

Gas The number of cities owning and operating their own gas plants is comparatively small. Approximately fifty plants out of nine hundred fall into such a category and less than 2 per cent of the gas for lighting and heating comes from municipal gas plants. For the most part, the cities engaged in this business have less than ten thousand inhabitants, though Philadelphia has been a striking exception. There seems to be little prospect of any considerable increase in municipal activity in this field during the immediate future.

Transportation Periodically the question of municipal ownership of transportation facilities has reached a white-hot point in some of the large cities. Nevertheless, the record of cities in this field is in general less impressive than in the lighting and power business, for less than 5 per cent of the municipal transportation facilities in the United States are owned by cities. San Francisco, Seattle, Cleveland, and Detroit have been most active in street-railway management and in no case has the record been all that was expected; Chicago voted in 1945 to take over its local transportation system. In the

[11] See Federal Power Commission, *Rates, Taxes and Consumer Savings—Publicly and Privately Owned Electric Utilities, 1937–1939*, Government Printing Office, Washington, 1941.
[12] *Ibid.*

rapid-transit field the capital outlay is so great that cities have been compelled to assume the initial responsibility, though they have not always operated the systems. New York, Boston, Philadelphia, and Chicago all have financed the building of subways out of public funds. New York City has recently taken over the operation of its subways from private companies and is the leading example of municipal ownership and operation of transportation facilities.

Markets American cities have given more or less attention to markets for many years, despite the difficulties which have been encountered. Two general types of markets are operated: wholesale and retail. The wholesale market is very important because it is an integral part of the process of distribution and the city seems the logical agency for providing facilities to bring the farmer and the retailer together. The wholesale markets maintained by New York City, Chicago, and other large cities are mammoth affairs, though the average citizen may be more or less unaware of their existence because of their location in the wholesale district and the fact that they transact most of their business in the early morning hours. Retail markets have encountered the competition of the chain stores and in many cases have not been able to offer lower prices. Local farm markets have their place, but the large markets which some cities house in permanent structures no longer involve the farmers themselves in many instances. Cities such as Newark, New Jersey, and New York have recently invested large sums of money in some of these retail markets.

Airports During the 1930's there was a veritable craze in the direction of building municipal airports. Cities of three or four thousand inhabitants joined the procession and invested their small funds in airports that even with federal assistance have often been too inferior to serve a useful purpose. New York City, at the other extreme, has spent many millions of dollars on its La Guardia and Idlewild International airports which are among the largest commercial airports in the world. Several hundred cities now own municipal airports of one kind and another. Some of these have little or no use and indeed have virtually been abandoned, but those in large cities are frequently very busy places and definitely justify themselves. With the changes that have come in plane size, the expansion of commercial aviation, and the experience of some years, cities have been forced to enlarge their airports and to pay greater attention to hazards of various sorts.

Public Schools and Libraries

Public schools are responsible for the largest expenditure of any municipal activity. All cities except the smallest which join with other political units for school purposes, provide educational facilities from the kindergarten through high school; many add junior colleges; and some of the largest including New

York City, Detroit, Cincinnati,[13] Louisville, Toledo, Akron, and Topeka, Kansas, maintain full-fledged colleges.

Relations of Public Schools to City Government Although the average citizen does not seem to get very wrought up over political domination of public works departments, recreational facilities, and other municipal enterprises, he professes to believe that education and politics do not mix. This widespread distrust has resulted in the partial or complete separation of school systems from city government in the majority of cities in the United States. The provisions which have been made to accomplish this purpose are so diverse that it is difficult to present a clear picture. Some states specify separate school cities which exist alongside of civil cities and enjoy the same authority to levy taxes, appropriate public funds, and incur indebtedness; others provide that school affairs shall be entrusted to boards of education which are popularly elected. A study carried on by the University of Chicago a few years ago showed that in 139 out of 191 cities of 50,000 or larger school-board members are chosen by popular election and that only 22.6 per cent of these cities definitely integrate their school systems with the general structure of local government.[14] However, in many instances elected school boards depend upon city councils for financial support—48.2 per cent of the 191 cities referred to belonged to this category.[15] Despite all of the arguments which have been advanced against making the schools an integral part of municipal government, the University of Chicago research staff concluded that politics plays substantially as important a role in school systems that are independent as in the integrated setups. Thus it would seem that more might well be done in the direction of bringing schools into closer relationship with city governments. Such a step would probably lead to certain economies in purchasing of supplies and the maintenance of equipment; municipal facilities for handling bonded indebtedness would be placed at the disposal of school systems; election procedure might be simplified; and government authority would tend to be concentrated rather than divided.[16]

Election of School Boards Inasmuch as most cities prefer to elect their school boards rather than have them appointed by the mayor or chosen in some other way, it is necessary to consider certain questions which arise in this connection. Are separate school elections desirable? Should school-board members be chosen on a nonpartisan basis? Is election by districts or at large to be preferred? The majority of cities choose their school-board members at regular municipal elections, though some 36 per cent of cities with populations of under 100,000 apparently use separate elections for this purpose.

[13] Cincinnati supports a university which has an arts and science, law, medical, graduate, and other faculties.

[14] See Nelson B. Henry and Jerome G. Kerwin, *Schools and City Government*, University of Chicago Press, Chicago, 1938, p. 10.

[15] *Ibid.*, pp. 50–51.

[16] It is only fair to note that some of these advantages have been achieved on a co-operative basis despite political independence.

There is a difference of opinion as to which arrangement is preferable. Advocates of separate elections maintain that less partisanship will be manifested; opponents point out the costs involved and the fact that the number of voters turning out is distinctly less than in the case of regular city elections. Almost all thoughtful persons agree that partisanship has no place in superior school administration. Election at large has proved more satisfactory than election on the basis of districts.

Relationship of School Boards and Superintendents School boards are supposed to determine general policies, decide on building programs, and care for financial matters, but after choosing a superintendent they should leave the routine operation of the schools to his supervision. Unfortunately many school boards like to have a finger in hiring and promoting teachers and in certain other things which they know little or nothing about. The superintendent might insist on being left alone in such matters, but his job depends upon the school board and hence he frequently dares not assert independence. The interference of school-board members in the educational policies and personnel practices of schools may be fully as serious in effect as political influences.

Public Libraries Considering their role in connection with an informed body of citizens—so essential in a democracy—public libraries have not been generously treated by cities. Some cities do not even maintain public libraries; others give such niggardly support that there is almost no money for the purchase of new books. When the income of a city is reduced, one of the first agencies to suffer is frequently the public library. The average amount provided by cities over one hundred thousand population is not much over 50 cents per capita annually. There has been a wide diversity in the practices of cities relating to the organization of public libraries. Some cities set up independent boards; others place public libraries under the public schools; still others make them a part of some general administrative department, such as public welfare or recreation.

Welfare, Health, and Recreation

Relief In small cities relief is usually not a municipal function, being entrusted to the county or township, though a good many small cities do carry on activities of this character. In the larger cities municipal relief agencies seem to have the edge, though cities such as Chicago and Los Angeles depend upon their counties to attend to this task. In those cities which assume the responsibility for assisting the needy, no problem has required more attention or occasioned greater worry during recent years. Relief has been demanded in both rural and urban areas, but the seriousness of the problem has been particularly accentuated in cities. The 30 per cent of the people residing in 116 urban areas of the United States receive about half of the amounts dis-

bursed by federal, state, and local governments for all forms of relief, while 70.7 per cent of all general relief paid out of public funds has recently gone to these same urban areas. Prior to 1930 relief was largely handled by private organizations, but at present less than 1 per cent of the amounts devoted to this purpose in the 116 urban areas comes from private sources. The vast amounts of money required, the necessity of investigation and supervision of the individual cases, and the unwillingness of large numbers of citizens to face the problem realistically have taxed the resources of even the strongest cities.

Outdoor versus Indoor Relief In so far as cities were active in the welfare field prior to 1930 they usually concentrated on indoor or institutional relief. Thus they provided almshouses, homes for the aged, municipal lodging houses, and orphanages. Some of these institutions still are operated, but the major effort of cities in the public welfare field is now directed at outdoor relief. Money, grocery orders, food, clothing, medical assistance, fuel, legal aid, and rent are now given in their homes to those persons who after investigation meet the requirements.

Public Health The activities of small cities in the public health field may be almost purely nominal, with a local doctor designated to give a little of his time to the problems arising out of public health. In sizable cities, full-time health officers are usually employed and receive reasonably adequate budgets for carrying on various programs relating to public health. Among the functions which municipal health departments undertake are the following: collection of vital statistics, control of communicable diseases, promotion of child health, inspection of milk, food, meat, and drugs, maintenance of hospitals and laboratories, the control of nuisances, the inspection of buildings, the direction of campaigns intended to arouse the people to the importance of public health, co-operation with state and federal authorities in the stamping out of veneral disease.

Recreation More progress has been made in the direction of providing adequate parks and recreational facilities in cities of the United States during the last two decades than in any other corresponding period. Park areas have been substantially increased; existing parks have been improved so that they would meet recreational needs. Stimulated by the federal government, cities have undertaken a large-scale program of supervised recreation.

Public Housing It has been pointed out in discussing the housing program of the national government [17] that cities in the United States have been very backward in this field. Acting under authority of state law several hundred cities have now set up housing authorities which have drafted projects for submission to the Housing and Home Finance Agency which is given authority to promote low-cost housing projects in cities. Loans and grants are made by this agency to these local housing authorities for the purpose of razing slum

[17] See Chap. 34.

areas and constructing in their stead modern housing facilities which may be occupied by those whose incomes are such that they are self-supporting but not far above the subsistence level.[18]

Police and Fire Protection

Until comparatively recently cities did not undertake the tasks of police and fire protection in very serious fashion. Amateur police forces, frequently paid for by the property owners, were maintained to go about at night, while volunteer fire companies were at hand to offer their services in putting out fires. But in neither case was the service rendered adequate. As crime became organized and fire losses mounted, citizens demanded that cities attempt more effective control in these fields and the result has been that it is now taken for granted that cities will maintain professional police forces and full-time fire companies.

Police Organization For some years there was a feeling that the police department could best be directed by a board, but experience proved that this was a mistaken idea and that a single commissioner is required for decisive action. While a few cities continue to use the board system, it is now customary for the mayor to appoint a single official to head the police department and be immediately responsible for the conduct of the men who constitute the police force. Under the commissioner there is often a chief of police who is drawn from the ranks of professional policemen. Various subdivisions are established at headquarters to deal with traffic, murders, personnel records, identification, public relations, and property, while in a large city district stations in charge of captains are usually provided to supervise the direct work of the patrolmen.

Police Problems With crime so well organized in the United States, population drawn from every corner of the earth, and the rewards of successful criminals apparently great, it is not surprising that police departments have the most difficult problems of any police in the world. The murder rate in our cities is many times that reported in England, for example, while burglaries run to several times those of England. Then there is the task of regulating traffic on city streets, which were never intended in many cases for heavy motor movement. The fact that traffic is sometimes much more congested than at other times adds to the complications, since it necessitates shifting policemen from their regular duties to special traffic work. Then there is the whole matter of politics, not only within the police department itself but in the courts to which the police have to take their cases. If guilty persons are released by politically minded judges, it serves notice on the criminal world that crime can be committed with impunity; moreover, policemen are discour-

[18] For additional information, see Nathan Straus, *What the Housing Act Can Do for Your City,* Government Printing Office, Washington, 1939.

aged from doing their best work if they have reason to believe that the courts will not support their efforts.[19]

Fire Protection The use of wood in building, the carelessness of the American people, and the emphasis upon fire fighting rather than fire prevention in many cities contribute to the fire loss in the United States which far exceeds that of most other countries. In 1926 Dr. Upson [20] reported the annual per capita fire loss of certain countries as follows:

United States	$4.75
Great Britain	0.72
France	0.49
Switzerland	0.15
Holland	0.11

The record in the United States has been improved since that time, but it is still high. It is only fair to point out that the urban fire loss per capita is only about half that of rural sections.[21] Nevertheless, allowing for improvement and the higher rural share, cities in the United States still rank at the bottom among the cities of the world in keeping fire losses down.

Fire Departments Small cities usually have only a single fire station where the few fire employees and the fire-fighting apparatus are housed, but sizable cities are divided into districts, each of which receives a firehouse. Small cities may employ three or four firemen in contrast to the hundreds and even thousands who are to be found in such cities as New York and Chicago, but interestingly enough they make a better showing on this basis than in the case of police departments.[22] Both large and small cities now depend entirely upon motorized equipment, which includes general trucks, ladder trucks, hose trucks, chemical trucks, and rescue wagons. Fire departments are usually headed by single commissioners who receive their positions from and owe responsibility to the mayor.

Importance of Emphasis on Fire Prevention Increasingly during recent years cities have given attention to fire prevention and this accounts in no small measure for the impressive reduction made recently in fire losses. Not much can be done to change the type of construction of a city in a short time, but adequate building codes will accomplish a great deal over a period of years. Zoning ordinances may be used to segregate industrial plants in which the fire hazard is high, so that in the event of fire there will not be a general

[19] An excellent discussion of police administration may be found in *Municipal Police Administration*, rev. ed., Institute for Training in Municipal Administration, Chicago, 1945.

[20] *The Practice of Municipal Administration*, D. Appleton-Century Company, New York, 1926, p. 225.

[21] See National Resources Committee, *Our Cities—Their Role in the National Economy*, Government Printing Office, Washington, 1937, p. 17.

[22] This is because the complexity of police administration increases more rapidly as population goes up. A small city of five thousand may have three policemen and five firemen. New York City has about twenty thousand policemen and something like seventy-five hundred firemen, while Chicago has slightly less than half as many firemen as policemen.

conflagration. There is much to be said for frequent inspection of premises to see whether fire hazards exist as a result of carelessness. Many basements have old newspapers, excelsior, rags, and other highly inflammable material, while backyards may contain similar fire hazards. Inspection by a fire department and insistence that premises be placed in a less dangerous condition would doubtless prevent many fires. Campaigns directed against the careless disposal of cigarette stubs also have probably served a useful purpose, though much remains to be done.

City Planning and Zoning

City Planning Although the formal planning activities of the national and the state governments have been instituted quite recently, city planning has received the attention of fairly large numbers of people for many years.[23] Starting out as a movement to beautify cities, planning expanded about 1915 to include land-use and other items primarily related to the physical aspects of city government. Since 1929 emphasis has been placed on "providing for the social and economic betterment of the people in the community." [24] Among the important items which the American City Planning Institute has listed are: housing, zoning, population and industrial trends, parks, recreation, land-use, airports, transportation, water supply, sewage disposal, public buildings, and public works. Almost all of the states authorize their cities to deal with planning and several hundred planning commissions, usually consisting of from five to nine members, have been established to draft policies. In sizable cities full-time professional staffs may be employed to assist in carrying into effect the policies laid down by the planning commission.

Zoning It is probable that no phase of planning has received greater attention during the last quarter of a century than zoning.[25] More than fourteen hundred cities in the United States have seen fit to pass zoning ordinances which designate the use to which land situated in the various sections within a city can be put. Small cities sometimes specify three types of zones: purely residential, mixed residential and business, and business, while larger cities may find it desirable to provide zones for single-family houses, for single-family dwellings and apartment houses, for retail business, for wholesale business, for industrial plants, and so forth. Ordinances apply only to the future and rarely affect property already dedicated to a given use, though there is some agitation in favor of making them retroactive. City councils are ordinarily given authority to rezone land, thus avoiding a plan which is unduly rigid.

[23] The city planning movement in the United States is usually identified with the present century, though some attention was paid to beautification before 1900.

[24] Quoted from a letter written by Mr. Walter H. Blucher, executive director of the American Society of Planning Officials, to the author.

[25] For additional discussion of zoning, see E. M. Bassett, *Zoning: The Laws, Administration, and Court Decisions During the First Twenty Years,* Russell Sage Foundation, New York, 1936.

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53. Townships, Villages, and Special Districts

If the inquiring reporter stopped the average American on the street and asked him to name the various units of government to be found in the United States it is probable that he would be told that in addition to the government at Washington there are states, counties, and cities. A few would doubtless add territories and the District of Columbia and in New England the town would certainly come in for attention. However, it is improbable that the majority of people who constitute the population of the United States have more than a vague idea of the maze of governmental units below the county and city. Take the national government and add to that the forty-eight states, the approximately three thousand counties, and the more than three thousand places of over twenty-five hundred population and one arrives at a number somewhat in excess of six thousand. Yet Illinois alone has approximately seventeen thousand different governmental units and Los Angeles County in California can boast of some eighteen hundred governments and special districts for which taxes are levied. According to a study made a few years ago by the National Resources Committee there were 271 incorporated places in metropolitan New York City; 134 in Pittsburgh; 114 in Chicago; and 91 in Philadelphia.[1] Altogether it has been determined that there are in excess of 150,000 governmental units and districts in the United States.[2] Thus it may be seen that the number of states, counties, and cities is very small in comparison with the number of other governmental units that the ordinary citizen hardly knows exist. This is unfortunate in a democratic form of government, since it means that many, perhaps most, of these political units receive little public attention. They are, therefore, all too often the resorts of politicians who use them to their own advantage. No wonder that taxes soar and inefficiency is rife.

New England Towns

It has been pointed out previously [3] that the town system of local government developed in New England at the same time that the county was serving as the basis in the South. The county has now been superimposed upon the

[1] See National Resources Committee, *Our Cities—Their Role in the National Economy*, Government Printing Office, Washington, 1937, p. 66.

[2] See William Anderson, *The Units of Government in the United States*, Public Administration Service, Chicago, 1942.

[3] See Chap. 50.

town system in Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, and Vermont; cities have also been chartered as the population has grown. Nevertheless, the town continues as the chief unit of local government in most sections of New England which are not urban in character.

Nature of a Town There are three general types of towns in New England: 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. This type of town is particularly common in Vermont, New Hampshire, and Maine. 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 such as Brookline, Massachusetts,[4] 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.[5]

Scope of Town Jurisdiction Though there is nothing like uniformity in the policies of state legislatures relating to towns, 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. In the towns which are entirely taken over by human habitations and business structures these services are, of course, more elaborate and approximate those to be encountered elsewhere in small cities.

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

[4] This town has a population of some fifty thousand.

[5] For a detailed treatise on town government in one state, see John F. Sly, *Town Government in Massachusetts: 1620–1930*, Harvard University Press, Cambridge, Mass., 1930.

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; the politicians who control the selectmen usually have their desires; and altogether the town meeting loses its vitality. 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 first day of the annual meeting is often devoted to electing officers and at present usually involves the use of paper ballots.

But it is the assemblage of men and women, grandfathers and babes in arms, village storekeepers, schoolteachers, and overalled farmers from the remotest hillside farms which 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. Picnic lunches are brought and shared with friends; children play games, the young engage in flirtation; and the oldsters exchange stories and try their mettle against ancient rivals. 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. It may deliberate on whether the few hundred dollars paid the constable annually is adequate—and it may be added that the constable and his friends invariably insert an item in the warrants of many towns "To see whether the town will authorize the payment of additional remuneration to the constable." 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. Consequently there is not the appalling indifference and inertia all too commonplace in local affairs throughout the United States.

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 [6] 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 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 summonses. 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—there is not even the substantial "honest graft" which is associated with public office in many communities.

[6] Rhode Island designates these officials who are known as selectmen in other New England states as the town council.

Record of the Town Forum 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 either 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.[7] 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

[7] Conservation officials sometimes handle what public business there is.

unchecked 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, though they writhe under the irresponsible system which in Center Township in Indianapolis has added more than a million dollars to the bonded indebtedness.

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. Professor A. W. Bromage, for example, has pointed out that the township is an anachronism in this day of good roads and automobiles and that it results in waste and inefficiency.[8] The Indiana Commission on Governmental Economy reported a few years ago that almost nothing good could be found in township government and that it is honeycombed with petty politics of the worst variety, nepotism, and general inefficiency. 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

[8] See *National Municipal Review*, Vol. XXV, pp. 585 *ff.*, October, 1936.

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.[9]

Village Government It is fitting that village government should be comparatively modest in character in the great majority of cases, though in Oak Park it is, of course, necessary to maintain governmental services which resemble those of sizable cities. It may be added at this point that village status was never intended for places that can show thousands of inhabitants and that Oak Park clings to this form out of sentiment and dislike of its giant neighbor, Chicago. Occasionally a village will resemble the New England town in that it will be authorized to use a village meeting of voters 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 law 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 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 one arrives 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.[10] They exist as a result of various state laws which authorize their creation and define their

[9] 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."

[10] For a good discussion of this, see Kirk H. Porter, "A Plague of Special Districts," *National Municipal Review*, Vol. XXII, pp. 544 *ff.*, November, 1933.

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 tens of millions of dollars. The Sanitary District of Chicago and the Metropolitan Water District of Massachusetts may be cited as examples of districts which employ larger numbers of workers and have larger budgets than most counties or cities.

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 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 confined to metropolitan areas where there is need to make expensive provision for the disposal of the sewage of a number of cities, villages, and so forth. 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 damned 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 a number of other public functions.

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. 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 reference 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.

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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 representatives 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.

[1] See the Sixteenth Amendment, p. 993.

[2] Partly superseded by the Fourteenth Amendment. (See pp. 992–993).

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.[4]

3. No person shall be a senator who shall not have attained to 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 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

[3] See the Seventeenth Amendment, p. 993. [4] See the Seventeenth Amendmnt, p. 993.

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 to 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.[5]

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 or 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.

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 represent-

[5] See the Sixteenth Amendment, p. 993.

ative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[6] 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.[7]

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.

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.[8]

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."

[6] This paragraph was in force only from 1788 to 1803.
[7] Superseded by the Twelfth Amendment. [8] See the Twentieth Amendment.

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 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;[9]—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 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 the 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

[9] See the Eleventh Amendment, p. 991.

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 [10]

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.

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.

[10] The first ten amendments adopted in 1791.

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 imposted, 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 respecively, or to the people.

ARTICLE XI [11]

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 [12]

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 ballôt, 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. 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,

[11] Adopted in 1798.

[12] Adopted in 1804.

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 [13]

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 [14]

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 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 the 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

[13] Adopted in 1865.

[14] Adopted in 1868.

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 [15]

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 [16]

The 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.

ARTICLE XVII [17]

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] [18]

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.

[15] Adopted in 1870.

[16] Passed in 1909; proclaimed 1913.

[17] 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.

[18] Submitted by Congress, December, 1917, proclaimed January, 1919.

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 [19]

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 sex.

The Congress shall have power by appropriate legislation to enforce the provisions of this article.

ARTICLE XX [20]

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.

[19] Proposed in 1919, adopted in 1920.
[20] Proposed in 1932, adopted in 1933.

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.

ARTICLE XXI [21]

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 convention 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.

[21] Proposed in February, 1933, and received the approval of the requisite three fourths of the states by November, 1933.

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