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AMERICAN GOVERNMENT IN ACTION

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and

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PREFACE

For many centuries, men have realized the social necessity of developing a science of government. Today, when the complaint is so often heard that physical science has outstripped social science, the need to understand the laws of society and government is more pressing than ever. Political scientists, therefore, along with other social scientists, are searching for more effective methods of presenting their subject to our future citizens and civic leaders.

The present book assumes that American government and general political science can be combined in the beginning course, that the beginning student should learn the principles and problems of political science in general and those of American government in particular. In the past, unfortunately, these two emphases have been too often separated, with American government taught as the beginning course and principles reserved for a relatively small group of students in advanced courses. In a few cases, a course entitled An Introduction to Political Science has been an alternative. Believing that there are advantages in both methods, we have attempted to correlate them.

In most fields of knowledge the beginning course deals with the history, concepts, and general principles of the subject, thus laying the foundation for specialized courses later on. Although this is the systematic way to go about it, there are good reasons why American institutions have been emphasized when American students are introduced to the art and science of government. Dictates of sentiment and practicality point in that direction. Further, the American political laboratory offers superb opportunities for studying the general laws and practices of political behavior. Nevertheless, the dangers inherent in a territorially confined study should not be overlooked—nationalistic bias, parochialism, a "glorified" civics, failure to develop the broad principles of political science as rapidly as otherwise might be done.

There seems to be a convincing case, therefore, for combining general political science and a knowledge of the American form of government in the beginning course, although admittedly it is a somewhat more difficult undertaking than merely describing the organization and functioning of our own domestic institutions. On the other hand, if American college and university students need to become familiar with the general principles of chemistry, physics, biology, and other organized fields of knowledge, there seems to be equal reason for believing that they need a similar approach to the study of government.

The method of this book is functional, meaning that the emphasis is placed consistently on principles, processes, and problems of broad import. When we discuss political parties, legislatures, chief executives, or regulatory programs,

for example, we deal with them in one place instead of first at the federal level, a second time at the state, and finally at the local level. This treatment is designed to promote understanding, avoid tedious duplication, and sustain reader interest. For theoretical as for practical reasons, a recognition of differences is as essential as calling attention to what all levels of government have in common. Furthermore, we do not believe that description can or should be eliminated, for it is requisite to the scientific method and is involved equally in the functional as in the "levels of government" approach. The functional approach, however, differs from the latter method in that it is less repetitious and pays more attention to common causation and understanding. Believing in the virtue of the functional method, therefore, we have attempted to follow it consistently throughout the book, and to emphasize local, state, regional, and international government as well as the federal.

Believing also that the student should have as clear an understanding as possible of what a book is attempting to do, we have dealt with the scope and method in Chapter 1 and more briefly at transitional points throughout the study. Information that is retained explains the "why" before going into the "what." For this reason, we encourage students as well as professors to read the preface before starting the main body of the book. For this same reason, we think it important to set forth here, in summary form, the objectives of this introductory textbook:

To combine the elements of American government with an introduction to political science, covering everything of significance on the subject of American government but avoiding needless and uninteresting detail.

To deal with the common problems of government at all levels, thus avoiding duplication and providing a rememberable basis of comparison.

To focus the organization and functioning of government on three central problems of our day: how to prevent war, how to produce an expanding economy, and how to create a better social environment.

To maintain a balanced emphasis in dealing with the political, legislative, judicial, and administrative processes, with due attention to historical development and causality, and to the influence of psychology and motivation.

To bring out the interrelations of the social sciences and to stress the need of correlated attacks on significant societal problems. We have tried especially to bring economics and political science into a closer working accord, and we have also emphasized the role of history, law, sociology, psychology and others of the social studies.

To stress the role of the United States in the world community, and to explore the problem of war. We assume that America's place in the community of nations is part of the fundamental groundwork of American government and political science.

To give more attention than is customary in beginning texts to the influence of law and legal institutions in the life of the politically organized community, thus providing a foundation for students who expect to enter either the field of law or government service.

To deal with the theory and principles of government so as to prepare students for additional work in comparative institutions and comparative government.

To provide a foundation for all advanced courses in political science in the fields recognized by the National Roster of Scientific and Specialized Personnel, including public administration, political parties and public opinion, legislatures and legislation, constitutional and administrative law, international law and relations, political philosophy and systematic theory, government and economic enterprise, and American government and comparative government.

To show the student how government is an integrated institution, not one that is artificially segmented, thus increasing the political sophistication and influence of the citizen.

To present with conviction the philosophy of American government and political beliefs, but at the same time to deal with alternative forms and philosophies of government.

A major problem of the author of a textbook is to effect a logical and teachable organization of subject matter. We have tried to present a reasonable sequence of topics, beginning with the rise of statecraft and the development of constitutional foundations, going on to the problems of area and the distribution of governmental power, and then to the problems of cost including taxation and expenditure. We then discuss the people and their government, legislatures and public policy, law and the judicial establishment, public administration, foreign policy and international relations, government and economic welfare, and government and social welfare. We conclude with a discussion of the future of popular government in the United States.

Different people, however, have their own ideas about the natural order of things. Since we claim membership in this independent fraternity, we have tried to keep in mind the fact that some instructors will want to take up parts or chapters out of sequence. We think, for example, that Chapters 12 and 13 on public finance fall naturally where they are, coming as they do after the student has learned what government is, how it developed, what its main outlines are, and the problems of area. We believe he should then understand how government is financed and to what extent the nerve that runs to his pocketbook is stimulated by public expenditures. But some instructors may wish to deal with governmental expenditures and revenues in conjunction with public budgeting, which in our scheme comes later, in the part dealing with the administrative process. In other words, our outline is presented as we think

it ought to be, but those who prefer to change the order should have no difficulty in doing so. It is also our hope that this book will prove flexible with regard to the amount of time various institutions devote to the course. Our experience in teaching the present outline and materials indicates that the book divides conveniently at the end of Chapter 32; an equally feasible division occurs at Chapters 20 and 39, making three parts if that is desired.

This book is a full collaboration. Since husband and wife authorships are still sufficiently uncommon to arouse some interest in the method of teamwork employed, we may explain that we jointly planned the outline, collected the materials, and polished the final drafts. The first writing was the work of one partner; later revisions were chiefly the work of the other. By this close collaboration, we hope that we have achieved unity in our presentation.

Considering the scope of the book, our indebtedness to other authors, from Aristotle forward, is plainly enormous. Since in our opinion copious footnotes detract from the readability of a textbook, most of our acknowledgments, either express or implied, are found in the topical bibliographies at the end of each chapter. We wish to take this opportunity, however, to express a sense of indebtedness and gratitude to the political scientists of the present century far exceeding any that might be specifically stated.

Special acknowledgments are due to several professional colleagues and friends. Professor E. E. Schattschneider of Wesleyan University twice read the entire manuscript, giving us many helpful suggestions and pointing out errors of fact or interpretation, and a similar service was rendered by Professor Lawrence H. Chamberlain of Columbia University. Sections of the work were also reviewed by Professors Grayson Kirk of Columbia University and Robert Carr of Dartmouth College. Our Northwestern University colleague, Professor Mary Earhart Dillon, criticized the whole manuscript. Professors John McDiarmid and Roscoe Baker, also of Northwestern University, read several chapters. The part on law and the judiciary was scrutinized by Walter N. Thayer, New York attorney and former general counsel of the Foreign Economic Administration. Lewis B. Sims of the Bureau of Census provided us with valuable charts and statistical analyses. For assistance in collecting material and typing the manuscript we are indebted to Colin and Marjorie Livesey and to Miss Lucy Phillipp.

To Phillips Bradley and other political scientists who have contributed to the "American Government in Action" series, we owe a debt of thanks for permission to use this dynamic title.

M. D.
G. D.

Evanston, Illinois
June, 1946

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AMERICAN GOVERNMENT IN ACTION

CHAPTER I

The Study of Government

GOVERNMENT has been called the highest and most difficult art. Few studies are more interesting and few demand more of man's best thought and reflection. Government is one of the broadest and most comprehensive institutions in life, ranking with religion and philosophy in challenging man's thought about himself and the society in which he lives.

If we knew as much about political science as we do about the laws of the physical universe—as much about man and his institutions as about the things he has learned to explode—we could feel more assurance about man's future on this earth. Why is the search for knowledge so difficult in the field of political science?

Partly it is because the scope of the study is so vast. Government ultimately affects everything in society and is equally affected by it, as Socrates and his students realized long ago. Moreover, here as in other areas, it becomes necessary to understand man, and that has been found not too easy. Another factor is the problem of attitude or of objectivity—the way we go about studying the laws of social life. If it were possible for him to acquire the objectivity of the chemist or the physicist in his own field, the student of government would make better progress. But objectivity is more difficult in the study of government than in the case of the physical sciences. Nor is it carried over, in many instances, from one field to the other. How quickly the physical scientist, for example, responds to prejudices, preferences, and group feelings when he discusses government and economics, or some other area outside his own field!

These obstacles to the study of political science, however, should not deter us. It is the clear task of social scientists to acquire accurate information and reliable insights relating to cause-and-effect relationships in social behavior and the laws which operate therein, and to see that this knowledge is widely disseminated as speedily as possible among those who make the decisions that control our common destinies.

The study of government is concerned with questions that are of the greatest importance to society. Over a period of years we have tried to learn from our students what these questions are in order that we might deal with them here and in our teaching. This is what we have learned and these are the questions that will consequently be discussed at the appropriate points in this book:

First, what is the prospect of another war in this generation? Governments make wars and fight them; what can they do to prevent them? How can nations control the destructive use of atomic energy? On returning to college, a

young veteran of World War II enrolled in a course on government with the comment, "I am going to try to find out why I was shot at."

Second, what are the chances of steady employment in an expanding economy? We are all interested in our own economic security, means of livelihood, and opportunities of personal self-development. What can government do to provide some degree of economic security?

Third, what kind of world is this in which to bring up a family? What can government do about slums, crime, illiteracy, disease, and juvenile delinquency? Man has made cities—now can he make them habitable?

And finally, people want to know what the chances are of keeping their individual freedoms in a society that requires them to live and act in large communities. Can over-all social efficiency and individual liberty be reconciled, or is that not possible?

These questions are all age-old problems of political science. But today their intensity is such, and they hammer so persistently for solution, that they seem new. It is against this larger backdrop that we propose to study government here.

The study of government—or politics in the broadest sense—is the oldest of the social sciences.[1] As soon as people live together in groups, they begin to have common problems. The larger the group, the greater becomes the need for rules. The first recorded writings mention government. In fact, men have been studying government seriously in our Western culture since the time of Socrates, Plato, and Aristotle in Greece, five hundred years before the birth of Christ.

SOME DEFINITIONS

Language is often tricky. It may confuse as easily as it clarifies. We must be careful, therefore, to define and explain our terms as we go along.

The study of government is the study of what the politically organized community does and how and why it does it. The study of government, like government itself, is dynamic. It is not merely the study of institutions and how they operate, important as this area of life is. Rather, it is the study of people, of human nature, human drives, cravings, lusts, incentives, aspirations, hates, loves, dreams, ideals. Government is all of the forces of society, singly and collectively, concentrated on the making of public policy and its administration and adjudication. Government, therefore, is central; and especially is it central in the complex society of today. Government stands squarely in the middle of the people and the land on which they live, making and enforcing the rules of the game. Thus the study of government must be broad enough to take all of these factors and relationships into account.

A key word in our vocabulary here is "government." Two other terms which may be used interchangeably are "political science" and "politics." The term

[1] To orient himself the student is urged to read the opening article in the *Encyclopedia of the Social Sciences* (New York, 1930), I, 3–7, "What Are the Social Sciences?"

"politics," employed by the Greeks, today often signifies conniving or skillful manipulation toward selfish ends and hence is less satisfactory for broad usage. The term "political science" is more recent than the word "politics" and is used extensively. Political science is the identification and understanding of the laws of society and government, which is very much a part of our task. The sooner we can develop a reliable science of government, so as to be able to predict the trend of social forces in the future—just as the physicist comprehends physical forces—the sooner will we be able to solve our worries about peace, security, family, and freedom.

Political Science and Society

All of the social sciences study man in society. In the field of government we tend to emphasize that part of society which is politically organized. But we could not secure a realistic grasp of what it is all about if we studied political structure as an isolated subject, unrelated to every other aspect of man's life. Political pressures stem from economic, social, religious, and technological forces. Each of us plays some kind of role in each of these categories, and they all impinge on government. We undertake government as a special study, therefore, only to reduce the materials to manageable compass. In doing so we should not fall into the error of narrowing our study too much, because, to be well informed, we must comprehend the relationships within government itself, and between government and those social and economic aspects of our lives that influence it. The following subjects combine with political science to form this synthesis:

Economics deals with the business institutions and the material wealth of a people. But the study of economics soon becomes unrealistic unless it takes governmental policies and controls into account.

Sociology is concerned with social institutions such as the home, church, school, and the like. However, the distinctive problems of sociology, including crime, education, welfare, and delinquency, are comprehensible only in relation to governmental problems and resources.

Government, economics, and sociology deal with the principal institutions of modern society, and the knowledge developed by these disciplines is likely to have the greatest effect on our future welfare. Other social studies are equally important, although for different reasons:

Anthropology tells us about primitive man in early society. It enriches the storehouses of knowledge of government, economics, and sociology, and modifies and corrects some of our assumptions.

History makes us aware of earlier political and social experience, and enables us to see things in perspective. In terms of case studies and materials on which to base predictions for the future, therefore, history is an invaluable tool.

Geography studies the relationships between man and his physical environment, and their effect on each other in the fields of health, culture, and economics.

Psychology explains motivations, drives, and impediments. It is the key to the study of human nature. If we could fully open this door we might more easily solve many of our social problems.

Law, a subdivision of the study of government, deals with judicial institutions and behavior. Law, like human nature, is central to all governmental functioning.

Philosophy analyzes the ends of human living. Philosophy is the great integrator, the focal point of all analysis and thinking. Political philosophy is a branch of this subject and hence should be related to other basic problems of society and the individual.

Religion is another great integrator. Religion inspires men to higher levels of conduct in government as in other fields, both public and private. The church, which is the institutional side of religion, has at times become the rival of the politically organized state or has been merged with it.

Technology, including all the physical sciences, underlies modern government and most of its problems. The steam engine, electricity, radio, the airplane, and atomic energy have revolutionized government as well as economics. We have not yet caught up. Some of our most pressing domestic and international problems are technologically induced.

To study government in a vacuum would be stultifying and unrealistic. Government would turn out to be a dry and technical subject and it would be hard to remember what we had learned. But to study government in relation to daily experiences, to understand how government may become the tool by which we may guide and shape our future, is a different matter. Our very existence and future happiness depend on wise governmental policies. When we see it in this light and realize how great an influence we as citizens may exercise, the study of government becomes a subject of keen everyday interest. It is, in fact, the method by which we, as citizen-craftsmen, learn how to handle an instrument which modern society has put at our disposal.

Society, State, and Nation

Society as a whole and the organized political state may be identified and distinguished by saying that *society is the people viewed in their associated aspect, as an aggregation having common interests and united by consciousness of kind.* As contrasted with this definition, *the state is society organized politically for protection and for the promotion of common interests.* These two terms, therefore, are about as broad as they are long. Bluntschli, the German writer, has defined the state succinctly and well as *the political organization of the people of a definite territory.*

The term "nation," on the other hand, describes a social or cultural concept. Dugit, the Frenchman, says that *nation implies common origin (nationality) plus a feeling of interdependence that must have penetrated profoundly the*

consciousness of all members of the group. Today, however, "nation" is often used interchangeably with the terms "country" and "political state."

State and Government

In the general discussion of our subject, the terms "state" and "government" will be used more or less synonymously. Many attempts have been made to draw a line between these two concepts, but in fact the differences are unimportant because both include the same elements. Government is composed of

People—those who are subject to the jurisdiction of government.

Land—the earth and its possessions that are subject to the particular political rule.

Constitutional frameworks—written and unwritten constitutions, laws, and customs.

Sovereignty—the highest legal authority of the state.

Levels of government—local, county, state, and federal, in the United States. In addition, there are regional levels when a jurisdiction includes several states or parts of states, as in the case of the Tennessee Valley Authority. There are also special local districts, taking in parts of towns or counties, that are responsible for the administration of schools, irrigation systems, or the like. The highest level of government is international.

Branches of government—the legislative, which makes the laws and determines public policy; the executive, which puts these laws and policies into effect; and the judicial, which settles disputes in the interpretation of these laws and policies.

Forms of government—democracy, which is the rule of the many; aristocracy, which is the rule of the few; and monarchy, which is the rule of the one. Other terms, such as fascism and communism, describe forms of government but they are simply corruptions of the three given here. This subject will be discussed in the last chapter of the book.

Main Subdivisions of the Study of Government

There are eight areas of political science, each of which is given a place in the body of this study:[2]

Political theory and philosophy—which are concerned with what government should do. This is the study of what the greatest thinkers have propounded as to man's relation to government and to his fellows.

Political parties, public opinion, and pressure groups—the means by which men stimulate governmental action to satisfy their needs. Psychology and the techniques of communication and political manipulation predominate here.

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[2] *National Roster of Scientific and Specialized Personnel* of the Bureau of Placement, War Manpower Commission, Washington, 1945. This eightfold classification was approved by the American Political Science Association.

Legislatures and legislation—converting pressures from particular groups into law and policy. This area of our study takes up the problems that legislatures endeavor to deal with and explains the central role of the legislature in democratic, representative government.

Constitutional and administrative law—the law which controls the organization and powers of government and the relation thereto of individual rights and duties.

Public administration—or the law in action, and how it is administered. Public administration is the management and operation of the public business at all levels of government including the international.

Government and the national economy—showing how government regulates, stabilizes, stimulates, taxes, and generally controls the national economy. The state as entrepreneur, or the government in business, comes under this heading. It is one of the most dynamic areas of the social sciences. Technology, economics, and engineering all enter here.

International law and international relations—concerned with the attempt to stabilize and order the relations among nations. The problem of war and peace, of primary concern to humanity today, lies in this field.

American government and comparative government—dealing with the form and development of American government, and comparing the similarities and differences of foreign governments.

In this outline, each subject shades off into the next. It starts with the question, What should government do? Then come the pressure to do it, the decision to proceed, the legislative hurdles, the methods of enforcement and administration, the impact of the program on business, and on other nations. This is the story of government, of our central process in operation.

GOVERNMENT IN THE UNITED STATES

Government in the United States is a democracy and takes the form of constitutional, representative rule. Many people would prefer to call it a republican form of government. The technical distinction is that democracy consists of the direct action of the people, as in the Greek city-state or the New England town, whereas a republic involves the delegation of authority to elected representatives as in the case of the state and national governments of the United States.

Our country provides an ideal laboratory for the study of political science. In the first place, ours is a large and populous nation, with wide geographic, economic, and cultural differences. In addition, as a people, we have come from all over the world, bringing with us different languages, customs, and political backgrounds and beliefs. We are almost a cross section of humanity. Thus, because of the resulting size and complexity of our nation, there has been opportunity to experiment. It is not just one governmental laboratory, but many. We have a variety of forms of local government, for example, and sev-

eral different forms of state government. Indeed, all of the elements of comparative government are found within our own borders.

Added to these circumstances is the influence of accumulated political thinking and practice. As we shall see, American government has been partly shaped by civilizations as distant in time as ancient Greece and Rome. Our early political leaders—men such as Madison, Jefferson, Franklin, Jay, and Hamilton—were as familiar with the previous political wisdom of the world as any similar group of men who ever lived. And because of the circumstances of our colonization, popular government has had a congenial setting in which to flourish. A study of our nation's government, therefore, should throw light on the age-old question: How can government be made to operate for the good of the whole people?

Futhermore, the United States is a singularly good laboratory for studying the distribution of power among the various levels of government—the matter of federalism, for example—and the division of governmental authority between the legislative, executive, and judicial bodies. These are among the most important questions of statecraft. And finally, the United States, as a great industrial nation, is probably unexcelled in the opportunities it provides for the study of the interrelations of government and business, a subject which is becoming more important to us every day.

It would be a mistake and an inexcusable national conceit, however, to assume that all political wisdom may be found at home. How could we make such a claim when we as a nation are debtor to all the world? The thinkers and political experimenters of ancient China and India, Greece and Rome, France, Germany, and Great Britain have all contributed to the building and governing of the United States. Our national problems, therefore, must be compared with similar developments that have occurred in other countries. This comparative method is the method of science, the surest way of discovering the laws that operate in society the world over. It was Aristotle, who has been called the father of political science, who introduced us to the comparative method some twenty-five hundred years ago, and this is still the best means of identifying what is important in a multiplicity of forms and observances.

We must not be content, therefore, with a nationalistic approach to political science. Nor should our approach be merely descriptive, lest we become lost and confused in the intricacies of institutional minutiae. It is we as a people, together with the social and economic forces that we put in motion and the political processes by which we are governed, that are vital and interesting. These factors combine with the institutional elements of government to create a synthesis that is understandable in the light of the kind of life we lead today, and by means of which we may help to shape the kind of life we hope to lead tomorrow.

We are interested in the goals and values of a democratic society. We want to know why government acts. We need a realistic understanding of the pressures between rival institutions, forces, groups, and individuals, and where and

how government figures in them. And in order to be practical about this matter of common interest, we want to know how government is organized and run. Government is concerned with the ends as well as with the means. Since both are important and related, both must be studied. We are interested here both in what is and what ought to be. We are concerned with dynamic political theory, including the history of what others have thought. Going beyond mere description, we look for evaluations and possible improvements.

Government has become a chief concern of us all. The study of government is now the indispensable preparation for a career in business, farming, and all the professions. Whatever our occupation, we succeed or fail with the degree to which our governments meet or ignore our needs. In addition, of course, a large percentage of us will work directly for the government because at present one out of nine Americans is in public employment. Thus there is also a direct vocational aspect to the study of government.[3]

This book tries to blend theory and practice. It cannot contain all the facts that anyone studying American government may ultimately need, but it does attempt to raise the more important public issues of the day and to call attention to the abiding problems of society in all ages. No one book, however, can do this completely. The student must supplement both his analysis of theory and his storehouse of factual information from other sources. Generalization in political science is often difficult because of the diversity of practice, and yet generalization is essential if wisdom as well as information is sought. Thus we suggest that students and teachers turn to their local political laboratories for applications and for verification and testing.

With regard to the pattern or outline of this book, it deals first with the history of political institutions and ideas, and then with the chief institutional aspects of American government at the federal, state, and local levels. Following this it considers the distribution of power and jurisdiction between the various levels of government, and studies the cost and financing of government.

Then comes a series of related matters: population, citizenship, public opinion, propaganda, the citizen as voter, political parties, practical politics and elections, the bases of representation, legislative assemblies, and the methods of increasing responsibility and legislative effectiveness, concluding with a chapter on the main areas of policy decision in the United States today.

It next studies the judiciary, as policy maker and as administrator. This part is followed by a group of chapters on public administration, how policy is given effect, and how the great bulk of government business is accomplished.

The book turns last to a consideration of three major questions in their policy as in their institutional implications: the problem of international organization, which in turn relates to war and peace; the problem of economic well-being and jobs for all, which is the joint area of political science and eco-

[3] See Chapters 27, 32, 39, and 43, dealing with careers in politics, law, administration, and international relations.

nomics; and the problem of a decent social environment, including the welfare activities of government. The concluding chapter in the book deals with these questions: What are the forms of government? Is our democracy changing into something else? What must be done if we are to retain our freedoms and our institutions?

SUPPLEMENTARY READING

1. Challenging problems of the social sciences: A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 1. This is one of the best books of readings. On the methods and challenges of the social sciences generally, sociologist Robert Lynd's book, *Knowledge for What?* (Princeton, revised, 1945) is highly recommended.

2. Scope and method in political science: The best reference book for systematic treatment is James W. Garner, *Political Science and Government* (New York, 1932)—see especially Chapters 1 and 3 dealing with nature, scope, and relations. Raymond G. Gettell, *Political Science* (New York, 1933), Chapters 1 and 2, is also useful. A more recent book is that of Francis G. Wilson, *The Elements of Modern Politics* (New York, 1936).

3. Approaches to American government: Frederic A. Ogg and P. Orman Ray, *Introduction to American Government* (New York, 8th ed., 1945) is the most complete compilation of facts; it represents the traditional descriptive approach and deals primarily with the layers (federal, state, local) of government. For the functional approach, see William Anderson, *American Government* (New York, 3d ed., 1946).

4. Books of readings and documents: The principal compilations have been edited by A. N. Christensen and E. M. Kirkpatrick, H. S. Commager, Finla G. Crawford, James K. Pollock, John M. Mathews and Clarence A. Berdahl, and Cortez A. M. Ewing and R. J. Dangerfield.

PART ONE

THE DEVELOPMENT OF STATECRAFT

CHAPTER 2

Forerunners of American Government: The State in Historical Perspective

AN EXAMINATION of the organization of textbooks in the physical sciences will show that frequently the opening chapter deals with the importance of the subject and the main outlines of its content. Succeeding chapters then study the historical development of the field and later ones the main laws and principles that have evolved. This is the procedure that the present study will follow.

This chapter, therefore, will show how American ideas and institutions have been influenced by earlier developments, and will appraise the political experiments and the failures and successes of previous ages, so as to provide a setting in which to place the methods and problems of our own government. First, it shows how the attention of primitive peoples was concentrated on the welfare of the individual—a condition that evolved most fully in the Orient. Under the influence of Greece, this preoccupation was superseded among Western civilizations by the emergence of a social consciousness. Accordingly, attention shifted from the welfare of the individual to the welfare of the community. This in turn stimulated a growing interest in government among the people themselves, and encouraged popular control over and participation in the conduct of public affairs, as contrasted with the earlier paternal, single-headed type of rule. As popular interest in government developed, the fields of law and public administration evolved, especially under the influence of Rome. After the fall of Rome, the span of the Middle Ages was a period of disorder, partly because of the lack of any unifying principle save the church, which was more concerned with the hereafter than with life on earth. Gradually, however, a new unity evolved as man gained confidence in himself and in his ability to guide his own destiny. This unity took the form of nationalism, the influence of which is still so strong today.

Since laws and principles of government will be discussed in this chapter, these terms will be defined at the outset:

A principle is a rule of behavior or an insight into a truth which has been found to be widely applicable under substantially similar circumstances.

A law is similar to a principle except that it has been tested more fully and hence is assumed to have greater weight and universality. Both are initially based on hypothesis.

Hypothesis is an assumption that a particular statement is true but it lacks the degree of verification attaching to a principle or a law.

Four Principles of Governmental Growth

The analysis which is to unfold should verify the following cause-and-effect relationships which explain the relative importance of government to the governed at different periods of time in the past. They may be considered as merely hypotheses now, but they should be kept in mind as the subject develops.

1) The importance of government varies with the simplicity or complexity of the social situation found in the community. Government among the early tribes of Greece, for example, differed little from a typical town government today, whereas twentieth-century government, like modern civilization, is an enormously intricate mechanism consisting of innumerable delicately balanced parts.

2) The greater the degree of complexity, the more is the role of government magnified in relation to other institutions of society—home, church, and economic life. If our government should fall to pieces today, every other segment of our lives would be thrown into confusion.

3) As complexity increases, governmental power tends to assume greater weight at higher levels, and hence individual and local controls are weakened by the necessities of representation and delegation. In a New England town, every voter has the right to a direct voice in the government of his community through his participation in the town meeting. In a city, because of its size, he can only vote for someone to represent him in the government of his community, so that direct control is lost and the power formerly exercised by the citizen now rests at a higher level.

4) As social complexity increases, there is a redistribution of power among the branches of government, the tendency being to concentrate power in the executive. In the early days of our history, Congress was the most important part of our government. Later the Supreme Court became dominant. But now it is the executive branch that wields the greatest power.

THE EMERGENCE OF SOCIAL CONSCIOUSNESS

The principal impression that stands out from the study of political rule throughout history is that government takes over where the family leaves off. In a simple agricultural economy where each member of the family has his appointed tasks, the management of the family, usually presided over by the father, is about all the government that is necessary. This was the situation during the earliest periods we know about. It is the situation which obtains among some nonliterate peoples today. Even in certain of the more remote parts of our own country, little government is necessary because the family and the neighborhood take care of almost everything of common interest.

China and India

In countries in which the technology is simple, the emphasis is on the person, on individual self-development, and this constitutes the unifying principle

of life. Nowhere is this more strikingly exemplified than in the traditions of China and India.

In China a great teacher, Confucius (551–479 B.C.), left his mark so deeply ingrained on Chinese thought that it is responsible for much of China's difficulty in forming a strong central government today. Confucius taught that individual self-development is the goal of life. The *summum bonum* is that everyone should strive to realize his greatest capabilities, an ideal that is possible if he follows the right rules of living. Cultivate the virtues and right thinking—thinking that is clear and penetrating, not shallow or muddled. If the majority of the people is like this, said Confucius, there will be fewer social problems. If the individual is virtuous, the family will be virtuous and happy. Enough happy families make a well-ordered community, and strong communities make a strong nation. The political ruler should be like the father of a family, not seeking power or display but primarily looking after the interests of those who depend on him.

This is individualism. Here individual self-development becomes the central principle, and social consciousness is correspondingly weak and undeveloped. So long as people live a simple, moderately virtuous kind of life in an uncomplicated, agricultural community—as in many of our own rural villages —little further is needed. But what happens when mechanization supplants handicraft and powerful neighbors cast covetous eyes on the riches of the nation? This is China's dilemma today. A social lag between the customary attitude of the Chinese citizen and the demands of modern civilization has arisen. As a result, the Chinese citizen, whose life is blocked out in terms of himself as an individual, is no match for a strong enemy organized on a group basis.

It must not be concluded, however, that the influence of Confucius has been harmful to the Chinese; rather, they have gained much good and much happiness from it. Their traditional emphasis on individual self-development needs merely to be combined with a greater degree of social consciousness and governmental organization for China to become a strong nation. Strength alone, on the other hand, untempered by a sense of personal values such as the Chinese possess, would quickly lead to the pitfalls into which the Japanese and the Germans tumbled prior to World War II.

Like China, India has been slow to develop a social consciousness together with the corresponding degree of governmental organization that must go with modern transportation and technology. This lag is largely due to the influence of her great teacher, Buddha, who lived in the fifth century before Christ or at about the time that Greek civilization was at its height. Buddha, the son of a wealthy family, was frivolous as a youth. Later he became a cleric but eventually broke away from the established order with some five hundred followers and set up an ascetic kind of monastic system of his own. He came to be regarded as a teacher and a radical rather than as a religious man. Like Confucius, Buddha believed individual self-development to be the goal of life.

A person finds wisdom through reflection. The ultimate end is Nirvana—wisdom, repose, complete passivity. Unlike Confucius, however, Buddha thought that virtue was essentially a negative quality, not positive. Life became a series of prohibitions against drinking, sleeping on soft beds, accepting gifts of money, and the like. The mental set was passive and prohibitive rather than positive and expressive. Buddha was considered radical primarily because he opposed the caste system.

Gandhi and India today are explained in part by these individualistic ideas. We Westerners say that India is opposed to "progress," by which we mean technology and a highly developed form of government. Which of us is right? Are individual self-development and social consciousness incompatible? China and India have looked askance at strong central government because to them it represents a superior power, a harmful physical force inhibiting individual development. Gandhi contends that "soul force" is ultimately stronger than physical force and outside controls. But if a nation wants dams for irrigation, together with railways and highways, a machine industry, and more and better food, shelter, and clothing, it seems obvious that a higher degree of social cohesion and social organization is necessary than is possible under a largely individualistic type of culture.

Greece, Mother of Political Science

The Greeks were the first great politically activated people of the world. The concept of social consciousness as the basis of governmental development was introduced by Socrates (469–399 B.C.), who reflected his environment and expressed the essence of his time.

Greece was destined to become the main portal between East and West. The explosive power of Greek thought was the transition which it provided from the philosophy of individual self-development of the East to the social consciousness which grew up in the West. The influence of Greece on Western culture was such that both European and American institutions have been immeasurably affected by her governmental system and the writings of her great political philosophers—philosophers who have not been excelled in twenty-five centuries.

Greece—like Egypt, Judea, and Assyria—was originally a monarchy. As with all early political systems, her government grew out of family organization and agricultural land tenure. First there was the family, and then families banded together into tribes. As the numbers increased, direct control gave way to a system of representation both for war and for peacetime pursuits, and this system in turn led to a monarchy. This development is not surprising because there seems to be a period in the political evolution of any people when the complexities of their society outstrip their ability to control them, in which case the strongest man among them usually takes over and becomes king. In Greece as elsewhere, the monarchy was succeeded by an oligarchy, consisting of the political rule of the landed and wealthy few; and this in turn was fol-

lowed by a democracy. It is as though the sophistication needed in government proceeded from the top down, from monarch to the upper classes to the people. The popular-rule stage was introduced by Solon, the great lawgiver, who ruled Athens in 594 B.C. and instituted democratic reforms. Then began a two-hundred year period in Athens which is one of the brightest spots in the history of political science. Both the practice of government at that time and the writings of Plato (pupil of Socrates), Xenophon, and Aristotle, who lived under it, continue to influence us today.

The effect of geography is strong on political development. A small peninsula, Greece was subdivided by mountains into valley areas, and no part of it was far from the seacoast. Agriculture was the principal means of livelihood, although there was some mining, and eventually a small trade grew up with adjoining islands. The farmers lived in or near a town, which became the center of community life—governmental, religious, and cultural. The characteristic form of government, therefore, was the city-state, and of the hundreds sprinkled all over the peninsula, all had different governmental histories and experiences. Athens and Sparta were the best known and were traditional rivals.

Because of this combination of factors the city-state became the center of a new social unity. Even the gods were civic and were merged with the life of the people. Citizenship became the highest mark of distinction. From it, however, foreigners (who were fairly numerous in Athens) and slaves were excluded. Hence Athens developed a democracy within a class system.

POPULAR CONTROL AND PARTICIPATION

The awakening of social consciousness which developed in Greece naturally led to an interest in the community and its government. During the period of Cleisthenes, Pericles, and Demosthenes in the fifth and fourth centuries before Christ, Athens set an example of representative rule in which the citizen assembly dominated and which has been hard to equal. Becoming dissatisfied with monarchy and oligarchy and fearing power wielded by the few, the Athenian citizens constituted themselves a legislative assembly controlling all the affairs of government including the executive, the courts, and even the army.

Try to envisage five thousand or more citizens congregated together, early on a sunny morning in an amphitheater, to debate and decide matters of peace and war and internal administration. The Athenians did it that way and made it work. It was like a large New England town meeting or the democracy of a Swiss canton. Prominent citizens called orators did most of the talking. They could also propose changes in the basic laws, but to guard against demagoguery it was provided that if an orator knowingly advocated a measure destructive of public security or welfare, he could be tried and imprisoned or executed. This had a sobering effect.

An executive council served the legislative body but had no independent powers. The council was drawn from the ten tribes, each furnishing fifty members, and the tribes took turns sifting the business to be taken up by the citizen

assembly. This rotation constituted another safeguard against the abuse of power. Even the law courts, which were numerous and large, were drawn from the citizen body. Top executives, including the military leaders, who as a group wielded the greatest authority, were chosen for one year only. The members of the executive council and the law panels, together with the civil administrators, were chosen by lot. Of all the ingenious things the Athenians did, this procedure was their greatest contribution to democracy and the best protection they could devise against a concentration of power. Our modern parallel may be found in the election of members to Congress, and in the election of certain of our top administrative officials in our federal, state, and local governments.

Civic democracy worked well in Athens. When it finally fell under the yoke of the invader it was because disastrous wars with neighbors had so weakened it—both in treasure and in population—that it could not put up an adequate defense. But the government of Athens was more honest than most, and it was competent. Most important of all, Athens trained her entire citizenry in the techniques and the philosophy of responsible good government, and taught it how to guard against minority rule. It is any wonder, then, that what Greece did twenty-five hundred years ago has been avidly studied by the Romans, the Europeans, the English, and our own founding fathers?

Socrates, Plato, and Aristotle

Socrates, with his usual ability to go to the heart of things, taught that the state arises out of the many needs of mankind. No one of us is self-sufficing; we all have many wants. These become more numerous and more urgent as the size of the community increases. When one or more communities are formed, the body of inhabitants is termed a state. The purpose of the state is the mutual benefit of the people who comprise it. Thus the true creator of social institutions is necessity, mother of all invention, and cooperation among the people is the key to institutional success. All things are produced more plentifully and easily and are of a better quality when each man does that which is natural to him and leaves to others the pursuit of other specialties. Here is the effect of social consciousness as contrasted with the Indian and Chinese emphasis on individual self-development.

The goal of life in the state, said Socrates, is human happiness, and human happiness depends on knowledge, wisdom, virtue, courage, a love of beauty, and service for the good of all. Philosophers excel in these respects and should, therefore, be made the "guardians" of the public weal. Thus we should rear, educate, and elevate the best qualified among us to positions of community service. Socrates also taught that all government should be through law which must be just, and that moderation and self-control are positive virtues on the part of citizens and government alike.

These terms and ideas describe what modern government and community life ought to be. Indeed, the teachings of Socrates—reported by Plato in *The*

Republic—are more timely today than ever before in the history of the Western world.

Aristotle, often called the father of political science because he was the first to classify the different forms of government and to study them as in a laboratory, emphasized conformity to the law of nature, which is right reason, and which he believed to be a more reliable guide to conduct than the mere preference or prejudice of the individual. In government, the law of nature is exemplified in the actual operation of the institutions that man sets up for his own use. A requirement of nature, said Aristotle, is that society shall actually function for the benefit of the community; thus no law can be superior to the immediate realities and needs of a society in operation. He came to believe in this concept after he had studied some two hundred concrete governing situations, both barbarian and Greek, and found human behavior to be essentially the same in a wide variety of similar circumstances. Aristotle, like Socrates, Plato, and Xenophon, also sought to identify the laws of society that will produce order, progress, and the greatest happiness of the community. The prerequisites to the preservation of the state, he thought, were six: exact observance of law, prudent conduct of magistrates toward subjects, vigilance and concord of rulers, settlement of differences by law rather than by chance, precaution against too much individual power, and maintenance of the parts of the state in due proportion.

The political wisdom of the Greek philosophers was gratefully tapped by the framers of our own American Constitution, so that much of the system under which we live today is directly related to that of Greece.

Four Principles of Popular Control

At this point it may be appropriate to break this narrative in order to underline the observations that grow out of the Greek experience just discussed:

1) Democracy, the form of government in which all citizens directly participate, is best designed to assure a voice to all and to sustain individual interest in public affairs. Democracy is the form of government that best assures our liberty and freedom provided we keep it alive and do not allow it to degenerate into something else.

2) Where a direct democracy is not feasible and a representative government must be installed—as in the United States, for example—then the legislative body (Congress), which is directly representative of the citizens, must be the center of political gravity. The legislature is responsible to us, as citizens, both for the enactment of the law and for the supervision of its administration.

3) When power must be delegated to public officials by the citizen body, it then becomes necessary to provide checks and safeguards in the use of that power so that it will not be abused and thus endanger our freedom. Citizen interest and participation in government are a means to this end.

4) In a popular government, the rule of law must prevail throughout, so that each citizen will be treated on an equal footing and receive equal oppor-

tunity. But only a just law will be respected. A law which does not have the support of the majority of the people will not be obeyed.

Four Principles of Popular Participation in Government

To the principles enumerated above may be added the following, which are closely related in process and application:

1) The participation of citizens in their own government is usually in inverse relation to the size and complexity of the social situation. The smaller and simpler the community, the higher the participation because it is only then that we can know everything that is going on and everything that needs to be done. The Greek city-state and the New England town are good examples of this kind of situation.

2) The opportunity and desire for direct participation in government are the greatest assurance of a sustained interest in government on the part of the people, because people are most interested in what they know best and can do best.

3) Popular participation is necessary to the survival of democracy or of representative government. Without this participation as a constant check, those to whom we delegate power are increasingly likely to use it without regard for our desires and needs. Eventually this state of affairs leads to a dictatorship, as it did in Germany.

4) The greater the complexity of our civilization, the greater is the need to encourage interest and participation on the part of the citizen. In a complex society we must delegate our right to direct participation in government to those whom we elect to represent us. We can best do this if we are so organized as citizens that our desires and our needs may be more forcefully expressed at the polls.

Thus it is obvious that democracy is not something that springs up of its own accord and then stays with us indefinitely. If we want democracy, we must work to keep it. Not only must we understand it and the dangers and abuses to which it is subject; we must work to preserve it, to make it grow, and to keep it responsive to our needs as a people.

LAW AND ADMINISTRATION

Greece gave us the popular assembly; Rome gave us law and public administration. Like Greece, Rome was primarily an agricultural community. Even after she extended her dominion over most of the then known world, she was not primarily a trading nation. During the century before Christ, Rome excelled as a great military machine and as a superb imperialist. In the field of government her influence on us today stems principally from the empire-wide administrative system that she developed and from her codifications of law which have spread her legal system over much of the Western world, including Latin America.

You will recall that the successive stages in the expansion of Rome were

from city-state to dominant power in Latium (the Italian peninsula), and then progressively to dominant power in the Near East, North Africa, most of Europe, and the British Isles. During the five-hundred-year period from 510 B.C. to 27 A.D., the internal control of the government of Rome changed from monarchy to republic, which lasted longer than any other form, thence to a limited monarchy, and finally to semidictatorship. At first, especially under the monarchy, power was monopolized by the patrician class, a landed aristocracy which debarred plebeians from citizenship, high office, the ownership of land, and marriage outside their own class. Over a span of about two hundred years, however, the plebeians gained increasing power in the government until at last practically all class distinctions were removed. During this time also, Roman citizenship was broadened to include plebeians, the residents of other towns in Latium, and finally, by absorption, some of the conquered peoples.

The Influence of Rome on Administration

Throughout this period in Rome the executive, rather than the popular assembly, was the center of governmental power. This is interesting because, despite the lack of a representative assembly with authority, the plebeians were eventually able to make their desires felt on the executive branch of the government and to secure radical changes in customs and laws that had become traditional.

Under the republican form of government in Rome, which succeeded the monarchy, two consuls were chosen annually as the leaders of the state. Sometimes they would divide the work between them; occasionally they would share it. Often enough they quarreled, but usually they got along fairly well together. The reason for two consuls was presumably a precaution against the seizure of power by one. However, in case of an emergency or imminent peril to the public safety in time of threatened invasion, either consul could call on the other, after consultation with the Senate, to turn over the power of the state temporarily to a dictator. This is reminiscent of a device of modern democracy in time of war, as illustrated by the unusual powers granted the President of the United States in both world wars.

As in Greece, the tribes of Rome (combinations of families) had great power, especially in matters of war and peace, taxation, and the choice of consuls. Once the consuls were appointed, they in turn nominated the members of the Senate, the upper body of the legislative establishment. The Senate had no legislative power during most of this period but acted more as a consultative assembly for the consuls. The Roman Senate has been called an administrative body, but actually it merely gave advice and did not itself administer anything. In its original function, our own Senate was partially modeled after its Roman prototype.

The lower house in Rome was more popularly chosen but, like the Senate, possessed no real legislative power. The consuls would merely submit proposed proclamations and decrees to it for consideration and consent. The lower house

did not initiate legislation. In practice it was hardly more than a sounding board and a debating society.

Why should there have been this difference between Athens and Rome as regards the center of governmental power? Were the Greeks, with their popular assembly possessed of power, more democratic than the Romans? Were the Romans more trusting of their government? Or were the Romans so intent on ruling the world that they were not concerned about keeping their government representative and popularly controlled? Since the Romans were students of Greek experience and political thought, they cannot be assumed to have been ignorant of the more democratic method. Thus far, no satisfactory reasons have been advanced to explain the differences in political philosophy.

The more far-flung the Roman Empire became, the more paramount became the question of capable administration. Next in authority to the consuls came the praetors, who served both in Latium and in the Roman colonies, where they were colonial governors. Other officials were charged with the raising of revenue and the expenditure of funds, the building of roads and other public works, and the conduct of military affairs, which, then as today, was the costliest part of running the government. There was a blending of military and civilian administration at all times, especially in the provinces. The fact that Rome was continually extending her frontiers through war undoubtedly affected the distribution of power within her home government and tended to elevate the executive above the legislative, just as depression and war have tended to increase the power of the executive in the United States.

By the time Julius Caesar came to power in the century before Christ, the administrative service in Rome had become professionalized. Its form and functions bore a marked resemblance to the departmentalized type of public administration with which we are familiar today. The service was even influenced by bureaucratic characteristics—which are by no means modern phenomena—and some historians have suggested that bureaucracy was an important cause of the decline and decay of Rome. There is little evidence to support this interesting conjecture, however, because even if bureaucracy was a contributing factor, the principal elements were invasion by a more hardy and ruthless people coupled with a weakening participation in the government by those best fitted to rule. Indeed, it was a situation not unlike that which prevailed in France at the outset of World War II.

Historians agree that Roman leadership became soft and lazy and neglectful of public affairs. Thus Rome was no match for the conquering force of a more virile people. Here the same law applies to men and to nations: *Where there is power without a corresponding sense of responsibility, loss of power may be expected.*

The Influence of Rome on Law

It is in the field of law that the influence of Rome on our modern governments has been most notable. Rome was the great codifier of law. Her legal

experts wrote down her rules of law in a logical and precise manner, dividing the whole body of law into main categories. This process was started as early as 450 B.C., when the Twelve Tables appeared, probably, as is generally believed, forced on the patricians by the plebeians, who insisted on having their hard-earned rights immortalized on tablets of stone. Only fragments remain, but from them we have learned much about the development of early law.

Law consists of the rules of human conduct which society enforces through custom (customary law) and through the institutional processes and sanctions of government (formal law). Obviously today most law is of the formally sanctioned and administered type. But law originally evolves from custom and depends on custom for social acceptance.

From the example of Rome we know that government does not intercede in private disputes until quite late in the development of social situations. The evolution goes something like this: When two people disagree, they fight it out; the term for this is self-help. If the community steps in, it is to support the custom on which the disputants rely. At a subsequent stage of development, the primitive government may act as referee. In the third stage the government sees to it that the award is carried out. Not until later does the fourth stage occur: then the government takes a hand in determining what the law shall be. Legislation as a means of changing custom and establishing rules of human conduct, therefore, is a comparatively recent institutional development. When so much of our conduct today is regulated by statutory provisions, we are likely to forget that it was not always so.

Adjudication, which is settlement by the courts of disputes arising out of the law, grows out of the administration of the law. This is true of the development of both Roman and English government. Let us visualize the process: A Roman praetor is ruling over a conquered country—Carthage, for example. When a dispute arises, he tries to settle it himself or, if he is too busy, he refers it to the "judex" who acts as a hearing officer for him. When disputes become so numerous that the praetor cannot carry the full burden himself, then the machinery of government becomes specialized and courts and judges are provided. Eventually the courts are separated from the administrative branch of government, and henceforth there are three independent and equal branches—the legislative, the executive, and the judicial. The principle of the division of labor, therefore, is found in government as in economic life.

Roman government also illustrates the manner in which a body of law evolves. The policy of Rome was not to interfere with local custom and law —the *jus gentium* or "law of the peoples"—unless absolutely necessary. But instances arose in which the law of Rome was applied to a colonial situation, while some local laws and customs gradually came to be accepted in Rome. Thus over a period of time a blending process took place, and the body of law prevailing at Rome was modified. But the process did not stop there. Soon the jurists, whose business it was to study the law, began to write about the

jus gentium, to help it grow, to discuss the law of nature, which they had read about in the works of Aristotle, and to argue the rules of right reason which men everywhere should live by. In this the jurists were also influenced by the philosophy of the Stoics, who held that all men should be treated equally and with justice—that common humanity is paramount and that differences between races and classes should be leveled. The great orator Cicero became a champion of natural law and equal justice. All political rule, he contended, is subject to a higher law: the law of universal justice and right reason, found in all men.

This doctrine makes natural law a force in human affairs, and so it has become. Hugo Grotius, the Dutchman, writing in 1625, made the *jus gentium* the basis of international law and argued that there is a law of God and reason which is above state sovereignties and to which all man-made law must conform.

This idea has had far-reaching consequences. Indeed, some of the most important constitutional decisions by the Supreme Court of the United States reflect presuppositions based on natural law. The greatest decisions of our greatest Chief Justice, John Marshall, for example, are instances of reasoning based on "the nature of things." Cicero would readily have understood Marshall's arguments.

Roman Influence on Anglo-American Law

In about 530 A.D., the Emperor Justinian completed his famous codification of Roman law for which jurisconsults had laid the foundation during five centuries or more. As a result, the law of Rome became the law of most of Europe, including Germany, France, Austria, Italy, and Spain. Roman law is also the law of Latin America, taken there by the Spanish and Portuguese settlers. Anglo-American law has drawn on it in many fields, especially with regard to wills and inheritances. Even the language of our law contains such terms as "habeas corpus," "mandamus," "certiorari," and the like.

Another influence of Rome on our law is in the area of corporation law. The Romans used the "corporatio" (association) long before the Christian era. Incorporation was the state's way of organizing subsidiaries, which it was free to abolish as well as to create. The fact that local governments were also incorporated under Rome explains why municipal governments in the United States today are characteristically corporations created by the state legislature, and why their basic law is called the law of municipal corporations. Roman incorporation was later applied to church organizations, to groups of workers, traders, and entrepreneurs, and to certain educational and eleemosynary institutions.

The invention of the corporation was a momentous social discovery, for it has made possible many of our social and economic triumphs. Our great hospitals and welfare organizations, the American Telephone and Telegraph Company, the United States Steel Corporation, are all corporations whose

impact on our lives today is incalculable. Another striking example is the Reconstruction Finance Corporation, a giant banker which made some thirty-two billions of dollars available to save failing industries during the depression and to help wage a world war. But the modern corporation has brought characteristic problems that have yet to be solved, for many have become so large that they rival the government which created them.

Four Principles of Legal Growth

Four principles in the development of government emerge from this brief survey of the growth of Roman law:

1) Law may reflect existing custom, or it may be superimposed on that custom so as to modify it. The incorporation laws of the United States legalized an existing custom, but the Sherman antitrust laws modified it.

2) Law may be in accord with popular ideas of justice, or it may lag behind them. People's ideas of justice change as their ideas about other things change. Laws providing that a man could be imprisoned for ordinary debt were once accepted, but today such laws no longer exist.

3) Law may reflect the force of community opinion, or the force of a dominant group opinion within the community, but in either case it is accepted as justice and has universal application. The gangster group among us, for example, refuses to obey certain of our laws, but as a minority it is nevertheless subject to them.

4) Law may be a great stabilizer or, if it is unrealistic, it may create tensions that nurture violent upheavals. Laws regulating commercial practices are of the first sort, but prohibition was of the second and had to be repealed.

THE CONTRIBUTION OF THE MIDDLE AGES

Rome fell in the fifth century after the birth of Christ. For a thousand years, Rome and Greece had taught the world a great deal about all forms of government including monarchy, aristocracy, and democracy. But for the succeeding thousand years the world learned very little that was new about government and even seemed to forget most of what it had known. Civil government went into eclipse. It seemed as though a new synthesis would have to be formed out of the remnants of the thought and customs of the Roman Empire before a civilization could again go forward.

The Temper of the Middle Ages

Each preceding age had had its synthesizing element that produced a sense of unity. Individual self-development, which Confucius and Buddha believed to be the goal of life, provided the focal point of culture in China and India. The Greeks found their unity in the city-state. Rome mastered the practice of statecraft, which Cicero considered the highest art. But the emphasis during the Middle Ages was not on any of these goals; rather, it was on the salvation of the soul in the life hereafter. Although this was a central idea, it was not

enough to create a unity in the chaotic situation that prevailed when the government of Rome fell apart.

For a long time after the barbarians overran Europe, there were many diverse elements to be reconciled but apparently no means of reconciling them. There were the unschooled but hardy conquerors, the polished but less virile Romans, the native tribes of different racial antecedents, the Christian religion centered at Rome, and the lingering influence of Greek philosophy and culture. In the face of so many diverse factors it took centuries to develop a new unity, and when it matured it was in the form of loyalty to the nation-state, or what today we call nationalism. The elements of social consciousness in the gospel of Jesus of Nazareth were strong, but for a long time they were overshadowed by the prevailing preoccupation with a personal religion and the life after death.

The Middle Ages, therefore, were essentially anarchic and governmentally undeveloped. Feudalism, involving a limited hierarchy of individual loyalties to individual overlords, was inevitable in the confusion resulting from the dominance of the barbarians. Simple and politically immature, they seized the land and made others work for them. Social organization was loose and primitive. The nobles who, with the aid of their vassals, were strong enough to be virtually self-sufficient were independent of higher authority. In this situation the church was of little help because its emphasis, even after the hierarchical church organization was formed in the sixth century, was on spiritual rather than on secular affairs.

Influence of the Middle Ages on Government

At a time when people were more interested in salvation than in the here and now, it was natural that government should be relegated to a secondary role along with other things secular. Slowly and unobtrusively, however, under the feudalistic top crust, four different lines of development were occurring that were to be of importance for the future of civil government: the growth of municipal government, the development of pluralistic rivals of the state, the rise of infant industries, and the appearance and spread of nationalism.

The growth of municipal government accompanied the rise of urban centers and was stimulated by simple invention, improved transportation, and early industrialism. There had, of course, been cities for hundreds of years prior to the Middle Ages, but many had declined after the fall of Rome. Now they were growing again, becoming more numerous and more important in relation to agriculture. Eventually they were to break the hold that feudalism had laid on the national economy and to play a major role in the revival of civil government and popular control.

The development of pluralistic rivals of the state diluted the loyalty of the individual—so far as it existed at all—whose attention was increasingly occupied by other attachments to other institutions. Under the influence of ecclesiastical leaders, for example, the corporation came to be regarded as a separate

entity with a distinct personality, and hence separate from the government which created it. Other characteristics were ascribed to it, among them being perpetuity—a corporation could not die although its charter could be revoked if anyone had the courage to do it. In consequence, associations of merchants, laborers, and others came to possess enormous power, governmental as well as financial. Eventually these groups rivaled the state itself in terms of men's affections and as the center of their interests. This is what is meant by *pluralism —that the state does not have a monopoly of power over men, and that it is not the only social organization that can command men's obedience.* Since the development of infant industries was usually encouraged by the sovereign, economic welfare was a principal concern of government. The state had always regulated merchants and traders, built roads, public buildings, and markets as far back as Egypt and Babylon. But now the sovereign became entrepreneur. The trend was strengthened about the end of the fifteenth century when Austrian and German rulers, in particular, chartered government corporations for mining, shipping, and colonizing operations. Municipalities, too, were taking an active part in trade, following the example of the Hanseatic League. Men were unconsciously laying the foundations for a philosophy of political economy, which is *the method used by the sovereign ruler to increase the wealth and prosperity of the people he rules.* Mercantilism, a system of national economy that dominated Europe between the sixteenth and the eighteenth centuries, was here in the making.[1]

And finally, nationalism was growing in power and influence. A new feeling of separate identity and nationhood in the seventeenth century was leading to the creation of a system of sovereign states in Europe and to the dominance once more of civil rule. Duchies and principalities, virtually independent under feudalism, were now forced to acknowledge the authority of a single ruler. Men's loyalties, formerly to their feudal overlord, were now transferred to the nation. Strong rulers, wars which aroused a feeling of patriotism, and the growing weakness in temporal affairs of the church at Rome all contributed to this increasing sense of nationalism.

Some Political Philosophers of Influence: St. Augustine, St. Thomas Aquinas, Dante, and Machiavelli

With government reduced to a secondary role, the period of the Middle Ages produced little in the field of political philosophy. A thousand years at this time did not compare with two hundred years at Athens. Commentators on the past rather than creators of current influence were the rule. Mankind had to wait until the Reformation, and the revival of liberal thought that followed, before great original political thinkers with a passion for human betterment were again to appear.

The characteristic ideas of the Middle Ages were first expressed—and well—by St. Augustine (354–430), church administrator in North Africa. In *The*

[1] See Chapter 44, "Government and the Political Economy."

City of God, he developed the theory that all history is predetermined, that it is merely God's will being carried out. The decline of Rome was a punishment for corruption and unrepenting paganism. St. Augustine defended civil government within a limited sphere. Its function, he thought, was to create order, protect property, and secure justice. But, being temporal, government must be sinful and therefore too much should not be expected of it. Government must have no authority over religion, ethics, or morality. He justified slavery, saying that slaves were property which the state must protect, but he concluded that slaves might embrace Christianity and thus anticipate a better life in the hereafter.

Eight centuries later St. Thomas Aquinas (1226–1274), a scholar and religious official, championed a positive role for the state. Relying principally on Aristotle for his ideas of government, St. Thomas became a supporter of social legislation. He accepted the papal view of the fall of man and the necessity for redemption, but he argued that man is social and that civil authority can do much to improve his life on earth. Where the church had previously deprecated the role of civil government, therefore, St. Thomas became its champion. This was the revolutionary character of his doctrine. He developed a philosophy of a social-service state, believing that government has a positive responsibility for the public welfare. Amelioration can be achieved through social legislation based on Christian concepts of social justice. Significant also was St. Thomas's reference to the possibility of *federated* governments, founded by combining two or more existing states. This is one of the earliest known references to federalism, a concept which has become so central a part of our own governmental system.

Of similar import was the main contention of Dante (1265–1321) in his work, *De Monarchia.* An Italian, Dante was concerned with the secret of empire and the conditions that insure peace. Civil government and religion, wrote Dante, have different functions. Each should keep to its own domain. Civil government alone can maintain peace and order through law; hence only civil government can hope to achieve the good life on earth. Dante, therefore, counseled the papal hierarchy to concentrate its attention on the spiritual realm and to withdraw from the political arena. And world empire? Dante believed that civil government should be vast because a number of small, quarreling principalities can produce only instability.

Machiavelli, like Dante, believed in the necessity for strong political rule. The author of *The Prince* was born in Florence, Italy, in 1469 and lived until 1527, so that he may be regarded as a link between the Middle Ages and the Renaissance. Machiavelli's chief concern was with the security of states and their political rulers, with the rules of statecraft which, as he viewed them, promote stability. *The Prince* is in effect a memorandum to the rulers of Italian city-states. In this work, and also in his less familiar *Discourses,* he counsels the princes of his day to flatter the populace, to use force to secure obedience, to arouse people's fears but not their burning hatreds lest they

threaten the leaders' powers, to use cunning and deceit if it is necessary to accomplish their ends, and to deal ruthlessly with conquered populations.

As a result, Machiavelli has come to be regarded as a forerunner of the modern German *Realpolitik* (philosophy of force), the so-called realistic approach to politics, and the art of manipulation and domination in social organization. Needless to say, his essentially amoral teachings did not commend him to the Christian morality of the age, nor have his views been received with much more favor by the democracies which seek popular control in place of exploitation. His cynicism and unabashed realism, however, suggest some of the more sordid aspects of municipal misrule in the United States, as well as of the various national cupidities of recent generations. Italian fascism, for example, was proud to acknowledge his influence.

THE NEW UNITY

Nationalism, gaining in intensity, proved to be a unifying force in the confusion of the Middle Ages. Not only was the institution of monarchy growing; a new balance of forces and institutions was emerging. At the end of the Thirty Years' War (1618–1648), the system of sovereign, independent nations which we find in Europe today may be said to have come into existence.

The close of the period saw many new forces at work. In the long struggle between church and state, the state was victor. The religious wars further intensified nationalism, weakened the power of the church at Rome, and set the stage for the doctrine of the divine right of kings. Improved transportation and manufacturing strengthened the rising merchant class and the towns; at the same time the power of the landed nobles was relatively weakened and feudalism was no longer the dominant system. Colonization became a main interest. Virginia and New England were in the process of English settlement; India was being fought over by Holland, France, and England. In all such imperialistic ventures, the king was the central figure as the empire builder and the recipient of the wealth and power to be derived from it.

Moreover, the Protestant Reformation, led by Martin Luther, cut into the spiritual as well as the temporal hegemony of the church. The printing press soon became a medium for the rapid dissemination of knowledge and ideas about government as about religion. There was a new impetus to study problems in many fields. An interest in science, which had lain dormant since the time of Greece, was revived. The people of the seventeenth century had the strange feeling that a restriction of some kind had been lifted and that they were now free to speculate and advocate and dissent as suited them. This spirit of free inquiry was carried over into the realm of civil affairs, at first cautiously but increasingly without fear or reservation. This was the century that saw two revolutions in England and the establishment of Parliamentary supremacy there in 1688.

For the student of government, what stands out during this transitional era is the change in the mental attitude of the rank and file of the people gener-

ally. The set of their minds was altered. Prior to this, it had been taken for granted that life on earth must be hard and seamy and disillusioning. Was not man born in sin and was there any reward save in heaven? But now the changes which were taking place in science, religion, industry, the arts, and government gave man a new view of his relation to the universe. He began to appreciate that the world was man's world, that mankind was meant to be happy, and that by the use of his intelligence he might improve his lot. If he would only use his intelligence, combine it with a Christian spirit, and apply it through the instrumentality of government, why could life not be made immeasurably better?

Thus when men began to have confidence in themselves, a revival of popular government became possible. Once men learned to believe in themselves and their own intelligence and right instincts, they set to work, through government, to correct the problems that were pressing all around them. Popular government is possible, in the long run, only so long as this self-confidence continues. It is literally true, therefore, that democracy is a philosophy of optimism.

SUPPLEMENTARY READING

1. Early political thinkers: On the influence of Confucius and Buddha, a good source is Louise Saxe Eby, *The Quest for Moral Law* (New York, 1944), Chapters 2 and 3. The treatment is concise but accurate; the entire book is recommended for reference purposes. Another readable book, beginning with Plato and Aristotle, is that of Thomas I. Cook, *History of Political Philosophy* (New York, 1937), Chapters 1–6 covering the period from the Greek city-state to the Renaissance. Alternatively, see George H. Sabine, *A History of Political Theory* (New York 1937), Parts 1 and 2.

2. Governmental development of Greece and Rome in the Middle Ages: The best brief account is found in the *Encyclopedia of the Social Sciences* (New York, 1930), Vol. I, in articles on these subjects. On Greek democracy, James Bryce, *Modern Democracies* (New York, 1927), I, 165–186, is recommended. For a more detailed study, see J. W. Headlam, *Election by Lot in Athens* (Cambridge, England, 2nd ed., 1933). The origins of political rule and Roman legal development are dealt with by Edward McChesney Sait in *Political Institutions: A Preface* (New York, 1938), Chapters 6, 7, and 10. A good article on feudalism and the Middle Ages is in the *Encyclopedia of the Social Sciences,* Vol. I.

3. Great books to read: There is no substitute for reading the originals, even if the amount is small. Plato's *Republic,* Aristotle's *Politics,* and other political classics are now available in the Everyman and other popular editions. Suggested reading: The Introduction and Parts 1–3 in the *Republic* and the *Politics.* The introductions in the Everyman editions are especially good.

CHAPTER 3

Forerunners of American Government: Functions and Concepts

THE PRECEDING chapter showed how the church and the state struggled for dominance in Europe over a long period of time, and how civil government can seemingly go into eclipse even after it appears well established in the range of its functions and in popular confidence. Such developments suggest that governmental functions are capricious and depend largely on chance. Is this a correct interpretation, or are there certain rules by which the functions of government may be determined?

Principles Relating to the Functions of Government

Four principles will be useful in determining what the functions of government should be:

1) The functions of government are related to the complexity of the social situation. With each increase in complexity we may expect a corresponding growth of governmental responsibility, although not necessarily an addition to functions. The small town, for example, may have a police force consisting of one constable, but the federal government of the United States requires the services of the Federal Bureau of Investigation with its huge staff, its laboratories, training schools, planes, and automobiles.

2) The work which government must do depends in large measure on the functioning of other institutions in society. If any fails in its appointed task the government is likely to be called on to supplement it. Likewise, when disagreements between different groups arise, or when one group thinks it can gain advantage through the use of government, again the state is likely to be called on. When private charity, for example, could not meet the situation created by unemployment during the depression of the 1930's, the government had to fill the gap with its relief programs. In certain parts of the United States where irrigation is needed to make agriculture possible, no private enterprise is available for the task and so the government takes over. Again, when a major clash of interests occurs between organized labor and management, the government is often called on to help settle the difference.

3) The functions of government vary, in emphasis if not in kind, depending on the ability of the controlling group to put its program into effect, and on the technological and other problems that arise at different periods. In early Babylon and Egypt government carried on every ***function*** that it does today, but not every ***activity*** or as many of them as we find today. But it did protect

the people, build public works, regulate prices, assist farmers, and carry on diplomatic relations. Matters of degree and emphasis are so important, however, that they sometimes seem as great as differences in kind.

4) The main categories of governmental function have remained relatively stable through recorded history, but the emphasis given to each and the variety of duties included within each category have differed markedly, both in time and as between contemporary cultures. The function of maintaining an army, for example, was a first priority under Louis XIV of France. But at this same time in England this function was overshadowed by the question of colonization. And in our own federal government today the maintenance of the armed forces, although paramount a little while ago, is now (1946) secondary to the problems of reconversion to a peacetime economy and the control of atomic energy.

If you were asked to write down what you consider the appropriate functions of government, what would you include? You might describe the things that government does today—that might be called the pragmatic test. Or you might draw up your list on the basis of your own preferences as to what should be considered private and what public business. Or you might frame a Utopia in which you would outline the activities you consider desirable, and then determine which of these the government should undertake. All of these methods have their advantages. Certainly preference should not be ruled out, nor can we be sure that everything that is now done is either necessary or adequate. And it is obviously desirable to think about a more ideal existence and how it can be realized. There is something to be said, therefore, for all of these methods.

In England and France during the seventeenth century, what was government called upon to do? The more important activities were to protect the people from invading forces, a protection which involved the fitting out of armies and navies; to raise revenue to finance war, the royal household, and the civil establishments; to maintain a police force so that people's belongings and their persons would be safe; to create companies of gentlemen adventurers for trade and colonization; to operate a postal service; and to assist infant industries, thereby strengthening the country and securing additional sources of national income. This is not complete but it is a representative list.

If the chief functions of government in every period of recorded time are thus listed, even as far back as ancient Egypt, India, and China, there will be certain similarities in each case and they will not be so very different from what governments do today, although the modern scale of operations, of course, is immeasurably larger than at any previous time in history.

The Functions of Government

The functions of government, therefore, have been much the same throughout the ages, but the degree of attention given to each has differed widely,

depending, among other factors, on physical and social invention. Different classifications of functions are possible, but the following has been found fairly inclusive and reliable:

Protection—maintenance of internal safety and repulsion of outside aggression.

Regulation—controls and prohibitions imposed upon various groups within society, such as regulation of prices, quality, trade practices, and so on.

Assistance—the giving of subsidies, franchises, or other forms of encouragement or charity, such as relief to the unemployed or subsidies to the shipping industry.

Service—provision of schools, libraries, postal service, municipal transportation, and the like.

International relations—the conduct of relations with other sovereignties, including foreign policy and diplomacy.

This classification should be kept in mind during this study of the present-day duties of government. You may wish to subdivide some of the categories or to add new ones.

The modern way of viewing the several functions of government is to use the objective method of science. The questions to be answered as a part of that process are as follows: What does government do today and what has been its experience in the past? What does the trend seem to be? What are the human needs and social satisfactions which people seek? What evidences are there, if any, of tensions among individuals or groups caused by failure to meet these needs? What is the record of other institutions which heretofore have dealt with the problem of satisfying these needs? Correlate this information and you should be in a position to predict what the trends of governmental activities in the future will be. Some of the factors, as you have probably sensed, are hard to measure, especially the one about tensions. But even when you have reached this stage in the analysis, there is yet another step: What is the nature of the leadership that is guiding the extension or restriction of this particular governmental function, and what is its relative skill?

The Nature of Government

Closely related to the basic question of what the state should and should not attempt to do is the problem of what constitutes the nature of government. Is it force or service? Is government permanent or transitional? Is it a means of enslaving man or of releasing his powers? Here also some guiding principles may be suggested:

1) Government is an institution of human society and, like other institutions, its scope and use are determined by man, not by some kind of mysterious power outside him. It is we, the governed, who have it within our power to control our government.

2) All forms of government make use of power and authority and the relations between governors and the governed. Government has the power to pro-

tect us, the authority to regulate certain portions of our lives, and the means by which to influence our thinking through its public relations programs.

3) Government is superior to other organized institutions in the community because it is the coordinator standing above all of them and represents the widest range of man's interests.

4) Government may involve the use of physical force or the use of persuasion, the enslavement of man or his release from bondage. It is an instrument for both good and evil. The use to which government is put depends on many factors, chief of which is this: Who controls it? Is it all the people, a group of people, or a dictator? Control of the government by all the people is the only method that is safe for all the people.

CONCEPTS OF GOVERNMENT

Before we consider the rise of governmental institutions and doctrines in the United States, it will help to understand them if we look at some of the underlying concepts of government, how and where they first appeared, what they mean, and what they have contributed to our own form of rule. These underlying concepts include sovereignty, the law of nature, the discovery of human nature, the compact theory, and the rights of man.

Sovereignty

In the welter of forces loosed by the Reformation in Europe and by the revival of the belief in the ameliorating influence of government, none was destined to be of greater influence than the doctrine of sovereignty. Broadly defined, *sovereignty is the legal and actual power to secure compliance of all individuals and interests within the confines of the state, and to be free from domination and control by any outside political entity.* The use to which the concept of sovereignty was put in the sixteenth and seventeenth centuries is a good example of how ideas are often employed in the political realm to justify something that needs to be strengthened by an intellectual rationalization. In this manner, the concept of sovereignty was used to bolster the claims of monarchs to rule by virtue of divine right.

The chief philosophical proponents of sovereignty during this transitional period were Jean Bodin (1530–1596) and Thomas Hobbes (1588–1679). Bodin was a nationalistic Frenchman, Hobbes a champion of English royalty. Both were aware of the anarchy which threatened during a period of rapid social change and both were anxious to develop a theory which would support a unified rule and act as a stabilizing influence.

Bodin, a lawyer by profession, knew that growing social complexity had created a broader problem of government than was found in the Greek city-state. He sought a center of unity for the nation-state and found it in sovereignty. Bodin defined sovereignty as the supreme power of the ruler over citizens and subjects. Sovereignty, he said, resides in the monarch. The king is superior even to law, because the king makes the law. If he becomes bound

by the law it is only because he so chooses. Sovereignty is not only illimitable, argued Bodin, it is also perpetual and indivisible, being handed down from one generation of ruling monarch to the next.

In his well-known *Leviathan* Hobbes contended that the essence of the commonwealth is that one man should possess sovereign power over all others, who thus become his subjects. There are two kinds of sovereign: one acquires power by force and conquest, the other by contract and peaceful agreement. Sovereignty, said Hobbes, is exclusive, it must be backed by force, and it is unanimous, leaving no room for dissenters. Sovereignty is not subject to the civil law because the king can make or break the law as he chooses. And the power to enforce the law cannot be distributed.

The people rose up and put an end to the claim of monarchical supremacy in England in 1688 and in France in 1789, but this did not abolish the concept of sovereignty. Far from it. It was simply transferred from the person of the monarch to another area of government, usually to the people. In England it was the people and Parliament that became supreme; in the United States it was the people and the federal Constitution.

In recent years the concept of sovereignty has been under increasingly heavy attack. It is said to be antidemocratic. It is contended by some that since the people are supreme, why not say so and let it go at that? What need is there for the word today? Terms such as "power," "authority," and "jurisdiction" express the same idea. Pluralists, emphasizing the sharing of governing power by all social institutions, criticize the concept of sovereignty because it is contrary to the facts; power, they insist, is shared, not monopolized in one place. Finally, many regard sovereignty as a principal deterrent to effective international organization and the securing of the peace because sovereignty has come to mean national exclusiveness.[1] Sovereignty has been characterized by Frederick L. Schuman as "the anthropomorphic deification of the nation-state in modern times." And yet this same author admits that it is the central and stubborn fact of today and doubtless also of tomorrow. Do you agree?

The Law of Nature

Another stubborn concept is the law of nature. Like sovereignty, the law of nature can seemingly be applied to a variety of purposes. Aristotle, you will recall, believed that nature was beneficent and made the law of nature the center of his approach to government. He believed that if we could but discover the laws of nature they would constitute our most reliable guides to all human activity. St. Thomas Aquinas looked upon natural law as the basic rules of good and evil which men may discover for themselves through the exercise of reason. Grotius believed the law of nature to be the dictates of right reason. Hobbes claimed it was the rule, discoverable by reason, by which man is forbidden to do that which is destructive of his own life.

[1] This is dealt with in Chapter 41, "The United States in the World Community."

Hobbes disagreed with Aristotle as to the basic characteristics of nature, holding that nature is at war with man. Until such time as men enter into a compact and appoint a sovereign ruler, argued Hobbes, they are at war each against his fellows. Man's life in the state of nature is solitary, nasty, brutish, and short; but no laws can be made until society has agreed who shall make them. Right and wrong, justice and injustice, have no foundation until the state has been organized by compact among those who are to be governed.

How rapidly the prevailing assumptions regarding basic concepts changed during this seventeenth-century period is evidenced by comparing Hobbes with John Locke, another Englishman. Hobbes's *Leviathan* appeared in 1651, Locke's *Two Treatises on Civil Government* in 1690, only forty years later. Locke's view of nature was just the opposite of Hobbes's, because he had a different understanding of human nature. Locke could not believe that man is addicted to warfare and evil. He argued that man is good, not bad; that he is reasonable, not depraved. In the natural state, said Locke, all men are equal, not unequal; they are enlightened, not shortsighted; cooperative, not dog-eat-dog. Thus where Hobbes stood for monarchical omnipotence, Locke was the champion of popular sovereignty. Moreover, Locke did not believe that the state of nature was perfect. There were defects. The law of nature must be interpreted, controversies under the law must be decided, and so the need for the political state appears. But the state is nothing more than a common organ of and for the people.

Do opposing views such as these on fundamental issues mean that political philosophy is merely a form of rationalization supporting whatever interests or prejudices dominate at a given time? It can mean that. But we must not be misled by the fact that political analysis has often been used for propaganda purposes. We cannot afford to be disillusioned by such a practice. There are eternal truths in political philosophy which it is the task of every generation to examine and to understand, so that they may not be lost to the future.

The Discovery of Human Nature

The two hundred years that preceded the American Revolution were also significant in the development of political philosophy because it was the first time that political thought had dealt seriously with the underlying assumptions of human nature. It was during this period that psychology—although it was not recognized as such—first began to influence the development of political theory.

Early thinkers such as Confucius and Buddha had little to say about human nature. Surprisingly enough, even the Greeks, competent as they were in both science and government, had but a meager understanding of this concept and dealt in no systematic fashion with human nature. The Middle Ages precluded the possibility of inquiry along this line because of the ecclesiastical assumption that man was born in sin. Man himself was less important than his fate after death.

With the coming of Hobbes, Locke, Rousseau, and the founding fathers of the American Constitution, however, attention shifted increasingly to the question of human nature. How important this new emphasis was can readily be appreciated because everything about government depends on the assumptions made concerning human nature.[2] It is here that the science of psychology has become so helpful. If man is evil and uncooperative, there is very little that can be accomplished anyway; whereas if he is essentially good and intelligent, there are enormous areas of human development which may be affected by wise institutional arrangements.

The Compact Theory

All of the great thinkers of this period emphasized the compact or contract which men were supposed tacitly to have made when they left the state of nature and entered into an agreement to form a civil society and empower their rulers. Bodin, one of the first to attach importance to the idea of the compact, argued that monarchs became absolute and illimitable because their subjects, voluntarily and for their own self-interest, agreed to vest complete power in the king in return for benefits of protection and guidance which they expected to receive. Hobbes argued substantially along the same line. But while Locke and Rousseau, advocates of limited government, accepted the idea of a compact, they held that it was of a circumscribed nature and that the right of the people to grant power to a ruler carried with it an equal right to modify that power, or to take it away if it were abused.

To us, the compact concept is important because of its influence on the early development of the American colonies. Witness, for example, the Mayflower Compact drawn up by the first settlers in New England. This was a contract that went a step further than the original idea because it was formally written down and signed. The American emphasis on written constitutions, which we have accentuated more than any other people in political history, stems directly from the contract concept of the seventeenth and eighteenth centuries. Unless an agreement is actually drawn up and signed, as our American forebears did, there is little historical justification for the compact theory as Bodin and Hobbes developed it. We have seen that government develops from lower to higher forms of association, from the simple to the complex, with or without the benefit of a contract. There is no ascertainable point at which we can say, "Here a compact was entered into," unless, of course, one was actually drafted and signed. Nevertheless, countless men in many countries have acted on the assumption that the contract is a reality, whether existent or implied. From the standpoint of political behavior, therefore, we must recognize its significance even though it is hard to justify on a historical or on a rational basis.

[2] This subject is dealt with further in Chapter 15, "Human Nature, Public Opinion, and Propaganda."

The Rights of Man

John Locke was read avidly by the American colonists and probably, with Rousseau, had as much influence on their political thinking as any man outside the country. Locke was essentially a moderate, especially so far as property rights were concerned, but in some respects his writings had a revolutionary effect. Locke believed firmly in the natural rights of man and in the sovereignty of the people. As a corollary, he contended that a ruler is no more than the agent of the people, acting on the basis of authority entrusted to him under the contract of agreement. As agent, if the ruler abuses his power, his authority may be limited, modified, or removed. Locke even justified revolution as a last resort if other measures of control were not sufficient. You can understand how welcome these theories must have been to the people of America just before the outbreak of the American Revolution.

Basic to all of Locke's reasoning was his belief in the natural rights of man. Man is born with these rights and hence they are inalienable; they cannot be taken away from him. The contract merely fortifies them. Property is the cornerstone of all rights; property is "that with which a man hath mixed his labor." When man enters into the social contract he gives up only so much of his natural rights as is necessary to protect himself and his property, and retains everything else. Moreover, to guard against possible tyranny, no action of the state can be taken without a majority decision. The only safe form of government is based on popular representation, and all power vested in public officials is merely held in trust.

Locke believed in legislative supremacy because the legislature represents the majority and protects the natural rights and the sovereignty of the people. Therefore the power of the legislature should not be delegated. Nevertheless, the legislature itself must not attempt to administer the laws it makes. This authority should be vested in the executive branch of the government, which in turn, however, should be created out of the legislature. Like our American revolutionary leaders, Locke feared the power of the king and of executive officials.

MENTORS OF AMERICAN DEMOCRACY

Rousseau

Jean-Jacques Rousseau (1712–1778), a Swiss and author of *The Social Contract,* lived to see the start of the American Revolution. Because of the time his life-span covered and his powerful democratic polemics, he exercised an enormous influence on our subsequent American government and traditions. Even greater was his impact on the French Revolution, of which he is sometimes called the spiritual father.

Rousseau believed that man is naturally good, not evil. Man, he said, was born to be free. Furthermore, Aristotle was wrong—men are not by nature unequal. Aristotle, said Rousseau, confused effect with cause: it is force that

makes men slaves and produces inequality among them. When man becomes a party to the social contract a great change takes place in him. Before this, his desires and instincts dominate, but afterward he is ruled by a sense of justice and duty. Prior to the contract, each separate will naturally seeks its own advantage, whereas afterward the general will, in which sovereignty is found, seeks equality for all. The expression of the general will is law, and law is the condition of civil society. There are no special, smaller unions such as classes and parties. The general will is the interest of all. Moreover, it is general not because every last individual subscribes to a given course of action, but because the majority will is assumed to be for the welfare of the whole. The greatest good of all consists chiefly in liberty and equality.

The direct and continuous participation of the people is the ideal of popular government. But, said Rousseau, there will never be a true democracy because the people cannot remain assembled all the time. The durability of a constitution, therefore, depends on the strength of its legislature, which is the heart of government. To strive in harmony toward the common good is civil liberty; to live simply and without artifice is the life of the natural man and is the happiest life. However, as complexity and artificiality increase, only through government can we retain the good qualities which men possess naturally in a simple society.

Montesquieu—On the Spirit of Laws

Another immediate forerunner of the American and the French Revolutions was the Frenchman Montesquieu (1689–1755). His famous work, *On the Spirit of Laws,* was published in 1748. Government, he thought, consists in applying the universal principles of natural law to particular situations. There is no absolutely best form of government; it depends on the circumstances. Representative government is expedient at one time, limited monarchy at another. When any regime becomes arbitrary it must ultimately fall, whether it be monarchy, aristocracy, or popular rule. A large democracy, depending on the direct action of its citizens, is unworkable.

Montesquieu championed the federal idea, and his advocacy of it carried much weight on this side of the ocean when our own Constitution was being drafted. Most influential of all was his belief in the separation of powers in government. Our federal Constitution and most of our state constitutions were established in accordance with Montesquieu's conviction that the legislative and executive departments should be independent of each other and of the judiciary. His admiration for separated powers was derived from his study of the English constitution. We now realize, of course, that he erred in his judgment of how English government really operated. Its excellence was not so much in the separation of powers as in the linking together of party leadership in both the legislative and the executive branches so as to secure responsible government.

ENGLISH GOVERNMENT IN THE SEVENTEENTH AND THE EIGHTEENTH CENTURIES

Although the American Revolution was aimed at throwing off the control of the colonies by the English king and Parliament, it was not because of any real antipathy to the English form of government as such. On the contrary, our laws, assumptions, and governmental institutions were more influenced by the English experience than by that of any other country.

England from the time of the Norman Conquest (1066) to the seventeenth century was ruled by hereditary kings whose powers and duties multiplied as internal complexity and external concerns added to the duties of the state. The great administrative establishments of the English government grew out of the functions of the king's councilors. The judiciary evolved from the administrative branch—just as in Rome—but it did not gain full independence and equality alongside the executive and legislative branches until the seventeenth century. The common law was a gradual growth and accumulation of custom, Roman law, legal treatises, decided court cases, and legislation. Parliament early developed into two houses, the upper (Lords) representing the aristocracy and higher clergy, and the lower (Commons), the untitled population. Trade expansion in the sixteenth and the seventeenth centuries led to the development of a strong middle class, and to the rapid growth of the House of Commons in power and influence in relation both to the upper house and to the king. The latter needed revenues for war and for his growing governmental costs. And as the industrialists of the cities came to possess a large portion of the taxable property of the nation, a greater share in the conduct of government became the price which the middle classes exacted for increased taxation. During this time, also, these same classes were widening their potentialities of leadership as their sons were able to acquire educational opportunities which more nearly equaled those of the landed aristocracy.

Up to the crucial seventeenth century, the king of England ruled through his Privy Council, a small committee made up of his principal advisers and chiefs of state. They possessed no independent powers and could act only in the king's name and with his authority. Twice in the seventeenth century the House of Commons attempted to force the sovereign to limit his powers and to act favorably on their grievances. Twice he refused to do so and both times lost his throne—once in 1648 when Cromwell became Protector, and again in 1688 when William and Mary were brought over from Holland to replace the deposed monarch. After that year there was no further question as to the supremacy of Parliament in England. The king's Privy Council became the nucleus of the present cabinet system. The chiefs of state thereafter reported to Parliament instead of to the king. The king was nominal ruler, ceremonial head of the state, and symbol of unity. But the actual head of the state, the wielder of power and the man responsible to Parliament and to the people for the government, was the Prime Minister, chief member of the Cabinet.

Parliamentary supremacy brought a speeding up of political party activity and a separation into two major political groupings in England, one of which became the majority, the other the opposition. The members of the Cabinet were chosen from the majority party and were required to hold seats in one or the other of the two houses of Parliament. They remained in power until the next scheduled general election or until an earlier defeat as a result of a vote of lack of confidence growing out of a test vote on an important issue. When this happened there was an election, and if the voters sustained the minority, it came into power and the former majority then became the opposition.

This was the general outline of government in England as it existed after 1688, as it operated just before the American Revolution in 1776, and substantially as it operates today. The chief innovation since that time has been in the franchise, which, during the nineteenth century, was broadened, with increasing democratization. In 1911 the Parliament Act was passed, establishing once and for all the primacy of the House of Commons over the House of Lords, which since then has had no power to block what the lower chamber was determined to do. But England retains her royal family along with many other evidences of aristocracy—an aristocracy, however, open to talented members of all classes, labor included.

Influence on American Governmental Development

The influence of the English experience on the development of government in the United States is shown by the elements of the former which have become a part of our own governmental system. In the first place, the concept of the natural rights of the individual—as found in Magna Carta, the Habeas Corpus Act and the Bill of Rights—influenced the formulation of the bills of rights included in our federal and state constitutions. With regard to popular government, we took from England a system of regular elections, and our emphasis on the legislature as the central organ of government. In the field of law we adopted much of the English common law together with the principle of the independence of the courts. Next, we imitated the English system of political parties, with emphasis on two major groupings. With regard to the executive, we took over the theory of limited powers; here, however, there was this difference—England developed the cabinet system in which the legislative and executive branches are linked through party leadership, while we have kept these two branches divided. Finally, our system of municipal government, under an elective council and a mayor, and our county and local governments generally are much like the English models from which they were copied.

It is worth noting that we did not take over from England her form of responsible government through the cabinet system, unitary government (which is the opposite of federal government), the unlimited power of the

national legislature, or the dual type of executive resulting from the retention of a king. Moreover, English experience does not explain the so-called great principles of American government: federalism, the separation of powers, the written constitution, and judicial review of legislation, which in some ways are the most distinctive features of our constitutional system.

PRINCIPLES CONCERNING THE BEST FORM OF GOVERNMENT

What is the best form of government? Must we conclude with Montesquieu that none is necessarily superior, and that time and place and circumstances are the deciding factors? That monarchy is usually successful if the monarch enshrines virtue and is careful about picking his chiefs of state? That aristocracy is useful as a spur to ambition if its ranks are opened to the able and the ambitious? That democracy is the ideal form of government if not carried to excess or allowed to become ineffectual? Or is it possible to formulate a few general rules as to the best form of government? [8] Consider the following:

1) That government is best which affords the greatest freedom and the greatest opportunity for individual development, which together produce happiness. Government must provide equality of opportunity for all. Ordinarily this condition is best realized in a representative government or democracy.

2) Monarchy provides a symbol of unity in the king. Unity is a factor which most democracies must assiduously cultivate because of the lack of a central symbol.

3) The concept of aristocracy is not necessarily foreign to democratic government if the distinction is based on individual development through education and the full utilization of one's talents, and if opportunity is within the reach of all. This interpretation differs completely from the concept of an aristocracy based solely on birth.

4) The weaknesses of democracy are the indifference of its citizens, the lack of sufficient plan, and the failure to provide enough unity to achieve the necessary efficiency in operation.

SUPPLEMENTARY READING

1. The nation-state system and sovereignty: Two good chapters are found in Edward McChesney Sait, *Political Institutions: A Preface* (New York, 1938), Chapters 8 and 16. Alternatively, Francis G. Wilson, *Elements of Modern Politics* (New York, 1936), Chapters 3 and 4. For a more extended treatment see Carleton J. H. Hayes, *The Historical Evolution of Modern Nationalism* (New York, 1931). Another excellent analysis is found in James W. Garner, *Political Science and Government* (New York, 1928), Chapter 6.

2. Great books to read: Machiavelli, *The Prince* (Modern Library ed.) with an introduction by Max Lerner, Chapters 1–10. Thomas Hobbes, *Leviathan,* Part 1, Chapters 13 and 14; Part 2, Chapters 17–26. Rousseau's *The Social Contract,* Books

[8] This is dealt with more fully in the concluding chapter, "The Future of Popular Government in the United States."

1–4. All of these have introductions that are useful. Unless otherwise designated, the Everyman edition is recommended.

3. Role of government, 1648 to the American Revolution: This subject is interestingly dealt with in Herman Finer, *Theory and Practice of Modern Government* (New York, 1934), Chapters 3 and 4. See also Marshall E. Dimock, *Modern Politics and Administration* (New York, 1937), Chapter 2.

CHAPTER 4

The American View of Government

RARELY do we stop to think today that the 170 years which elapsed between the settling of Jamestown in 1607 and the Revolution of 1776 comprise a period almost as long as that which separates us from the Revolution. It seems hard to realize that the original settlement, the development of colonial government, and the preparation of the American people for statehood and federal government covered so long a time. As a matter of fact, if we reckon from the ratification of the federal Constitution in 1788, our history as a nation has been twenty years shorter than our history as a colonial possession.

It is also hard to realize that on the eve of the Revolution, the population of this country totaled some three million people, living in settled communities extending from Maine to Georgia, a distance of thirteen hundred miles. Compared with government during the golden days of Greece or even in England at the end of the Middle Ages, there was already an extensive governmental problem on these shores at the time of the Revolution, with regard to both territory and population. America was already cosmopolitan in terms of racial origins. The English had settled in New England, Maryland, and Virginia. The Dutch were in New York. The French Huguenots occupied the Carolinas. There were French and Spanish claims along the southern gulf. The Scotch-Irish were scattered along the western frontiers, and the Pennsylvania Dutch were in the central states. America was already a microcosm of Europe. And as the original settlers pushed westward and millions of others came from all parts of the world, we were in the process of developing a governmental problem on a continental scale.

By the time of the Revolution, thriving cities had grown up along the eastern seaboard. Commerce was extensive, especially with England and the West Indies. There was a pervasive interest in ideas. The reading of newspapers and books was probably as great, in proportion to the population, as anywhere in the world. America's three million citizens were politically minded, possibly more so than the people of any other country. The circumstances which led them to the new world—escape from tyranny and quest for opportunity—made government a primary concern in their lives. For ten years before the outbreak of the Revolution, political pamphleteering rose in ever-increasing crescendo. The people did not want to be taxed unless the levies were determined by their own representatives and the revenues used for the defense and upbuilding of the colonies. They did not intend to sit supinely by and allow

the mother country to drain off the wealth of America for the benefit of absentee owners and the designs of the English government in London. Permit London merchants to choke and throttle American trade in order that they might benefit themselves? Not so long as patriotic Americans had the power to resist!

Although anti-British sentiment was felt by only a small minority at first, by 1775 the pride of the colonists had begun to be aroused. They had struggled with the wilderness and the Indians to hew out a new civilization. Their nationalism had become indigenous: after 170 years they had become Americans. England and Europe were fleeting memories. One form of resistance led to another: smuggling thrived; tea was tossed overboard when, despite repeated protests, it was objectionably taxed; obedience gradually gave way to passive resistance and finally to open violence. Each step successfully made encouraged the taking of the next.

From Maine to Georgia the towns began drilling volunteers in secret. Inevitably, so it seemed, the colonists and the British redcoats were to clash at Lexington in 1775 and the test of strength was on. Democracy thrives on optimism and self-confidence. "Three millions of people, armed in the holy cause of liberty, and in such a country as that which we possess," stormed Patrick Henry, "are invincible by any force which our enemy can send against us."

THE DECLARATION OF INDEPENDENCE

Thomas Jefferson's Declaration of Independence, by which the colonies announced to the world their separation from the mother country, expressed humanity's yearning for freedom and opportunity throughout the ages. That it is unmistakably influenced by all the great political thinkers since Socrates becomes clear when the most famous part of the Declaration is subdivided under these four captions:

The law of nature: "When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

The rights of man: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. [*Role of government:*] That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. [*Justification of revolution:*] That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and

organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. . . ."

Is it any wonder that this battle cry of freedom even stirred men in England as it did those in the newly born sovereign states on this side of the Atlantic? Poor, struggling humanity the world over, never ceasing in the fight to improve its lot, has considered the Declaration of Independence the greatest single political utterance in the history of the world.

Principles Relating to the Limits of Obedience

Where is the dividing line between obedience to law and the decision to use force in re-establishing popular control? This is a moral as well as a sternly practical question which peoples of all times have had to face. Is physical violence ever justified? Apparently it is. But only to secure the ultimate values of life, and then only as a last resort.

Some principles governing the relations between man and the state are these:

1) Government is made for man, not man for government. The ultimate value of life and the touchstone of all governmental activity is human personality, which requires freedom and opportunity to unfold.

2) When the state incorrigibly violates this ultimate value, the people must exercise their natural right and duty to place the government in more democratic hands.

3) Peaceful persuasion and mutual education, working within and through human associations, will usually effect changes without the use of violence. Ordinarily, peaceful methods leave less bitterness, cost less, and preserve other values which society is loath to lose.

4) If people in a democracy retain control of their government, revolution is not necessary.

5) But when the generality of mankind concludes that irreparable damage is being done to human values, then the use of physical force may be justified.

GENERAL OUTLINES OF AMERICAN GOVERNMENT DURING AND AFTER THE REVOLUTION

Effective government is even more essential when a war must be fought than it is in time of peace. Mindful of this, the American colonists, when they signed the Declaration of Independence, also took steps to strengthen their governmental machinery.

The Continental Congress, which had been organized as a kind of makeshift central body in 1774, issued a call to the several states to put their governmental houses in order. Consequently, with the departure of the royal governors from the country, informal legislatures or conventions of prominent citizens assembled in the several states. Each then proceeded to draw up a basic charter, or constitution, as the framework of state government. Under wartime conditions and because haste was necessary, most of the states framed their governments through these informal assemblies, since it would have taken time

to set up duly elected constitutional conventions. In six of the erstwhile colonies the citizens were given a chance to vote on the proposed plans. In two of these —Massachusetts and New Hampshire—regularly constituted constitutional conventions were elected and the frames of government were afterward submitted to the voters. So lasting was the work of the Massachusetts convention that her state constitution remained in operation without significant change until 1918—a period of 138 years.

A constitutional convention is a foregathering of duly elected representatives of the citizens for the purpose of drafting a constitution or proposing changes in an existing constitution, following which their work is submitted to the voters for acceptance, rejection, or adoption in part.

The framework of government among the original thirteen states differed materially, although the divergencies were usually in detail rather than basic. Since the Revolution, the freedom of the states to experiment in the governmental laboratory has been one of the most distinctive characteristics of the American system. In this country there has never been—as there was in the Napoleonic reforms in France, for example—an attempt to standardize and prescribe the framework of state government as a means to stronger central control.

Much later Mr. Justice Holmes was to characterize the forty-eight states in this country as insulated laboratories in which the people are free to try out different governmental and social theories. As a result, possible failures do not affect the balance of the country as a whole, while deserving innovations may be discovered and imitated by others.

Local Government

In the development of local government, geography and economic forces played a major part. The South was predominantly agricultural, consisting chiefly of large plantations. In this section the towns were relatively less important than in the Middle and Northern states because each plantation was virtually a town in itself. *In the South, therefore, the county became the center of local government.* This pattern is directly traceable to England, where the county has always occupied an important place, and for the same reasons. Southern local government centered in county officials who, during the early period, were appointed by the state governor. Chief among them was the justice of the peace, whose duties were administrative as well as judicial. He was assisted by sheriffs, coroners, and school and road officials as the needs increased.

In contrast to this system, *in New England, township government became the rule.* Here manufacturing and commerce predominated in certain parts where population was concentrated in urban areas. The farms, being largely family-operated, were much smaller than in the plantation areas of the South and were usually grouped around a small town or village. The dominant organ of government, therefore, quite naturally became the town meeting, convoked

annually, at which the citizens decided local policies, elected their own officials, and determined the tax rate. This was democracy akin to that of ancient Athens. In fact, it was more democratic than Athens because there were no slaves and suffrage qualifications were liberal. True, counties also existed in New England, just as there were towns in the Southern states, but their governmental powers were negligible and even today are much less prominent than in other parts of the nation.

In the Middle Atlantic states, the mixed system of counties and towns predominated from the first. This foreshadowed what was to happen in large sections of the country as the entire continent became populated and settled communities grew up. Local industries developed everywhere. Even in the South, agriculture came to occupy a relatively less prominent role as industries moved in.

The typical pattern of local government in America today, therefore, is a dual pattern, urban and county, on which have been superimposed thousands of special local districts relating to schools, fire protection, irrigation, parks, and so on. The number of local governmental units in 1942 is shown in the following table:

U. S. government	1
States	48
Counties	3,050
Townships (or towns)	18,919
Municipalities	16,220
School districts	108,579
Special districts	8,299
Total	155,116

Source: U. S. Bureau of the Census, *Census of Governments, 1942.*

The consolidation and general tightening up of these multitudinous units constitute one of the principal means of improving local administrative effectiveness and of saving the taxpayers' money.

Predominant Features of Early State Governments

In the structure of the state governments themselves at the time of the Revolution, six outstanding features were destined to exercise a marked influence in the future: written constitutions, bills of rights, the separation of powers, legislative supremacy, a weak executive head, and independent judiciaries.

Written constitutions. Unlike the English, who have never written down their basic laws and agreements in one place, the American colonists believed that written documents are a protection against tyranny and misunderstanding. In this they broke new ground. Later, however, we were to discover that there are drawbacks as well as advantages in this procedure, because a rule once written down is hard to alter. Government, being human and subject to the forces

of social change, must itself change if it is to serve adequately, and the methods of amending constitutions are usually cumbersome.

Bills of rights—the protection of human liberties. Seven of the thirteen original states prefixed their constitutions with a bill of rights, setting forth the principal rights and immunities of their citizens. In this respect, American government profited from English experience. The English Bill of Rights, it will be remembered, was adopted in 1689, and became the model of the bill of rights included in the first state constitution in this country, that of Virginia.

The listings of rights in our early state constitutions, plus the preambles, made it clear that all power resided in the sovereign people. Here we followed Locke and Rousseau rather than Bodin and Hobbes. Here also we agreed with Tom Paine, who advocated a limited government with the people holding most of the power. Paine published his *Common Sense* in 1776, and in it expressed his idea of freedom: "I draw my idea of the form of government from a principle of nature, which no art can overturn, viz., that the more simple anything is, the less liable it is to be discarded, and the easier repaired when disordered. . . . Government even in its best state is but a necessary evil." Specifically listed in the state bills of rights were such protections as habeas corpus, trial by jury, indictment by grand jury, and other civil liberties. It was these state precedents that made it the easier for Thomas Jefferson to insist on the adoption by Congress of a bill of rights in the federal Constitution, although none had been drafted in the original document in 1787.

The separation of powers. Although Plato and Aristotle anticipated the idea of the separation of powers and Montesquieu had made it one of his central theses, the founding fathers of our Constitution must be given credit for enunciating it as a central principle of statecraft and insisting on it in practice.

The separation of powers means that each of the three branches of government—legislative, executive, and judicial—shall have its appropriate and distinctive function, and that none shall attempt to invade the province of the other.

The concept is not difficult in theory but in practice it is often confusing. It does not mean that each branch shall live in a hermetically sealed compound, having nothing to do with the others. Nor does it mean that each shall be denied the exercise of powers that seem to be in the exclusive realm of another. Thus, in practice, the legislative branch sometimes exercises administrative powers, the executive has acquired judicial powers, especially in connection with its regulatory commissions, and the courts influence both administration and legislation. The central idea of separated powers was to safeguard the people's liberties and, by parceling out responsibilities among three separate branches, to prevent a concentration of strength in any one. This is the governmental equivalent of the division of labor theory in economics. But it is far from simple. For example, the principle of the separation of powers is accompanied by the theory of checks and balances, which holds that one

branch must check, supplement, and balance the power of the others in order that their freedoms may be further hemmed in.

At many points in our story we shall see how important, and also how intriguing, the separation of powers theory may become. It is enough here to say that the various state constitutions, drafted at the time of the Revolution, generally provided for this division of power at the state level.

Legislature—center of political gravity. The American people—having observed the titanic struggle between king and Parliament in seventeenth-century England—realized full well that representative government requires the dominance of the legislature and the effective checking of the executive. Shortly after the first meeting of the Continental Congress, for example, John Adams said, "I contend that our provincial legislatures are the only supreme authorities in our colonies." This view was shared by Thomas Jefferson, who maintained that "the influence over government must be shared among all the people. If every individual which composes the mass participates of the ultimate authority, the government will be safe. . . ."

The supremacy of the legislature, therefore, was made certain by appropriate provisions incorporated in our early state constitutions. Unlike the system which obtained during the colonial period, where royal governors exercised most of the power, the new state legislatures were elevated to the central role. They were given the power to initiate legislation, to originate money bills, and to scrutinize the conduct of administrative affairs.

Most of the early legislatures had an upper and a lower house (bicameralism). Two experimented with unicameralism: Pennsylvania, which had operated under a single house in colonial times and continued to do so until 1790; and Georgia, which adopted the plan in 1777 and kept it until 1789. The members of the legislatures were chosen on a representative basis. Like the England of this period, some property qualifications for the franchise were typically imposed. Vermont, first of the western states to join the union, was the exception to this rule.

A limited chief executive. Again remembering the tyranny of royal governors, the American people subordinated their state governors to the legislative branch. In only four states was the governor popularly elected. In the other nine he was chosen by the legislature. Had this practice been continued we might have had today the responsible cabinet system of government which England evolved after the revolution of 1688. In most of the states the governor's term was limited to one year, another method of circumscribing his power. Only in Massachusetts was he given independent veto power. He had no freedom of appointment, such as the governor increasingly has today. As an official he was feeble, deliberately restricted in order to guard against tyranny.

But in this our forebears went too far, and it was eventually realized that the executive office had been weakened too much. Most of the state govern-

mental reform of the past thirty years, therefore, has been aimed at strengthening the governor's power and improving the administrative services which he controls.

An independent judiciary. One of the great constitutional battles fought out in the seventeenth century in England culminated when the judiciary won its independence, just as the legislature established its supremacy in its own struggle for power. This tradition has been faithfully followed in the United States. As a matter of fact, the judicial branch has risen to a higher degree of power and influence in this country than anywhere in the world.

This is another respect in which American government early became distinctive. The power to declare unconstitutional the acts of the legislature and the executive is as typically American as Boston pork and beans or Paul Bunyan. It was destined to become a central issue in American governmental development and to exercise wide influence on our social and economic growth as a people.[1] Not until John Marshall became Chief Justice of the Supreme Court, in 1801, however, did the doctrine of judicial review assume its present overwhelming importance in American government.

THE CENTRAL GOVERNMENT DURING THE REVOLUTION

Simultaneously with the strengthening of the state governments after the Declaration of Independence, it became equally necessary to create a central governmental mechanism by which to carry on the war against the mother country. The effort was never a great success, but perhaps the most surprising thing about it was that it was successful at all.

Governments cannot be improvised. They must grow gradually from lower to higher forms of association. In this respect, the American colonists were unprepared because under British rule they had been accorded little part in the actual conduct of colonial affairs. But war is a stern disciplinarian. The people were forced to respond to the situation brought about by the opening of hostilities or be hanged as unsuccessful conspirators. And so the Continental Congress was established in 1774, followed in 1781 by the Articles of Confederation.

The story of the Continental Congress and the Articles of Confederation, under which the central government operated until superseded by the Constitution of 1787, is significant for two reasons. First, the central government succeeded in weathering the storm of the Revolution, as unequally matched as the colonies and the world's leading power seemed to be. And second, the Articles of Confederation proved so deficient when the war was over that they had to be replaced by a new constitution and a stronger and more durable governmental structure. The framework of the Continental Congress did not differ materially from that of the state governments during the same period, but so great was state loyalty and particularism that the Congress was merely

[1] This subject is dealt with in Chapter 29, "The Judiciary as Policy Maker."

a weaker counterpart of the state governments, which grudgingly surrendered to it as little authority as possible.

After the Continental Congress had adopted the Declaration of Independence and advised the states to strengthen their governments with all possible haste, the Congress set in motion plans for a somewhat more effective (but still weak) scheme of national government, known as the Articles of Confederation. These, however, did not supersede the Continental Congress until 1781, when they were finally ratified by the last of the thirteen states. But this new form of central government lasted only until 1789, when it was replaced by a stronger plan of government worked out by the Constitutional Convention of 1787. Nevertheless, weak as the Continental Congress and the Articles of Confederation were, during the period of the war they were a godsend to the infant nation. It must be recognized, however, that had the Articles of Confederation been more quickly ratified, the war might have been shorter because of the greater power accorded by them to the central government. The five-year delay in acceptance was costly to the American people.

The main features of the Articles of Confederation were the following:

They established a confederation rather than a federation. Actually, they created a limited alliance of sovereign states for the purpose of taking care of certain specified functions. The central government was not superior to the states or independent of them, but merely their agent in carrying out enumerated duties. This idea was clearly expressed in the words, "For the more convenient management of the general interests of the United States . . ." And the second article positively stipulated: "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled."

This wording was prophetic. It showed the strength of the states' rights sentiment prevailing even then. It disclosed the determination of the people to make the legislative assembly the fortress of popular control. And it expressed the current fear of strong central government and constituted a formula which was later written into the federal Constitution of 1787. As we shall see, however, this formula was powerless to prevent the eventual growth of federal centralization and the subsequent weakening of states' rights—a development which has gained rapid momentum since the Civil War.[2]

The Articles of Confederation vested most of the governing power in Congress. But this power, being delegated by the sovereign states, was strictly limited. *The Congress was authorized only to*

Declare war, make peace, send and receive ambassadors, and make treaties and alliances.

Regulate the coinage, fix weights and measures, regulate trade with the Indians, establish and regulate post offices, build and equip a Navy, appoint

[2] See Chapter 9, "Federal Centralization and States' Rights."

the higher officers of the Army and Navy, and make rules for the conduct of the armed forces.

Borrow money, emit bills of credit, ascertain the sums of money necessary and appropriate and apply the revenues required for the joint effort. But funds for the common defense and public welfare were to be supplied by the several states on the basis of the land values within each, and taxes were to be levied by the state legislatures, not directly by the Congress.

Call upon the several states for land forces, in proportion to the white population.

Congress did not have the power to

Regulate commerce among the several states or prevent the erection of tariff barriers between the states.

Establish a uniform currency and issue legal tender backed by national instead of state authority.

Tax the citizens of the several states directly, which might have put the Congress in a position to finance the war beyond doubt.

Directly commandeer all of the armed forces and supplies needed in carrying on the war. It could only tell the states what was needed and hope that it would be forthcoming.

Even the members of Congress themselves were primarily state rather than national officials. Each state was given one vote, although the number of members from each ranged from two to seven. As evidence of the sovereign nature of the states, members of the Congress were elected and remunerated by the several legislatures instead of by the voters directly. Service was limited to three years out of any six and Congress was ordered to meet every year. On most questions, an affirmative vote of nine states was required for passage.

The executive power was plural and strictly limited. Under the confederation, the suspicions of the citizens with regard to a national executive branch exceeded even those which they entertained toward the governor in their state governments. As in the case of state governments, the Articles of Confederation provided that the legislature should create the national executive body—another tendency toward cabinet government which was not destined to develop further.

The device by which the executive arm was constituted would seem ridiculous today. "A committee of the States," to use the wording itself, was to carry out the laws. Each state was to be represented by one member on this central committee and the group was to serve while Congress itself was not in session. Moreover, it was expressly stipulated that the executive committee should exercise only such powers as Congress might delegate to it, and under no circumstances were these to include the determination of policy. If these limitations seem unrealistic, consider that the colonists had learned the dangers of undemocratic power the hard way, and that they were determined to guard against it at any cost, even at the expense of imminent peril to themselves.

And despite the handicaps of a weak executive, the war was, in fact, won, thanks to local initiative, fighting spirit, the ability of the generals, and men like Franklin, plus the aid of the French.[3]

A judicial system was improvised. Realizing that disputes would arise between states and that prizes of war would be taken, the Congress provided a court of appeals for admiralty and wartime cases, and special commissions to deal with disputes between states, such as border questions. The system worked passably well and afforded a foundation for the federal court structure which was created later.

Finally, what was believed to be the permanent nature of the Articles of Confederation is clearly indicated by the wording of Article XIII: "Every state shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; . . ." Nevertheless, the Articles of Confederation lasted only eight years. The basic difficulty was that the people of the United States were citizens of the states, but not of the United States, because the central government was not given direct jurisdiction over them. It was not until the framing of the Constitution of 1787 that a new unity was created and the weaknesses of the confederation were rectified.[4]

THE AMERICAN VIEW OF GOVERNMENT

Certain aspects of American government are very much our own. Some of them we borrowed, especially from France and England, and then altered to suit our own needs; others are indigenous. Perhaps the greatest influence on the shaping of our constitutional system during the early years of trial came from the English utilitarians, whose work was widely read in this country in the first part of the nineteenth century. Equality of opportunity, government as the servant of man, governmental power kept in check, liberalism, constitutionalism, the importance of legislatures, and freedom are aspects of the American view of government which will be taken up at this point.

Equality of Opportunity

If people are to reach their highest development, they must not only be free; they must also be accorded an equal chance and equal treatment. The American idea of equal opportunity was expressed as early as 1778 by a group of Massachusetts citizens, delegates to a constitutional convention. "All men are born equally free," they said. "The rights they possess at their births are equal, and of the same kind. Some of those rights are alienable, and may be parted with for an equivalent. Others are inalienable and inherent, and of that importance, that no equivalent can be received in exchange."

[3] Charles A. and Mary Beard, *The Rise of American Civilization* (New York, 1927), Vol. I, Chapters 1–5. If possible, read the whole of this two-volume masterpiece.

[4] To be discussed in the following chapter.

In other words, it is not wrong for one man to excel over another if he does so because of superior ability or effort. But it is wrong for him to win the race if his competitor is forced to start behind him or is tripped during the competition. Equality of opportunity means concrete things. It means free public education, for example, so that all who wish, or are able to, may rise. It means an equal right to vote, to hold public office, to own property, and to earn a living. It is the best assurance of justice that we have.

Government Is the Servant of Man, Its Appropriateness Depending on Utility and Justice

The American character consists of idealism accompanied by a protective realism. It is more likely to be practical than doctrinaire, holding to fixed values but remaining adaptable as to method. Accordingly, the American view of government holds that individual responsibility for the public business is preferable to public responsibility so long as the public business can be satisfactorily accomplished in that way. But if it cannot, then society should undertake the task. Thus government is an instrument to be used when needed, and its control must remain with the people.

Much of this part of our tradition resembles the beliefs of the English school of utilitarians. Their views and ours with regard to the role and utility of government developed along nearly parallel lines during the early years of our national history, while later on utilitarian doctrines came to exercise a direct influence on the development of our governmental institutions. This was particularly true when our federal Constitution was undergoing its first tests, through interpretation, during the nineteenth century. The three great figures connected with this school of thought lived in England just before and after the American Revolution: Jeremy Bentham (1748–1832), James Mill (1773–1836), and John Stuart Mill (1806–1873), the brilliant son of James Mill.

The most cogent and developed statement of what utilitarianism comprises was written by John Stuart Mill, author of treatises on utilitarianism, liberty, and representative government. "The creed which accepts as the foundation of morals *utility*," said he, "or the *greatest happiness principle*, holds that actions are right in proportion as they tend to produce happiness, wrong as they tend to produce the reverse of happiness." Pleasure and pain, he observed, are the usual tests of right and wrong. But in this context pleasure is not to be confused with mere sensual gratification; pleasure is a synthesis of intelligence, morality, and all the component parts of man. That the emphasis is morally conceived is shown by Mill's statement that "in the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility."

Mill also emphasized the influence of environment. Moral feelings, he said, although not innate, are based on nature and are capable of springing up spontaneously; under favorable circumstances and with outside encouragement, they may be brought by cultivation to a high degree of development. Next to selfishness, he continued, the principal cause of unhappiness in the world is

lack of intellectual cultivation. Thus he recognized the responsibility of both the individual and the environment (the public) for the furtherance of the greatest happiness principle, the greatest good of the greatest number. But since there may be conflicts, how can private interest and public good be reconciled? Mill's answer was that "genuine private affections, and a sincere interest in the public good, are possible, though in unequal degrees, to every rightly brought up human being." Mill believed that "the utilitarian morality does recognize in human beings the power of sacrificing their own greatest good for the good of others. It only refuses to admit that the sacrifice is itself a good. A sacrifice that does not increase, or tend to increase, the sum total of happiness, it considers as wasted. The only self-renunciation that it applauds is devotion to the happiness, or to some of the means of happiness, of others; either of mankind collectively, or of individuals within the limits imposed by the collective interests of mankind." As a corollary, restraint is necessary in human organization, said Mill, so as not to trespass on the rights of others. He stated the rule thus: "The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it."

In his essay on utilitarianism, Mill also outlined the foundations of justice. These, he said, are the assurance to each individual of what the law entitles him to—that is, the right to property and personal liberty; immunity against badly conceived or iniquitous laws; the right of obtaining what one deserves; the keeping of faith; and the guarantee of impartiality and equality. As a philosophy of government, Mill's ideas of justice held a warm appeal for a people embarking on independent statehood.

The Concept of Governmental Power Kept under Leash

American government is one of constitutional limitations on the power of government, and this idea also was held by the utilitarians. It was Jeremy Bentham who coined the phrase "the agenda of the state," defining it as the irreducible number of activities that government must undertake to maintain a sound and thriving economy, while James Mill believed that "the democratical point of view is that each individual should secure protection and that the powers which are constituted for that purpose should be used exclusively for that purpose." John Stuart Mill also warned against the evil of adding unnecessarily to the powers of government. These ideas reinforced our own views on government and still express an attitude widely held in the United States today.

Liberalism, Constitutionalism, and Legislatures

The utilitarian approach to government was all the more congenial to the sympathies of early American statesmen because it was dynamic rather than static or repressive. Although the utilitarians held that government should do only what is necessary, they denied that government is an evil. Rather, if properly directed and controlled, government provides the means of securing

happiness and the good life for the entire community. Thus utilitarianism did much to build the foundation for liberalism in government.

Liberalism holds that government should do what is necessary, after individualism has accomplished all it can; that in what government does, intelligence, impartiality, and justice must predominate. All social decisions must be made on the basis of what is best for the majority. Government errs if it favors merely a segment of the community. Because they believed in a limited form of government, the utilitarians also stressed the concept of constitutional government—a government of law, by law, and through law. *Constitutional government means a government of specifically defined powers in which internal safeguards are provided against abuse of power by any branch or official of the government.*

The utilitarians were intelligent optimists. Like the founding fathers of our own constitutional system, they were the spiritual heirs of the eighteenth-century view that man is rational, knows his own intelligent self-interest, and can be counted on to cooperate in solving the social, economic, and political problems that perplex him. They believed, therefore, in the ameliorative possibilities of social legislation. Writing at the time when the Industrial Revolution in England was rapidly multiplying the problems of mankind, and when factory laws were growing in number, the utilitarians could see the potentialities of wise legislation as the solution of the difficulties of increasing complexity. Bentham in particular developed a philosophy of government centered around the legislature as the nucleus of governmental influence, and legislation as the means by which the public good might be realized. "Private ethics," said Bentham, "has happiness for its end; legislation can have no other."

It should be realized, however, that although the influence of the English utilitarians on the development of the American view of government was sharp, the spirit of Americans and our ultimate values are attributable to many other forces that were varied and deep rooted. They came from numerous quarters, but they were adapted and energized through contact with the virility of plain people whose ancestors were inured to centuries of struggle; people who looked on this continent as the place in which, at last, men could be treated with humanity and individuals might find the right environment in which to grow in dignity and stature.

"WE HOLD THESE TRUTHS TO BE SELF-EVIDENT . . . ."

The unifying credo of American life was early decided and everywhere evident. The provisions of early constitutions contain it. The fervor of Sam Adams, John Hancock, Tom Paine, and Patrick Henry—firebrands of the American Revolution—show it at white heat. The Declaration of Independence was its finest expression. What a people believe in and come to value forms the basis of their national unity—and unity is necessary to stability and progress. The institutions of a nation are only as strong as the beliefs and attitudes of the people. If these are humane and democratic, the government will

be likely to be democratic. If they are arrogant and exploitative, popular government is out of the question. Thomas Jefferson saw this, as did all the great leaders of the formative period in our national history. "The basis of our governments being the opinion of the people," said Jefferson, "the very first object should be to keep that right; . . . Cherish, therefore, the spirit of our people, and keep alive their attention."

The values and fervors of American life have succeeded in retaining much of their original vigor. But like all good things, they must constantly be renewed. This refreshening we accomplish by reminding ourselves frequently of what we have and what we hope for. We should expect that everything in life will undergo change of some kind, except our ultimate values. These we need in order to keep our bearings, and if they are right, they need never be changed.

What are the factors of national belief and inspiration that have remained constant throughout our history? Can they be stated simply? How much agreement would there be once they were expressed? The ultimate value by which every subsidiary end and means in government must be judged, the foundation of American social and political philosophy, is *respect for the innate worth and dignity of all human personality*. Nor does it mean only some of the people; it means all of the people, because democracy is synonymous with humanity. As Americans, we hold that human personality is to be respected; nurtured, not exploited; regarded as the goal of social development, not as something to be prostituted for power or wealth. We hold also that, given the proper opportunities and encouragements, common humanity is capable of infinite improvement and growth.

Our second most important value is our belief in *freedom as the condition of man in which individual self-development and the achievement of happiness are most likely to take place*. Like so many key words in the vocabulary of political science, however, there are several distinctions and decisions to be made in applying the concept of freedom to concrete situations. The following ideas inherent in the word "freedom" may help to clarify its application:

1) Freedom is simplicity, the opportunity to act without being compelled to conform to the dictates of complexity. In this mechanized age, the opportunities for such simplicity are increasingly limited. Under complex conditions, therefore, freedom means the transference of the humane, unregimented characteristics inhering in simplicity to, and their retention within, an institutionalized frame—admittedly, as Rousseau recognized long ago, a difficult task.

2) Freedom is opportunity to develop, the condition under which the individual, knowing what he wants, finds the circumstances right, and experiences only those difficulties that he himself creates. This situation may obtain under varying degrees of simplicity and complexity in the social structure.

3) Freedom provides the individual with the chance to have a voice in determining the social controls under which he lives. He may not be able to do everything he might if things were arranged for him alone, but at least he knows that his preferences receive consideration along with those of others. If

he chooses, he may be an equal participant in his own government. Indeed, Socrates' explanation of the necessity of the state was that freedom may derive from the larger opportunities which cooperative effort in the conduct of the government makes possible.

4) And finally, freedom is opportunity for initiative and individuality. It is the right of the individual to be different, to follow his inner lights, his hunches, his occasional divine flashes, his instinct to excel. It is in this area more than any other that the practical difficulties in the application of the concept of freedom are likely to arise.

SUPPLEMENTARY READING

1. Colonial and early American government: The best brief treatment is found in Arthur N. Holcombe, *State Government in the United States* (New York, 1926), Chapters 2 and 3; see also Allan Nevins, *The American States during and after the Revolution* (New York, 1927), and A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941). Other good references are John Fiske, *The Critical Period of American History* (Boston, 1888), Chapters 3 and 4; and C. H. Van Tyne, *The American Revolution* (New York, 1905), Chapters 9 and 11. Students should also be encouraged to read Charles and Mary Beard's classic, *The Rise of American Civilization* (New York, 1927), especially Vol. I, Chapters 2–5. See also Carl Becker's books, *The Declaration of Independence* (New York, 1922) and *Modern Democracy* (New Haven, 1941).

2. Great books to be read: John Locke, *Of Civil Government* (Everyman), Introduction and Book II (Second Treatise); Tom Paine, *Rights of Man,* Part II, Chapters 1–3; Thomas Jefferson, *The Declaration of Independence;* John Stuart Mill, *Utilitarianism* (Everyman), Introduction and essays on "Liberty" and "Representative Government."

3. American political ideas: Charles E. Merriam, *History of American Political Theories* (New York, 1903), Chapters 1 and 2; R. G. Gettell, *History of American Political Thought* (New York, 1928), Chapters 3 and 4; Charles A. Beard, *The Republic* (New York, 1943); D. W. Brogan, *The American Character* (New York, 1944). These are all good sources.

PART TWO THE CONSTITUTIONAL FOUNDATIONS

CHAPTER 5

The Framework of the Federal Government

THE IDEAS men live by and the wants they seek to fulfill find expression through the institutional machinery which society sets up to give them effect. The more complex the social, economic, and political conditions of our life become, the more significant is the influence of these institutional vehicles. There is a very simple machinery, for example, connected with the New England town meeting and the work of the selectmen, the town clerk, and other local officials who act in the citizens' behalf. In contrast with this, the provisions of the federal Constitution, the organization of Congress, the administrative branch and the judiciary, the parceling out of authority among local, county, state, and federal governments, the provisions of constitutional, statutory, administrative, municipal, and international law, the foreign policies and relations of a world power, and the intricate network of government's relations to all segments of the political economy including finance, commerce, industry, labor, agriculture, and the professions—all constitute a complicated study indeed.

And yet we must reduce this maze of institutional detail to comprehensible terms. We must understand the principles which enter into organization, relationships, and power. We must grasp the realities of human needs and competitions which flow through and seek expression in institutions. We must become aware of the decisive influence for good or evil, release or frustration of human needs, which are bound up in the Leviathans of our own invention. We cannot afford to fail in this. Aspiration is still-born unless it is energized by translation into workable activity.

All of life is divisible into the ends we seek and the means by which we attain them, and between the two there is an intimate and necessary connection. You cannot secure what you want until you organize yourself. Similarly, society cannot do all of the things which individuals have collectively decided on until institutional procedures have been fashioned for the job. This is axiomatic. What is not always fully appreciated, however, is that institutions seem to possess their own innate powers of frustration and release. Whether it is a custom such as the establishment of a family, or an agency such as the United States Department of Justice, an institution is an entity, and as such it is subject to growth, change, decline, unbridled power, and timid ineffectuality, depending on the degree to which we understand it and exercise our power to control and guide it. A knowledge of these truths, therefore, becomes of

central importance if stability and logical growth are to prevail over accumulated tensions and violent change.

It is for this reason that a major emphasis in government from the time of Aristotle has been institutional organization, relationship, and procedure. In recent decades political science has been largely occupied with discovering these "mysteries" and converting them into usable devices by lawmakers, administrators, judges, and the citizenry as a whole. And the citizens as well as the officials of a nation must learn to comprehend them, else the government will come to belong to select groups operating for their own selfish purposes, and not to the people. In this respect the study of economics has much to learn from government; and equally, in the study of public policy, political science may learn from economics, from philosophy, and from other related fields. What we seek is a realistic comprehension of how men go about getting what they want.

This chapter, therefore, will study the manner in which our federal Constitution was framed and adopted, will analyze its provisions, and will discuss its implications as an instrument adapting itself to changing conditions. It concludes with a discussion of the three main periods in the development of American governmental institutions, during which the legislature, the judiciary, and the executive have successively predominated.

THE FEDERAL CONSTITUTION

A constitution represents the general framework of agreement and institutional arrangement under which governments operate. We have already seen how what was supposd to be a permanent constitution was developed for the government of the United States during the War of Independence. It now becomes necessary to understand why it lasted only eight years, from 1781 until supplanted by our present constitution in 1789.

Was the new document due to a conservative reaction following a revolution? Was it engineered by those who favored a stronger national government and greater protection for property rights? Were the weaknesses of the Articles of Confederation so great that the change was inevitable? Was the Philadelphia constitution in effect an improvement over that which went before, but not essentially different in nature and spirit? Or did one thing simply lead to another without deliberate planning, and a new constitution emerge by chance? All of these interpretations have been advanced at one time or another, most of them during the period when the adoption of the new instrument was being fought out in popular debate. You may wonder why it is worth raising the question at all, except as a matter of historical interest. We have been living under our present constitution for more than 150 years and almost everyone agrees that it is a good one. We are interested, if for no other reason, because it is a good laboratory subject and adds to our knowledge of government. We want to know why changes occur in government, how they are manipulated, and what the elements of stability are.

Steps Leading to the Framing of the Constitution of 1787

In the progression of the more important events that led to the calling of the Constitutional Convention at Philadelphia in 1787, its deliberations, and the action taken thereon, the following cause-and-effect relationships stand out:

Weaknesses of the Articles of Confederation. The Articles of Confederation had been sharply criticized even before their final adoption in 1781. There were five principal objections: The national government was said to be too weak, both in peace and in war, because it had to rely on the states and not directly on the people. The fact that there was no power to regulate interstate commerce resulted in the erection of state trade barriers interrupting the free movement of goods. The national government did not have sufficient power to raise adequate revenues in order to maintain the public credit. The states could not be compelled to live up to their agreements, nor could disputes among them be properly handled because, although power and authority were centrally located, they were inadequate. And, finally, it was felt that the general weakness of the articles handicapped the United States government in dealing with foreign powers, some of which—so it seemed—were inclined to take advantage of our lack of unity and central power for their own aggrandizement.

The Annapolis Convention of 1786. This meeting, held at Annapolis, Maryland, grew out of a dispute between the states of Maryland and Virginia with regard to the navigation of the Potomac River, a matter of several years' standing. A prior conference between the representatives of these states had settled the immediate issue, but new problems appeared. Therefore, at the instigation of James Madison, who sought a broad discussion, the legislature of Virginia passed a resolution inviting the other states to another conference in order "to consider how far a uniform system in their commercial regulations may be necessary to their permanent harmony." In reply, only five of the thirteen states sent representatives to the Annapolis Convention. Four appointed delegates who did not attend and the remaining four spurned the invitation. Under these circumstances nothing of broad import would have emerged except for the determination of Madison and Alexander Hamilton. The latter, principal champion of a strong central government, succeeded in getting the unanimous consent of the delegates to a call for another convention to be held in Philadelphia on the second Monday of May, 1787. The purpose? Not to discuss commerce only, but "to take into consideration the situation of the United States." From such small beginnings do giants sometimes grow.

Congress approved a meeting in Philadelphia to consider amendments. In February of 1787 Congress took cognizance of what had happened at the Annapolis Convention and attempted to give the forthcoming gathering at Philadelphia a specific mandate. It was to meet, said Congress, "for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein

as shall, when agreed to in Congress and confirmed by the States, render the federal constitution adequate to the exigencies of government and the preservation of the Union."

The states chose representatives to the Philadelphia meeting. All of the thirteen states except Rhode Island thereupon chose delegates to attend the convention at Philadelphia. New Hampshire held back for a while and did not send representatives until the proceedings were well advanced. None of those selected to attend were elected by a vote of the people. They were either elected by their own state legislatures or appointed by their own governors. None was authorized to frame or propose a new constitution. In fact, most of the states expressly stipulated that their delegates should consider amendment to the Articles of Confederation only, and Delaware even forbade her representatives to consider any proposal which would eliminate equal state votes in the Congress.

The Constitutional Convention of 1787 Drafts a New Constitution

The more the delegates considered possible revisions, however, the more clearly it appeared that a thoroughgoing change in governmental machinery was necessary. Only five days after the meeting was convoked, a resolution was passed by the committee of the whole to the effect that "a national government ought to be established consisting of a supreme legislative, executive, and judiciary." Once this basic determination was made there could be little question that a new constitution would emerge, despite strong dissent in some quarters.

The principal division within the convention was over the question of large versus small states. The *Virginia Plan,* prepared by James Madison and Edmund Randolph, was favored by the larger, more populous states, while the *New Jersey Plan,* written by William Paterson, was supported by the smaller states. More than once it seemed as though the convention might break up over issues of national power, states' rights, taxation, and representation. Compromise, therefore, became a necessity, including the so-called Connecticut Compromise, which broke the worst deadlock and provided for the present system of representation in the lower house of Congress. When a rough plan for the new instrument was finally agreed on, it was turned over to a committee of detail, debated for six weeks, and then entrusted to a committee on style headed by Gouverneur Morris of Pennsylvania for final polishing. The finished draft was approved on September 17, 1787. The meeting had lasted only four months. Most of the work was done in the committee of the whole. Altogether, seventy-four men had been appointed to the convention; fifty-five attended one or more sessions; and thirty-nine finally signed the finished document.

The convention had clearly exceeded its instructions, both those of Congress and of the participating states. Naturally the delegates were worried. Would the legislatures and the voters approve? In doubt, three delegates who were

present refused to sign. Many were critical of their own product. Even Hamilton, whom one might suppose to have been more gratified than most, said he approved the new plan because it could not be worse than the Articles of Confederation.

Principal Issues Decided by the Constitutional Convention

Many were the problems that arose during the hot, sultry days in Philadelphia; and great was the knowledge of government brought to the meeting. The chief decisions arrived at may be summarized as follows:

The Constitution was to become the supreme law of the land.

The national government should deal directly with the people, as the states were able to do. Henceforth there would be two sets of legislatures, courts, and executive establishments affecting the lives of the inhabitants of every state.

The powers of the federal government were expressly enumerated and those not specified were to remain in the states or in the people.

The states were to remain equal and were not to be combined without their own consent and the approval of Congress.

State representation in Congress—each state, irrespective of size, was to have two seats in the Senate; but, in accordance with the terms of the Connecticut Compromise, population was determining in the House of Representatives, giving the populous states an advantage there.

Chief executive—there was to be a single executive, a president. This was in contrast to the plural-headed system under the Articles of Confederation and the proposal of the New Jersey plan.

Judiciary—the Supreme Court of the United States was specifically provided for, and Congress was empowered to create inferior tribunals.

Commerce—Congress was given specific power to regulate foreign and interstate commerce, and commerce with the Indian tribes.

Public credit—Congress could borrow money on the credit of the United States, coin money and regulate its value, and collect direct taxes (apportioned) and indirect taxes (uniform).

Territorial expansion—Congress could admit new territories into the Union and provide for their government.

Foreign affairs—in this field the federal government was to continue its exclusive authority.

Bill of rights—although no provision was made for a bill of rights as such, certain immunities were written into several sections of the Constitution.

A comparison of the main outlines of these provisions with the faults of the Articles of Confederation will show that remedial action had been afforded in every case. Hamilton may not have secured everything he wanted, but his fears must have been largely stilled. "It should not be forgotten," he wrote in *The Federalist* papers, "that a disposition of the State governments to encroach

upon the rights of the Union is quite as probable as a disposition in the Union to encroach upon the rights of the State governments . . . and as there are weighty reasons to induce a belief that the State governments will commonly possess most influence over them [the people], the natural conclusion is that such contests will be most apt to end to the disadvantage of the Union. . . ." How strange and unfamiliar this sounds today!

The Constitution of 1787 Is Ratified

The method of ratification of the Constitution was proposed by the convention at Philadelphia itself and Congress agreed. Constitutional conventions chosen by the people were to act, and the approval of any nine states would bring the plan into effect. During the following nine months, from September, 1787, to June, 1788, the required nine approvals were secured. In the interval, however, and for some time thereafter, public controversy was aroused to white heat, especially in Virginia, New York, and Massachusetts. Sam Adams, John Hancock, and Patrick Henry arose to the attack, fearing in federal centralization a loss of recently won liberties. In all the states, two camps appeared, the Federalists defending strong central government, and the Antifederalists fearing a loss of states' rights. A basic cleavage of opinion, leading to the foundation of our political parties advocating fundamental issues, was in the making.

Delaware, New Jersey, Georgia, Connecticut, and Pennsylvania had all ratified within a period of three months. Thereafter the pace was slower. Massachusetts joined in February of 1788, but only after a very close vote. Maryland, South Carolina, and New Hampshire, after hard fights, brought the total to nine by June. Virginia finally ratified in the same month. In New York, whose accession was necessary to success because of its pivotal position among the states, there was the closest call of all, with a margin of only three votes in favor of adopting the Constitution. The chief opposition here arose in upstate New York, and were it not for the pamphleteering campaign conducted by Madison, Hamilton, and Jay, the victory might not have been won. In their papers, *The Federalist,* subsequently reprinted in more than thirty editions, the world has been afforded one of the greatest governmental classics of all time.

In 1789 the new government, under the new constitution, began to function. Congress convened on April 2, 1789, the Senate three days later, and on April 30, George Washington became the first President of the United States. Of the two states that had not yet ratified the Constitution, North Carolina was brought in after assurances that a bill of rights would be added by amendment, while Rhode Island held out until 1790, when she also joined the Union.

THE ECONOMIC AND POLITICAL INTERPRETATION OF THE CONSTITUTION

From the Annapolis Convention of 1786 until the affixing of Rhode Island's approval of the Constitution in 1790, the American people learned a great deal

about the political process. To their experience as a colonial people and their wide reading of Locke, Rousseau, and Montesquieu were added the sobering and practical lessons of making a national government succeed in actual operation.

Patrick Henry, Sam Adams, John Hancock, and other popular leaders had aroused the people to a fight for freedom, only to find themselves opposing the conservative reaction which sometimes follows a revolution. Does this mean that the leadership appropriate to a given situation—such as revolution—must be replaced by another type of leadership when the situation changes, as in the settling-down process which follows war? It is an interesting idea and has been seriously argued.

Why was it that the leaders of the convention at Philadelphia failed to include a bill of rights as an integral part of the Constitution? Hamilton, in *The Federalist,* argued that none was necessary because under the Constitution "We the people" surrendered nothing, because the enumeration of exceptions to powers not granted might afford a pretext to claim more than had been granted, and finally because the Constitution was in itself a bill of rights. Nevertheless, when Thomas Jefferson led a movement to correct the deficiency, Congress approved the first ten amendments, constituting the Bill of Rights, in its first session.

Rarely if ever does a simple explanation of political behavior describe the total considerations which are at work. In the steps taken to bring about the adoption of the new constitution, for example, several factors may be noted:

There were the determination of Hamilton and Madison that the Constitution be approved and the confidence of the people in popular leaders such as George Washington and Benjamin Franklin, who honestly believed that a stronger frame of government was necessary. There was a widespread desire for a feeling of security among the people, induced by the realization that America was at last a nation embarked on hazardous seas. There was the natural concern of traders and businessmen that the public credit should be safeguarded, since that is the foundation of business confidence. And finally there was the fear of anarchy if the states should become openly embroiled in seemingly insoluble differences and if the executive and judicial powers of the national government should prove inadequate. These are some of the elements that entered into this particular situation, but they are not all.

Various theories developed to explain how a new constitution could be achieved without legal authorization to draft such a document have led some writers to suspect a conspiracy, but these theories must be considered in the light of all contributing factors, each of which may be *one* explanation but not *the* explanation. This method of studying political motivation and manipulation is a difficult habit to acquire because the single explanation is often more intriguing than a combination of several.

Although the major elements in this particular situation were clearly partly political, they were also partly economic. In his *An Economic Interpretation*

of the Constitution, Charles A. Beard, American historian and political scientist, throws a good deal of light on this matter. He points out that the majority of the delegates to the Constitutional Convention were men of some property and wealth; that the so-called radicals, such as Adams and Hancock, were absent; that Patrick Henry had declined to be present, saying he "smelt a rat"; that Thomas Jefferson and Tom Paine were in Europe; and that of the fifty-six signers of the Declaration of Independence, only eight were members of the Constitutional Convention. In general, therefore, the majority of the delegates at Philadelphia were a good deal more conservative than they were radical. Is it true, as William Bennett Munro has argued, that the money power in politics strongly influences public affairs, and that even when it seems to lose out for awhile, it inevitably comes back?

It should be added that Beard makes it amply clear that he does not consider the economic explanation the only important one; thus he cannot be accused of oversimplification. His rational analysis of political behavior is in harmony with recent realistic emphases that his book had no small part in encouraging.

ANALYSIS OF THE CONSTITUTIONAL FRAMEWORK

Thanks to the lucidity of style employed by Gouverneur Morris, the Constitution of the United States is easily read and understood. Its simplicity is partly due to the logical scheme of organization used:

Purpose. As expressed in the Preamble, there are six objectives of the Constitution: 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.

Distribution of powers. There is no express "distributing clause" in the federal Constitution—as there is in many state constitutions—dividing all power between the legislative, judicial, and executive branches of the government, but the structure of the Constitution itself clearly signifies this intention. The first article deals with the legislative branch, the second with the executive, and the third with the judiciary. As possible evidence that the legislative branch was considered the center of the government, note that Article I begins, "All legislative powers," whereas Articles II and III simply say, "The executive power" and "The judicial power."

In the enumeration of the powers of the three branches of government, each is authorized partially to check and control the work of the other two, giving rise to the so-called system of checks and balances for which, among other things, our government is distinctive.

Supremacy of the Constitution. The provision that makes the Constitution the ultimate test of legality is found in the next to the last article, the sixth, which reads in part: "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . 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."

Articles IV, V, and VII. Of the seven articles in the Constitution, the first three deal with the legislative, the executive, and the judicial branches of the government, and the sixth deals with the supremacy of the Constitution. Of the remaining three, Article IV takes up the question of interstate relations including full faith and credit, equal privileges and immunities, and so on. Article V concerns the amending process which will be explained below. Article VII provides for the effective date of the Constitution and is not important today.

The Powers of Congress

The powers of Congress, it will be recalled, are specifically enumerated. They are found in Article I, section 8, and may be conveniently subdivided under eight main headings:

Fiscal—Congress may collect taxes, pay debts, borrow and coin money.

Commerce—including the regulation of interstate and foreign commerce, bankruptcies, weights and measures, patents and copyrights.

Naturalization—Congress may make uniform rules in this field.

Postal—the establishment of post offices and post roads.

Law enforcement—Congress may punish counterfeiting, establish inferior courts, define and punish piracies, call forth the militia to execute the laws, suppress insurrections, and so on.

War—Congress may declare war, provide an army, a navy, and a national guard, and determine rules of warfare.

Territories—seat of government, acquisition of government property.

Elastic clause—the final power enumerated is called the elastic clause because it provides that Congress may "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." In the expansion of federal power this provision was to become central.

Reserved Powers

The clearest statement concerning the distribution of powers between the states and the federal government is not found in the main body of the Constitution but in the Tenth Amendment, which is the last of those constituting the Bill of Rights. Here it is provided 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." Thus every authority not specifically vested in Congress remains in the states or in the people.

The Bill of Rights

After the charge that federal centralization would strip the states of their sovereignties, the next most controversial issue in the fight over the adoption

of the Constitution related to the omission of a bill of rights. Seven states proposed a total of 124 amendments to the Constitution during the course of the ratification fight, and a majority of these related to the missing bill of rights. The matter had been discussed at the Philadelphia convention but the delegates apparently agreed with Hamilton that none was required. Moreover, were not bill of rights provisions written into eleven of the thirteen state constitutions, and was that not sufficient protection?

The people thought not. They had learned from experience to safeguard their liberties and were impressed with the cogency of the warnings sounded by Tom Paine, Sam Adams, and others. Accordingly, when the omission was rectified at the first session of Congress, it constituted a victory for Jefferson and the liberals. The actual drafting, however, was done by Madison. Ten proposals were finally approved, ratified by the states, and thus became a part of the Constitution.

As the Supreme Court has interpreted it, *the Bill of Rights is a limitation on the actions of the federal government and does not apply to actions of the state and local governments.*[1] Let us be clear, at this point, just what the Bill of Rights does guarantee. The following summary is by amendment:

First—Freedom of speech, press, assembly, and petition.

Second—The right to bear arms.

Third—No quartering of troops in peacetime without consent.

Fourth—Security against unreasonable search; requirement that a search warrant must issue.

Fifth—Indictment by grand jury; prohibition against double jeopardy in criminal cases; cannot be compelled to testify against self unwillingly in criminal cases; shall not be deprived of life, liberty, or property without due process of law; just compensation when private property taken for public use.

Sixth—Speedy and public trial in criminal cases; specification of charge; confrontation by witnesses; entitled to counsel and witnesses in own defense.

Seventh—Trial by jury in civil cases where amount is over twenty dollars.

Eighth—Prohibition against excessive bail and cruel and unusual punishments.

Ninth—This one deserves to be quoted in full: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Tenth—Powers reserved to the states or to the people.

These ten amendments were passed so soon after the Constitution went into effect that to all intents and purposes they may be considered as a part of the original document. During the century and a half since then eleven additional amendments have been adopted.

[1] This subject is dealt with more fully in Chapter 31, "Our Civil Liberties."

The Amending Process

The process by which the federal Constitution may be amended, as set forth in Article V, is not hard to understand if two things are kept in mind: (1) There are two ways of *proposing* amendments: *either* a two-thirds vote of both House and Senate, *or* by a convention called by Congress on the application of the legislatures of two thirds of the states. (2) There are two ways of *ratifying* amendments: *either* approval by the legislatures of three fourths of the states, *or* approval by conventions in three fourths of the states. Congress determines which of these two methods of ratification shall be used.

The process is still further simplified in practice, however, because *with one exception, only one method has been used:* all amendments have been proposed by Congress; and all except the twenty-first have been ratified by the state legislatures. The Twenty-first Amendment, repealing prohibition, was ratified by state conventions rather than by state legislatures.

Other rules relating to the amending process may be summarized as follows:

The requirement of a two-thirds vote in both houses means a *two-thirds vote of those present.* It assumes the presence of a quorum.

The President has no veto power over proposed constitutional amendments.

If two thirds of the states call for a constitutional convention and Congress convokes it, there is no reason why the convention could not go as far as it liked in proposing new amendments or even in drafting a new constitution.

How long a proposed amendment remains open for ratification by the states, if no time limit is specifically provided, is a question which Congress must decide because the Supreme Court will not. This was held in the case of the proposed child labor amendment, in the decision of *Coleman* v. *Miller* (307 U. S. 443. 1939). Recent amendments to the Constitution, beginning with the eighteenth, have limited the time allowed for ratification to seven years. This will apparently be the rule in the future.

Constitutional Amendments, Eleventh through the Twenty-first

It is remarkable that only eleven amendments have been added to the Constitution since the Bill of Rights in 1789. And of these eleven, the eighteenth and the twenty-first canceled each other, so that in terms of subject matter there have been only nine.

During the century and a half since the first Congress there have been in the neighborhood of four thousand amendments laid on the clerk's table in the two houses of Congress, although many of them dealt with the same subject. Congress itself has passed twenty-six, but the states have approved only twenty-one, including the first ten.

The subjects with which the last eleven amendments have dealt are as follows, by number of amendment:

Eleventh—A state may not be sued by a citizen of another state or of a foreign state without its consent.

Twelfth—Separate balloting for President and Vice-President.

Thirteenth (Civil War amendment)—Slavery abolished.

Fourteenth (Civil War amendment)—Citizenship by birth and naturalization; no state shall deprive any person of life, liberty, or property without due process of law; equal protection of the laws; sanctions to protect Negro rights.

Fifteenth (Civil War amendment)—Right 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.

Sixteenth—Federal income taxes need not be apportioned.

Seventeenth—Direct election of senators.

Eighteenth—National prohibition.

Nineteenth—Woman's suffrage.

Twentieth—Changing the dates for the convening of Congress and the inauguration of the President and Vice-President so as to eliminate the so-called lame duck session following a congressional or presidential election.

Twenty-first—Repeal of the Eighteenth Amendment.

It will be noted that with the exception of the Civil War amendments (the thirteenth through the fifteenth), all of these relate to changes in governmental organization and procedure. It should also be kept in mind that, unlike the Bill of Rights, *all of these amendments relate to the powers of state governments as well as to those of the federal government,* unless the matter pertains to the federal government alone.

THE LIVING CONSTITUTION

Constitutions grow. Even when they are written down in one place, they continue to grow. It is generally agreed by French jurists and historians, for example, that for a thousand years before the French Revolution of 1789 there existed a constitution in France. England has a constitution, and yet it is merely the totality of basic statutory provisions, plus the customs, conventions, and natural rights on which the people rely. There is no sharp line between written and unwritten constitutions—it is merely a matter of degree.

More important than form is the question of whether a constitution is flexible or inflexible. Some constitutions, like those of Great Britain and France, can be changed by legislation. Ours cannot; ours can be changed only as the result of a constitutional amendment—that is, by a special procedure provided for in the Constitution itself. In nations having written constitutions, such as ours, there are two sets of lawmaking bodies and two sets of laws, so to speak. The first is constitutional and paramount, the other statutory and subordinate. The latter, to be "constitutional," must conform to the provisions of the former. And yet even our American Constitution relies on much that is custom and usage. Perhaps the principal case in point is the influence and recognition of political parties, which are not mentioned in the federal Constitution but which are central to its operation today. Every branch of the government—legislative,

executive, and judicial—has its customs and conventions which give our institutional life cohesion and practicality.

Charles E. Merriam, the political scientist, has written a book called *The Written Constitution and the Unwritten Attitude.* The late Howard Lee McBain wrote *The Living Constitution.* Both are worth reading as evidence of how constitutions grow in order to keep pace with institutional needs and the requirements of society. The Cabinet is the center of the British frame of government, and yet it relies on custom and acceptance rather than on formal law. Even a bill of rights is useful only in so far as it is respected and lived up to in practice.

Constitutions must grow or the people will suffer. Macaulay, the great English writer, said, "The great cause of revolutions is this: that while the nations move forward, constitutions stand still." A constitution must be framed, therefore, with an eye to one of the most vital principles of the state: its ceaseless growth and expansion. Thomas Jefferson believed that a constitutional convention should be called at least once every generation. Constitutions grow by usage, judicial interpretation, and formal amendment. How important each becomes depends on the effectiveness of the other two. Woodrow Wilson said that "living political constitutions must be Darwinian in structure and in practice," by which he meant that only the fit should survive. And yet, despite the almost universal agreement among political scientists on the Darwinian nature of constitutions, the principle is often violated, and dead constitutional provisions remain in force to foment tensions. This is particularly true of some of our state constitutions, of which that of Illinois is a good but by no means isolated case in point.

America's influence on governmental practice has been outstanding since we adopted our first state and federal constitutions in the period between 1776 and 1789. France adopted her constitution in 1791, the German states between 1814 and 1829, Spain in 1812, Denmark and the Netherlands in 1815, Portugal in 1822, Belgium in 1831, Italy and Switzerland in 1848, Austria in 1861, and Sweden in 1866. Many of these, to be sure, have since been greatly modified or replaced. But between 1800 and 1880 more than 300 different constitutions are said to have been promulgated in Europe alone.

Ours was a pioneer influence. We must now prove that we are worthy of maintaining that progressive role.

PRINCIPLES RELATING TO CONSTITUTIONS

Constitutions, viewed as fundamental law, are as old as our knowledge of government. Neither Greece nor Rome had a formal, written constitution such as we have in the United States. We were the first great nation to emphasize the idea of writing down in one formal document all the rules for organizing and running a government. But Greece is said to have had eleven so-called constitutions—which were basic collections of law—between 624 B.C. and 404

B.C.; and the Romans eventually codified their laws, the most important ones becoming, in effect, the constitution of the period.

A constitution, said Aristotle, "is the organization of the offices in a state, and determines what is to be the governing body and what is the end of the community." Charles Borgeaud, an eminent Swiss authority on the subject of constitutions as instruments of government, defined a constitution as "the fundamental law according to which the government of a state is organized and agreeably to which the relations of individuals . . . to the community are determined." This is about as good as any. Our own Judge T. M. Cooley, author of *Constitutional Limitations,* defined a constitution as "the fundamental law of the state, containing the principles upon which government is founded, regulating the division of the sovereign powers and directing to what persons each of these powers is to be confided and the manner in which it is to be exercised."

As principles relating to constitutions, we suggest the following:

1) Every government has a constitutional framework and a fundamental body of laws of some kind. This is true of monarchies and aristocracies as well as of representative governments and democracies.

2) Constitutions differ in the degree to which they are written down in one place. A fundamental charter should emphasize rights, principles, and basic framework rather than the minute details of organization.

3) The stronger national tradition and national unity become, the less is the need to rely on written constitutions. Every constitution, including our own, contains a large part which is unwritten and which depends on custom, convention, and attitude.

4) Any constitution, particularly a detailed constitution, must be periodically reconsidered and revised, preferably by each generation. It should not be too inelastic and too difficult to modify as conditions change. This is especially true of the institutional aspects of government.

PERIODS IN AMERICAN INSTITUTIONAL DEVELOPMENT

Living under the general frame of government provided by our Constitution, we have weathered many a storm and have adapted to vast and complex national social, economic, and political problems. During the past century and a half, three main periods may be distinguished from the standpoint of shifts in our institutional balance:

Legislative Leadership and States' Rights, 1789–1861

The first period, and the longest, saw the American people still fearful of executive power and staunchly attached to a belief in legislatures, which they regarded as the natural center of democratic aspiration and popular control. In the first part of this seventy-year span, the influence and prestige of the House of Representatives was higher than that of the Senate. But in time the upper house gained in power and prestige relative to the popular assembly,

which declined somewhat in influence. Friction between Congress and the President broke out almost from the start, and it was soon clear to any shrewd observer that differences between the legislative and the executive branches were to constitute a perennially perplexing problem, even threatening the stability and effectiveness of our whole governmental system.

As time went on, it became equally clear that the problem of states' rights versus federal centralization would remain the chief constitutional issue before the country. The slavery controversy made this inevitable. It began when President Thomas Jefferson purchased the Louisiana Territory and extended the American empire well across the continent. This automatically increased the power of the federal government, led to the settlement and admission of new states, and disturbed the institutional equilibriums in Washington as well as the balance of power between the slaveholding South and the industrial North. By the time Lincoln came into office the territorial confines of the United States had been pushed to the Pacific. Our thirteen hundred miles of colonies along the Atlantic coast were dwarfed by the three-thousand-mile expanse of nation from Washington to San Francisco. By this time our problem of government exceeded the proportions of Roman dominion. The settlement of the controversy between President Jefferson and the Federalists, who had "retreated to the judiciary," could be postponed, as could the outcome of Andrew Jackson's fight with Congress over the national bank and federal centralization. But the states' rights issue and slavery could not.

Growing Centralization and the Increasing Influence of the Judiciary, 1861–1890

The victory of the North in the Civil War secured the future of the federal union and gave promise of the rapid centralizing influences which were to follow. The center of states' rights sentiment, heading up in the South, had been vanquished in battle. Shortly after the war, railroad building toward the Pacific coast commenced, and commerce soon followed. National business meant nation-wide government. A continental governing problem could mean only one thing—a Leviathan at Washington. Trusts appeared. Farmers demanded the regulation of the railroads. Law followed law through Congress, pushed by those who were able to make their strength felt. The creation of powerful administrative agencies, such as the Interstate Commerce Commission, constituted a portent of future governmental centralization through control of industry.

During this same period the judiciary became increasingly powerful because of the many laws—both state and federal—which were declared invalid following the adoption of the Fourteenth Amendment to the Constitution. So active were the courts that the people began to talk about judicial supremacy. The courts were criticized because they interfered with social legislation such as that aimed at controlling the railroads and the trusts. As the judicial institution came to hold the spotlight, the legislature declined in public esteem.

There was more criticism of legislatures and lawmakers than in the former period. The prestige of Congress waned. People began to be less certain of the legislature as the natural center of governmental gravity. This was partly because we were further away from the Revolution and partly because we were becoming used to concentrations of power in business and naturally tended to assume a similar tolerance toward concentrations in government. During this period, the eyes of the people were more often turned on the Supreme Court than on Congress.

Federal Centralization Becomes a Fact and Executive Power Grows, 1890 to the Present

The year 1890 may be regarded as another turning point because it marked the passage of the Sherman Antitrust Act, creating machinery to deal with the trust problem. Since 1890, business, agriculture, and labor have all brought new and multiplying problems to the door of government. Technology and invention have made rapid advances, creating additional problems of regulation and control that government also must solve. Nowadays when we speak of government we generally mean the government in Washington, so wide have its activities and powers become. Thus have our attitudes changed in a century and a half, so as to keep pace with the magnitude of institutional change. Everyone now admits the fact of federal centralization and that the states, by comparison, occupy a secondary position. But what to do about it? And do we really want to do anything about it?

This third period, in which we now live, has also seen the rise of the executive branch of the government, especially at the federal level, to a position of overshadowing leadership, standing out above both the legislature and the judiciary. Many people speak of "executive government" as though it were inevitable. They rarely seem to realize that such a conception was entirely foreign to the early attitudes and fears of the founding fathers, who were suspicious of executive power. Today, by contrast, "Get the job done" has become a categorical imperative. Wars and depressions are fought with concentrated national powers.

What does this portend? Will the institutional balance within American government remain tipped in the direction of the executive, or can the legislature be revitalized so as again to occupy the central role conceived for it when the nation was young and our democracy new? Is federal centralization here to stay, or may we yet experience a revival of state and local vitality, similar to that found in the vigorous early years of this country? Wishful hoping will not solve these problems. We must analyze why we are where we are today. Only then can we decide intelligently what should be done about it, and how.

SUPPLEMENTARY READING

1. Constitutional history: There are several good source books, including A. C. McLaughlin, *A Constitutional History of the United States* (New York, 1935),

Chapters 9–12; Carl B. Swisher, *American Constitutional Development* (Boston, 1943), recent and readable; A. J. Beveridge, *The Life of John Marshall* (Boston, 1916), Chapters 10–12; H. C. Hockett, *The Constitutional History of the United States* (New York, 1939); C. H. McIlwain, *The American Revolution: A Constitutional Interpretation* (New York, 1923); and Charles Warren, *The Making of the Constitution* (Boston, 1928). For reference purposes, see J. Elliott's *Debates in the Several State Conventions on the Adoption of the Constitution of the United States* (Washington, 2nd ed., 1854) in five volumes, and *The Debates in the Federal Convention of 1787* (short title) edited by Hunt and Scott; these are invaluable. Students generally find the essays in *The Federalist* (Hamilton, Jay, and Madison) interesting reading; essays numbered 15–22 are particularly recommended for reading at this stage.

2. The amending process: Three good selections are found in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 3. A good book is that of Benjamin F. Wright, *The Growth of American Constitutional Law* (Boston, 1942), Chapters 5, 6, 9, and 10. The late Professor Howard Lee McBain's book, *The Living Constitution* (New York, 1927) is short and brilliant. Similar to it is Charles E. Merriam's *The Written Constitution and the Unwritten Attitude* (New York, 1931). Charles A. Beard's *An Economic Interpretation of the Constitution of the United States* (New York, 1913) appears in new editions of 1935 and 1945. One of the most challenging books is by William Y. Elliott, *The Need for Constitutional Reform* (New York, 1935).

CHAPTER 6

The Framework of State Government

THE FORCES that were engendered by a young nation growing up, and that influenced the development of the federal government, also influenced the development of our state governments. Thus at both the state and the federal levels there are parallels in general outline that appear with regard to constitutions and to administration.

In both cases the primary emphasis on the legislature as the center of political gravity was followed by a decline in the relative importance of this body. The judiciary in most states has been less in the public eye than has the federal judiciary, although the state courts as well as the Supreme Court have enunciated the principle of judicial review of legislation with power to declare laws unconstitutional. This power of the state courts has not gone unnoticed and entirely uncriticized, but their influence has been more circumscribed than that of the Supreme Court and their acts have less often emerged in the public arena to be exposed to public debate. Finally, there is the parallel of a weak executive branch, followed by an increasingly stronger executive as the duties of government became broader and as popular interest shifted from their formulation in the legislature to their execution by the administration. The chief difference here is that in the states executive power got off to a relatively late start and has proceeded there more slowly than at the federal level. In general, however, here also the trends have been similar in both the national and the state governments.

As federal centralization has increased, state governments have shrunk in importance in the eyes of the average citizen. As population has gradually concentrated in the larger cities, the states have continued to hold power over most of these urban centers, those which have succeeded in obtaining home rule being the exception. But the surging life and the rapid growth of the metropolitan areas, in contrast to the slower advance of village and rural life, have created a governmental imbalance at the state level. The needs of metropolitan centers have outrun the legal and governmental provisions relating to them. In the state legislatures, therefore, the cities are often at the mercy of the rural sections because of representation on the basis of area instead of population. If home rule should make further progress so as to liberate our cities, the influence of the state governments would be still further diminished.

The following discussion deals first with the form of state governments as guaranteed by the federal Constitution. It then studies the state bills of rights

and the methods of altering state constitutions to meet changing circumstances. It concludes with a consideration of the powers of state governments.

The Federal Constitution Guarantees Each State a Republican Form of Government

Article IV of the Constitution provides that the federal government shall guarantee to every state a republican form of government, and that it shall protect each state against invasion and, on application of the state legislature or of the executive when the legislature cannot be convened, against domestic violence. There are outside limits, therefore, to the changes which the people of a state may make in their own government. They must retain a republican form of government. But this provision is not so much a limitation as it is a guarantee. It is like the stipulation in the Constitution of France's Third Republic—presumably the one feature that could not be changed—that the republican form of government was not subject to modification by amendment or otherwise.

What is meant by the republican form of government? James Madison, in *The Federalist,* made it clear that "whenever the states may choose to substitute other republican forms, they have a right to do so and to claim the federal guaranty for the latter." He defined republican government as "a government in which the scheme of representation takes place." In a longer definition, he described it more fully as "a government which derives all its powers directly or indirectly from the great body of people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; . . . It is *sufficient* that the persons administering it be appointed, either directly or indirectly, by the people; . . ."

In actual experience the provision of the federal Constitution requiring the states to maintain a republican form of government has not limited them when they have wished to change their governmental forms and procedures. For example, the initiative and referendum, which is a form of direct legislation by the people, has been challenged but staunchly upheld as consonant with republican government. Republican government is not a limitation on democracy; rather, it constitutes our defense against minority rule.

The State Bills of Rights

It will be recalled that most of the early state constitutions, drafted between 1776 and 1780, included extensive provisions relating to the rights and immunities of citizens. It was customary to divide the state constitution into two main parts, one dealing with the frame of government and the other with the rights of man. The bill of rights was often nearly as long as the other section. The following representative cases illustrate the custom with regard to the number of provisions in various bills of rights:

Vermont, adopted in 1777, nineteen provisions
Massachusetts, adopted in 1780, thirty provisions
Indiana, adopted in 1851, thirty-seven provisions
Arizona, adopted in 1910, thirty-four provisions

But it was not only the constitutions drafted at the time of the Revolution which emphasized an extensive bill of rights; later constitutions also paid it marked respect. Even the model state constitution drawn up in 1926 for the National Municipal League by a committee of experts contained twelve sections in its bill of rights.

The length of the bill of rights in most state constitutions is such that in recent years there have been attempts to shorten it. In several states, notably Oklahoma, this has been done. Some advocates of reform have gone so far as to suggest that fully two thirds of the provisions customarily found in state bills of rights could be eliminated without loss to the people.[1] These clauses are said to be vague, based on eighteenth-century philosophy, duplicative of federal provisions, sometimes not enforced, and at times interpreted by the courts in such a way as to reverse the original intention. They are also criticized because they help to make state constitutions long and complicated to read. The processes of amendment and the operation of the initiative and referendum have also combined to make most of our state constitutions much longer than they were, and a solution to this difficulty is being sought.

But if length is an important consideration, would it not be better to reconsider those provisions relating to the machinery of government, weeding out those which do not differ materially from legislative statutes, rather than weaken the bill of rights provisions? It is true that many state constitutions contain sections reflecting the eighteenth-century view of natural rights and governmental limitations. But should these not be retained in their original vitality so long as they favor popular aspirations and the fulfillment of human needs? Perhaps we need to relearn some of the solid truths which our forebears acquired the hard way through struggle for greater freedom.

Some of these provisions, when read today, seem more like admonitions than strict rules of law. But are they any the less useful? Take, for example, the sixteenth provision of the Vermont Constitution of 1777:

That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free. The people ought, therefore, to pay particular attention to these points, in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislators and magistrates, in the making and executing of such laws as are necessary for the good government of the state.

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[1] See, for example, the criticism in a book by Frank G. Bates and Oliver P. Field, *State Government* (New York, 1928), pp. 74–75.

There is a world of political wisdom in such a statement. Anyone acquainted with the qualities common to most Vermonters knows that these virtues are authentic expressions of popular character and belief. Such provisions therefore should be given wider currency, not diluted or withdrawn.

Or take at random other provisions of the Vermont Bill of Rights: "That all men are born equally free and independent . . . . That private property ought to be subservient to public uses . . . . That all men have a natural and unalienable right to worship Almighty God . . . . That all power being originally inherent in, and consequently derived from, the people . . . . That all elections ought to be free . . . . That the people have a right to freedom of speech, and writing and publishing their sentiments . . . ." Statements such as these should be allowed to stand. A belief in natural rights remains a bulwark of defense in a world where abuse of power is still possible.

METHODS OF CHANGING STATE CONSTITUTIONS

Much as they have been amended—and some two thousand amendments have been added up to 1942—most state constitutions today are in need of further modernization and general tightening. They have become a great, sprawling mass of words set in a complicated framework of articles and provisions and sections. The reform, however, should be aimed at the sections concerning the machinery of government and at the elimination of those which are not properly constitutional matters, rather than at the wholesale elimination of bill of rights provisions.

Most of the state constitutions at the outset were relatively brief and inflexible. These same constitutions today are frequently much longer but equally inflexible. The resulting confusions are anything but an aid to representative government because the machinery of public affairs cannot be improved unless the constitution is first modified to allow it. The states cannot hope to retain their efficiency and effectiveness, in competition with federal centralizing tendencies, unless they can deal effectively with their own state governmental problems. The situation badly needs rectification.

Changes in state constitutions occur in several ways. They may result simply through custom, as when the administration of certain provisions is relaxed to take care of altered situations. Or they may be effected through statutory elaboration or judicial interpretation. The three principal methods used today, however, are change through amendment, through the use of the initiative and referendum, and by means of a regularly constituted constitutional convention.

Amendment

Amendments are proposed by the state legislature and ratified by popular vote. This is the most popular method. In the period from 1900 to 1925, for example, approximately five hundred amendments were proposed by the various state legislatures and half of these were subsequently adopted by the

voters. This piecemeal device, however, has been chiefly responsible for the length and varied assortment of matters which now characterize the typical state constitution. That document is rarely considered as a whole. As a result, change by amendment has all of the faults which attend a patchwork technique. On the other hand, it is a necessary part of the machinery of constitutional growth and, if properly handled, can be a useful instrument.

The Initiative and Referendum

A certain proportion of the voters may sign a petition initiating an amendment to the state constitution; whereupon the matter is placed on the ballot at election time for final approval or rejection by referendum. For well over a century the referendum has been employed in connection with constitutional amendments proposed by the legislature. The initiative, however, is of more recent origin, having been first used in Oregon in 1902. It is now employed by one fourth of the states, most of which are in the Western part of the country. This reform has been slow of adoption. Massachusetts, the only state on the Eastern seaboard to accept it, did so in 1918.

The initiative and referendum is another piecemeal method of reforming constitutions, although there have been cases in which ambitious revisions were attempted by this means. It is largely a reflection of the late nineteenth- and early twentieth-century demand for more popular participation in government.

Some rules to keep in mind relating to the initiative and referendum are the following:

1) The initiative and referendum are separate devices and may be used either singly or together.

2) The initiative may be used to propose new laws as well as new constitutional provisions.

3) The initiative petition must be signed by from 8 to 15 per cent (according to the state) of the voters participating in the last election.

4) Some states require an absolute number of signers—25,000 in Massachusetts, for example.

5) Some states require that the signers shall be geographically distributed in order that purely local matters may be kept from the ballot.

6) The referendum is *compulsory* in the case of an amendment to a state constitution—that is, the matter *must be* submitted to a popular vote. But the referendum dealing merely with legislation is sometimes optional with the legislature.

7) The initiative and referendum are parts of a single system of direct control on the part of the voters, because the initiation of a measure is significant only when submitted by referendum for action.

It is possible that in the future more states will adopt this method of revising their constitutions.

The Constitutional Convention

The third and most systematic means of reforming state constitutions is through a constitutional convention. This is also the most effective method because it makes possible the reconsideration of the constitution as a whole.

Organization and procedure of state constitutional conventions. A means of taking stock of the situation from time to time should be incorporated into every state constitution, but unfortunately it is not. In twelve states such a provision is entirely lacking, although in none is there a prohibition against the calling of a convention, and such gatherings may be called without specific constitutional provision.

Some states have held periodic constitutional conventions, while others have remained stagnant. The situation is very uneven. There has been a total of some 220 state constitutional conventions held in the United States. Rhode Island held her first in 1944. Illinois, with 6 per cent of the population of the country, has held only one constitutional convention since 1870 and nothing came of that. Four states have held ten conventions or more. New Hampshire has called four in thirty years: in 1912, 1919, 1930, and 1940. A step in the right direction—which should be made universal—is the provision that the question of holding a constitutional convention must be submitted to the voters for their decision at prescribed intervals. Seven states, in fact, have such a provision in their constitutions: New Hampshire, every seven years; Iowa, every ten years; Michigan, every sixteen years; and Maryland, New York, Ohio, and Oklahoma, every twenty years.

Many state constitutions, on the other hand, still leave to the legislature the decision on whether the people shall be allowed to vote on the question of calling a constitutional convention. This may and sometimes does result in throttling majority rule. The failure to modernize the state constitution of Illinois, for example, is due to two principal factors which stem back to minority control. The first is the realization by the downstate minority that in a constitutional convention the city of Chicago would demand and probably obtain reapportionment and home rule, with the result than an urban majority would come to dominate the state legislature at the expense of the rural sections. The second reason is the likelihood that a convention would authorize the adoption of a state income tax, which is now prohibited. For these reasons the constitutional frame of Illinois has remained virtually untouched, except for ineffectual amendments, for three quarters of a century, although it seems certain that a majority of the people would have supported a constitutional convention during the intervening period if they could have voted on it.

The model state constitution proposed by the National Municipal League in 1926 provided that constitutional conventions should be held automatically at least once every twenty years. This is a minimum requirement and the rule should be universal. Much-needed improvements in legislative, executive, and judicial organization await constitutional authorizations. In many cases, too,

the relations between states and municipalities need reform. The temporary and outmoded provisions of state constitutions should be stripped away so as to reveal that which remains alive and pertinent. Most of our present state constitutions could be shortened and brought up to date. All are longer than that of the federal government, and two—those of California and Louisiana—are of book length, comprising some three hundred pages each.

There are four principal steps in the holding of a constitutional convention:

1) *Authorization.* The submission of the question to popular vote is usually required.

2) *Preliminary work.* Some time is spent in considering and studying the needed reforms, drafting proposals, organizing the convention, and so on. This is done by members of the legislature, by public-spirited citizens, and often by a special commission appointed for that purpose.

3) *Composition.* Delegates are chosen on the basis of the district system, as for the legislature, with sometimes state-wide delegates at large in addition. The average state constitutional convention consists of around two hundred members, the largest being four hundred and the smallest eighty.

4) *Procedure.* The convention usually meets at the state capital on a designated day. The election of a presiding officer and the selection of committees, which do most of the work, are the first order of business. These committees may number from twenty to thirty, and each is responsible for particular proposed changes in or additions to the constitution. Public hearings may or may not be held. When the committee reports are ready, they are laid before the convention, which often constitutes itself a committee of the whole for the consideration of many of the more important questions. In this respect and in others the rules of the constitutional convention generally resemble those of the lower house of the legislature.[2]

Authority. In some states the convention may propose any constitutional change or the adoption of an entirely new constitution as it sees fit. In others, however, the legislature is authorized by the constitution to specify what the constitutional convention may do, and in this case the constituent power is restricted. The convention may not arrogate and itself administer the authority of any existing legislative, executive, or judicial agency. Its power is limited to the proposals at hand. No effective method has yet been found by which to rule out proposals relating to legislation rather than to fundamental structure, and this is one of the reasons why state constitutions have become increasingly long and complicated.

It seems that our belief in popular sovereignty is not as strong as in the early years of the American republic. Constitutional conventions were then looked on as paramount and unlimited. But today they are increasingly regarded as analogous to the state legislature and are thus becoming more circumscribed in scope.

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[2] Explained in Chapter 23, "The Legislature at Work."

Ratification. Usually the people get a chance to approve the work of the convention which they authorized in the first place, but there are exceptions. In a dozen or so cases during the past hundred years, the enactments of a convention have been instituted without a prior popular vote for or against them. In registering their preferences, the voters may act on the provisions separately, vote on the total proposals lumped together, or vote on the proposals both as a whole and individually on the more important points. In this case the questions are simultaneously submitted in both forms. If a brand-new constitution is being acted on, a vote under the second method involves an all-or-nothing decision, whereas under the third method it is usually possible to salvage something even if the main reform fails. The vote may be held either at a special election or at a general election when candidates for public office are chosen. If the state requires a majority of all those voting at the election to favor a constitutional amendment, or if extensive changes are being considered, it is usually preferable to have the matter settled at a special election.

The Relative Advantages of the Different Methods of Changing State Constitutions

In recent years the American people seem to have become discouraged and somewhat cynical where their state constitutions are concerned, their attitude often being one of "What of it—it's just another piece of paper!" Then, of course, there are those who feel "It was written once and for all and should not be changed."

Both attitudes are wrong. The greater the degree of detail in which constitutions are written, the more they need periodic revision. Society is constantly creating new problems with which governments must deal. Governmental organization and functioning have altered as much as the automobile. It follows, therefore, that when constitutions remain static, everything they relate to remains equally static, with the result that efficiency suffers and social tensions increase. If we are realistic, therefore, we cannot afford a cynical view with regard to the importance of state constitutions.

The amendment method of changing our state constitutions will probably remain the most popular because it is the quickest and simplest. It cannot be excelled where a single question at a time is involved, but it does lead to a piecemeal document. The initiative and referendum is a desirable device, but it is limited in influence by the fact that only one fourth of the states have authorized its use. Its chief virtue is popular control, its drawback too many proposals, some of which are not properly related to the constitution.

The constitutional convention holds a distinctive place as a means of major constitutional reform and periodic checking. Citizen confidence must be revived in this institution of popular sovereignty. Constitutional conventions succeed only in so far as a vigilant and unselfish citizenry, acting as a rule through civic organizations rather than through political parties, determines to effect needed changes. Frequently the impetus for sweeping constitutional change

comes from universities or bar associations or leagues of women voters. If we ever lose faith in this source of civic betterment, our democracy will be seriously impaired.

REDISTRIBUTION OF POWERS WITHIN STATE GOVERNMENTS

We do not realize today how much variety there was among the constitutions of the original thirteen states. The Virginia type, for example, encouraged legislative supremacy and restricted the franchise. In the Pennsylvania plan, the legislature at first was restricted by a special organ of the popular will called the council of censors, which did just what the name implies—censor; but the Pennsylvania plan was characterized by a broad and liberal electorate. Then there was the dominant-legislature type with a single house, as in Georgia, also coupled with a broad electorate. In the Massachusetts type, the power of the legislature was more equally balanced by that of the executive and the judiciary, so that here the separation of powers meant more both in practice and in theory.[3]

But a trend toward uniformity was not long in developing. Unicameralism was finally replaced everywhere by bicameralism. The council of censors was given up as cumbersome and impractical. The powers of the three branches became more evenly divided in practice as in theory. The people lost some of their original confidence in representative assemblies and gradually came to do more and more things for themselves. Evidences of this trend are the popular election of executive officials, the extension of universal manhood suffrage, the popular election of judges and officials of the judicial branch generally, the introduction of the direct primary, the growth of home rule, the use of the initiative and referendum in constitutional and legislative change, the introduction of the recall of public officials, and the adoption of proportional representation in a few instances. It was not merely that the people were becoming disillusioned as to the virtues of legislative assemblies and so found ways of taking things into their own hands; they also regarded popular participation as a positive virtue to be cultivated. A conservative New Englander has called this "the triumph of Jeffersonianism," by which he meant that the franchise had been broadened and popular sovereignty and participation strengthened. It is not an inaccurate characterization and it could just as validly be attributed to Andrew Jackson or Abraham Lincoln.

During the past thirty years, in the period which began at about the end of World War I, there seems to have been a reaction away from popular participation in and control of state government. Or perhaps it would be more accurate to say that people do not seem to be as interested in their state governments as they used to be. It is not so much that they are more indifferent citizens as that the federal government has increasingly occupied their attention, with the result that state government has taken a back seat. Consequently we

[3] Arthur N. Holcombe, *State Government in the United States* (New York, 1926), Chapter contains a good discussion of these types and of the changes that occurred.

have been less interested in constitutional reform, the initiative and referendum, the strengthening of state legislatures, and the unification and improvement of the state judiciary.

One notable exception is that between 1913 and 1933 there was a considerable interest in improving state administration and in increasing the powers of the governor.[4] This was a reform long overdue, since a weak executive, you will remember, was an early tradition. This change is of a piece with the corresponding development we have noted in government at the federal level—the tendency toward executive government in recent years. Alexander Hamilton, you will recall, argued that state governments might be expected to encroach upon and weaken the federal government because the states, being closer to the people and deeper in their affections, would receive the greater support. For a century this was undoubtedly true. But today? Tomorrow? As a people, we seem to be forgetting the liberties for which we fought a revolutionary war. Popular sovereignty and citizen participation in government at the state level have been on the decline. Can the trend be reversed? If democracy cannot be kept effective at the state and local levels where our governments are nearest to us, how much more difficult will it be to maintain a democratic form of government at the federal and international levels?

The Powers of the States

When it is remembered that the state of New York has one tenth of the nation's population, that Illinois has almost one sixteenth, and that three or four other industrial states are also very large, it is hard to understand why state government is not higher among our interests as citizens. Consider, for example, the effect on the citizen of the power of the state legislature to organize and maintain cities, counties, and all local governments—the authority of the state over seven million people in New York City and three and a half million in Chicago. In the case of these large states, of course, there is a good deal of popular interest in what the state government does, but even in the smaller states it might be expected that the factors of competition and survival, supported by the importance of the functions of state government, would lead to a wider citizen interest.

Let us arrange state powers in something like logical order. They include complete power over all of local government; the chartering and regulation of corporations and all manner of business associations; the regulation of public utilities and the operation of economic services, such as water and power systems, by the state itself; maintenance of the highway system and other methods of transportation; the maintenance of the free public education system, family, and religious interests—the basic institutions of society; administration of most of the welfare field including employment, relief, institutions for the sick, the mentally affected, and the criminal; the whole undefined and seemingly limit-

[4] Dealt with in Chapter 34, "Executive Leadership in Government," and Chapter 36, "Government Reorganization."

less field of the police power—all of the reserved powers needed for the public health, safety, morals, and so on; and finally civil functions such as taxation, revenues, suffrage and elections, civil liberties, and the like.

This is not a detailed list but it is an impressive one. The first item alone—control over all cities and forms of local government—is stupendous in its implications because people have increasingly moved into settled communities; and as people go, so goes government. Are not these powers worthy of our interest, our attention, and our devotion so that they may be controlled for the public good?

SUPPLEMENTARY READING

1. State government in general: Among several excellent books dealing with state government in the United States are Arthur N. Holcombe, *State Government in the United States* (New York, 1916 and 1926), particularly Chapter 16; John M. Mathews, *American State Government* (New York, 1924), Chapters 1 and 2; Frank G. Bates and Oliver P. Field, *State Government* (New York, 1928), Chapters 1 and 4; A. W. Bromage, *State Government and Administration in the United States* (New York, 1936), Chapters 1–4; W. B. Graves, *American State Government* (Boston, 1941), Chapters 3 and 4; Austin F. Macdonald, *American State Government in the United States* (New York, 1945), Chapter 4; Walter F. Dodd, *State Government* (New York, 1928), Chapter 4.

2. State constitutions and amendments: National Municipal League, *A Model State Constitution* (New York, 4th ed., 1941); R. S. Hoar, *Constitutional Conventions: Their Nature, Powers, and Limitations* (Boston, 1917). Excellent articles on recent problems and developments are found in the *University of Chicago Law Review*, Vols. X and XI (1943, 1944), and *The Annals of the American Academy of Political and Social Science* (September, 1935).

CHAPTER 7

The Framework of Municipal Government

DEMOCRACY is an instrument of people in groups. The smaller the group, the more direct is citizen control of government. As the group becomes larger, direct control diminishes, but the potential strength of democratic government increases through the device of representation. The population of the United States is now overwhelmingly urban. It is the cities, therefore, which hold the key to healthy, democratic government in this country. It is in the cities that the greatest influence may be engendered. Thus the position of the cities in the political structure of the nation becomes an important consideration.

THE ANOMALOUS POSITION OF CITIES

Unless the American people take a greater interest in their state governments than they have in recent years, so that these governments become more effective, it is doubtful whether the urban communities of the United States will tolerate a constitutional system which subordinates them to state authority. Our cities have become large and strong—many of them stronger than some of our states or stronger than the rest of the state in which they are located. It is not reasonable to expect them to continue to occupy a subordinate role which they have outgrown and which now often hampers their administration, the welfare of their citizens, and the spirit of community responsibility which every city needs.

The shift of population from country to city, which has been nothing short of revolutionary, has thrown our whole theory and practice of government out of kilter. In 1800, only about 3 per cent of the people lived in urban centers. There was no city problem. Indeed, there were few governmental problems of any kind. But by 1880, out of a national population of 50,000,000, almost 30 per cent was urban, leaving 70 per cent rural. In the next sixty-five years—that is, up to 1945—our population increased to 140,000,000, a figure nearly three times as large as the total for 1880. This growth alone was sufficient to complicate the problems of government. But in addition, by 1940 the balance between city and country had completely changed. Seventy-seven per cent of the population was now urban and nonfarming, while the rural areas accounted for only 23 per cent. There are more than 16,000 municipalities in the United States today. It is true that many are small, with 10,000 having a population of 1,000 or less. But four cities—New York, Chicago, Philadelphia, and

Detroit—comprised one tenth of the population of the country in 1930.[1]

Thus the problems and responsibilities of democratic government have enormously increased, but government itself—especially in state and city administration—has been slow to adjust. Consequently, urban communities everywhere today are in great need of orientation and readjustment. But where can they look for help? Urban problems, such as slum clearance, neighborhood redevelopment, reconstruction, planning, recreation, transportation, public utilities, employer-employee relations, social security, economic readjustment and stabilization, are local affairs and as such must be resolved by local initiative under broad grants of power. It is in the area of the autonomy and power granted to cities by the state legislatures that the greatest tensions exist.

Chicago is larger than some European states—Denmark, for example. Yet its powers are that of a small, provincial community. Chicago is the second largest city in the United States, and yet it cannot make a significant move without the authorization of the state legislature functioning under an 1870 constitution and dominated by representatives of the downstate, rural minority. In 1870 the population of Cook County (in which Chicago is located) was less than 350,000 out of a total of 2,500,000 for the whole state. In 1940 the total for the state had reached 7,897,000; of this, 4,630,000—or nearly 60 per cent—constituted Cook County. With over half of the population of the state, Chicago was allowed only 19 out of 51 senators in the state legislature. Again, as at the time of the American Revolution, the cry of taxation without representation is heard. Cities need more government than any other governing unit, and yet they are legally so situated that they have the least freedom of control over the conduct of their own affairs.

The city-states of Greece and Rome were free; the city and the state were then one. During the Middle Ages, too, for all essential purposes the city was the principal unit of government; even London was virtually independent of royal control. All the countries of Western Europe revolved around their cities, especially around their ports. Trade and commerce were carried on by Amsterdam, Lübeck, London. Cities were the originators of modern capitalism and the modern nation-state. What has happened to their glory?

In the United States, the cities have been subordinated to the states by a legal device—the corporation—that owes its origin to the early condition of the colonies. Today, the state creates all forms of local government as corporations, which are considered, legally and for other governmental purposes, as subordinate to their creator. This is interesting because the state also creates the business corporation, but the business corporation is not so subservient in its operations as the municipal corporation must be. It seems that here we have a double standard.

In the eyes of the law, any local governmental unit, even if it is larger in

[1] See an excellent article on the over-all problems of cities in "The Rise of Metropolitan Communities," by R. D. McKenzie in *Recent Social Trends* (New York, 1933), Chapter 9.

population than all the rest of the state, is merely a corporation and hence subordinate to state authority. More, it is a subsidiary instrument of the state for carrying out state programs. But what about those programs that are distinctly local and urban and which, because of the size of the city, may be larger and more important than any state program? That is where the rub comes.

The municipal corporation is defined in law as "a part of the people of a given state, residing within a given territorial district, who are by law organized into a corporation, i.e., endowed with legal personality, for the purpose of assisting in carrying on the government within that district."

There are three main classes of local governmental corporation as defined by law. These are (1) urban, including villages and cities, depending on population; (2) rural, taking in counties and townships, within which villages and cities are located; and (3) special districts of various kinds, such as school, drainage, or fire districts. Counties are sometimes called quasi corporations to indicate that they are not corporate in the full sense and that their powers and organization are less conventionally delimited.

THE CITY'S CONSTITUTION—ITS MUNICIPAL CHARTER

The municipality has its constitution, just as the state and federal governments have theirs, but it differs from them in being merely an act of the state legislature. The exception to this occurs when a city is granted a degree of municipal home rule, in which case the citizens help in the formulation of their municipal charter. Here the process is comparable to the constituent assembly, such as that which drafts state or federal constitutions.

The municipal charter is *the written instrument enacted by the state legislature which grants corporate existence, bestows powers and duties on the city, and provides for its frame of government.* The effect is much like that of a constitution, but the process by which it is framed, except in the case of home rule, is quite different.

Once the municipal charter has been granted, amendments and additional powers may be added to it from time to time. This means that a grasp of the entire constitutional picture for a modern city is not always a simple matter. It is somewhat analogous to the so-called unwritten constitutions of some nations, notably Great Britain, where the constitution is merely the total of pertinent legislative enactments.

Historical Evolution of Charter Granting

In the evolution of municipal government in the United States, from colonial to modern times, four stages may be noted so far as methods of charter granting are concerned:

Colonial period. The grant of a charter was from the proprietor or the colonial governor. The chartering of a municipal corporation was considered merely an incident to the general power granted by the king and Parliament. The power over municipal bodies was absolute; they were regarded as a kind of

personal property. In this historical circumstance is found the explanation of the present subservience of city government to the state. Our early cities did not have the opportunity or the time, like London, to develop an autonomy of their own.

Early state period. After the Revolution, the power which had formerly derived from the royal governor or proprietor was vested in the legislature of the state. These legislative bodies were free to grant, revoke, alter, or amend municipal charters as they saw fit. In this early period, which lasted until about the middle of the nineteenth century, a charter was a piece of special legislation, and hence lack of uniformity and accentuation of individual differences among the various cities of a state were characteristic.

Special legislation restricted and classification introduced. By the middle of the nineteenth century there were coming to be as many forms of municipal government as there were municipalities. The principal difficulty was that whenever a city needed additional power or a new authority, it had to apply to the state legislature for it. Consequently the situation in each city developed haphazardly along independent lines, and the legislature was kept busy. The courts customarily interpreted the powers of municipalities in a narrow sense, so that every limiting decision required the addition of the missing power by special act of the legislature.

Here is the dilemma: Specification of powers in great detail results in strict judicial construction. But on the other hand, skeleton provisions are ambiguous and incline the courts toward withholding powers which are assumed without being specified. What, then, is the solution? A step in the right direction was taken when state constitutions began to be amended in order to restrict special legislation, not only for charter granting but for general purposes as well. Over three fourths of the states now prohibit their legislatures from passing special charter or legal provisions affecting individual subdivisions of the state. The general rule in these states is that statutes must be general and apply equally to municipal and local subdivisions of the same population group.

Ohio was the leader in this movement, amending her constitution to that effect in 1851. Since then there have been three lines of development: (1) Most states, as we have said, have passed legislation providing the general outlines of government and the options which local governments may choose. (2) Some states have gone further than this and have adopted a device of classification under which cities are grouped into a number of classes, depending primarily on population, and for each group there is a corresponding form of government. (3) Finally, where there are great metropolitan centers such as Chicago, special legislation may still be employed. In the case of Chicago, however, the law of 1904 provides that special legislation must be accompanied by a local referendum.

Legislatures have been able to find convenient loopholes in the system that prohibits special legislation, but by and large it has worked well for all except the large cities. It has unquestionably been an improvement over special legis-

lation. Nevertheless, complying with the demands of municipal governments has absorbed much of the time of the state legislatures. In a five-year period —1910 to 1915, for example—nearly one fourth of the bills passed by the New York State Legislature—983 out of 4,260—dealt with special municipal matters. The charter of Greater New York, which was in effect from 1901 to 1938, filled several volumes and comprised 1,400 printed pages. In less than twenty-five years, from 1885 to 1908, the Massachusetts Legislature passed approximately 400 bills affecting the city of Boston alone.

The growth of municipal home rule. The only effective solution to the governmental difficulties of large municipal centers is a high degree of freedom from the state legislature. Our cities must be given the right of self-determination and self-government or we cannot expect them to put their own houses in order. They know their own problems best and are best able to work out the necessary remedies. It was James Bryce, brilliant author of *The American Commonwealth,* who said that "the deficiencies of the national government tell but little for evil on the welfare of the people. The faults of the state governments are insignificant compared with the extravagance, corruption, and mismanagement which mark the administration of most of the great cities." Bryce might not emit so pessimistic a stricture today, but there is still much need for improvement in civic democracy. The theories of law and government have not kept pace, in this instance as in others, with the changes of population and community development.

Home rule is the granting by the state legislature of a substantial degree of municipal independence through the drafting of a local charter or code by the citizens themselves, which charter or code, when approved by the voters, belongs exclusively to the city and is its constitution. Amendments may be added, when submitted by the council or by popular initiative, if they are followed by ratification by the voters of the city.

An advantage of home rule is that the charter provisions need not be spelled out at great length because the courts are more ready to assume that liberal interpretations of power were intended. Home rule appeared first in Missouri in 1875 and has grown fairly rapidly since then. In 1928, twelve states had adopted it; there are now twenty. Six others have partial home rule provisions. However, the extension of the plan is still far from complete or satisfactory. Only half of the country's thirty largest cities operate under it, so that the reform is only about half complete. Nevertheless, it is estimated that more than two hundred municipalities, including smaller towns and cities, now enjoy home rule privileges.

In addition to the advantages which have been mentioned, home rule relieves the state legislature of much needless work, thereby releasing it for broader matters. It encourages a sense of local responsibility and participation, which is necessary to good government everywhere. It permits the people of a city to adopt whatever form of government they think best and provides opportunity for healthy experimentation and growth. And it reduces the fric-

tion between urban and agricultural areas and keeps state politics out of local self-government.

Degrees of Local Freedom—Summary

Despite the reforms which have been described—relating to classification, general legislation, and home rule—the picture with respect to basic municipal charters and freedoms today is still complicated and confused. It needs desperately to be clarified. Large states such as New York and California have adopted home rule, but others, notably Illinois and Massachusetts, have not. At the present time from 10 to 15 per cent of the cities of 25,000 inhabitants or more in the United States still have special charters—that is, special legislation, not home rule; some 50 per cent are under the general or classified provisions of state law; and the remainder—from 35 to 40 per cent—enjoy home rule privileges.

In the growth of the law of municipal corporations, two rules or doctrines have struggled for supremacy. One is called the *Cooley* doctrine, which assumes that local governments inherently possess a high degree of local freedom and autonomy which the state legislatures and the courts are obliged to recognize. The opposing theory, called the *Dillon* doctrine, holds that local powers are subservient and must be explicitly specified by the legislature, with the result that local freedoms are restricted. Historically, the latter doctrine has fared much better at the hands of the courts than the more liberal rule. It is to be hoped that in the future the tables will be turned and that the right of municipal self-determination will be more fully recognized and respected.

FORMS OF CONTROL OVER LOCAL GOVERNMENT

In addition to the power of the state legislature to determine the degree of local freedom which shall be accorded the municipality, and what form of government it may adopt, there are three other means by which state governments control their local subdivisions.

The first is legislative. By general law, state legislatures determine what part of the state's enforcement responsibilities shall be imposed on the local units. The *grant-in-aid*,[2] appropriating funds to the local subdivisions for specific purposes, is one of the means by which state programs are put into effect through municipal channels.

Second, as administration has become more important at all levels of government, and as municipal freedom has tended gradually to increase, in putting state programs into effect the state administrative departments have more and more sought the active cooperation of local governing units through administrative channels. This is one of the most hopeful means of bringing state authority and local freedom into a working accord. As is to be expected, city officials are more willing to cooperate with the state authorities than to receive orders from the state legislature.

[2] This subject is dealt with in Chapter 10, "Intergovernmental Cooperation."

Third, the power of the state courts, an important means of controlling and regulating local governments from the earliest colonial times, still constitutes an important method of state supervision. Judicial control is essential, but if the problems of municipal government are to be solved, it must be exercised in a more statesmanlike manner than is often the case.

In Great Britain, municipalities bear much the same relationship to the central government that cities do to the state in this country. By and large, British municipalities have more home rule than ours because the oldest of them secured charter rights which predate the Norman Conquest of 1066. Parliament has been loath to invade these freedoms, for reasons of political expediency—even as this factor has a certain determining effect in the United States.

There are two features of British central-local relationships that we might well consider in studying our own problems. The first is the existence of a separate administrative department of the national government that is principally responsible for dealing with municipal powers and relationships. Although a department of municipal affairs in each of our state governments would not be an entirely perfect solution, in practice the system promotes sympathy and understanding between the two levels of government.

A second feature lies in the provisional order procedure that Parliament employs. The municipality refers matters, such as obtaining permission to initiate a new activity, to the appropriate administrative branch of the central government. If the request is favorably acted on, the permission is tentatively accorded. The order then lies before Parliament for a required length of time and if Parliament does not object, it becomes law. The procedure is speedy, saves Parliament's time, and places the provisional decision in the hands of those who presumably know most about the matter. There are real advantages in such a division of authority, as we shall have more than one occasion to observe.

THE GROWING DUTIES OF MUNICIPALITIES

We have seen that throughout history, government has grown in practical importance to people as life has become more complex and community centers have increased in size. Today, when millions inhabit a single metropolitan area, there can be no question of how much they must do in common through government. To list the functions of a modern metropolis such as Boston, St. Louis, or San Francisco is tantamount to cataloguing most of the things people need, want, and do. A municipality, more than a state or a nation, is a community; and hence, as Plato said, man needs the help of many—one might almost say the help of all. Outside his own job there is little he can do himself. Each does his small part and the totality adds up to a complete coverage of essential needs.

Some of the major areas of municipal responsibility include:

Police protection—presumably a local problem, although officers are sworn to enforce state laws as well

Fire protection—almost entirely local, although there is often an exchange of services among small communities in time of need.

Transportation—either by coordinating public utilities or by outright municipal ownership and operation. Primarily a local or metropolitan function.

Streets, sewage disposal, gas, water and electricity supply—almost entirely local.

Public health and sanitation, nursing, hospitals—largely confined to local residents.

Public education—primarily a local responsibility although there are usually state standards and financial assistance.

Public buildings, auditoriums, and the like—primarily local but with some federal (post offices) and some state.

Public welfare activities—many of them distinctively urban in origin but rather thoroughly coordinated with state and even federal programs.

Recreation programs—almost exclusively local.

Housing projects—locally administered, usually with federal rather than state assistance.

Courts—both state and municipal, with the latter tending to be increasingly independent in the larger cities.

Muncipal finance, taxation, assessments, licensing, regulation of business, and so on—local.

The bare enumeration of activities gives one little sense of all the things the modern city is called on to do every day, as regularly as clockwork. Each category creates administrative problems, many of which compare in size and complexity to those of some of our large private corporations. The 1944–1945 budget for New York City totaled nearly $750 million, a sum greater than the combined public expenditures of the six New England states.

The foregoing list of duties and functions indicates what share of the responsibility is borne by the municipality and what part by the city as agent of the state, but it is hard to draw any final dividing line. Often there is a difference between the legal theory on the one hand, and the practical circumstances requiring the adoption of a particular program and the manner in which it shall be administered, on the other. For example, municipal policemen are paid and directed locally and most of their work is created by the urban environment, but they are also state officers and subject to some direction from that level. Moreover, the degree of state financial and administrative control of the municipality varies considerably between states and even within a state, depending on home rule, and this also makes a segregation of functions difficult. Furthermore, in most cases the state and the municipality have parallel functions, such as health and education, *but usually they cover different groups of people.* In many cases, also, the state establishes the standards and provides a financial subvention, but leaves the municipality free to administer. And finally, the same person will sometimes be both a state and a local official, hav-

ing two sets of laws to administer and perhaps even two masters. This is one of the worst features of duplicating jurisdictions at the local governmental level.

THE FORMS OF MUNICIPAL GOVERNMENT

Trends in American municipal government have diverged from the state and federal forms of government in two important respects: first, unicameralism has increasingly captured the legislative assembly (in this case, the municipal council); second, the separation of powers has not been widely developed, especially with regard to the legislative and the executive branches. The cities have generally been free to adapt themselves to their own requirements in these respects because *the courts have widely held that, as regards forms of government and the separation of powers, municipal and other local governments are not bound by the strict rules of state and federal constitutional law.* Thus we sometimes find a virtual merging of the legislative and administrative branches of municipal government, with the city council assuming administrative duties or the mayor taking on semilegislative responsibilities.

With regard to unicameralism, a single-chambered municipal council is clearly preferable to a double chamber. The single chamber is less expensive, quicker to act, and yet serves every purpose of representation required of a municipality. Considerably over half of our cities—including all thirty of the largest—have adopted unicameralism. Those that have abolished bicameralism rarely return to it. May this not suggest the desirability of extending the plan upward to the state level, as Nebraska has done in her state government?[3] Why should the smaller states, especially, continue to support duplicating branches of the state legislature?

Along with these two divergences, there is one respect in particular in which municipal trends have paralleled state and federal development: the powers of the executive have increased in scope and influence at all levels of government from municipal to federal. Whatever form the municipal executive branch has taken—the mayor-council plan, the commission plan, or the city-manager plan, to name the three principal forms—it is stronger now than it was even a generation ago.

The Mayor-Council Plan

An elective council (unicameral or bicameral) and an elected mayor, either a strong mayor or a weak one, comprise the mayor-council plan.

The strong-mayor type is a plan under which the chief executive is given wide authority over the administration of city departments and programs, while the council confines itself to legislation and general surveillance. This scheme, found particularly in the larger cities, is increasing in popularity elsewhere. The mayor's term ranges from one year to five, with four years as

[3] This is discussed in Chapter 22, "Strengthening Legislative Effectiveness."

the average in large cities. His salary is from $12,000 (Philadelphia) to $25,000 (New York) a year. In some instances it is equal to or greater than the salary of the governor of the same state. The mayor's powers and duties include

The direction of all municipal departments.

Submission of budgets and programs to the council.

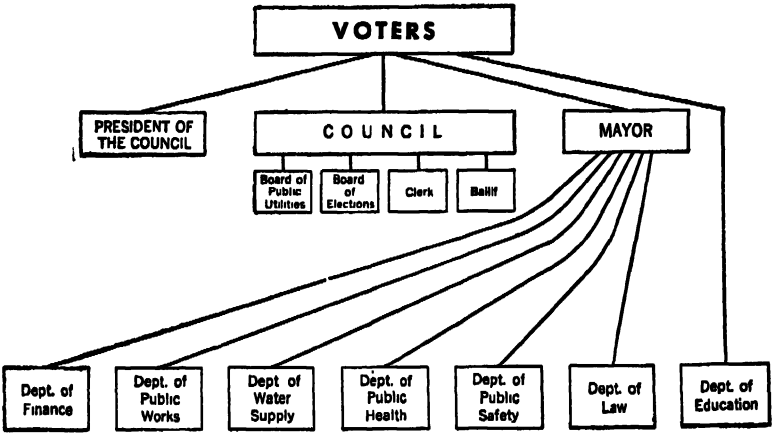
The power of appointment and removal, although frequently the more important appointments require council approval.

Chairmanship of or participation in council meetings.

The power of veto, although usually the council may overrule his veto by a two-thirds or a three-fourths vote.

The duty of representing the city and acting as its ceremonial head.

The councilmen are elected generally by geographical subdivisions of the city, the most common of which are wards. Increasingly, however, the city-wide ticket has been preferred. The size of the council varies in large cities from nine to fifty (Chicago). New York's city council numbers twenty-six members. The duties of the council are primarily legislative but it is also charged with the administrative supervision of its own ordinances.



THE STRONG MAYOR-COUNCIL PLAN

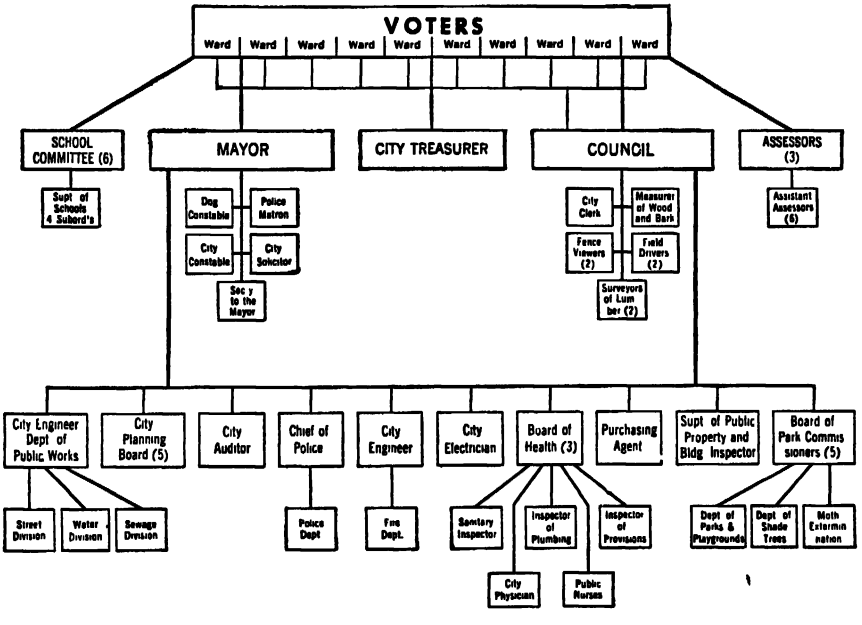
This chart and the three following charts are based on charts from *Government in Action* by Keohane, Keohane, Pieters, and McGoldrick (Harcourt, Brace and Company).

The weak-mayor type was the original form of municipal government in the United States and is now on the way out. Because of the general trend toward a stronger executive, it has been increasingly superseded by the strong-mayor plan as municipal functions have grown and as citizens have sought more efficiency. Originally, the mayor was just a member of the council. For a considerable time after the Revolution he was appointed by the council itself out of is own membership, as he still is in England. This is another evi-

dence of how we seemed at one time to be headed toward a cabinet form of government, a trend that failed to materialize, however, at any level.

Gradually the mayor gained administrative duties. Today, under the weak-mayor plan, he may have some administrative powers, but his authority is not extensive or complete as in the strong-mayor plan, and he is primarily an honorific personage and an administrative figurehead. As a consequence, the city administration is usually weak in leadership, coordination, and control, with little if any separation between legislative and executive powers. However, the tendency toward a stronger municipal chief executive has grown steadily since the Civil War and especially since the turn of the century, so that even the medium-sized and smaller municipalities have moved in the direction of stronger executive leadership, and differences have become increasingly ones of degree rather than kind.

It is now hard to remember that our mayors were once appointed rather than elected, that they received no salary or no more than the other members



THE WEAK MAYOR-COUNCIL PLAN

of the council received, and that most departments were headed by boards and commissions, as they were in state governments and are still in some states today. But despite the wide variety of organization existing in municipal government, the direction is clearly toward the substitution of single administrators for managing boards and the strengthening of executive power to make it more effective and responsible.

The Commission Plan

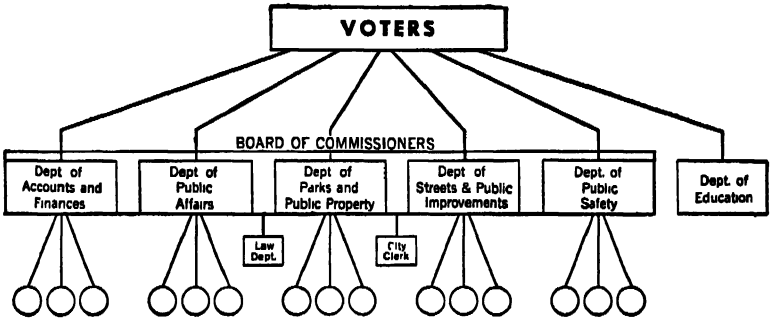
The commission plan of municipal government, introduced at Galveston in 1900 and now found in about eight hundred cities, is an exception to the trend toward the single administrator. The idea seems to be losing ground in public favor, however, so that it may not materially modify the development we have noted.

In the commission plan, all of the members of the city council are administrators of the public business as well as legislators. Here, therefore, the separation of powers at the local level disappears entirely. Each member of the council has a specific field of administrative responsibility in addition to his duties as a councilman. In Des Moines, Iowa, for example—one of the most successful early followers of the plan—the posts are divided into public affairs, accounts and finance, public safety, streets and public improvements, and parks and public property—five in all.

The commission plan is largely a protest against the large councils formerly characteristic of the mayor-council type. Under the Galveston plan, a small council, usually five in number, is elected by the voters for terms ranging from two to four years. Some degree of continuity in administration is provided when terms are staggered, as they frequently are, so that all of the commissioners will not go out at the same time. In some cities candidates run for particular administrative posts, but more often they are elected to department headships by majority vote of the council itself. The plan is aimed at securing a businesslike management of public affairs and at getting businessmen into local government. Candidates are usually nominated by citizen petition or on a nonpartisan ballot. Frequently the safeguards of recall and the initiative and referendum are provided. One member of the council usually acts as mayor, being chosen for that post either by popular election or automatically by virtue of receiving the greatest number of votes. In such cases he is the ceremonial head of the government but has no more administrative duties than his colleagues on the council.

We cannot afford to be doctrinaire in judging forms of government. We have enough variety in American local government so that we should avoid that pitfall. The commission plan has achieved some notable accomplishments. For the most part, it has been adopted by smaller cities where the chances of success are greatest because of more active citizen participation and a greater opportunity for choosing leadership in which the people have confidence. So long as good men can work together, instead of pulling in opposite directions, there is no reason why the commission plan should not succeed. It has now been adopted in nearly a hundred communities of over 30,000 population, and in seven cities of over 200,000—among them New Orleans, Buffalo, and Jersey City. Since 1918, less than a decade after Galveston adopted the commission plan, it has grown rather slowly, however. Inherently it suffers most from a divided authority and from the danger of personal competitions within the

council over jurisdiction and policy. Nor is the plan a safeguard against corrupt municipal administration if those in control are more interested in personal gain than in the welfare of the city.



THE COMMISSION PLAN

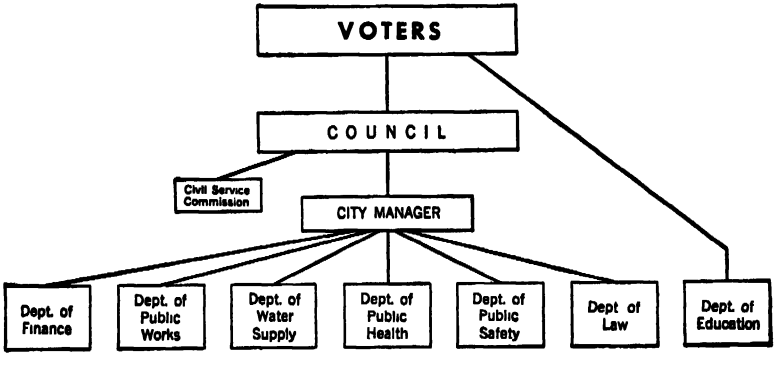
The City-Manager Plan

The city-manager plan consists of a small elective council and a professional chief executive chosen by it. In the intervening period since the plan was first tried in Dayton, Ohio, in 1914, it has acquired almost six hundred adherents, including small towns. Although this number is not as great as the number of cities using the commission plan, the city-manager scheme has extended its territory consistently and is strong in all parts of the country. It is found in twenty-two cities of over 100,000 population, among which are Cincinnati and Toledo in Ohio; Cambridge, Massachusetts; Kansas City, Missouri; Oakland, California; and Miami, Florida. Cincinnati, which pays its manager a salary of $25,000 a year, is perhaps the outstanding example of the plan in successful operation.

The city-manager plan, which bears several familiar resemblances to other forms of municipal government and to private enterprise, is like the commission plan in its small council and its emphasis on business management. In the selection of the manager by the council instead of by popular vote, it is reminiscent of the original mayor-council plan of local government. In the division of duties between council and manager, it is essentially similar to the strong-mayor type. It is also much like the operation of a business corporation with its board of directors and professional managers.

And yet it would be a mistake to assume that the city-manager plan lacks originality. Perhaps its most distinctive feature is the selection of its chief executive from among the most qualified candidates in the country. This method of choice rules out both political partisanship and favoritism for a local candidate, and makes possible a true career service for municipal executives. The term of office is either for a specified number of years or during the will of the members of the council.

The council does all the legislating, the manager all the administering. Here is one place in local government where there is something like the separation of legislative and administrative powers. Working closely with his councilmanic employers, the manager attends council meetings and submits plans for financial and local improvements. If he is wise, he does not try to exert pressure or to appeal to public opinion on controversial issues. He is the prime governmental official of the community, but he dare not propagandize for his projects. He must rely on his greater knowledge and experience and on patient counseling, and he must be able to take disappointments gracefully. He must give the council members the credit for accomplishments or he cannot expect them to take the blame for mistakes. An elected mayor becomes the ceremonial head of the municipality and should be accorded his due. On his part, the city manager is entitled to expect from the council a free hand in administration, appointments, removals, and the executive end of the government.



THE CITY-MANAGER PLAN

The manager plan has much in common with the strong-mayor type of city government. Would it prove successful if a large city like New York, Detroit, or Chicago were to adopt it? The experiment would be interesting. The strong-mayor plan and the city-manager system both give promise of much that is beneficial to the community.

The table on page 107 shows the type of municipal government in effect in all cities with a population of 5,000 or more.

If our cities could solve some of their home rule difficulties, if their proper place in our democratic polity could be recognized and fully analyzed, then the great mass of our urban populations might turn out to be more responsible citizens than many of them are today. It must not be forgotten that the city is "the hope of democracy."

SUPPLEMENTARY READING

1. Textbook references on city government: William Anderson, *American City Government* (New York, 1925), Chapters 1–6, is good on the historical and socio-

TYPES OF GOVERNMENT FOR ALL CITIES OVER 5,000

Population group	Number of cities under			Total cities 5,000 and over
	Mayor-council government	Council-manager government by charter or ordinance	Commission government	
Over 1,000,000	5	0	0	5
500,000 to 1,000,000*	8	0	0	9
250,000 to 500,000	8	7	8	23
100,000 to 250,000	27	15	13	55
50,000 to 100,000	42	29	35	105
25,000 to 50,000	108	52	47	200
10,000 to 25,000	378	121	127	606
5,000 to 10,000	718	109	97	920
Totals	1,294	333	327	1,923

* Washington, D. C.: The governing board of the District of Columbia is composed of three members, two of whom are appointed by the President with confirmation by the Senate, and one army engineer who is detailed for four years. There are no elected officers.

Source: Municipal Year Book 1943, and U. S. Bureau of the Census.

logical aspects. Equally good is A. F. Macdonald, *City Government and Administration* (New York, 3rd ed., 1941), Chapters 1–8. William Bennett Munro, *Municipal Government and Administration* (New York, 1923), and *The Government of American Cities* (New York, 4th ed., 1926), although older, are good. See also Charles M. Kneier, *City Government in the United States* (New York, 1934), Chapters 1–6, and H. Zink, *Government of Cities in the United States* (New York, 1939).

2. Home rule, the units of government, and related matters: Howard L. McBain, *The Law and Practice of Municipal Home Rule* (New York, 1916), is good but out of date. More recent is Joseph D. McGoldrick, *The Law and Practice of Municipal Home Rule* (New York, 1932). For an interesting case study see Albert Lepawsky, *Home Rule for Metropolitan Chicago* (Chicago, 1935). The best single authority on the units of government is William Anderson, *The Units of Government in the United States* (Chicago, rev. ed., 1942).

3. Forms of municipal government: This is discussed in the textbooks referred to above. In addition see Harold A. Stone, *City Manager Government in the United States* (Chicago, 1940), a survey of fifty cities; and *City Manager Government in Nine Cities* (Chicago, 1940). On the general aspects, see Ernest S. Griffith, *Current Municipal Problems*, (New York, 1941). Much current information on the forms of government will be found in the *Municipal Year Book*, published annually by the International City Managers' Association, Chicago.

CHAPTER 8

The Framework of County and Local Government

IF ANY PART of American government deserves the appellation "neglected," it is county government. There are 3,050 counties in the United States. Every state has them, although in Louisiana they are called parishes and in Rhode Island they are unorganized and have no function. Counties are the center of governmental life for people living in rural areas. From the standpoint of function, they are important especially in connection with our state court system. Some urban counties, such as Cook County in which Chicago is situated and Westchester County in the state of New York, spend millions of dollars annually and directly touch the lives of hundreds of thousands of citizens. And yet it is hard to get people interested in their county government. Is it because we have so many layers of government that we are confused? Is it because, paradoxically, federal and state governments seem closer to us than our counties? This may be true. But at least we might expect those who live in rural areas, who rely most on county government, to be more interested in it than apparently they are.

Agriculture, the basis of a nation's economy, also makes cities possible. Ordinarily, there is a surplus population of 50 per cent annually among farm people, and a deficit of from 25 to 30 per cent annually in the larger cities. Thus the cities can grow or maintain themselves only by drawing on the population of rural areas. In addition, agriculture gives us health and an understanding of natural law. It has always done much to keep alive and growing the spirit of fraternity and democracy. Should we not do more, then, to strengthen our local government at the grass roots, where it comes closest to agriculture? If Alexis de Tocqueville or James Bryce were to return to America today, they would still find reason to declare that county government and rural government generally are in need of sweeping reform.

In the United States there are too many counties, townships, and special districts which in general cost too much for the benefits we derive from them and whose functions could often be simplified and more efficiently performed by some other unit of government, either federal, state, or municipal. The organization of counties and townships, especially, is archaic. Their jurisdictions overlap and duplicate, and there are too many officials to elect and too many to watch. No one would seriously object to their cost if only their administration were more efficient and effective.

It has sometimes been argued that local self-government in the counties is not worth wasting time on, that the county has proved itself a wretched failure.

But the failure of county government is not the failure of the principle of local self-government; rather, it is the failure of an unintelligent kind of government. It has also been argued that the state could take over county functions with a saving to the citizen in time and taxes. But the further government is removed from the citizen, the less interested he is likely to be in it and the less control he has over it. As George Spicer has pointed out in his report on *Ten Years of County Manager Government in Virginia,* "a vigorous, self-reliant local government may be essential to the effective operation and perpetuity of our democracy," and he adds that "all too little has been done to make democracy work at its most normal and natural level, namely, the local community," of which the county is a part.

A real job, therefore, awaits those of us who live in rural areas or county seats, where the county government is essential but where overlapping units are piled on top of each other to the confusion of government and citizen alike.

The county is primarily a rural subdivision of the state and as such is the largest unit of general local government in the nation. The county usually includes under its jurisdiction the cities and villages within its boundaries, which may be separately incorporated. But it is not entirely separate from these urban centers either, because most counties perform some functions for the cities within their borders. In addition, counties may act as agents of the state in dealing with other local subdivisions.

The majority of our counties have an average population of 20,000 inhabitants, but in 1940 one county had only 42. Nearly 2,500 of our counties contain no community with as many as 10,000 inhabitants, but 281 have within them at least one city of over 25,000 population. With regard to density, 70 per cent of the counties have fewer than 50 persons for every square mile, and 15 per cent have fewer than 10 per square mile.[1] In size and in the number of counties in each state the pattern is equally varied. Massachusetts has only 14 counties, in contrast to Texas, which has 254. Delaware has only 3 and Rhode Island 5, which, however, are unorganized and without function. San Bernardino County in California is almost as large as the state of Massachusetts.

In an earlier chapter it was remarked that the county was originally more important in the South than in the North. This is still true. The various types of local government in this country followed the streams of westward migration. Consequently, because of the influence of the South, the county is the principal unit of local government in the South Central states, where Southern migration predominated. In the North Central states, on the other hand, the township, a largely rural subdivision of the county somewhat similar to the New England town, is more active than the county. In the Far West, the township is unknown except in Washington, and the county, as in the Southern and South Central states, occupies the principal field. In the East Central

[1] U. S. Bureau of the Census, *Governmental Units in the United States, 1942.*

states, including New York, the influence of both the county and the township is more equal than in any other part of the country.

The County "Constitution"

A basic difficulty faced by the county is that its powers are generally not clearly defined. In the eyes of the law, the county is usually a quasi corporation rather than a full corporation, like the municipality or even the village. Unlike the municipality, the county does not ordinarily have a charter in which its basic powers and organization are set down in one place. In this case they are found piecemeal in a score or more of statutes by which the state legislature has granted general or special powers. Although five states permit county home rule, few counties have taken advantage of it.

Another difference between the county and the city, practically as well as legally speaking, is that the county is viewed as an agent of the state in giving effect to state laws. This is simply a matter of state convenience. The county, unlike some urban centers, has never championed the doctrine of inherent powers of home rule, as may be true of urban centers. The county is caught between the horns of a dilemma: a lack of specification as to power on the one hand, and inflexibility of framework and procedure on the other. In two thirds of the states, for example, constitutional provisions stipulate the officers which a county shall have, and neither the state legislature nor the county voters may change the rule without a prior constitutional amendment. When a county wants to modernize its organization, therefore, by creating the office of county manager, it finds itself in a vise. Change for the better is slow and difficult, so that deterioration of quality becomes inevitable. This is one reason for the disrepute into which many of our counties have fallen.

The Functions of Counties

The county is servant of the state and a logical center of government for people living in rural areas. It has no sovereign legislative powers; it may administer only within narrow limits; and its court system is an adjunct of the state. The list of county functions is something like the following:

Courts. As will be seen later, the county courts are a key link in the court structure of the state.[2] Most criminal cases start there, and many appeal cases end there. Although the administration of the state court system is essentially a state function, the chief importance of the county lies in this field.

Law enforcement. Sheriffs, coroners, and prosecuting attorneys are the most important law enforcement officials at the county level.

Taxation. The state relies on the county to collect certain state revenues out of which portions are turned back to the county for its own administrative purposes.

Recorder's office. This is the center for filings of many kinds—land titles, wills, deeds, mortgages, and birth and death certificates.

[2] Chapter 30, "Judicial Administration."

Schools and libraries. This function differs in various parts of the country. In about three fourths of the states, however, there are county superintendents of schools. An extensive rural library service has also grown up in several of the states.

Public welfare, hospitals, and similar institutions. County poor farms, old people's homes, and reform schools are almost as old as the country. In the past generation all of the county welfare activities have expanded. Nearly five hundred county hospitals alone were added in a twenty-year period.

Highways and roads. With the coming of the automobile, the county's functions with regard to the maintenance and repair of roads, bridges, viaducts, and the like have increased. The state turns back to the county part of the gasoline tax receipts for these purposes. The county highway department generally has the largest budget of any county service.

In addition, as a quasi corporation the county may sue and be sued, make contracts, and acquire, hold, and dispose of real and personal property. It is also employed by the state in the holding of elections and is often an election district for the state legislature.

These functions add up to a respectable total. In Cook County of Illinois, with its population of some four millions—the largest from that standpoint in the country—the governmental load is truly colossal. In a small county or in New England, on the other hand, county government is a minor factor in the total governmental picture. It is this diversity which makes it difficult to generalize about the county or to suggest reforms that could be universally applied. In the final analysis, each county is likely to present a special problem and will have to be dealt with individually by those interested in improving its situation.

GENERAL FRAMEWORK OF COUNTY GOVERNMENT

A primary difficulty of the county is the almost universal lack of a chief executive. In that respect the county is unique among all levels and types of government in the United States. Even our early municipalities had at least a nominal chief executive. Most counties today do not even have that, although there are a few exceptions where reforms have been vigorously instituted by alert citizens.

The typical method of governing a county is through a county board, of which there are two main types—the board of supervisors and the board of commissioners. The board of supervisors plan provides for a large board elected from the townships and districts comprising the county. The larger the number of such governmental units, therefore, the larger the board, which in fact ranges in size from fifteen to forty members. This plan is found in states such as New York, Michigan, Wisconsin, and most of Illinois. The board of commissioners, on the other hand, is usually small, consisting of from three to seven members who are elected from the county at large or from election districts that have been laid out for this purpose.

Whatever its form, however, the functions of the county board—as it may

be generically called—differ but little under either type. The county board combines the legislative and administrative powers of the county (the former being inconsequential) and in some cases even the judicial authority as well. The county turns its back completely on the principle of the separation of powers. And yet it is misleading to compare the county board to the commission plan of city government because the latter exceeds it so greatly in both legislative and administrative powers.

The county board's legislative power is small, apart from the voting of taxes and appropriations, except where the county has become an important unit of government. This is true, for example, in the populous centers of Cook and Westchester counties. Moreover, even its authority over the purse is greatly circumscribed in practice because offices and salaries are frequently rigidly fixed by the constitutional or statutory provisions of the state. What does the county board do? It carries out particular state laws, arranges for tax collections, supervises elections, cares for public property, is responsible for appointments and removals, supervises schools, public welfare institutions, a police force, and the highway department. In short, the county board operates within limits laid down by state law for all the functions listed above and keeps an eye on the several county departments to see that they do their work. The county board administers, therefore, but within prescribed limits. It acts only as a body, furthermore, and does not hire anyone to act as general coordinator except in those few instances where the county-manager system has been adopted. County officials report to and receive directions from the board as a whole.

Professor Roger Wells has written an excellent book entitled *American Local Government,* in which he calls attention to three common defects of county administration. The voters, he says, are asked to elect too many officials; administrative functions are scattered over too many departments; and there is no real coordinating executive. A study of county government in seven widely scattered states—California, Illinois, Michigan, Minnesota, Mississippi, New York, and Pennsylvania—showed that no less than twenty-eight different kinds of popularly elected officials were represented in this sample. No one state had all twenty-eight kinds but some had as many as fifteen categories. Positions commonly present were county and probate judges, district attorneys, county clerk, coroner, treasurer, auditor, recorder of deeds, surveyor, and superintendent of schools.

Some Proposed Reforms in County Rule

Since we shall be dealing at other points in the book with the various problems of county government, it will suffice here to analyze briefly some of the major changes which have been proposed to make county administration more effective.

Relation to the state. The state should effect a closer working relationship with the county, thereby increasing the efficiency of both. Centralizing tenden-

cies are already under way in California, Virginia, North Carolina, Oklahoma, and others.

County consolidation. Consolidation could be brought about, first, by combining two or more counties. This plan is favored where counties are numerous, populations small, and economies of finance and public control possible. Second, city-county consolidations could be effected. This major problem in some metropolitan areas will be considered more fully in a later chapter.[3]

Charter changes. The basic law of the county should be put in order by the state legislatures. Taking their cue from experience with the cities, the legislatures might pass standard provisions, adopt the principle of classification by size, or permit home rule charters to be framed and granted to counties. On this last reform a start has been made.

County boards. The size of the larger boards should be reduced. Members should be given longer terms and a more clearly defined authority.

Single responsible executive. In most cases, provision for a chief executive would do more than anything to increase the efficiency of county government. The restriction of the number of elective offices would permit the county board, on recommendation of the county chief executive, to fill all but two or three of the most important posts.

A county-manager plan might be the best solution of all. It is already in use in Virginia, North Carolina, California, and several other states—ten in all. The movement is gaining momentum in widely distributed parts of the country and contains interesting possibilities. In addition, some of our more important counties, such as Los Angeles, Cook, and Westchester, have what amounts to quasi managers—that is, executives with rather full powers.

These five proposals with their subordinate suggestions by no means exhaust the field so far as improvement is concerned. Even if this limited program were adopted, many reforms could still be made in county government. There are more than 155,000 separate units of government in the United States, with only forty-nine of them (the federal government and the states) not at the grass-roots or municipal level. The problem of molding a workable scheme of economy and efficiency out of this bewildering complexity is a challenge to the generation just now coming into its own.

TOWNSHIP GOVERNMENT

The township, or town as it is called in New England, is a subdivision of the county and includes both rural and urban populations. In New England the town has within its boundaries at least one urban or semi-urban center in addition to the surrounding territory, and it is always irregular in shape. Outside New England the township is generally an artificial unit, regular in shape and lacking the homogeneity which is characteristic in New England.

There are 18,919 organized townships in the United States, of which more

[3] See Chapter 11, pp. 159–171.

than 12,000 have populations of less than 1,000, and 6,000 have populations of less than 500. Nearly 11,000 townships have population densities of less than 25 per square mile, and in 4,000 it is less than 10. Some townships at the other extreme, however, are of a highly urban character: 30 have populations of more than 50,000, and 137 have densities of more than 1,000 inhabitants to the square mile.

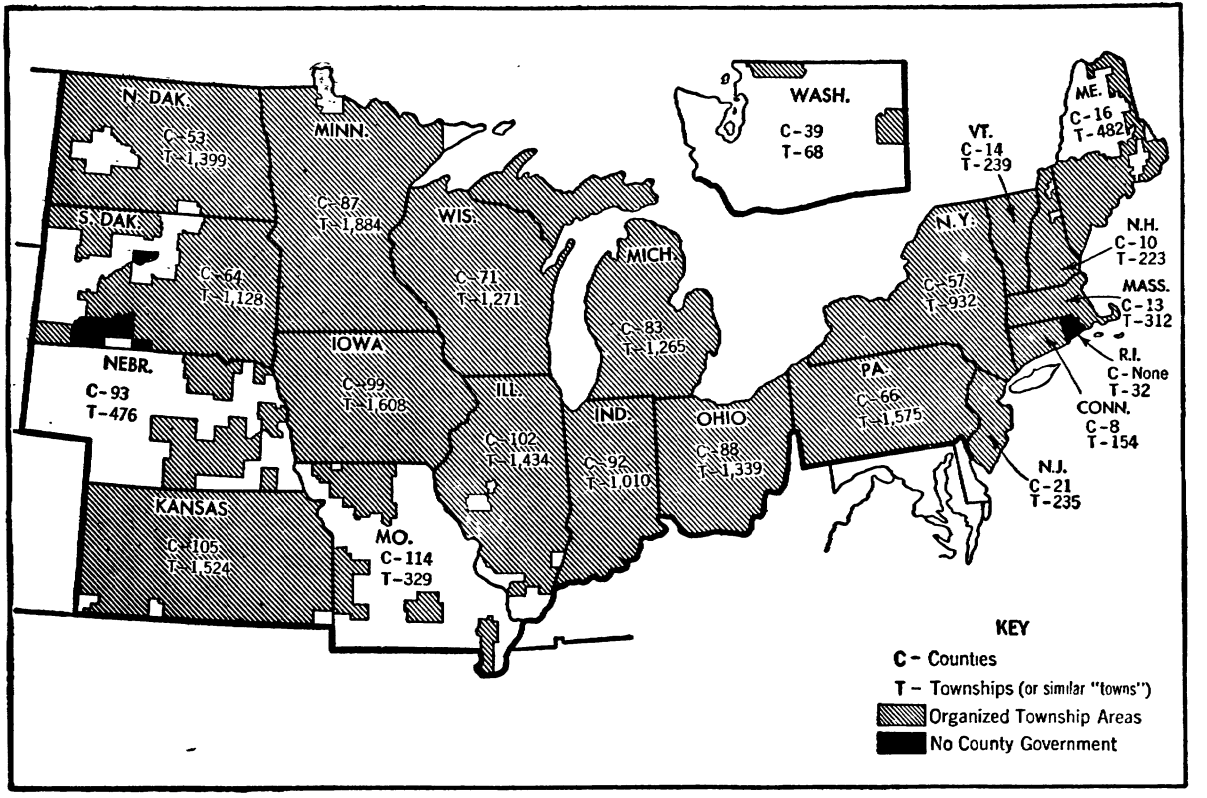
Despite the fact that townships cover a fairly wide area of the country, the only real strength of this form of local government today is in New England where, as a consequence, county government is a negligible factor. In New York, New Jersey, and the North Central states, township government has less authority and influence than in New England, and even what it has is constantly declining. In the North Central states especially, the usefulness of the township has rapidly faded because of the lack of homogeneity, the imposition of artificial boundaries, the duplicating functions of a stronger county government, and the incorporation of villages and cities out of township areas as urbanization has grown, thus separating the village from the territory of which it was formerly a part, and leaving the township in a much weakened condition. As a result, there have been a decline and a virtual disappearance of the annual town meeting, the most distinctive feature of town government in New England; and at the same time, the strength and influence of the county have increased.

Nevertheless, the township goes through the form, at least, of certain governmental procedures. Although characteristically it possesses few powers, it resembles both its New England ancestor and the characteristic scheme of county government in that it elects township officials, collects taxes, maintains roads and bridges, supervises schools, public health and public welfare institutions; and it often lacks a chief executive for administrative purposes. The township has become a complication and an expense in most East Central and North Central states, and in time it may disappear entirely from these regions.

The New England Town

Much more interesting and more vital is the nearest approach to a true democracy which the American people have ever made. This is the town government which the six New England states have developed and clung to since early colonial times.

The New England town is generally not incorporated. Like most counties, its only constitution is usually a collection of pertinent state laws. Invariably, however, the New England town enjoys more freedom and autonomy than the average American city. In some respects, the relation of the town to the state government is like that of a state to the federal government. Thus, in effect, the town has reserved powers, just as the state has reserved powers. On this score the New England town is in sharp contrast to the usual municipality whose powers are limited to those which have been specifically granted by the state legislature. Like other units of government within the



THE LOCATION OF TOWNSHIP GOVERNMENTS

Source: U. S. Bureau of the Census, *Finances of Townships and New England Towns, 1942.*

state, the town must do its allotted part in collecting taxes (state and local) improving roads, maintaining acceptable schools (with state aid), and assisting in state health and welfare activities. But apart from such responsibilities as these, it has a wide choice in the kind of program it wishes to undertake.

The principal authority of the town is the town meeting, or primary assembly of the electors in the town, held regularly once a year and more often if necessary. At this gathering all citizens who have met the local voting requirements (such as payment of a poll tax where that is imposed) may participate and vote. Coming as it usually does at the end of the winter season, town meeting day is the gala day of the year at which farmers and villagers gather for the usual festivities. The meeting is held in the town hall, under the chairmanship of a moderator. Sometimes the public business requires only a few minutes; often it takes most of the morning and afternoon, with a hot lunch served in between. The meetings are generally small, but the speeches and discussions are to the point and may even generate a good deal of warmth. Chief items of business are the election of officers and the determination of the local tax rate —plus such other matters as may require the attention of the voters: the repair of the firehouse, the purchase of new road equipment, the erection of traffic signs, and the like.

Because the town meeting operates on a small and personal scale, it is an ideal laboratory in which to study the laws applicable to democratic vitality and decay. As towns grow in size, the annual meetings tend to lose some of their effectiveness in a community democracy. Partly this is because the town halls are too small to accommodate all who wish to attend, while at the same time interest in local affairs becomes diluted because other matters which seem more important to the individual citizen come to occupy more of his attention. A device which has been adopted by some towns in an attempt to remedy this situation is the limited or representative town meeting where the voters of the community elect a small number from among themselves to represent them at the town meeting. All who wish may attend the meeting, but only the elected representatives of the people may vote. Thus in the town as in other forms of government, as it increases in size, direct democracy must give way to representation.

Between town meetings the town business is discharged by elected officials called selectmen, whose number ranges from three to nine. They act as an executive committee, often meeting weekly. Their powers are limited to those conferred by statute or by the town meeting, and they have no authority to levy taxes. In general, their functions are increasing, thereby creating problems of time and competence in technical matters. The office is one of honor and trust and is not financially compensated. Terms are usually for one year but re-election is frequent.

Other officials are few and often succeed themselves for several terms. The town clerk keeps the town records and has other duties which resemble those of the county clerk in states outside New England. He may, in effect, act as

a kind of coordinator for the town, depending on his abilities, but he has no administrative powers. Other officers are the town treasurer, the road commissioner, the cemetery commissioner, the constable, the justices of the peace, the listers (tax assessors), and the overseer of the poor. A number of minor posts, such as fence viewer, tree warden, and hog reeve, are wholly traditional, having come down to us from colonial times, and are devoid of duties today. As a rule, town officers receive fees only for services rendered—if, indeed, they are paid at all. The schools are administered by an elected school board and are supported by a separate tax levied by the board.

Modifications of the original New England town meeting form of government have, of course, occurred, as towns have grown in size and in complexity of function. Some towns, as we have seen, have adopted the representative town meeting. Others have somewhat reluctantly accepted city charters, and still others have turned to the town-manager system, which has increased its spread and is generally well liked. The trend can be summed up in one sentence: as the popular assembly declines, administrative officials grow in number, power, and responsibilities.

VILLAGE GOVERNMENT

A village is a small community development which has become a municipal corporation. As a matter of fact, in law, villages are classified with cities. A village, therefore, is a city on a small scale, although usually it must have attained a certain size before incorporation is permitted. There are over 10,000 incorporated villages in the United States. They are found in all areas, but the heaviest concentration is in the north central part of the country, especially in Illinois, which alone has 800.

When a village acquires a charter it takes on the powers and responsibilities of a municipality. It may borrow money, tax its citizens, and be governmentally independent of the surrounding township or county. The village represents the sociological transition from rural to municipal life. Situated in the center of the rural area, it has succeeded in separating itself legally and governmentally from the adjoining countryside.

Village government, like that of the New England town, is relatively simple. Sometimes there is a meeting resembling the town meeting, but more often not. A village board, popularly elected, runs the public business. Usually there is a mayor or a chief executive of some kind. The officials are the usual ones: police officer, judge, clerk, treasurer, assessor. When a village grows in population beyond a certain size (one to five thousand, for example) it is sometimes required by state law to reclassify itself as a city, although in some states this step is optional.

THE SPECIAL DISTRICT PROBLEM

The special districts of the United States come last in our present treatment, but they are by no means unimportant. Indeed, collectively, they are the most

numerous of the units of government in the nation, reaching a total of 116,878 in 1942, 108,579 of which (or nearly 93 per cent) were school districts.

Sociologically, the district is interesting because it represents the advance of technology over current governmental means to fulfill new needs. A new requirement appears, and if the framework of government is inadequate to handle it, a new district is formed, cutting across the existing lines of towns, villages, cities, counties, and even states.

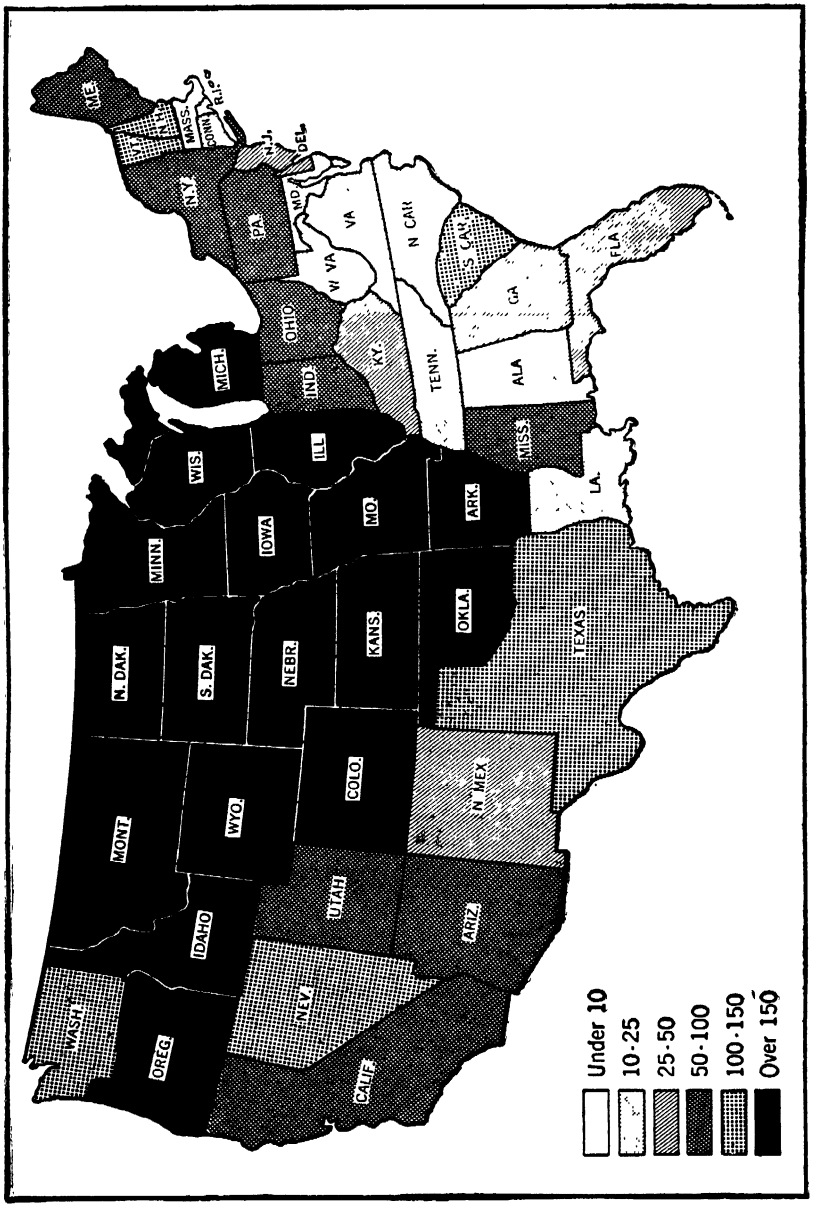
There are many kinds of districts. The principal purposes for which they have been organized and the numbers in each case are shown in the following table:

THE NUMBER OF SPECIAL DISTRICTS, BY FUNCTION, 1942

Total, all types	116,878
General government, total	115,720
School	108,579
Safety (fire and police)	1,189
Highway (rural road and bridge, and city street improvement)	1,331
Navigation facility	96
Sewer	401
Health (health, hospitals, and pest control)	52
Library	207
Park	128
Drainage	1,955
Conservation and reclamation (flood and levee, irrigation, soil conservation, protection to crops and stock)	1,201
Cemetery	490
Other general government	91
Public-service enterprise, total	1,080
Water supply	357
Power, light, and gas	54
Housing, urban and rural	543
Other	126
Districts combining general and public-service enterprise	78

Source: U. S. Bureau of the Census, *Census of Governments, 1942.*

What do these districts have in common? To begin with, they are usually corporate in nature. They may acquire, hold, and dispose of property. Often they may borrow money and levy taxes. Usually they are run by a small commission or board and additional paid officials. In other words, they have most of the characteristics of other forms of local government. Most of them are newer than the counties and towns, however, and their governmental framework is often more simple and more pertinent to the work at hand. The special districts are special only because a new function arose that did not seem to fit into the existing governmental scheme.



NUMBER OF LOCAL GOVERNMENTS PER 10,000 INHABITANTS

Source: U. S. Bureau of the Census, 1942.

But is there no limit to the piling up and overlapping of local governing units? We can begin to understand the size of this part of the problem when we realize that the number of organized governmental units in metropolitan areas alone reaches as high as 1,039 in New York, where they include sections of the neighboring states of Connecticut and New Jersey. Chicago has 821, Pittsburgh 613, Philadelphia 522, including areas in New Jersey; and St. Louis 539, including sections of Illinois. Even a city the size of Memphis, Tennessee, has 15 separate units, including 10 across the Mississippi River in Arkansas. The problems of intergovernmental cooperation created by this maze are not easily solved.

The map on page 119 shows the number of local governments in the United States per 10,000 inhabitants.

When do we begin to introduce more symmetry and more order into this patchwork? Can it, indeed, be done at all? Or is confusion the price we must pay for complexity?

SUPPLEMENTARY READING

1. General references on county government: One of the best brief books on American local government generally is that of R. H. Wells, *American Local Government* (New York, 1939), Chapters 3–5. On county government alone, A. W. Bromage, *American County Government* (New York, 1933), is highly recommended. Also excellent is J. A. Fairlie and C. M. Kneier, *County Government and Administration* (New York, 1930). Earlier good books are H. G. James, *Local Government in the United States* (New York, 1921), and K. H. Porter, *County and Township Government in the United States* (New York, 1922). Good case studies are those of P. W. Wager, *County Government and Administration in North Carolina* (Chapel Hill, N. C., 1928), and George W. Spicer, *Ten Years of County Manager Government in Virginia* (Charlottesville, Va., 1945).

2. On townships, villages, and local government generally: R. H. Wells' book, *American Local Government,* and several others listed above are good. On town government alone, see John F. Sly, *Town Government in Massachusetts* (Cambridge, Mass., 1930). On the broader aspects the reader is referred to W. S. Carpenter and P. T. Stafford, *State and Local Government in the United States* (New York, 1936), Chapter 3. On the metropolitan problem the best general analyses are those of Charles E. Merriam, *The Government of the Metropolitan Region of Chicago* (Chicago, 1933), and Paul Studenski, *The Government of Metropolitan Areas* (New York, 1930). On the nature and scope of special districts, see *Governmental Units in the United States* (U. S. Bureau of the Census, Washington, 1944).

PART THREE

THE PROBLEM OF AREA —DISTRIBUTION OF GOVERNMENTAL POWER

CHAPTER 9

Federal Centralization and States' Rights

A KEY WORD in the vocabulary of political science is *power*. In this part of the book we deal with one of its aspects, the distribution of authority from top to bottom among the various levels of government in the United States. In this country we call such a distribution federalism. A study of federalism also involves a consideration of the problems of area.

Federalism may be defined as a plan whereby contiguous states (or governments otherwise designated) associate themselves under a common central government, retaining a portion of their authority and jurisdiction while empowering the general government with another portion of it.

The United States was not the first government in world history to organize on a federal basis, but it is doubtless the most celebrated. Switzerland became a federal state in 1848, Canada in 1867, Germany in 1867 and 1871, and the Commonwealth of Australia in 1900. Mexico, Brazil and the Union of Soviet Socialist Republics, among others, are also organized on a federal basis.

A federal union may be contrasted with *a confederation, which is a league or association of sovereign states which delegate certain limited powers to a central authority but which retain their full sovereignty, including the right to withdraw from the association.*

The Greeks occasionally banded themselves temporarily into associations resembling a confederation when two or more city-states desired mutual protection against a common enemy, but such arrangements never outlasted the danger which created them. In the United States, the Articles of Confederation established a confederation during the Revolution; and later the Southern states were associated in a similar frame of government during the Civil War. Our federal union today differs from all of these in that the individual states are not free to withdraw from the union, and they have vested superior power in the national government. How authority is divided between the states and the federal government and how the latter has grown in power in relation to the states constitute the central purpose of this chapter.

Unitary and Federal Governments

The principal governments of the world may be conveniently divided into two main types, unitary and federal. *A unitary government is one in which there is a monopoly of legal authority at the national level, and in which political subdivisions are treated as separate units merely for administrative convenience.*

Examples of unitary government are France and Great Britain. In France, the national government is supreme. Under it there are territorial *départements* (not to be confused with the legislative, executive, and judicial departments of government) corresponding roughly to our states. They in turn are subdivided into *arrondissements,* and, finally, within the *arrondissements* are the *communes* or villages, towns, and cities. This system of unitary rule is attributable largely to Napoleon, who distinguished himself not only as a military leader but also as an administrative and judicial reformer. England has developed a similar kind of pyramid consisting of the central government, counties, and municipalities. In both France and England the national government is supreme in all important respects.

Having made these conventional distinctions,[1] however, we must point out that the differences in practice between unitary and federal government—like so many others in political science—are primarily differences in degree rather than in kind, because in the last analysis there are more resemblances than divergencies. The character of both unitary and federal rule changes with time, in each case tending to become more centralized or decentralized as circumstances alter. The unitary states that we have mentioned, for example, have considerably relaxed the severity of central rule, while most of the federal states—our own included—have developed more in the direction of centralization than was first intended.

Centralization is the shifting of governing authority from lower or member units to higher units, with a tendency for power to grow at the top. The opposite of this is decentralization, which is the tendency to divide or disperse authority formerly vested at a higher level. Devolution is similar to decentralization and may be defined as *the shifting of central power, by delegation or allocation, to subordinate units, whereas formerly it was located higher in the governmental hierarchy.*

Importance of the Problem of Centralization

In dealing with governmental trends in the preceding chapters, we have already pointed out that centralization has grown rapidly in this country. The federal government has constantly increased its power and authority. The development has been steady and continuous since 1789, but it has been particularly marked since the Civil War. Moreover, the trend is world wide. The effect of war is to bring about a centralization of power at the top of the government—and we have had two major wars in a single generation. In addition, when governments must deal with nation-wide economic depressions, again the consequence is the increase of political centralization—and the whole world has been through a serious depression in the recent past.

Yet another element is the fact that as government assumes greater responsibility for regulating, promoting, and stabilizing the nation's economy, again

[1] For a further development of these important questions, see James W. Garner, *Political Science and Government* (New York, 1928), pp. 346–356, 412–423.

power grows at the top. Business on a nation-wide scale seems to stimulate regulation and control on an equal scale. National problems of labor regulation, agricultural assistance, and the conservation of natural resources all produce the same end result. As government grows in the responsibilities thrust upon it, it also grows in over-all power so that invariably the trend is toward centralization.

A major problem of our age is the blending of efficiency in public administration with the individual freedom of the citizen. Efficiency seemingly requires power and regimentation, but freedom means that power shall be popularly controlled and individuals permitted to develop their opportunities. Can these two be reconciled? Is it possible to combine standardization and individuality, power and democratic control, centralization for some purposes and the retention of local freedoms for most? Some people say not.

Consider the logical conclusions to be derived from some of the principles of government. If the relative importance of government is directly related to the growth of complexity, then must we not expect government to wield greater central power? Because of the rapid advance of science and invention, ours is an increasingly complex age. If every advance in the methods of transportation and communication has the effect of making the world smaller and hence of breaking down local isolations, must we not expect a corresponding shift of attention and power to higher levels? If the solution of a difficulty depends on the adoption of a governing unit corresponding to the territorial extent of the problem, are we not under the practical necessity of using that unit, just as the expert machinist must select the right tool for the job at hand? Is there an inexorability about big business and big government, federal centralization and business centralization, which is due to the operation of physical forces beyond man's control? Are we powerless to guide the social ramifications of technology?

Many thinkers throughout history have stressed the fact that popular rule is more likely to succeed in an agricultural than in an industrial economy. James Bryce has argued along this line. Where has the greatest popular participation and control been possible? Was it not in the Greek city-state, which was both agricultural and small? Or in the Swiss cantons and communes, also small, largely farming, communities? Or in the New England town, where life is rural and the areas are compact? With every increase of mechanization and size, must we expect a corresponding loss of popular participation and control? This would be a sorry prospect. And yet there seems to be a general tendency in that direction. What can human analysis and contrivance do to solve the difficulty?

THE STATES' RIGHTS ISSUE IN AMERICAN POLITICS

The problem of states' rights versus federal control, which we are considering in this chapter, has been one of the chief issues of American politics since our inception as a nation, in terms of both continuity and fervor. The issue was

already joined, as we have seen, at the time of the Constitutional Convention of 1787. There the small states were afraid of the greater power of the larger states, and both feared their loss of sovereignty to the national government. Hamilton and his followers favored the assumption of state debts by the federal government, which would have placed it in a position of control over the states. Jefferson and his followers, on the other hand, saw in this move the growth of federal power and a corresponding loss of state independence. The question was solved in favor of the assumption of state debts by the national government, but it involved a concession whereby the national capital was located on the Potomac.

When extensive purchases of western lands were made from France and Spain, and later from Mexico, fear was again expressed that this would further aggrandize the federal power. With it was joined the anxiety of the Southern states that slavery might be prohibited when new states were formed and applied for admission to the union. At about the same time the chartering of the national banks became a leading controversy of the day, especially during Jackson's administration, and the apprehension was expressed that national banks and national business would weaken the state banks and local business.

The Civil War, of course, revolved around the states' rights issue. Was each individual state sovereign in its own right, and free to withdraw from the federal union? Or was this, as Abraham Lincoln contended, an "indestructible" union living under a constitution which forbade secession? Was it a loose confederacy or a permanent federation? The outcome of the Civil War assured the permanence of the union and greatly strengthened federal centralization.

Then followed the long struggle over the gold standard versus the coinage and parity of silver, which was a contest between the financial East and the silver states of the West. It, too—under the guidance of the fiery William Jennings Bryan and other Western leaders—revolved in part around the issue of states' rights. Should coinage, currency, and banking be jointly shared by the states and the federal government? Or should these areas be regarded as wholly federal? If so, then the silver bloc had to capture the federal stronghold. The growth of the railways created yet another problem in the same area. Once the nation was girded with steel rails, business became national instead of local and sectional. Farmers and consumers called on the federal government for protection against exorbitant rates and monopolistic practices, and finally vested regulatory powers in the government at the national level for this purpose. As a consequence, the West inclined increasingly toward a strong central government at Washington, whereas the business community, which had earlier been the champion of this viewpoint under Hamilton's leadership, now occupied the opposing corner in the political ring and lamented the growth of central power.

Hamilton had favored a strong central government in order that the public credit might be safeguarded, trade barriers among the states prohibited, and

territorial expansion furthered so that business opportunities and commerce might grow. But when the government came to be used for purposes of regulation and control, the business community changed its attitude and its politics. Governmental intervention now became the enemy, as federal centralization became the means of extending new forms of what businessmen called "interference." Again, the clash was primarily economic at base. The parties to the competition took opposite sides of the issue. The small trader, the farmer, and the consumer, who had once lined up with Jefferson as the upholder of states' rights, now found it in their interest rather to support the regulatory powers of the central government.

This is the alignment which has continued rather consistently to this day. Theodore Roosevelt, Woodrow Wilson, and Franklin D. Roosevelt all championed the use of the federal authority to regulate business, "bust" the trusts, undertake the permanent conservation of natural resources, and stimulate economic improvements. All of these programs have involved a growth of federal power, expenditures, authority, and administration—sometimes at the expense of the states. Warren G. Harding, Calvin Coolidge, and Herbert Hoover, on the other hand, saw in the growing federal centralization of power a threat to free business enterprise, and so they were loath to extend the federal "bureaucracy" any more than seemed absolutely necessary. Although they were more concerned with free business enterprise than with the question of states' rights, under their policies the states stood to retain their freedoms, if only as a side issue.

The basis of the question of states' rights, therefore, is primarily economic and social. The political and governmental expressions of the controversy are fully understood and evaluated only in the light of these underlying considerations of group pressures and differing social philosophies.

The Judicial Power and the Commerce Clause of the Federal Constitution

Chapter 5, which dealt with the outlines of federal government and authority, noted that the federal Constitution presumably guaranteed states' rights and assured a limited central government by providing that Congress might exercise only those powers expressly enumerated in the Constitution, while reserving to the states the balance of all power. This was specifically stated in the Tenth Amendment to the Constitution. When this constitutional injunction was apparently so clear, how could the balance of power between nation and state be so nearly reversed, as it has been in the last century and a half? The basic factors are doubtless those we have already mentioned—the economic and social changes which alter governmental arrangements with the seeming irresistibility of an ocean tide. Governments must deal with wars and depressions if they are to survive.

But there were three principal factors within the governmental system itself, as well as outside it, which, over a period of time, have increased federal authority at the expense of the states. First, the federal judiciary has played a

major role in establishing the supremacy of the federal government. Second, the express powers of Congress have been constantly expanded and in effect added to by legislative, judicial, and administrative interpretation, while at the same time state and local authority has in some notable instances—and especially when it conflicted with federal power and authority—been diminished or withheld. And finally, certain express powers of Congress have been chiefly responsible for centralizing tendencies. Among these, the most important is the commerce clause, with which we shall largely deal in this chapter. Almost as important are the taxing powers of Congress, which we shall take up in connection with a discussion of federal aid to the states, and at several other points.

The growth of federal power at the expense of the states is reflected in the laws which have been passed by Congress and by the administrative departments and commissions which were set up to give these policies effect. The landmarks of this growth during the past seventy-five years are enactments such as the Interstate Commerce Act, the Sherman Antitrust Act, pure food and drug legislation, the Clayton Antitrust Act, the Federal Trade Commission Act, the Federal Reserve Board legislation, the Federal Power Act, legislation creating the Reconstruction Finance Corporation, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Agricultural Adjustment Administration, the National Labor Relations Board, the Federal Communications Commission, and the Social Security Board. Although this is not the whole of it, this legislation constitutes the outward expression of federal centralizing tendencies, just as the resulting regulatory commissions are their administrative symbol.

For the explanation of how the shift of power from states to nation became possible, however, we must go to another source, to the interpretation of the Constitution by the Supreme Court of the United States. This is a fascinating study, as a part of which we must examine the construction placed by the Court on particular clauses of the Constitution—the commerce clause, the taxing power, the so-called elastic clause, due process of law, and the power of judicial review of legislation. Attention now, therefore, will center on the establishment of the supremacy of the federal Constitution through the enunciation of the doctrine of the judicial review of legislation, on the growth of national power, and especially on the power granted Congress under the Constitution to regulate interstate commerce, and which has led to the increased authority of the federal government to deal with the nation's most pressing economic and social questions.

You will recall that Article I, section 8, of the Constitution prescribed the powers of Congress, including the power "to regulate commerce with foreign nations, and among the several states . . . ." You will also recall that almost immediately after the adoption of the Constitution the first ten amendments were added to it, the tenth of which read: "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." The assumption, therefore,

was that the states exercised final authority in every field not specifically charged to Congress. It must have seemed like a very simple way of taking care of the question of states' rights, but in practice the trend was to lead in quite a different direction.

A chief actor in the entrenchment of a strong federal government was John Marshall of Virginia, staunch Federalist and Chief Justice of the United States from 1801 to 1835. His decision in the case of *Marbury* v. *Madison* established as early as 1803 the power of the courts to declare acts of Congress unconstitutional, although the Constitution itself contained no express provision to this effect. Sixteen years later, in the case of *McCulloch* v. *Maryland* (1819), also one of Marshall's opinions, the doctrines of national supremacy over the states and the implied powers of Congress were definitely enunciated. Together these doctrines made federal centralization inevitable.

Since this is the first time we have taken up a court decision for discussion, we should explain the technique to be employed in such cases and define some of the terms that are likely to appear.

ON HANDLING JUDICIAL DECISIONS AND LEGAL TERMS

The court decisions that have made history and changed the course of American political development constitute some of the best and most interesting materials at the disposal of the student of government. He should learn to use them and to understand their implications.

There are five steps involved in analyzing and reporting on any court case: (1) What are the *facts;* how did the case arise? (2) What are the *issues,* that is, the legal issues, at stake? (3) What was the *decision* of the court? (4) What was the *reasoning* by which the court justified its decision? And (5) what is your own *analysis* of the consequences of the decision on our political, economic, and social life? Each of these steps should be brief and clear.

The following terms are likely to be frequently used; others will be defined as they appear.

Jurisdiction—the authority of a court to hear and decide cases and controversies concerning persons or subjects. If a court does not have jurisdiction under the Constitution and under the laws regulating jurisdiction, it will refuse the case and refer it where it belongs.

Case or *controversy*—any suit, action, or other proceeding in law or equity contested before a court of justice.

Writ—a formal written order issued by a court commanding a person, either official or unofficial, to do or abstain from doing some specified act.

Certiorari—a writ issued at the discretion of a higher court calling on a lower court, or an administrative agency, to send up the record of a given case for review. This is one of the ways in which a higher court receives a case from a lower court.

Writ of error—an order issued by an appellate court to a lower court requiring that the case be sent up for review, on the ground of alleged errors

committed by the lower tribunal; another way of getting a case up before a higher court for review.

Mandamus—a writ issued by a court to a lower court, government official, or person, compelling the performance of an act where the legal duty is clear. It is applicable to ministerial or mandatory duties, not to discretionary authority.

Ministerial powers—powers of an administrative official that are so precisely set forth in the instrument granting the authority that discretion is said to be lacking.

Discretionary authority—the right, within limits which will be upheld by a court of competent jurisdiction, to choose between alternatives or differing conclusions in administrative action.

Appellate jurisdiction—authority to hear and decide cases or controversies on appeal. It is distinguished from *original* jurisdiction, which is authority to hear a case or a controversy initially.

Opinion—the reasoning by which a court explains and justifies its decision in a particular case or controversy.

Dissenting opinion—a statement, by one or more members of a tribunal, of their reasons for disagreeing with the majority in the disposition of a case. Such opinions sometimes foreshadow changing rules of law.

Stare decisis—to abide by the precedent established in cases previously decided, which deal with the same sort of situation.

SUPREMACY OF THE CONSTITUTION ESTABLISHED

Two cases in particular that have established the supremacy of the Constitution and the right of judicial review of legislation are *Marbury* v. *Madison* and the *Dred Scott* case.

Marbury v. *Madison (1 Cranch 137. 1803)*

The movement toward federal centralization received its first impetus from the Supreme Court in Marshall's opinion in *Marbury* v. *Madison,* which established the principle of the supremacy of the federal Constitution and the power of the courts to declare legislative acts unconstitutional. This decision grew out of the fight between the Federalists and the Jeffersonian Republicans. President Adams and his Federalist associates had been defeated in the election of 1800 by Jefferson and the supporters of states' rights. At the eleventh hour before their administration went out of office, however, the Federalists passed the Judiciary Act of February 13, 1801, which, among other things, created sixty-seven judicial vacancies to be filled by President Adams. These were the "midnight appointments." In derision, Randolph referred to the judiciary as a "hospital for decayed politicians," while Jefferson made the famous remark, "The Federalists have retired into the judiciary as a stronghold."

But Jefferson's administration was slow to cooperate in these new judiciary appointments. As a result, one of the appointees, William Marbury, applied

directly to the Supreme Court as provided by the Judiciary Act of 1789, for a writ of mandamus (see above) to compel the new Secretary of State, James Madison, to deliver to him a commission as justice of the peace for the District of Columbia. This had been signed and sealed by the previous Secretary of State, but not delivered.

Would the writ be issued? Would the law of Congress be upheld? The answer in both cases was in the negative.

The judiciary clause of the Constitution (Article III, section 2) specifically mentions three classes of cases that come within the original jurisdiction of the Supreme Court, but the issuance of the writ of mandamus is not among them. Concerning the Supreme Court's original jurisdiction, this clause merely states, "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." (Italics ours.) All other cases shall come within the Court's appellate jurisdiction.

What the Constitution does not expressly provide for, said the Court, Congress cannot add. The law of the Constitution is higher than the law of Congress. The writ of mandamus is not enumerated as coming within the Court's original jurisdiction; therefore the provision of the Judiciary Act of 1789 must be null and void. The Constitution, said Marshall, is the supreme law of the land. From the nature of a written constitution, it follows that the highest court must interpret and maintain it; the oath of judges requires that it be maintained.

In this manner was established the doctrine of the judicial review of legislation and the supremacy of the federal Constitution, together with the Supreme Court as its ultimate supervisor. *The federal judiciary has from the outset, therefore, been one of the strongest centralizing influences in American governmental life.*

The Dred Scott Case

It was fifty-four years before the Supreme Court a second time exercised the right of holding an act of Congress null and void on the ground that it was not in conformity with the Constitution. This was in the famous *Dred Scott* case (*Dred Scott* v. *Sanford,* 19 Howard 393. 1857), which involved the Missouri Compromise and the balance between free and slave states. In the meantime, to be sure, other cases had attempted to raise the issue, but for a half century and more the Supreme Court steadfastly refused to invoke the power utilized in the *Marbury* case.

When Missouri applied for admission to the Union as a slave state in 1818, there was sharp opposition from the members of Congress representing the North. This was a period of heat and confusion in the relations between the North and the South, but an arrangement was finally agreed on in the so-called Missouri Compromise of 1820, according to which Missouri was admitted as a slave state and in return all of the Louisiana Territory north of

36° 30′ should remain free. Several years later, after additional compromises had been effected and under pressure from the factions of the South, the Missouri Compromise was repealed.

Meanwhile, a test case bringing into question the citizenship of a Negro, Dred Scott, appeared before the courts. Scott sued for his freedom on the ground that his master had taken him into the state of Illinois which, under the terms of the Missouri Compromise, was free territory. On the basis of the Missouri Compromise act, a lower court decided in favor of Scott, but on appeal to the Supreme Court that decision was reversed in the holding that a man of African descent, whether slave or not, could not acquire citizenship in the United States.

It has been said that the Supreme Court could have settled the case without questioning the validity of the Missouri Compromise and that it went out of its way to take this factor into account, with the result that the Missouri Compromise was declared unconstitutional. It is also interesting to note that the law in question had already been repealed when the *Dred Scott* case appeared before the Supreme Court.

Later the Court's citizenship ruling in the *Dred Scott* case was in effect overturned when the passage of the Fourteenth Amendment to the Constitution left no doubt about the citizenship of a native-born Negro.

Here again the question was one of federalism versus states' rights. By the time this case appeared in 1857, the composition of the Supreme Court had changed. It was no longer sympathetic to the opinion prevailing at the time of *Marbury* v. *Madison*. The sentiment of the Court, which had been predominantly federalist in 1803, was now predominantly antifederalist. The decision in the *Dred Scott* case, therefore, might have been expected to favor states' rights, as in fact it did. In this important instance the Court took advantage of the doctrine of judicial review as established in *Marbury* v. *Madison* to come to the aid of the states against the federal government. How different our history as a nation might have been had this case never revived the doctrine of the judicial review of legislation.

After the Civil War—because of the adoption of the Fourteenth Amendment with its due process of law clause—this doctrine was to be used frequently, and more often in cases affecting state authority than federal power; hence it constituted a strong centralizing force in the growth of a young nation.[2] Prior to the Civil War there were fewer than twenty cases in which the Supreme Court of the United States declared acts of state legislatures invalid,[3] but since then the rate has greatly accelerated. It is no accident that this increase coincides with the most rapid growth of federal centralization.

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[2] Judicial review of legislation is dealt with further in Chapter 29, "The Judiciary as Policy Maker."

[3] Edward S. Corwin, "Judicial Review," *Encyclopedia of the Social Sciences* (New York, 1937), IV, 462.

Judicial review now takes three forms: it is "national" when acts of Congress are in question, "federal" when state laws are brought before the federal courts, and "state" when state courts scrutinize the acts of their own legislatures.

NATIONAL SUPREMACY AND IMPLIED POWERS

In some ways, the outstanding decision in the history of the Supreme Court was *McCulloch* v. *Maryland* (4 Wheaton 316), a case that arose out of the long controversy over national versus state banking, and decided in 1819 just sixteen years after *Marbury* v. *Madison*. Here again the opinion was written by Chief Justice Marshall.

When Congress created the first Bank of the United States, Hamilton argued that the action was within the power of Congress, while Jefferson and Madison held that it was not. Congress incorporated the bank, however, and it operated to the end of its charter period without legal contest, at which time a second Bank of the United States was created.

Meanwhile, the state of Maryland had passed an act prohibiting all banks not chartered by the state itself from issuing bank notes, except by payment of a tax which could be paid in a lump sum of $15,000. Penalties were provided for failure to comply. The Baltimore branch of the United States Bank refused to pay the tax, and the state sued to collect the penalty, which amounted to $500 for each offense. The defense of the national bank was that the state tax was illegal. Attorneys for Maryland, on the other hand, argued that the national bank itself was unconstitutional, and beyond the lawful authority of Congress to create. When the case reached the Supreme Court, the Court decided in favor of the national bank and against the state of Maryland. The tax, it said, was illegal; the national bank was within the legislative power of Congress.

The important thing about this decision was that it established the doctrines of national supremacy and implied powers, and shifted the balance previously existing between the states and the federal government.

National Power

In this case of *McCulloch* v. *Maryland,* the doctrine of national supremacy was sharply enunciated. It was the people and not the states that adopted the Constitution of the United States, argued the Court; hence the written instrument is superior to the states and operates on them as on the federal government. The laws of the nation are supreme. "The government of the United States, . . . though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land." The power to tax, said the Court, is the power to destroy. If the states were to be allowed to tax a federal instrumentality, therefore, they might destroy the federal government. This could not be permitted.

Implied Power

The Court admitted that the Constitution is silent on the question of creating national banks; it also admitted that the federal government is one of express powers. But it got around this difficulty by enunciating for the first time, and forever after, the doctrine of implied powers. *An implied power is a power that is deducible from an express power.* "Let the end be legitimate," said the Court, "let it be within the scope of the Constitution, and all means which are appropriate, . . . which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

Does not Congress, it was argued, have express power to lay and collect taxes, borrow money, regulate commerce, declare and conduct war, raise and support armies and navies? Now note the reasoning that follows: ". . . The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are intrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. . . . But it may, with great reason, be contended, that a government, intrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be intrusted with ample means for their execution."

Resultant Power

But the Court in this case went even beyond the doctrine of implied power when it invoked the theory of resultant power. *A resultant power is a power that is deducible from two or more express powers.* Thus where the doctrine of implied powers has a broadening effect, the concept of resultant powers has no limit at all except as the judiciary itself exercises self-restraint. The power to create a national bank could not be implied from any one single express grant of authority to Congress. That authority had to be inferred from several of the provisions of the Constitution and from the "necessary and proper" (elastic) clause of that document. It had to be deduced from the intention and the spirit of the Constitution itself.

It will help to understand this situation if we remember that John Marshall was in the main stream of the natural law tradition, which we have seen flowing steadily throughout the history of government. Marshall argued from natural reason, from the nature of the case. Unquestionably he would have denied that he was "making" the law; he would have said he was merely "finding" it.

NATIONAL SUPREMACY AND THE COMMERCE CASES

Of all of the powers of Congress, that having to do with the regulation of commerce has exercised the greatest centralizing effect on our national government. The legislative landmarks referred to earlier, beginning with the Interstate Commerce Act of 1887, are concrete evidence of that fact. But the remarkable thing is that this power, which is so important today and has been for the

past sixty years, was little used by Congress for the first century of our national existence. The explanation, of course, is to be found in the relatively slow development of technology and business before the Civil War and the increasing tempo which it has assumed since that time.

The three outstanding cases in the field of the commerce power of Congress are *Gibbons* v. *Ogden,* the *Cooley* case, and the *Shreveport* case.

Gibbons v. *Ogden, National Control of Commerce Broadly Defined*

Although Congress did not make extensive use of its commerce power for the first hundred years, the Supreme Court, speaking through Chief Justice Marshall in the case of *Gibbons* v. *Ogden* (9 Wheaton 1), opened the way in 1824 for a broad construction of that power. This foretold the eventual shift of authority in the field of commerce from the states to the nation.

The state of New York, wishing to encourage the development of steam-propelled water carriers, had granted an exclusive franchise in 1798 to Robert Livingston, creating a monopoly that was later extended to both Livingston and his new partner Robert Fulton and providing that no person might navigate New York waters without first obtaining a license from these men. When neighboring states resented this move, adopted retaliatory measures, and then copied the example of New York, a bitter economic rivalry among the states resulted.

Ogden was operating in New York waters under a license from Fulton and Livingston. Gibbons, Ogden's former partner and now his rival, was also operating between New York and New Jersey under a coasting license from the United States government, and Ogden sought to enjoin him in order to engage in the business for himself. The highest court in New York upheld Ogden, and Gibbons appealed to the Supreme Court, where he was represented by Daniel Webster. John Marshall's decision in favor of Gibbons was one of the few popular decisions ever written by the great Chief Justice because it lay the foundation for expanding federal power and anticipated the anti-trust program initiated in 1890. The issues were these: What is interstate commerce? What is the relative authority of the federal and state governments in this field?

In defining what constitutes interstate commerce, the Court defined commerce itself so broadly that later industrial and commercial developments, such as the railroad, the telegraph, telephone, radio, and airplane, automatically came under federal control. From this interpretation of the commerce clause, the Court made it clear that commerce must be broadly and popularly construed, to include, in this instance, navigation. Commerce, said the Court, is intercourse; hence the movement of persons and objects over state boundaries, for any purpose, is potentially within the control of Congress. In addition, in its realm, the power of Congress is complete and exclusive, and the states will not be allowed to exercise coordinate or concurrent power if this restricts or imposes a burden on the federal power in any way. *Coordinate or concurrent*

power is power that may be exercised, under certain conditions, by either Congress or the states.

The Cooley Case

The case of *Cooley* v. *Board of Wardens of Port of Philadelphia* (12 Howard 299), decided in 1852, was another landmark in the issue of states' rights. The dispute related to state laws regulating pilotage, clearly a matter coming under foreign commerce, but at this time Pennsylvania had legislated under its police power and Congress had passed no laws relating to the same matter. The state legislation was declared valid.

In its reasoning, the Court distinguished between matters national in scope calling for uniform, hence national, regulation, and questions that are local and concerning which the states might act. Thus the Court was willing to permit the states to exercise their police power over matters indirectly affecting interstate and foreign commerce, so long as Congress had not previously pre-empted the field by legislating in it. The rules that the Court laid down are that the states may act, if the Supreme Court so holds, so long as Congress has not legislated; but no state law will be allowed to affect interstate and foreign commerce, even indirectly, if Congress has pre-empted the field or the state law is in conflict with a federal law. From which it follows that authority may be coordinate—that is, it may be exercised by either the state or Congress—so long as Congress has not acted.

It is interesting to remember that the members of the Supreme Court at this time were generally sympathetic to states' rights. Two justices dissented, however, arguing that the power of Congress over interstate and foreign commerce is absolute and exclusive. These latter opinions foreshadowed a later trend in such controversies.

The doctrine of coordinate jurisdiction over commerce means little in actual practice today because Congress has legislated in many areas which were once free of federal laws, with the result that the authority of the states in this field is now sharply restricted. Examples are pilotage, where federal authority is now exclusive; sanitary regulations on ships entering American ports; safety appliances on trains; bankruptcy laws, and the like. In all of these fields the state legislatures once operated in a manner which conferred, in effect, coordinate authority. *State power, therefore, has shrunk as Congress has legislated so as to occupy all fields of control belonging to it under the Constitution.*

The Shreveport Case—State Power Further Restricted

By the time the Interstate Commerce Commission Act of 1887 was passed, Congress had begun to make wide affirmative use of its commerce power. Livingston's steamboats had almost been forgotten, but in their place scores of complex problems growing out of invention and mechanization had appeared. Railroads were now the roadbeds of a nation-wide commerce. Railroad rates

made the difference between successful and unsuccessful competition for whole communities.

The *Shreveport* case, officially known as *Houston, E. & W. Texas Ry. Co.* v. *United States* (234 U. S. 342), arose in 1914 and is yet another landmark in the history of growing centralization. The Texas railway commission, which fixes rates within the state, had established freight rates which were lower over the same number of miles than rates which had previously been fixed by the Interstate Commerce Commission for distances between points in Texas and a neighboring state. Because of this difference in intrastate and interstate rates, enterprises in one community acquired a relative advantage over competitors in another when seeking the trade of a third.

These issues were therefore involved: Did the lower intrastate rate constitute a burden on interstate commerce? Could the Interstate Commerce Commission force a state regulatory body to raise the rates within a state? The Supreme Court decided both of these questions in the affirmative, holding that federal authority was superior to state authority and that hence disparities in rates could not be allowed. The practical consequences were far reaching:

The distinction between intrastate and interstate control over railway rates was virtually obliterated for all practical purposes.

Federal authority over railways became nearly unified, leaving the states little authority in that area.

If state policy or action should result in placing a burden on other forms of interstate commerce, the Court would, by analogous reasoning, still further extend federal authority.

Trends in Commerce Cases

The general effect of Supreme Court decisions has been to broaden federal authority at the expense of state power when the two are in conflict. Nevertheless, the decisions have not been uniform in this respect. Even within the same period of time there have been tendencies in both directions, although in general the direction is toward more centralized authority. To guard against the danger of oversimplification, therefore, let us turn to a few more landmarks which illustrate the fluctuating nature of social policy as guided by Supreme Court decisions.

Insurance. In the famous case of *Paul* v. *Virginia* (8 Wall. 168), decided in 1868, the Supreme Court held that the business of insurance was not a proper subject of federal control under the interstate commerce clause because it was analogous to risk taking in lotteries and because nothing tangible passed over state boundaries when an agent in one state wrote a policy which was then sent to the home office in another state. For three quarters of a century, therefore, the insurance business was nationally unregulated and so became the exclusive province of state control. In 1944, however, the Supreme Court reversed itself in the case of *United States* v. *South-Eastern Underwriters* (322 U. S. 533) and held that insurance is subject to federal authority and control.

In the intervening period, insurance had become a major business in the nation in terms of money involved, and constituted the backbone of our financial and investment structure. It was partly because of the size of the business, perhaps, that the Court—becoming aware of a new social trend—adopted a different attitude in 1944, reversing itself on a former policy.

The *Schechter* case and the NRA. In 1935 a basic law of the New Deal was declared unconstitutional in the case of *Schechter* v. *United States* (295 U. S. 495). This case had to do with the wholesale marketing of poultry in the metropolitan district of New York. The Supreme Court declared the National Industrial Recovery Act null and void on two grounds: first, because it attempted to delegate to the President a grant of discretion that was too broad and undefined; and second, because it tried to regulate intrastate business—the latter reason, of course, being the one in which we are primarily interested here.

In this same decision the Supreme Court itself was seemingly trying to slow down its former policy of approving the centralization of national power, even in times of emergency and in the face of what was widely held to be a social need.

Labor relations—the constitutionality of the NLRB. Two years later, however, the temper of the Court had again changed and the lag between its attitude and the social need had diminished. As a result, the Court upheld the Wagner Act, labor's so-called Magna Carta, in the case of *NLRB* v. *Jones & Laughlin Steel Corp.* (301 U. S. 1. 1937). This is one of a series of decisions relating to the constitutionality of the National Labor Relations Act, which greatly extends the power of the federal government in a field where previously it had been loath to enter. The effect of these decisions was to establish the presumption that labor relations in industries producing goods for the interstate market—and most of them nowadays do—fall within the range of the commerce power. In each case, however, the Court reserves the right to determine the extent and effect of alleged interferences with production and distribution attributable to labor disturbances.

Expansion into agricultural production. The Agricultural Adjustment Act of 1933 was held unconstitutional by a divided Court. The subsequent act of 1938 in this field, however, was upheld by the Supreme Court, two justices dissenting, in the case of *Mulford* v. *Smith* (307 U. S. 38), decided in 1939. The decision in this case is unmistakable evidence that the Court has discarded the old distinction between manufacturing and agricultural production—formerly considered a local matter—in interstate commerce, as the dividing line between matters that Congress may and may not properly control. This decision, like those relating to labor relations, held that production is connected with the interstate flow of goods and services and that hence federal authority may extend to productive activities as a means of avoiding restraints on interstate commerce. In other words, in a realistic sense, in a growing number of fields

commerce is now considered a continuous process from the production of a commodity until it reaches the consumer.

OTHER SOURCES OF NATIONAL POWER

The National Police Power

As an adjunct of the states, *the police power is the reserved power of the states to pass social legislation relating to health, safety, morals, and the general welfare of the public.* Over a period of years, however, the Supreme Court has invalidated the assumption that the states have a monopoly on the police power. In practice—if not in strict legal contemplation—therefore, we may speak of the police power as being concurrent rather than exclusive. Legally regarded, the police power is still among the reserved powers of the states. Wide use is still made of it there, but it is now an authority in which Congress shares and where Congress may even be supreme. The point to remember is that the federal government—through its commerce and taxing powers—has come to occupy a role equal to that of the states in discouraging and prohibiting certain lines of activity and in helping the states to enforce social programs that are deemed in the public interest.

Under its police power Congress has prohibited lotteries in interstate commerce, has prohibited the "white slave traffic" by forbidding the transportation of women from one state to another for immoral purposes, and has regulated the transportation of dangerous or injurious drugs and foodstuffs. In the case of *McCray* v. *United States* (195 U. S. 27. 1904), a tax imposed on oleomargarine colored to look like butter was upheld. The Court admitted that the purpose of the tax might have been to discourage the use of oleomargarine in lieu of butter but justified it on the ground that if revenue was derived therefrom it was not the Court's responsibility to pry into the social purpose. During the prohibition era Congress used its regulatory power over interstate and foreign commerce to stop the shipment of intoxicating liquors. In a fairly recent case, *Kentucky Whip & Collar Co.* v. *Illinois Central Ry. Co.* (299 U. S. 334. 1937), the Court upheld an act of Congress making it unlawful to ship in interstate and foreign commerce goods made by convict labor where such goods would be sold in violation of state laws.

An ever wider use, therefore, has been made of the national police power during the last half century, and it is to be anticipated that the power will be even more extensively applied as the line between interstate and intrastate commerce fades.

Legislation Relating to Treaties—Another Source of Federal Power

The interpretation of the Constitution by the Supreme Court and the enactment of measures of social control by Congress in wide areas of the economy are not the only sources of growing federal authority. Congress may also de-

rive legislative power from the constitutional grant of authority to make treaties with foreign nations.

The leading case bearing on this point is *Missouri* v. *Holland* (252 U. S. 416. 1920). In 1916 a treaty with Canada related to the protection of migratory birds. Congress thereupon passed legislation putting the policy into effect. Were migratory birds proper subjects of interstate commerce? The Supreme Court had never been called on to decide this issue but an earlier law had been declared unconstitutional by the lower federal courts. In the present case the Court held that it did not matter whether the commerce clause applied because Congress may properly legislate in order to carry out the terms of a treaty. In this case the authority of Congress is implied and will be upheld on the basis of the treaty-making power, irrespective of whether it comes within the enumerated powers of Congress or not. Here again, by legislating in pursuance of treaties, Congress may exercise a power superior to that of the states.

A LIVING CONSTITUTION

From the legislative and judicial trends here described, certain conclusions may be drawn. Ours is a living Constitution in that it has proved sufficiently flexible to keep pace with changed social conditions. Although the powers of Congress are expressly stated, they must also be interpreted. Through interpretation they may be construed in either a broad or a narrow sense. From the beginning, the trend has been to expand them by judicial construction. The doctrine of implied and resulting powers—as unfolded by John Marshall—made this inevitable. Thus the key words of a written document are apparently subject to almost limitless differences in connotation and emphasis. Congress, pressed by public opinion, has repeatedly passed laws which stretch the limitations imposed on federal authority by the Constitution.

The Supreme Court, on the other hand, has not always been so willing to follow the lead of Congress and of public opinion. Often it has lagged, but sometimes—as in some of John Marshall's opinions—it has even been in advance of what the majority of the people would have favored. Eventually it has usually come around to what Congress and the country have persistently demanded, as, for example, in the Court's reversals on minimum wages [4] and on the federal control of insurance. Equally significant is the ability of the Court to adjust to new problems brought about by invention. Such discoveries are of two kinds—physical and social. Examples are electricity and the modern business corporation. In either case, invention leads to new processes, new processes stimulate industrial growth, and industrial growth causes shifts in the balance of power between the states and the national government.

The problem of federal-state balance cannot be solved by wishful thinking. There are physical and social forces at work that make it necessary for man to adapt to his environment. When our economy became nation wide, our gov-

[4] See Chapter 29, "The Judiciary as Policy Maker."

erning power was necessarily redistributed accordingly. Government does not work in a vacuum. It is compelled to operate in relation to the problems produced by economic and social change. These are the rational and realistic foundations from which we must view the question of federal centralization versus states' rights.

If we are determined to decentralize the government and its powers, we must first learn how to decentralize the cultural and economic segments of our society. If we want the states to assume greater responsibility and the federal government less, then we must fashion the job on the appropriate last. For one thing, we must build up our governments where they are nearest to us. As a means to this end, as will be seen in the next chapter, we must strengthen the machinery of government at the state level.

SUPPLEMENTARY READING

1. Special monographs: Federal centralization and states' rights have been dealt with in a masterful fashion by Jane Perry Clark in *The Rise of a New Federalism* (New York, 1938). A good brief survey is also found in George C. S. Benson, *The New Centralization: A Study of Intergovernmental Relationships in the United States* (New York, 1941). See also W. Thompson, *Federal Centralization: A Study and Criticism of the Expanding Scope of Congressional Legislation* (New York, 1923). The most complete study of the expansion of federal power is that of Carroll H. Wooddy, "The Growth of Governmental Functions" in *Recent Social Trends* (New York, 1933), Chapter 25; this study was also published as a separate monograph.

2. The commerce clause and federal expansion: The cases referred to in this chapter are found in Robert E. Cushman, *Leading Constitutional Decisions* (New York, 7th ed., 1944). An excellent monograph is that of E. S. Corwin, *The Commerce Power versus States' Rights* (Princeton, 1936). See also B. C. Gavit, *The Commerce Clause of the United States Constitution* (Bloomington, Ind., 1932); J. E. Kallenbach, *Federal Cooperation with the States under the Commerce Clause* (Ann Arbor, Mich., 1942); and F. D. G. Ribble, *State and National Power over Commerce* (New York, 1937). Excellent chapter references are found in M. Fainsod and L. Gordon, *Government and the American Economy* (New York, 1941), Chapter 9; H. D. Koontz, *Government Control of Business* (Boston, 1941), Chapters 1–12; and E. P. Herring, *Public Administration and the Public Interest* (New York, 1938), Chapters 7–14.

CHAPTER 10

Intergovernmental Cooperation

"To HAVE CREATED a free government, over a continental area, without making a sacrifice of adequate efficiency or of liberty, is the American achievement. It is a unique achievement in world history."

The compliment is doubtless deserved. It comes from D. W. Brogan, an English political scientist who has written about the United States in his book, *The American Character*. Brogan reminds us that there is much that is illogical, inefficient, or even absurd about our governmental arrangements. How clumsy it is, for example, to split up the governmental machinery into forty-nine units—one federal government and forty-eight states. Several of the states are small in area, or in population, or in both. In many cases natural geographical considerations have been disregarded in a way that would lead to sharp criticism if the map of Europe were carved up in similar fashion.

How absurd it is, continues this English observer, that the three counties that make up Delaware should be "empowered to charter corporations to do business all over the Union on terms more profitable to the corporations' controllers than to the body politic." How absurd to place the New York harbor area under the control of two states and the federal government. How absurd that "the pride of Arizona should hold up, for years at a time, the development of water-power that Southern California needs badly." And yet, says Brogan, "to cure these absurdities it would be necessary to impose on three million varied square miles a central authority strong enough to suppress local objections."

It is true that competitions between the states and between the states and the federal government are a common American characteristic. But they are more than simple disputes over local pride and local rights. It is much more exciting to treat them as contests over power, and there is a good deal of evidence to support such an interpretation. The Civil War, for example, was just such a struggle. So also were the court cases discussed in the last chapter, the outcome of which so greatly enhanced the power of the federal government. But whatever the true nature of these disputes, we Americans commonly regard our politics primarily as prearranged battles or sporting contests in which we are all divided into sides. There may be much bitterness generated in the course of an election campaign, for example, but when it is over and the vote taken, little rancor remains. Thus our national contests are as much a good-natured game as they are battles for power.

It is perhaps because we tend automatically to take sides on national issues

that we characteristically regard federal-state relations as an "either . . . or" proposition: either a strong central government or real states' rights. And yet in practice as well as increasingly in popular appreciation, the problem is not to be solved through competition between the national government and the states, but only by effective cooperation—by a "both . . . and" approach. André Siegfried, author of *America Comes of Age,* as well as other acute observers from abroad, have interpreted this newer approach to our problems as a sign of our growing political maturity; and such it probably is.

This chapter will discuss intergovernmental relationships, including the position of the states and their subdivisions, the relationships of the states among themselves and with the federal government, and the relationships between the federal government and local subdivisions of the states.

PRINCIPLES RELATING TO GOVERNMENTAL AREAS

For purposes that are purely local, the town or the city is the appropriate political subdivision. Under different circumstances where the issues are broader —such as highways, for example—the states supply a more effective answer. And for yet wider purposes and under continental conditions of technology and transportation, the national approach is the only one that will deal adequately with the situation.

But in addition, *at any one time, each level of government, simultaneously, is appropriate to a certain sector of the governmental problem which constitutes the total work load.*

This is the rational, the scientific approach to federalism. This is the state of mind we must adopt if a cooperative arrangement—which alone holds promise of combining efficiency with freedom—is to become a living reality as new problems arise. We must learn to reconcile our rational analyses and our sentimental attachments. We must examine the problem of governmental area, therefore, with a new eye, and decide which function is most appropriately discharged at each level and which sections of particular functions must be discharged at more than one level of government. But in addition, we must remember the valid claims of local attachments and traditions, local pride and local freedoms.

Some of the guiding principles relating to the allocation of powers among the various levels of government from national to local may be stated as follows:

1) Geographical considerations—such as natural boundaries created by rivers and mountains or the juxtaposition of agricultural and industrial areas—constitute the basic rational factors in determining appropriate political subdivisions.

2) Economic factors—such as trade areas, communication and transportation facilities, and the like—are also basic to a rational solution.

3) Governmental area should correspond with the extent of the governing problem. For example, if the governmental program involves the conservation

and development of a particular extent of territory—such as the "dust bowl," the Tennessee River watershed, or the arid lands of the Far West—the governmental jurisdiction should, ideally, be coterminous. However, it is costly and duplicative to create areas for every conceivable purpose, as we have been inclined to do in the case of our special districts referred to in Chapter 8. We must, therefore, find the point at which the largest number of governmental problems converge. This means that as technological and other factors upset a previous pattern, we must be sufficiently adaptable to adjust to the new pattern that is indicated.[1]

4) Political and administrative factors must be blended to form an equilibrium. From the administrative standpoint it is desirable that jurisdiction be accorded over the full extent of the problem in order that every tool of successful operation may be available to the man in charge. This is sometimes called administrative convenience. But this factor must be balanced with a political concern for keeping the government as close to the people being served as humanly possible, in order that they may have a better chance to observe government, participate in it, and hold their officials to account. Again we meet the old problem of the degree to which we must sacrifice efficiency in order to maintain democratic control.

5) Modern developments—such as rapid transportation and improved communication—increase the chances of democratic control. The press and the radio bring us news almost as soon as it happens. Our media of popular information are vastly superior to what they were when the Constitution was framed, when news traveled only as fast as the horse. As distance is obliterated and popular awareness increases, therefore, we can afford to concentrate governmental power at higher levels than formerly. Such concentration is now democratically safe where formerly it was not, because today the instruments of public information and control keep us informed.

6) Man forms loyalties to particular areas of the earth's surface and to their symbols of identification, such as home, the fields or the streets where he played as a child, the corner drugstore, the home town ball club, and the like. Our membership in a community or in a particular state of the union becomes an asset which we prize and fight to preserve. These attachments may not be strictly rational, but they are nonetheless of value to us in a psychic and cultural sense. The rational considerations regarding governmental area which have been mentioned above, therefore, must be squared with these individual loyalties and attachments. To disregard them is to violate democratic values.

THE STATES

All government, unless it is in the hands of a dictator, must be based on compromise. What is rationally possible, therefore, is not always culturally

[1] See National Resources Committee, *Regional Factors in National Planning and Development* (Washington, 1935).

desirable. In case of conflict, the people's preferences must be respected even if it means putting up with inefficient conditions.

The Future of the States

This rule applies with particular force to the future of our forty-eight states. The states as they stand at present have frequently been criticized because they fail to serve a particular governmental purpose as efficiently as they might. As a result, it is sometimes proposed that certain state boundaries be redrawn, or that certain states be superseded by geographically determined regions, or that small adjoining states be combined.

The shortcomings of state government and the growth of national power have also led critics to speak of the "vanishing" states. In his book entitled *The Need for Constitutional Reform,* for example, Professor W. Y. Elliott has boldly and constructively called attention to the problems of overcentralization in Washington on the one hand, and the small and illogically delimited states on the other. To solve the difficulty he proposes that the federal government delegate some of its legislative and administrative powers to over-all authorities to be established in a number of major regions. Each region would be composed of several states whose governments would decline in influence as the regional government gained in power. Thus the states might come to occupy a role similar to that of most of our counties at present, and the counties might disappear altogether.

In the light of the rational factors bearing on the problem, Elliott's proposal is on good ground. Geography and efficient government are in the corner of the regionalist. Such a plan would certainly give us better government in many respects, but is it possible to imagine the states abdicating their powers? Would you even want them to? Actually, few people today would favor a plan, however praiseworthy, that would elevate regional government and subordinate or abolish state government. Since at this juncture the proposal is politically impracticable, a more constructive approach seeks ways and means of strengthening the effectiveness of the states and their political subdivisions. Let us accept the fact, therefore, that the states are permanent fixtures, and then do our best to make them more perfect instruments to bear their part of the governmental load.

Strengthening the States

A law of institutional life is that *power and public support favor the type of organization which, over a period of time, provides the best service for their needs.* It is important to note that this generalization has been qualified by the phrase "over a period of time." For short periods this law is not necessarily valid because lethargy, tradition, aggressive advertising, irrational assumptions —any number of factors—may prevent men from supporting an institution which offers them the greatest advantages in the way of service. But in the long run, utility will tell. This is true as regards both private business and

public business. It is from here that we must start in considering how to strengthen state government.

Let us first stake out an important understanding: the states will hold their own against centralizing influences if the machinery of state government—including legislatures, executive departments, court systems, financial programs, county governments, and municipal autonomy, to mention but a few of the more prominent factors—is geared so that it can do a job commanding public respect and support. This problem will not be considered in detail in the present chapter, but it will be returned to at various points throughout the book in the discussion of state legislatures, state administration, state fiscal programs, and the like. What is important to note here is that our state governments will survive only if we are willing that they should grow fast enough, in both size and efficiency, to take care of the social needs which are increasingly encountered.

In the second place, the states can do a more effective job by developing the techniques of intergovernmental cooperation. These relationships take several forms: cooperation among the states themselves through uniform state laws, interstate compacts, and the like; cooperation with the federal government through a system of grants-in-aid; cooperation between the federal government and the cities, especially in the field of municipal finance; and finally, cooperation between the states and their principal subdivisions through grants-in-aid and administrative simplification.

In this chapter attention will be directed primarily to the *legislative and financial* devices through which such cooperation is made possible, the methods of *administrative* delegation and devolution being reserved to later chapters.

INTERSTATE RELATIONSHIPS

The Full Faith and Credit Clause of the Constitution

The underlying philosophy of intergovernmental cooperation holds that if the states themselves would voluntarily formulate *common* programs to deal with national problems, it would not be so necessary for the federal government to step into such areas of governmental control. If the states would act together in the solution of national problems, they could check the centralizing tendencies of the federal government and restore power to themselves.

The framers of the Constitution, aware of the necessity of national unity at the state level, provided in Article IV, section 1, that "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."

The full faith and credit doctrine comes under the general principle known as comity in the dealings of states with other states. The term is more often applied to the relations of nation-states in the international community, but it

is equally applicable to the states of a federal union. *Comity is the recognition which a national or a state government accords within its borders to the legislative, judicial, and other official acts of another government; it is a neighborly spirit; a quid pro quo.* The full faith and credit clause is one of several such provisions in the Constitution. However, the application of this clause is not as wide in scope as it seems to be. This is another example of how actual conditions have modified the original intent of the language of the Constitution. The term "public acts" does not mean that the laws of one state must operate outside that state directly on the citizens of a second. They operate only to vest individual rights that will be respected in other states.

The principal points to keep in mind are that, in actual practice, the full faith and credit clause of the federal Constitution deals almost entirely with the effect of court decisions and the binding effect of legal documents such as deeds, wills, contracts, and the like; it applies only to decisions in civil cases, and not to criminal cases. It should also be remembered that the records and judicial proceedings of state and territorial courts shall, when properly authenticated, "have such faith and credit given to them in every court within the United States *as they have by law or usage in the courts of the states from which they are taken.*" (Italics ours.) This is quoted from an act of Congress passed in 1790 which placed a construction on the language of the Constitution. Note the words "every court." The term means federal as well as state and territorial courts.

Some difficulties have arisen in the interpretation of the full faith and credit clause. The practical intent of the clause is obvious: if a man could skip into another state and there escape adverse court judgments, it would make a farce out of state law; it would lead to new trials and endless litigation; it would disturb the security of property rights. A difficulty, however, is that in many cases involving both court decisions and legal documents, the state courts have allowed various kinds of defenses, chief of which is that the first court possessed no jurisdiction over the case to begin with. This naturally dilutes the effectiveness of full faith and credit.

The jurisdictional question has arisen particularly in cases involving divorce. Let us assume that one of the parties to a marriage goes to another state and establishes a residence there in accordance with state law. If the other party enters the jurisdiction and is represented, there can be no question about the binding character of the decree in all states. But if he does not enter his appearance and a default decree is taken, then he may start a proceeding in his own jurisdiction and raise the question of the "foreign" court's original jurisdiction over the case. Had a legal domicile been established? Since the answer to this question depends on intent, the court may be uncertain as to the proper interpretation of the full faith and credit clause.

The equal privileges and immunities clause of the Constitution is sometimes referred to as *the* comity clause. This provision is found in Article IV, alongside the full faith and credit clause and reads as follows: "The citizens of each

state shall be entitled to all privileges and immunities of citizens in the several states." This is an important guarantee. Imagine what our nation would be like if the citizens of one state were treated as foreigners by every other state and everywhere they went they were subject to discriminations and burdens because of that fact. The citizenship and civil rights aspects of this question will be discussed in later chapters; [2] what is pointed out here is the constitutional basis for a full and extensive cooperation among the states and their legal freedom to carry this cooperation to wide limits.

Interstate Rendition of Criminals

Article IV of the Constitution also contains a provision designed to assist the states in enforcing their criminal laws without seeking federal control in this area: "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, and be removed to the state having jurisdiction of the crime."

Since a national police force is a potential tool of the dictator for robbing the people of their liberties, as Hitler and others have demonstrated, the people of the United States have always viewed a federal police authority with suspicion. Interstate rendition helps to keep the states' enforcement of their criminal laws in their own hands. The use of the word "shall" in the rendition clause seems to suggest that the governors have a mandatory duty to give up fugitives from justice. However, such is not the case. "The words 'it shall be the duty,'" said Chief Justice Taney in the leading case of *Kentucky* v. *Denison* (24 Howard 66. 1861), "were not used as mandatory and compulsory, but as declaratory of the moral duty which this command created. . . ." In a number of instances, therefore, governors have refused, for one reason or another, to comply with requests for interstate rendition.

We may summarize the situation by saying that the governor of every state has a moral obligation to cooperate in apprehending and turning over criminals to other states. In most cases it works automatically, but in some the governor may refuse to comply. Moreover, Congress has passed a regulatory statute on the question of criminal rendition but it has not attempted to make the return of criminals uniformly obligatory and nondiscretionary on the part of the governors.

Under the customary procedure the governor delegates authority to one of his official family, usually the attorney general, to investigate the application for rendition. Thereafter, the governor alone has the authority to decide what he will do. Legally there is no way to force him to turn a criminal over to another state if he decides not to. Where governors have refused, it is usually because the criminal is wanted for a crime in the state in which he was captured. Or it may be because the governor, supported by public opinion, has

[2] See Chapter 14, "Citizenship as Participation in a Democracy," and Chapter 31, "Our Civil Liberties."

concluded that the other state's definition of a crime is harsh and unreasonable compared with the law of his own state, which may not even consider the act in question a crime. Various other reasons for refusal to return fleeing criminals have occasionally been given, with much heat and fanfare in certain celebrated cases. The governor may decide, for example, that as a matter of conscience he cannot surrender a fugitive because of what he regards as discrimination due to race, color, nationality, religion, social philosophy, or some other matter having to do with civil liberty and equal protection of the laws.

Refusal to comply with requests for rendition, except where the criminal is wanted in the state in which he has taken refuge, naturally causes bad feeling between states and is likely to lead to retaliation when the situation is reversed. But we must remember that the criminal laws and mores of the people vary notably as between states. So long as comity works 99 per cent of the time, can we not afford to be tolerant with regard to the remainder? Standardization could be secured only by transferring authority from the states to the federal government. In such an event, uniformity in the rendition of criminals might be bought, but at a price high in terms of local sentiment and independence.

Uniform State Laws

Various attempts have been made to increase cooperation among the states by means of state legislation. A development in the last half century or more that has contributed slightly to this end, and which could be made more useful, is the creation in 1889 of the National Conference of Commissioners on Uniform State Laws. In that year the American Bar Association, seeking to reduce the divergencies in state legislation and to guard against federal overcentralization, initiated a cooperative movement which would encourage a degree of standardization in important fields of state governmental activity. The legislature of New York started the ball rolling in 1890 by providing for the appointment of commissioners to confer with corresponding groups in other states. Since 1892 these meetings have been held annually. Altogether, about one hundred bills have been drafted on various subjects, and approximately a quarter of the states have adopted one or more of them. Most of the interest has centered in the fields of business and finance in an effort to make business transactions easier through common legislative enactments. For example, the only proposal to be adopted uniformly by all the states is the Uniform Negotiable Instruments Act, relating to bills of exchange, notes, and other forms of commercial paper that pass from hand to hand in business dealings.

It is the consensus of those who have studied the records of this organization, however, that its accomplishments have not been particularly impressive.[8]

[8] See W. B. Graves, *Uniform State Action* (Chapel Hill, N. C., 1934), Chapter 3; also G. C. S. Benson, *The New Centralization: A Study of Intergovernmental Relationships in the United States* (New York, 1941).

Three principal reasons have been suggested for the disappointing results to date: first, state legislators are generally not included on the commissions and hence do not always learn of the measures which are available; second, the sponsorship of the American Bar Association may discourage legislators who suspect the experts or who dislike the conservative nature of the sponsorship; and finally, the proposed laws may be so rigid as not always to fit the needs of special state situations, so that modifications are brought about which in the end defeat the purpose of uniformity. It is not too much to hope, however, that in time such handicaps may be overcome and that more in the way of state cooperation may be expected from this quarter.

The Council of State Governments

Uniform state laws have also been sponsored in recent years by the Council of State Governments, a semiofficial organization with headquarters in Chicago which most of the state governments have now joined. The council maintains a secretariat and deals with all aspects of state government. Allied with it are the Governors' Conference, the American Legislators' Conference, the National Association of Attorneys General, and the National Association of Secretaries of State.

The council, an aggressive organization, has been successful in many fields. Its most notable accomplishments are uniform state laws controlling crime, studies of double taxation, and steps taken to eliminate state trade barriers. Since the association is entirely voluntary and it possesses no compulsory power, progress is slow. The organization's principal virtue is to call attention to the importance of state government and to give those connected with it a feeling of professional pride.

Interstate Compacts

Turning again to constitutional provisions for interstate cooperation, we must note the oldest and potentially the most important: that which deals with interstate compacts. This provision, found in Article I, the legislative section of the Constitution, reads: "No state shall, without the consent of Congress . . . enter into any agreement or compact with another state, or with a foreign power." The purpose of this provision was primarily negative. It sought to prevent the several states from allying with each other or with a foreign nation in order to weaken the power of the national government. On the positive side, however, this clause provides that interstate compacts may be entered into with the consent of Congress. What use has been made of this power? All told, up to 1940 Congress had approved eighty-six compacts, although most of them have dealt with such relatively unimportant matters as interstate bridges, boundary lines, the policing of interstate streams, and the like.

Nevertheless, in recent years more important problems have been attacked by the compact device. For example, an agreement between New York and New Jersey to develop the port of Greater New York through the Port of

New York Authority provides a joint body to deal with railways, shipping, bridges, tunnels, and all manner of transportation in a unified fashion. Then there is the Colorado River Compact entered into by seven Western states in 1928 to regulate the division of the waters of one of that area's most important sources of water and power. These have been the outstanding instances of the use of the interstate compact in the last 150 years. But even one of these, the Colorado River Compact, shows the essential weakness of the device. If every state involved does not voluntarily agree, the compact is inoperative. In this instance Arizona held out. She finally took her case to the Supreme Court (*Arizona* v. *California,* 183 U. S. 423. 1931), where she was defeated. If it had not been for the determination of California, backed by the power of the federal government, the Colorado River Compact might never have accomplished anything.

By and large, therefore, the interstate compact must be regarded as potentially more promising than in practice it has proved. Various fields of economic activity, such as the conservation of petroleum resources and the control of various commodities, especially tobacco, have been dealt with by means of the compact device but none with outstanding success. Nevertheless, in the field of interstate cooperation we must not set our standards too high. There is no one solution, apparently, and hence a variety of measures must do what they can toward the final objective. With a proper understanding of their possibilities, interstate compacts might become more effective than they are at present.

Interstate Cooperation—an Evaluation

Mention has been made of four provisions of the federal Constitution through which interstate cooperation is encouraged—full faith and credit, equal privileges and immunities, the interstate rendition of criminals, and interstate compacts—in addition to the efforts of the National Conference of Commissioners on Uniform State Laws and the Council of State Governments, with its affiliates, to further interstate cooperation through legislation and promotional activities. But the list has not been exhausted. Special commissions of many kinds are formed as needed to deal with particular questions arising between two or more states. In addition, in recent years state administrative officials have met frequently, often with encouraging results. Notable progress has been made in securing reciprocity among the states, especially in the licensing of professions and in tax legislation.

Before the conclusion is reached that the picture of interstate cooperation as a whole is not particularly promising, several important factors should be recalled: First, cooperation at the state level has never been emphasized as much as it is today. And second, almost every aspect of state government—including accounting, highway engineering, state police, and the like—is now included in some kind of national cooperative program. It is too early to say, therefore, that cooperation cannot be relied on to help solve the twin problems of overcentralization in Washington and lack of sufficient effectiveness at the

state capitals. With public support, the favorable trends just noted can be made to go forward very rapidly.

FEDERAL-STATE RELATIONSHIPS

Grants-in-Aid, Federal and State

Cooperation is desirable in every form of intergovernmental relationship. One of the foremost of these is federal-state and state-local financial cooperation which takes the form of the grant-in-aid. *The grant-in-aid is any form of subvention or matching of funds between the federal government and the states or between the federal government or the states and their subdivisions, which finances in whole or in part approved projects or activities.*

The device is of wide applicability and has ramifications not yet fully explored. Grants-in-aid are given by the federal government to the states, and by the states to their counties, cities, and other local subdivisions. Moreover, the federal government offers grants-in-aid directly to cities and to other local subdivisions of the state. It may therefore move in at least three channels: federal-state, state-local, and federal-local. But it could move in more channels as well because counties or other units may adopt this form of assistance. Furthermore, the purposes of the grant-in-aid are legion: highways, schools, housing, state militia, social service—there is seemingly no limit to what it may be used for.

The underlying theory of the grant-in-aid is a good one: policy determination and fund raising at a particular level of government, with administrative execution of the program at a lower level. The federal government is able to raise revenues more easily than the states, the states can do this more easily than their local subdivisions. This aspect of the matter will be explored in Chapter 12; here it should be noted that this facility is the principal reason that federal aid is undertaken. However, since the work is actually done at a lower level of government, it produces results which are in the right direction. Politically, it offsets federal centralizing tendencies; administratively, it is efficient because it avoids congestion at the top.

But do not policy making and fund raising at the top tend to increase federal and state centralizing tendencies? No doubt they do, but not so much as they would if the higher level of government were responsible for the execution of the work in addition to its other functions.

The Development of Federal Aid

Three stages in the development of federal aid to the states may be noted:

Outright grants—no strings, 1785–1862. The gift of public lands to the states for school purposes started under the Articles of Confederation when in 1785 the old Congress determined that certain lands in the Northwest Territory should be set aside for school purposes. Then in 1802, when Ohio was admitted to the Union, the new Congress bestowed on her, for the benefit of her schools,

one section of land in each township, a precedent which was continued when new states were admitted thereafter. The procedure was to grant one section in every township, and in time the number of sections was increased to two, three, four, and even more. But the system did not work well. The states sold their lands, the schools lost their heritage, and Congress was criticized for laxness. And sometimes the lands in question were neither sold nor used, and eventually the record was the only evidence of what their original purposes had been.

Conditional grants, 1862–1911. With the passage of the first Morrill Act by Congress in 1862, the policy of financial grants to the states began to take a more definite form. This legislation set aside still more land from which the states derived income to finance "such branches of learning as related to agriculture and the mechanic arts." This is the origin of the land-grant institutions, especially our state agricultural colleges and our state universities. Funds were also available, sometimes in the form of an outright gift, for such work as roads, canals, and other public improvements. In 1890 Congress passed the second Morrill Act, the turning point in federal assistance because Congress here stipulated that the states must receive a price for federal lands which could not be less than a certain minimum. The act also inaugurated the granting of annual sums for specific purposes. This general policy came to be known as the conditional grant and it worked rather well. There was less waste of birthrights and more was accomplished along the lines that Congress intended.

Matching of funds, 1911 to the present. The third and present stage of the development began with the Weeks Act of 1911, which introduced the method by which federal grants must be matched by state funds, usually on a fifty-fifty basis. From every standpoint it represented an improvement over preceding legislation. Since 1911 the grants-in-aid have been in the form of Congressional appropriations. Highways and the national guard were among the first beneficiaries; forestry and other conservation projects have been favored. In recent years the principal expenditures have been for social security, agricultural extension, public works, unemployment relief, and vocational education.

Federal aid has now become a major factor in the public economy. In 1920, for example, federal grants-in-aid totaled some $42,000,000, and ten years later they were $147,400,000, nearly four times as great. But it was in combatting the depression of the 1930's that federal expenditures for the grant-in-aid really soared: they amounted to $1,478,300,000 in 1940, an increase in a decade of better than 900 per cent. By 1944 the sum had declined to $1,141,000,000 and was divided among highways, public welfare, schools, health, employment security administration, and agriculture.[4]

It should be remembered that these funds were matched by state funds. They did not include direct, or outright, grants of sums in which there was

[4] *Annual Report of the Secretary of the Treasury*, fiscal year ended June 30, 1944, p. 107.

no *quid pro quo*. Nor did they include any part of the emergency relief appropriations to the states during the 1930's.

FEDERAL-LOCAL RELATIONSHIPS

Uncle Sam, Municipal Banker

While federal assistance to the states was increasing in scope and amounts in the 1930's, a significant new development was taking place at the municipal level. Since 1933 the United States government has dealt directly with the cities in important areas, particularly in making grants and loans for unemployment relief, public works, and housing. As a result, Uncle Sam is now sometimes referred to as the municipal banker.

This development is full of possibilities.[5] Never before have the states been by-passed in this manner. There is no constitutional provision for such direct dealings between the federal and local governments. Theoretically, the federal government should supply funds only to the states, which would then dole out portions of these amounts to the cities, counties, and other subdivisions. This method was adequate up to a point, but in time of emergency the extra step required by the state distribution of funds proved too cumbersome and was eliminated in the administration of many federal programs. The decade which began in 1933, therefore, saw a significant development in government operations, in terms of expenditures and personnel, which expanded relatively much more rapidly at the federal and municipal levels than at the state level. It looks as though necessity had created a new pattern, and as though the trend would continue.

What were the reasons for this new federal-municipal entente, which short-circuited the state governments? In large part it was the desperate situation in which cities all over the country found themselves because of the depression of the 1930's. All city and local subdivisions of the state must operate under debt limitations imposed by the state legislature or contained in the state constitution. Therefore, when sources of municipal revenue evaporated because of the depression, and when borrowing was stopped by debt limitations, there was no alternative to municipal bankruptcy save federal grants for special purposes. Relief was one of these. Public works and housing projects were others. Sometimes the funds were supplied on a matching basis, sometimes as an outright gift. In other words, the federal government began to apply to the cities the same policies of financial assistance that it had long applied to the states. But even these emergency measures were sometimes inadequate in the face of the great need for funds, and Congress was obliged to authorize the cities to adjust their outstanding obligations through the mediation of the federal district courts. This law, the Sumner-Wilcox Act, was declared unconstitutional by the Supreme Court (*Ashton* v. *Cameron County Water Improve-*

[5] Paul V. Betters, *Federal Services to Municipal Governments* (New York, 1931), and *Recent Federal-City Relations* (Washington, 1936).

ment District, 298 U. S. 513) in 1936, but was re-enacted by Congress in a different form a year later.

This new experience with federal assistance to the cities and other local subdivisions may portend a number of things which are of interest to us as students of American government. In the first place, Uncle Sam will probably continue to act as municipal banker. As a corollary the cities may be able to evade a certain measure of state control by tapping federal financial resources directly. In addition, now that so large a percentage of our population is urban, the cities may be increasingly called on to act as the administrative agents of the federal government, especially in the field of public works.

The bargaining position of the cities vis-à-vis the states therefore has been increased, because if they do not get what they need from the states the cities can turn to the federal government for substantial sums. The net effect over a period of time may be to reduce still further the influence of the states in the totality of governmental relationships in the nation. Federal centralization will not be appreciably increased, however, because the expenditure and administration of these funds, as in the case of the grant-in-aid, is at a level nearer the people.

The cities, like the states, have organized themselves into associations for their mutual interest and advancement. And, significantly, the headquarters of the organization which represents the largest cities, the United States Conference of Mayors, is located in Washington. Our beleaguered cities have become a federal pressure group of great effectiveness. Especially in the fields of housing, public works, and relief they have played a significant role, not only in securing funds but also in sponsoring legislation of various kinds from which the cities in particular stand to benefit.

Direct Federal Aid to Counties and Local Governments

What we have said about the new emphasis on federal-city relationships applies equally to the impact of the federal government on county and local administration. As a matter of fact, in some ways this alliance is older than that with the cities.

The most significant part of the development has been in the area of agricultural assistance. The backbone of the federal agricultural program is the work of the county agent, who operates in every one of the nearly 3,000 agricultural counties in the United States. Except for the postal service, it is the most complete coverage of the nation to be found in federal operations. When during the depression years, therefore, an enormous expansion of the agricultural programs occurred—with the Department of Agriculture spending some $1,500,000,000 a year—the grass-roots organization for the carrying out of these programs was already at hand.

The Agricultural Adjustment Administration created in 1933 is probably the outstanding example to date, in any field, of federal-local joint action in deal-

ing with a major governmental-economic problem.[6] Under the organizing genius of the United States Department of Agriculture, three million cooperating farmers in 4,600 production control associations were participating in wheat, cotton, corn-hog, and tobacco programs in 1934–1935, working through community, county, and state committees of farmers. In 1935 a national referendum of four million farmers decided by a large majority in favor of continuing the production control program. By 1940 the decentralized administration of the AAA was operating through 125,000 committeemen, mostly at the community and county levels. There is no more dramatic illustration of federal-county teamwork, working with great smoothness and without the necessity of clearing through state administrative channels.

Evaluation of the Direct Federal-local Relationship

Few federal programs do not directly affect either city or county-local governments in some way. In addition to the agricultural programs that are chiefly of interest to our county populations, for example, are the road building, housing, relief, and other projects shared in common with the cities. In addition, the counties are often the recipients of federal funds for old-age assistance, aid to dependent children, assistance to the blind, and public health work under the Federal Security Agency programs. Soil erosion control is carried on primarily through county and local units. Moreover, county agents, although usually appointed by the counties, are paid in part from federal funds, and hence sometimes consider the federal Department of Agriculture as a boss along with a state official. Rural electrification and other public-utility developments constitute additional areas in which the federal government has come to deal directly with county and local authorities, again short-circuiting the states. Perhaps the handwriting on the wall was clearest when the city of Cleveland created the office of Commissioner of Federal Relations. This precedent may become standard practice among our larger cities within a relatively short time.

It is significant that even the strongest champions of states' rights are not particularly disturbed over this tendency of the federal government to become banker to the cities, counties, and local subdivisions. If the functions themselves remain local, and if local administration and local policy making are provided for, there is little to fear. Assuming that the work is going to be done anyway (which might not be true in all cases), and that the federal government can secure the financial resources more readily than the cities and counties (which is almost always true), then there is a real advantage in direct federal-local dealings, even though the state governments are left out of the picture.

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[6] See Chapter 48, "The Problems of Agriculture."

GENERAL ASSESSMENT OF THE GRANT-IN-AID POLICY

Wide use is now made of the grant-in-aid by both the federal and the state governments. The development in other countries, such as Great Britain and Canada, has followed the same general lines as our own. This in itself seems to indicate that the device has universal applicability and appeal. It is, in fact, one of those compromises which form the heart of democratic government. The grant-in-aid is the middle ground between heavy administrative burdens at the top and financial weakness at the base.

In the United States, both state and federal governments have used the grant-in-aid for much the same purposes—roads, education, public works, conservation, military preparedness, public welfare, and social service. The power of the purse has doubtless increased the power and influence of both state and federal governments vis-à-vis the city, county, and local units, but these subdivisions are already so subordinated by legal and financial limitations that financial assistance could not make them any more dependent than they are, and such assistance does add to the effectiveness of their functions.

The degree to which the grant-in-aid tends to centralize power depends on the manner in which the funds are administered. If the policies and standards which must be accepted by the beneficiary are rigid and inflexible, then standardization and loss of local freedoms will result. If the government granting the funds indulges in too much oversight and supervision, then centralization will certainly take place. If the power of the purse is used to force citizens to do things against their will, then a polite form of coercion is being exercised. But all of these disadvantages are matters of degree, and their effect may be so slight as to be negligible. They are theoretical dangers and none are necessarily the hazards that occur in practice. Furthermore, if recognized, all may be guarded against in advance.

What, then, is the ultimate verdict? It seems clear that the grant-in-aid has been a good thing. The independence of recipients has not been bought, as some once feared it might be. Federal and state inspectors have become increasingly skilled in diplomatic relations with city, county, and other local officials. The standards which have been set up are generally minimum rather than ideal so that honest administrators have little difficulty in measuring up to them. The drastic penalty of stopping funds if agreements are not kept has seldom been invoked.

Grants-in-aid have also helped to secure higher financial and personnel standards. The Social Security Board, for example, requires the use of the merit system for employees in state social security programs, a requirement which has tended to raise the standard of state administrations generally. The policy of matching funds, the fairest method of taxing the wealthiest states, also encourages economy in the planning and expenditure of funds. It cannot secure national uniformity, of course, and hence some people are impatient of this method of fund-matching as too slow a method of social reform. That may

be true, but we must not forget that social reform, democratically arrived at, requires time for the education and persuasion of the people. Hence financial assistance, being persuasive rather than coercive, is in accord with that spirit. All things considered, therefore, we may confidently expect a growing and still more prominent future for the grant-in-aid program.

And finally, the grant-in-aid is one of many ways in which intergovernmental cooperation may be made a living reality. In the number of purposes to which it is suited, in the division of authority between ability to pay and ability to administer, and in its inherent flexibility in adjusting to new and unforeseen situations, the financial assistance programs, both federal and state, constitute a hopeful instrument for securing cooperative democracy.

SUPPLEMENTARY READING

1. General references: George C. S. Benson, *The New Centralization* (New York, 1941), and Jane Perry Clark, *The Rise of a New Federalism* (New York, 1938) are both good in this connection. See also a volume by W. Brooke Graves (ed.), *Intergovernmental Relations in the United States, The Annals,* Vol. 207 (Philadelphia, 1940). Material in the following textbooks is recommended: F. G. Bates and O. P. Field, *State Government* (New York, rev. ed., 1941), Chapter 2; A. W. Bromage, *State Government and Administration in the United States* (New York, 1936), Chapters 3 and 24; and F. G. Crawford, *State Government* (New York, 1931), Chapter 2.

2. Federal aid to the states: An early study is that of A. F. Macdonald, *Federal Aid* (New York, 1928). A good article by the same author is entitled "Federal Aid to the States: 1940 Model," *American Political Science Review,* Vol. 34 (June, 1940). A comprehensive survey has been made by V. O. Key, *The Administration of Federal Grants to States* (Chicago, 1937). See also Henry J. Bitterman, *State and Local Federal Grants-in-Aid* (New York, 1938). There are some good readings in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapters 5 and 6.

3. State grants-in-aid: For a general view, Schuyler C. Wallace, *State Administrative Supervision over Cities in the United States* (New York, 1928) is recommended. This subject is also dealt with by R. G. Wells, *American Local Government* (New York, 1939), and H. J. Bitterman, *State and Federal Grants-in-Aid* (Chicago, 1938). Two short studies by Paul Betters are useful: *Federal Services to Municipal Governments* (New York, 1931) and *Recent Federal-City Relations* (Washington, 1937), dealing with the federal government as banker to the cities. See also T. H. Reed, *Federal-State-Local Fiscal Relations* (Chicago, mimeo., 1942).

4. Interstate compacts, uniform laws, and interstate rendition: On interstate compacts, see M. E. Dimock and G. C. S. Benson, *Can Interstate Compacts Succeed?* (Chicago, 1937); on uniform laws, W. B. Graves, *Uniform State Action* (Chapel Hill, N. C., 1934); and on interstate rendition, J. A. Scott, *Law of Interstate Rendition* (Chicago, 1917). Much valuable current information is found in *The Book of the States* (published annually by the Council of State Governments in Chicago), especially for the years 1942–1943 and 1943–1944. This organization also publishes a monthly magazine called *State Government.*

CHAPTER II

Regionalism—The Tennessee Valley Authority

FRANCIS BACON once said, "In order to master Nature, we must first obey her." A corollary under this proposition is that men must integrate all the aspects of a problem before they can solve it. A second corollary, previously noted, is that the size of a governmental unit must correspond to the size of the problem to be solved. These guiding principles indicate that the pattern of American life, as applied to governing units, is going to become even more complex than it already is.

In addition to the interstate and intergovernmental cooperative devices explored in the preceding chapter, others must be developed to help meet the demands of this growing complexity. As will be seen in this chapter, a new level of governmental coordination called regionalism is coming to the fore.[1]

Regionalism, in the governmental sense, is administration at an intermediate level between federal centralization and local decentralization which ignores state boundaries if the problem at hand requires it.[2]

In the United States, regionalism takes two principal forms. The first is the integrated planning and development of all or parts of an interstate area such as the Tennessee Valley watershed or the so-called dust bowl. The second is the integrated planning and development of a large metropolitan community such as New York or Chicago. In its broadest sense, regionalism comprehends such factors as geography, independent historical traditions, racial, ethnic, and religious peculiarities, and local economic and class interests. Regionalism is usually distinguished from mere sectionalism in that it involves a blending of local and national considerations, although it may also take into account purely sectional economic and class interests. Hence regionality is often termed subnationality.

The administration of particular public programs under the jurisdiction of a region rather than through the separate states in that area has a number of advantages. Most important, perhaps, it makes possible the direct treatment of all the different aspects of a complicated problem in an integrated manner. "The region is the meeting place for local thinking coming up from the 'grass roots' and national planning coming down from the federal government," says Earle Draper in an article in *Planning for America*.[3] "Regional planning,"

[1] See National Resources Committee, *Regional Factors in National Planning* (Washington, 1935).

[2] For the various meanings of the term and its historical evolution, see the article on "Regionalism," *Encyclopedia of the Social Sciences*, VII, 208–218.

[3] George B. Galloway and Associates, *Planning for America* (New York, 1941), p. 507.

he continues, "can integrate local thinking and national policies . . . ." Thus the federal government and the people are able to get together in the treatment of area-wide complexities without the necessity of the extra administrative step which would be required if the separate state governments were standing between them. In this manner the states become cooperating units instead of administrative bottlenecks.

In several instances, notably the Tennessee Valley Authority, regionalism is already a matter of national and international attention. In 1944, for example, the International Labor Office published a book by Herman Finer entitled *The T.V.A.: Lessons for International Application.* In the first ten years of its existence the TVA was visited by foreign governmental missions from most of the countries of the world, in addition to which some fifteen million of our own people went there to satisfy their curiosity and to see what man can do when he works in harmony with nature.

Because of the success of the TVA, legislation was introduced in Congress in 1945 which, if adopted, would create river development authorities similar to the TVA in half a dozen or more of the principal watersheds of the United States. Regional developments have been proposed or are actually under way in many countries of the world, including India, China, and Australia. The regional development plan has even been proposed for the small states bordering on the Danube, including Rumania, Bulgaria, Hungary, and Czechoslovakia. It is argued that the nations in this region might federate in a manner similar to the TVA plan, with a common agency for economic development, and yet, like the seven states in the Tennessee Valley, retain their separate political identities.

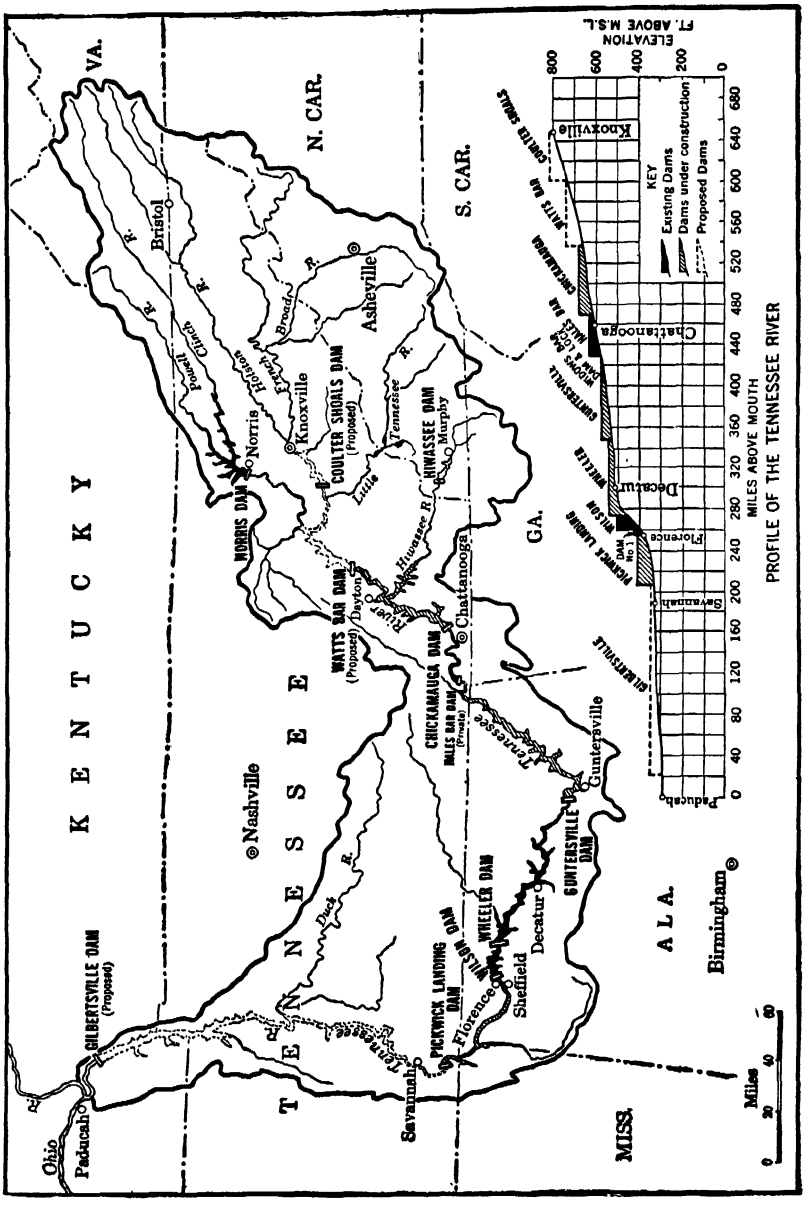
There are many interesting possibilities. A description of the TVA development will illustrate some of these, together with the advantages and potentialities of regionalism.

THE TENNESSEE VALLEY AUTHORITY

Congress passed the Norris Act[4] creating the Tennessee Valley Authority in 1933. Under this legislation, a new kind of governmental unit was to undertake the unified treatment of river control and the development of natural resources in the watershed of the Tennessee River and its tributaries.

This is an area of approximately 40,000 square miles, about the size of England. Included are parts of seven states: Tennessee, Alabama, Georgia, Mississippi, Kentucky, North Carolina, and Virginia. The boundary limits were not rigidly fixed, but they were made as definite as possible for major purposes, such as dam construction, flood control, the prevention of soil erosion, the development of fertilizer plants and hydroelectric power, the improvement of agriculture, and the conservation of forestry and other natural resources. In 1945 the area involved extended from Asheville, North Carolina,

[4] The Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 58).



MAP OF THE TENNESSEE VALLEY (1936)

Source: Tennessee Valley Authority.

to the Mississippi River, and north and south from the Ohio River to the Gulf of Mexico. In this region, according to the 1940 census, lived 4,500,000 people, mostly of English, Irish, Scotch, and German descent. About 10 per cent were Negroes.

This region is overwhelmingly agricultural. Potentially one of the best grazing areas in the world because of soil and moisture, it had lost much of its original fertility. The Tennessee River drops rapidly, the rainfall is heavy. Most of the farms are on hills or sloping land and for generations had been planted to corn. In consequence, erosion had robbed the soil of much of its ability to provide the population with a decent level of subsistence. Floods took an annual toll in millions of dollars, not only in agricultural resources but also in urban developments along the river. As might be expected, the standard of nutrition was low and educational and cultural opportunities were meager. But at the same time the area had one of the highest rates of population increase in the country.

As early as 1824 Congress and other federal agencies had shown concern over these problems and had made exhaustive studies of them. During World War I, the development of Muscle Shoals and its nitrate plants marked the first concrete steps to control and utilize the rampaging Tennessee River. Later, the government, after some indecision about turning the project over to private interests, completed the Wilson Dam. Under the Norris Act, passed in 1933, Muscle Shoals became part of the Tennessee Valley Authority, the agency providing the unified treatment that alone seemed capable of checking waste of physical and human resources.

The attempt to understand nature's laws as they affect this area has led to the following analysis: River and soil erosion must be controlled, and as one means of control, dams must be built at strategic points in the river's course. The hillsides, originally covered with trees and vegetation, must be taken out of open cultivation and replanted. Power generated by the dams can be used in the production of the fertilizer in which the region is rich. The husbanding of land resources and the diversification of agriculture will strengthen and maintain the agricultural economy. The electrical power may also be used for industrial development, thereby providing the region with a balanced economy. The increased agricultural and industrial wealth should improve the educational, governmental, and social level of the region and hence produce a better balance of all factors.

The TVA Form of Government

The governmental machinery set up in the Tennessee Valley is commonly referred to as a "multipurpose authority." By "multipurpose" is meant the multiplicity and correlation of the several programs growing out of a single natural problem, in this case the control of the waters of a great river.

By "authority" we mean a type of public administrative agency with special governmental powers. The term has become increasingly common in recent

years. Thus, for example, we find the Port of New York Authority, which serves the world's largest port; or the Columbia River Authority, which is a river development agency somewhat similar to the TVA. The new vocabulary is indicative of the new levels of government that call it forth.

The TVA has corporate characteristics. As a matter of fact, the Norris Act refers to it throughout as "the Corporation," and President Roosevelt described it as a corporation "clothed with the power of government but possessed of the flexibility and initiative of a private enterprise." The corporation is headed by a board of three full-time directors appointed by the President with the approval of the Senate. During the first two years of the board's existence the three directors divided the administrative work among them in the manner of the commission form of municipal government. But when this method of management led to conflicts over jurisdiction and policy it was superseded by the customary corporate system involving a separation between policy formation and administrative execution. A general manager of the TVA was appointed, and since then the corporation has operated with increased efficiency and with peace in the family.[5]

As a corporation, the TVA was granted power by Congress to issue bonds as a means of financing its own programs. This method had been used to the extent of about $100 million by 1945, but it has not been the chief method of finance, for Congress has appropriated the bulk of the funds. After the first ten years of operation, most of the dam construction—which is the most expensive part of the work—had been completed. There were twenty-one dams in all, sixteen of which were built since 1933. The public's investment in the TVA by 1945 was in the neighborhood of $750 million. Of this, approximately 60 per cent, or $450 million, showed on the books of the corporation as expenditures for power development.

Summary of Accomplishments, First Ten Years

In addition to the twenty-one dams and the $450 million power development, the TVA could cite the following accomplishments at the end of the first ten years of its operation:

The flood problem had apparently been conquered. The waters of a heavy rain are impounded behind dams and released only gradually on orders from a central control office. A navigable river channel, 650 miles long, has been completed so that cities such as Knoxville have become, in effect, seaports. In 1932 the Tennessee waterway moved 32 million ton-miles of traffic; by 1942, a decade later, this had increased to 161 million ton-miles and it was estimated that the savings to shippers by 1945 would amount to around $3,500,000 a year.

Before the TVA was set up, the Tennessee Valley had the lowest per capita use of electricity of any region in the United States.[6] Ten years later it was

[5] For a recent analysis, see C. Hartley Grattan, "A Hard Look at TVA," *Harper's Magazine*, 191 (Sept., 1945), 206–215.

[6] David E. Lilienthal, *TVA—Democracy on the March* (New York, 1944), pp. 21–24.

second from the highest. The average use of electricity by private customers had been 17 per cent below the national average; at the end of the period it had increased 146 per cent, standing 77 per cent above the nation's average household use, while the country as a whole showed an increase of only 15 per cent during the same time. The volume of electricity produced per person increased 500 per cent in the first ten years, a rate twice as fast as for the United States as a whole. One farm in 5 was electrified as compared with the figures for 1933 of 1 in 100 for Mississippi, 1 in 36 for Georgia, and 1 in 25 in Tennessee and Alabama. The sale of electrical appliances to households increased more rapidly than in any part of the country. Major industries—such as aluminum and rayon—have entered the area to take advantage of these resources.

But perhaps the most convincing measure of increased prosperity is found in the fact that bank deposits increased 76 per cent between 1933 and 1939, compared to 49 per cent for the country as a whole; moreover, in the same period, retail sales increased 81 per cent compared to an increase of 71 per cent for the national average.

By the end of the first decade there were 20,000 demonstration farms in the area embracing 3,000,000 farm acres. These were the lands of local farmers who had been chosen by their neighbors for this purpose. Diversified farming had made great progress. In ten years small grains had increased 13 per cent, dairying 73 per cent. Under the direction of state and county agricultural agents, one million acres of land had been terraced as a means of checking soil erosion.

THE INFLUENCE OF THE TVA

From the standpoint of the effect of the TVA on the federal-state equilibrium, the interesting thing is that in practice the TVA has actually constituted a decentralizing influence. As its chairman, David E. Lilienthal, has pointed out in his book, *TVA: Democracy on the March,* the cornerstone of the board's policy is that the TVA does as little as possible itself. Rather, it encourages the states, counties, and local governments to administer its various programs. The construction of the dams is the one exception to this rule. These were built by the TVA engineers themselves, but with a labor force which was predominantly local. At the peak of dam construction in 1944, the TVA's total pay roll reached the impressive figure of 40,000 employees. After that, with major construction completed, it began a rapid decline.

How does the TVA encourage decentralization and grass-roots democracy? The formula is simple: confine the authority's activities to finance and planning; encourage others to assist in this work, and to do all of the actual administration. In other words, the TVA has deliberately confined itself to a skeleton organization. It produces the hydroelectric power but does not market it. The power is sold to and distributed by municipalities, cooperatives, or private companies. The TVA is only the wholesaler. Even in its engineering work

the TVA has relied heavily on state and federal agencies. Thus, for example, the President of the United States has several times instructed the Army Corps of Engineers to cooperate with it. The agricultural program, as has been said, is carried out almost wholly through existing state, county, and local agencies. Much use has been made of farmer organizations for all purposes, including agricultural education and improvement, soil erosion control, and electrification. The TVA has not interfered in education but has given substantial encouragement and support to it. The same is true of other fields of government such as preventive medicine, sanitation, welfare work, libraries, housing, and the like. The TVA also carries on extensive research and encourages state and local authorities to make joint plans with it. But when it comes to the execution of the programs, the authority wisely insists that existing governmental agencies shall carry the burden. By this means, duplication is avoided and local initiative and responsibility are strengthened.

The assumption of administrative responsibility by local governing units is made possible partly because the state and local governments have received increased revenues for essential public purposes as a result of the higher per capita incomes of their citizens. Then, too, the TVA pays substantial sums from its electricity operations to the state and local governments in lieu of taxes. At the outset these sums were set at 5 per cent of the gross proceeds from the sale of power generated at any dams in Alabama and Tennessee.

These payments, however, were made only to the states, with the result that the counties did not share in them. In addition, studies made by the TVA itself indicated that the tax payments of private utilities throughout the country averaged about 12½ per cent of gross utility revenues. For these reasons, therefore, the TVA changed its policy of payments in lieu of taxes and, instead of a flat 5 per cent, the amount is now roughly equivalent to the national average of the privately operated electricity companies.[7] Furthermore, the minimum total amount must equal the two-year average of former property taxes when the properties were privately held, plus taxes which would otherwise have been available from land flooded for reservoir purposes.

In 1943 the TVA's tax payments amounted to two million dollars. Tax payments by municipal and cooperative users of TVA power brought the total up to well over four million dollars. Under the revised plan, too, payments are not confined to Tennessee and Alabama. In 1943, for example, 6 states and 111 counties profited from TVA payments on account of electrical power.

The Significance of the TVA to Government in General

The TVA has been in existence long enough and has settled down into a sufficiently fixed pattern to allow certain assessments and speculations to be made with reasonable certainty.

First, it is clear that geography is a sound basis on which to undertake gov-

[7] C. Herman Pritchett, *The Tennessee Valley Authority* (Chapel Hill, N. C., 1943), p. 94.

ernmental programs. Once the need has been determined, then the resulting program becomes a one-step-at-a-time procedure in which each part falls automatically into place.

Second, a multipurpose, regional authority such as the TVA may be introduced at a level between the states and the central government without complicating the total pattern of intergovernmental relationships so long as its powers are clearly defined and understood. Indeed, the TVA has helped to check federal centralization and has strengthened state and local governments.

In addition, the corporate device has created new and higher standards of governmental performance in certain areas, particularly in the field of personnel, where the record of the TVA is unsurpassed.

And finally, a balanced economy, in which agricultural and industrial factors are blended, is an ideal consciously to be sought. The Tennessee Valley seems to be attaining that objective.

In its possible bearing on the larger agricultural problem, the TVA is an exciting challenge. In 1800, nine out of ten of the people in the United States lived on farms. Now three out of four live in settled communities. There are still seven million separate farms in this country but only three out of five are operated by their owners. The single-family farm—basis of much that is best about America—is fighting for survival. Big farms have increased 25 per cent since 1930, while small farms have decreased 15 per cent. In recent years the spread of farm tenancy has been much more rapid than the increase of ownership. The hundred million acres of land in the United States which have been ruined by soil erosion largely account for a million marginal farms in all parts of the nation. Farming as a way of life is jeopardized by technology and the introduction of machine methods. The total farm income is about 12 per cent of the national income, but one third of the children of the nation live in rural areas.

Criticism of the TVA has come chiefly from the private utilities and their supporters, who find in it a threat to their business. In the first place, it is alleged that the TVA fails to pay its share of taxes, but, as we have seen, this is not now the case. Second, it is said that the TVA operates at a loss in order to provide cheap rates. This charge is equally inaccurate. The capital costs of the TVA are allocated among its different functions, on the basis of which the authority is making a profit which it returns to the federal treasury in order eventually to liquidate the public investment in the power facilities of the program.

In all valuation problems, of course, honest differences of opinion may arise, and the authorities will fail to agree. The field of public-utility regulation—on which the TVA impinges—is especially the subject of such disagreements.[8]

[8] This subject is dealt with in Chapter 46, "Business and Government."

OTHER REGIONAL DEVELOPMENTS

The TVA, as has been suggested, is not alone in the use of the regional formula. The following examples are equally interesting, although for the most part they have not been as widely developed as the TVA:

Pacific Northwest. One of the most promising areas of the continental United States is the Pacific Northwest, which includes the states of Washington, Oregon, Montana, Idaho, and part of California. Two enormous dams have been built on the Columbia River for multipurpose activities: Bonneville and Grand Coulee. Thousands of acres of fertile but arid territory are the potential beneficiaries of these new water and power resources. Electrical energy is available in great quantities. The beginnings of coordination are found in a Columbia River Authority which, although much more limited at present than the TVA, has possibilities for wider use.

The arid lands of the Pacific Southwest. The Colorado River Compact, entered into by the states of Colorado, Utah, Nevada, Wyoming, New Mexico, Arizona, and California, is another regional development with important potentialities. No part of the country is more dependent on water resources. Hundreds of thousands of acres of land, useless without water but richly fertile when irrigated, lie available to development. A start has been made in the construction of federal dams, including the great Boulder Dam. Most of them have been built by the Bureau of Reclamation of the Department of the Interior. Electrical power possibilities are almost limitless.

The dust bowl. In the prairies of Kansas, Nebraska, Oklahoma, Missouri, and Colorado, where the "plow that broke the plains" created a virtual desert following World War I, problems of similar magnitude await wise and farsighted solution. Some progress has been made, although not in as coordinated a fashion as in several other regional projects. In large areas nature demands that there be grass where men mistakenly tried to establish corn and wheat, and here vegetation is the key. In other parts, water and new methods of tillage designed to check and prevent soil erosion and to restore fertility to the ground are required. State and local cooperation, with the assistance of federal and regional facilities under the leadership of the Soil Conservation Service, must continue the joint attack on the underlying geographical and agricultural problems in this area.

The Port of New York Authority. An advantage of the regional device is its flexibility. It is adaptable to many uses and to many types of region. Agricultural areas are the chief but by no means the only claimants of its services. Thus, for example, the Port of New York Authority makes use of an *ad hoc* planning and development board consisting of experts in transportation. Like the TVA, also, it is called an authority. Unlike the TVA, however, the Port

of New York Authority has but a single purpose: the coordination of transportation facilities in and around New York Harbor. Unlike TVA, also, it does not compensate its board members, relying instead on the active interest and participation of leaders in the transportation and business field.

The Port of New York Authority resembles the TVA in that it issues bonds, handles its own finances, and enjoys a high degree of autonomy in the management of its own affairs. Another similarity is its close working relationships with federal departments and agencies, especially the Interstate Commerce Commission, which, having jurisdiction over railways, is naturally concerned with the coordination of all transportation facilities in the world's largest port.

Perhaps because of the resulting overlapping jurisdiction, however—and possibly also because of insufficient power—the Port of New York Authority has not particularly distinguished itself in planning and in the simplification of procedures. Its principal contributions are in the building of mammoth bridges and tunnels for truck and passenger traffic. From these facilities it has made an excellent financial record, and by creating additional arteries of traffic it has helped to relieve the load on shipping and rails in and around the city of New York and the adjoining congested areas in New Jersey.

Regionalism at the City Level

The regional formula is also helpful in the solution of some of the metropolitan problems of our largest cities. When cities become so big that they burst their bounds and spill over into adjoining towns, villages, counties, and even states, a confusion of jurisdiction inevitably arises. The key elements of city living, including such things as transportation, police and fire protection, recreation facilities, and health and welfare activities of all kinds, cannot be adequately dealt with because the jurisdiction is not unified and so is not coterminous with the territorial extent of the problem.

This is the condition of many of our largest cities today. Chicago, perhaps more than any other, suffers acutely under a limited jurisdiction. New York, with its borough type of organization, is better situated. What can a metropolitan area do about its problems of overgrowth? How can it consolidate and simplify its units of government, which in Chicago, for example, now amount to more than 800? The matter has been extensively studied by Professor Charles E. Merriam of the University of Chicago. In his volume entitled *The Government of the Metropolitan Region of Chicago* Merriam suggests the possibility of creating a city-state enjoying an independence similar to that of the states. This was virtually the position occupied by New York in the administration of the Works Progress Administration program in the 1930's: the city was treated on an equal footing with the states. But such a scheme on a permanent basis does not seem politically feasible for Chicago at any near date.

A possibility which seems more likely to succeed is the development of a metropolitan region around large cities by the absorption, consolidation, and simplification of overlapping jurisdictions, such as the adjoining towns and

counties. This type of regionalism is particularly needed in any intelligent city planning. Those who live in the suburbs, for example, must be assured of adequate, unified, and economical transportation to and from the city. If neighboring communities refuse to relinquish their separate identities, then by contractual arrangements such central services as transportation, police and fire protection, and sanitation might be extended to them.

But the question is not a simple one, as Chicago, which has struggled with this problem for fifty years, has had reason to learn. Despite the slowness and the setbacks, however, metropolitan regionalism seems to hold some hope of successful achievement.

City-County Consolidation

Another possibility, city-county consolidation, has already been accomplished in a few notable cases, chief among which are Denver, San Francisco, and Philadelphia. Frequently the problem is complicated because the city lies in more than one state. Paul Studenski, author of *The Government of Metropolitan Areas of the United States,* has pointed out that there are actually twenty-one instances in which metropolitan districts ignore state boundaries. The problem of Detroit extends into two countries because Canada is affected. Boston's metropolitan consolidation would require the integration of the city proper with five surrounding counties. Los Angeles is more favorably situated than most because it is located in a single large county; hence, although its city limits already cover more area than any city in the world, it still has room to expand. New York includes 5 major boroughs but it also spills over into 14 counties and 286 municipalities.

The need for city-county consolidation cries out for bold and statesmanlike attention. But it can be accomplished only through the action of the state legislature in each case. Unfortunately, as we have noted earlier, the rural delegations to the state legislatures are generally reluctant to extend the bailiwicks of the cities. Under these circumstances we must expect that much time and effort will be expended before the problems of the metropolitan region and city-county consolidation are satisfactorily settled.

A GENERAL PLAN OF AREA SIMPLIFICATION

We come now to a consideration of the over-all problem of duplicating and overlapping governmental subdivisions—a problem that affects many parts of the nation in addition to the large cities we have been discussing.

How can more order and economy be introduced into the more than 155,000 political subdivisions that comprise the ruling governmental structure of the United States? One of the few attempts to suggest an answer has been made by William Anderson in his monograph *The Units of Government in the United States.* For the present arrangement of 3,050 counties, 16,000 municipalities, 19,000 townships, 108,000 school districts, and the rest, Professor

Anderson would substitute a more rational plan in which overlappings would be eliminated so far as possible.

Anderson would create 350 city-county consolidations. He would reduce counties to approximately 2,000, although even this figure might be too great. The number of separate municipalities would be cut by about 1,000, to around 15,000 in all. And finally, there would be a consolidation of special districts with the abolition of special districts and townships where possible, the potentialities in this area being hard to gauge. This means that the number of levels of government might also be reduced in some localities.

Under this plan, according to Anderson, four fifths of our citizens would live under the jurisdiction of only one local unit instead of under several as is now so often the case. Only one fifth of the population, consisting of persons living in smaller incorporated places, would be subject to both county and township jurisdiction.

It will doubtless be objected that this is a difficult scheme to put into effect. Admittedly so. But it is not impossible if people become sufficiently aware of the necessity of governmental simplification. Good government requires that at least two conditions shall be present: The people must want the things that a common agency can provide for them, and they must be sensitive in the nerve that runs to their pocketbook. As indicated by the development of the Tennessee Valley Authority and similar imaginative programs, we Americans have recently shown that we realize the importance of the first of these conditions. That the pocketbook nerve should become more sensitive seems but a matter of time.

SUPPLEMENTARY READING

1. General references on regionalism: One of the first comprehensive analyses of the governmental and social aspects of regionalism was that of the National Resources Committee, *Regional Factors in National Planning and Development* (Washington, 1935). See also the same agency's analysis of seven regions of the United States in *Regional Planning,* Parts I–VII (Washington, 1936–1937). Two excellent books on the theory and practice of regionalism are by Howard W. Odum and H. E. Moore, *American Regionalism* (New York, 1938), and J. W. Van Sickle, *Planning for the South; An Inquiry into the Economics of Regionalism* (Nashville, Tenn., 1943). On the Pacific Northwest, see Northwest Regional Council, *Men and Resources: A Study of Economic Opportunity in the Pacific Northwest* (Portland, Ore., 1941). On the tendency of the federal government to regionalize, see James W. Fesler, "Federal Administrative Regions," *American Political Science Review,* XXX (April, 1936), 257–268. An earlier study but a suggestive one is by W. B. Munro, *The Invisible Government* (New York, 1928), pp. 136–164.

2. The Tennessee Valley Authority: The best short book is by David E. Lilienthal, *TVA—Democracy on the March* (New York, 1944). From the governmental standpoint the most useful book is that of C. Herman Pritchett, *The Tennessee Valley Authority: A Study in Public Administration* (Chapel Hill, N. C., 1943), espe-

cially Chapters 1 and 10. See also H. W. Odum, *Southern Regions of the United States* (Chapel Hill, N. C., 1936).

3. Metropolitan regions: Most useful is Paul Studenski, *The Government of Metropolitan Areas in the United States* (New York, 1930). See also the proposed solutions in Charles E. Merriam, *et al., The Government of the Metropolitan Region of Chicago* (Chicago, 1933). One of the best treatments of the urban problem is found in the National Resources Planning Board study, *Our Cities—Their Role in the National Economy* (Washington, 1937). See also Erwin W. Bard, *The Port of New York Authority* (New York, 1943).

PART FOUR

THE PROBLEM OF COST— TAXATION AND EXPENDITURE

CHAPTER 12

Public Finance—The Citizen's Business

THE PUBLIC BUSINESS must be run with money, and today it takes a lot of money to operate a government. During World War II the United States spent over half of its national income on programs financed through government—and in 1945 the national income had reached $160 billion. It is estimated that in the decade following the war the total cost of government, including interest on the national debt, will amount to between one fourth and one fifth of our total national income. Merely in financial terms, therefore, government is a big business—the biggest in the country.

The cost of government, its effect on the citizen and his family, and the far-reaching consequences of public financial policies on the national economy have become such personal matters that the field of public finance must be considered early in this book, even before we go into the methods by which people express their interests and needs through public opinion, political parties, and the machinery of representation—the subject matter of the chapters that follow.

Public finance is so central that we could almost redefine the state and say that it is the territory, the people on it, the government, *and the financial resources* with which the politically determined goals of society are sought. Finance is as crucial as that. Although it is beyond the scope of this book to analyze all of the reasons why government finance is important, some of the principal ramifications of the subject must be set forth. This chapter, therefore, will try to show the effects of public finance on the economy; it will then take up the cost of public expenditures and what they mean to the individual, the national debt, and in conclusion, the problem of debt limitations on state and local borrowing.

THE FAR-REACHING EFFECTS OF PUBLIC FINANCE

The services that society attempts to provide through government can be supplied only when funds are available at the right place, at the right time, and in the right amounts. Legal and other limitations found in state constitutions and statutes are sometimes an obstacle to the raising of funds for needed public expenditures. Finance, therefore, has an interacting bearing on constitutions, laws, organization, administration—all the other elements of government. Control of the purse strings is the control of government. Kings lost their power and the people won popular sovereignty when the rulers could no longer secure sufficient revenues without the people's representation and consent.

Finance, therefore, is one of the means by which the people may influence the policies and programs of their governments.

Whether they are public or private, expenditures must be judged by the extent to which they produce or contribute to the production of goods and services for society as a whole. If public funds are spent with this in mind, they may be more productive than the expenditure of private funds. In the long run, therefore, it is not so much a matter of *how much* governments spend—as fearsome as our national debt appears to be—as *what* they spend money on and its effect on the well-being of society.

In the words of Adam Smith, public finance has long been considered a principal subdivision of the science and art of the statesman and legislator. The tax policy of government, for example, is a tool of political economy if that term is defined as the broadest plans and decisions by which the community may foster its own well-being. Its tax policy is one of the principal means by which the government stimulates or checks the business and financial activities of our economy. Thus if corporations or citizens earn more money than the community thinks they ought to keep, the excess can be recaptured through taxes. If the government wants to stimulate initiative, it can adjust its tax policy in that direction. In recent years, tax policy has been considered by some as a possible substitute for greater over-all planning and control by government. According to this view, the government has an inescapable responsibility for stabilizing and directing economic tendencies, but it should do so indirectly through tax policy rather than by direct planning and control.

The manner in which the burden of taxation falls on individuals and classes helps to determine whether economic differences among them shall increase or diminish, whether, after the payment of taxes, there shall be a greater range between individual incomes or a smaller one. Differences in economic power, in turn, are reflected in the distribution of political influence within the electorate, because in general those with the greatest economic resources command the greatest political respect. In addition, the expenditure and revenue policies of government have become one of several x factors in the operation of a business enterprise. How can businessmen plan for the future unless they know in advance what government is going to do? Business confidence seems to depend on the predictability and stability of the policies of government.

Differences in tax policy affect the growth of cities, states, and localities, and determine the degree of success with which private businesses compete with one another. For example, here is a city which is tax-free because of income derived from a public enterprise, such as a municipal electricity plant. But a neighboring city has high taxes. This could be the principal factor determining successful business competition in the one city as against its neighbor.

That the power to tax may be used for regulatory and prohibitive purposes was seen in an earlier chapter. You may recall the oleomargarine case, for example, in which the sale of a colored product that might compete with but-

ter was discouraged through the imposition of a heavy tax. Taxation, therefore, is not only the blood stream of government; it is also an effective way of exercising social and economic controls.

THE COST OF PUBLIC EXPENDITURES

The principles involved in financing our governmental operations are no different from paying money over the counter at the grocer's. In both cases something is purchased that is presumably needed. What is sometimes different is the method of collection. Usually the grocer is paid in cash. Government, on the other hand, presents its bill for most of its services when it collects our income tax from us.

Actually the difference is not as great as this because charge accounts are widespread in the retail trade and "cash on the barrel head" is increasingly a government practice. Cash is paid to the government, for example, in the form of a tax added to the price of various articles or services, including most amusements and luxuries. It is as though each of us had two pockets, in one of which we keep our funds for private purchases and in the other our money for governmental services. But the source of the money is the same and the method of payment often identical.

When we pay for governmental services in a lump sum, as we now do in the case of the income tax, we realize more clearly than we used to how much these services cost us. The same is true of property taxes, which are usually paid in a single sum or in large installments. But when the cost of government is added to the price of a private purchase such as theater tickets, it becomes more difficult to reckon the total cost of government to the individual.

Expenditures on government have gone up so rapidly that it is hard to get even a general picture of what government is costing each one of us. The increase has been typhonic in the past generation because of two world wars and a world-wide depression. In order to grasp the significance of what has happened, let us make a comparison between two dates—the first just prior to World War I and the second just before World War II, with the major depression of the 1930's intervening:

COST OF GOVERNMENT IN THE UNITED STATES, 1913 AND 1938

Year	Total expenditures all levels of government	Per capita	Proportion of national income
1913	$3 billion	$30 per year	8%
1938	$18 billion	$130 per year	25%

Source: Adapted from William Anderson, *American Government* (New York, 1942), pp. 708–709.

It is also interesting to compare the percentages of total public expenditures at the federal, state, and municipal levels of government for the same two periods:

PERCENTAGES OF TOTAL EXPENDITURES, 1913 AND 1938

Year	Federal	State	Local
1913	25%	15%	60%
1938	44%	20%	36%

Source: Anderson, *op. cit.*, pp. 708–709.

These figures show that whereas the largest share of expenditures used to be found at the level of the localities, it is now at the federal plane.

Consider the effect of depression expenditures on local finances alone: In 1929, local governments spent 27 per cent of their total outlays on education, and only 6 per cent on welfare and relief—hardly one fifth as much. This was the year the depression started. Six years later, in 1935, local expenditures on relief had jumped far ahead of the outlay for education.

The effect of a major war on the expenditure picture is even more striking, as the following figures for World War I and World War II illustrate:

COMPARISON, FEDERAL GOVERNMENTAL EXPENDITURES, WORLD WARS I (1917–1918) AND II (1940–1945)

	1917–1918	*1940–1945*
Total spent	$36 billion	$300 billion (8 times as much)
Monthly expenditures	$2 billion peak	$8 billion, mid-1944
Aid to allies		One year (1943) exceeded total for World War I
Industrial production		Peak three times as great as in 1918
Percentage of national production spent on war	One quarter	Over half, peak near 70 per cent
New manufacturing facilities	$3 billion	$20 billion, mid-1944
Total government employees	Under 1,000,000	Over 3,000,000

Source: Adapted from Harold D. Smith, *The Management of Your Government* (New York, 1945), p. 42.

Even though one set of these figures is for 1940–1944 only, and hence includes one peacetime and excludes one wartime year, it serves to show the enormous expenditure involved, even compared with World War I.

A composite picture of public revenues, expenditures, and debt outstanding for the federal, state, and local governments in 1942 is given in the following table:

FEDERAL, STATE, AND LOCAL REVENUE, EXPENDITURE, AND DEBT OUTSTANDING: 1942

(In millions)

(NOTE: This table emphasizes totals, inclusive of intergovernmental aid, for each of the three levels of government. To eliminate double counting in the totals of federal, state, and local governments, subtract from general revenue the item "aid received" and subtract from general expenditure the item "aid paid.")

Item	Total	Federal	State and local		
			Total	State	Local
GENERAL REVENUE	$26,858	$13,721	$13,137	$6,114	$7,023
Taxes	23,165	13,510	9,655	4,975	4,680
Individual income	3,539	3,263	277	250	27
Corporate income	5,021	4,744	277	274	3
Property	4,593	...	4,593	271	4,322
Sales and gross receipts and customs	5,640	3,294	2,346	2,219	127
Licenses and privilege	1,340	518	822	686	136
Payroll	2,354	1,271	1,084	1,076	8
Other	678	421	257	200	58
Aid received from other governments	2,572	...	2,572	810	1,762
State	1,662	...	1,662	...	1,662
Other	909	...	909	810	100
Earnings and miscellaneous	1,122	211	910	329	581
GENERAL EXPENDITURES	47,328	34,320	13,008	5,844	7,164
Operation	31,138	23,954	7,184	1,862	5,322
General control	1,162	438	724	171	554
Public safety	21,915	21,158	757	122	635
War activities	21,127	21,111	16	16	...
Police	397	10	386	37	349
Other	392	37	355	69	286
Highways	866	66	800	252	548
Natural resources	1,160	1,001	159	123	35
Sanitation	188	...	188	...	188
Health and hospitals	605	27	578	287	291
Public welfare	2,344	1,125	1,219	511	708
Schools	2,247	23	2,224	243	1,980
Miscellaneous	650	115	536	154	382
Capital outlay	7,618	6,577	1,041	619	422
General control	52	33	19	3	16
Public safety	6,298	6,265	33	8	25
War activities	6,265	6,265	...	...	...
Police	5	...	5	...	5
Other	16	...	16	...	16
Highways	743	75	668	531	137
Natural resources	207	196	11	7	5
Sanitation	38	...	38	...	38
Health and hospitals	38	...	38	26	12

FEDERAL, STATE, AND LOCAL REVENUE, EXPENDITURE, AND DEBT OUTSTANDING: 1942—*Continued*

(In millions)

(NOTE: This table emphasizes totals, inclusive of intergovernmental aid, for each of the three levels of government. To eliminate double counting in the totals of federal, state, and local governments, subtract from general revenue the item "aid received" and subtract from general expenditure the item "aid paid.")

Item	Total	Federal	State and local		
			Total	State	Local
GENERAL EXPENDITURES—*Continued*					
Capital outlay—*Continued*					
Public welfare	4	...	4	1	2
Schools	169	...	169	26	142
Miscellaneous	69	7	62	17	46
Aid paid to other governments	2,647	837	1,810	1,789	21
General control	..	...	...	.	...
Public safety	118	101	17	17	.
War activities	101	101	..	..	...
Police	10	...	10	10	..
Other	7	..	7	7	..
Highways	508	154	354	350	4
Natural resources	30	29	1	1	..
Sanitation	...	...	...	...	..
Health and hospitals	39	29	10	10	...
Public welfare	772	376	396	396	.
Schools	829	29	801	787	14
Miscellaneous	350	119	232	229	3
Debt service	2,897	1,260	1,637	428	1,209
Interest	1,796	1,260	536	114	422
Provision for debt retirement	1,101	.	1,101	315	786
Contributions to trust funds and enterprises	3,028	1,693	1,336	1,146	190
ENTERPRISES:					
Operating revenue	2,857	1,694	1,164	138	1,026
Operating expense	2,191	1,587	604	38	566
GENERAL AND ENTERPRISE DEBT OUTSTANDING					
Gross debt	95,991	76,991	19,000	3,271	15,729
Long-term	89,431	71,387	18,044	3,107	14,937
General government	75,190	62,740	12,451	2,858	9,592
Enterprise	14,241	8,647	5,594	249	5,345
Short-term	6,560	5,604	956	164	792
Net long-term	87,501	71,387	16,114	2,620	13,494

Note: Because of rounding to the nearest million, figures do not always add to totals.
Source: U. S. Bureau of the Census, *Governmental Finances in the United States, 1942*, United States Summary.

The Cost of Government Following World War II

The percentage of our national income spent on the public business in the postwar period depends on the figure for the total national income. If that is $150 billion a year and the cost of government is around $30 billion, then the cost of government will be one fifth of our national income. If, however, the national income drops to, let us say, $140 billion a year, while the cost of government increases to $35 billion, then one fourth of the national income will be spent on government, which is where matters stood in 1938. This relationship between national income and governmental expenditures might be repeated if another major depression occurs, because in that case public costs would inevitably increase in the fields of relief and public works; while at the same time, because of the depression, individual incomes would decline as would revenues from the income tax.

A major factor in our postwar calculations is the greatly increased fixed cost of servicing the national debt. In the United States we have never reached so high a figure before, but it looks as though we might as well get used to it. During World War II our national debt increased somewhere in the neighborhood of 600 per cent—from around $40 billion to around $280 billion, and it may reach as high as $300 billion. This means that interest on the national debt will cost us as taxpayers something like $6 billion a year, or as much annually as the total cost of financing the federal government in 1933.

Beyond this, the picture is not so clear. Some interesting data, however, have been published by the Committee for Economic Development—an organization of businessmen headed by the president of the Studebaker Corporation—in a study entitled "A Postwar Federal Tax Plan for High Employment," which appeared in 1944. On the question of future public expenditures and the taxes that will be necessary, the committee concluded that our postwar taxes will probably be at least three times higher than in 1940, the last peacetime year. The normal expenditures of the federal government may be expected to remain at prewar levels, but payments to veterans and increased social security benefits will represent large totals which, as of 1944, could not be predicted.

On the basis of known factors, the committee concluded that federal financial requirements would amount to from $16 billion to $18 billion a year, excluding obligations for increased social security benefits and the retirement of the national debt. To this total should be added around $12 billion to cover the needs of state and local governments. Thus we have a minimum annual financial requirement of around $30 billion. Assuming a national income of approximately $140 billion, the outlay for governmental expenditures runs between one fourth and one fifth of our national income.

This is one measure of the extent of our investment, as citizens, in government.

What the Average Family Will Pay in Taxes

On the basis of available data, it appears that an average family of four in the United States must expect in the future to pay $850 a year in the form of taxes—federal, state, and local. This is the prediction of the C.E.D. in its report referred to above. Of this $850 total, approximately two thirds, or $510, will be paid in federal taxes. These figures assume that taxes would be spread evenly over the whole population, with everyone paying the same amount irrespective of income. But that, of course, is not the way it is done. Those in the lower income groups pay much less than the average, while those in the higher brackets pay considerably more.

Comparing the peacetime costs of the federal government to the average family, we find that in 1929 the cost amounted to $132; in 1933 it had fallen to $68; in 1940 it had risen to $156. The predicted figure of $510 represents an increase of 227 per cent over that for 1940.

An even more forceful way of presenting the burden of federal taxation on the individual is to take the income tax for 1944 and apply it to the various income levels. In the figures that follow, taken from the C.E.D. study, the assumptions apply to a married couple with two dependents, and to income without capital gains or losses so that all income is subject to the normal tax:

FEDERAL INCOME TAX PAYMENTS, 1944

Net income, after deductions but before exemptions	*Amount of Tax*
$2,000	$45
4,000	505
6,000	1,005
8,000	1,585
10,000	2,245
16,000	4,725
25,000	9,705
50,000	26,865
100,000	68,565

These, of course, are the actual schedules for 1944. What the corresponding personal income tax payments will eventually amount to in subsequent years cannot be fully anticipated.

THE NATIONAL DEBT

In 1940 the total debt of American governments—federal, state, and local—amounted to around $63 billion. Two thirds of this was federal, one third was state and local. By February of 1946, the national debt stood at nearly $280 billion, to which must be added an additional $20 billion for state and local debts, making a total of $300 billion.

A national debt of this magnitude is obviously something to take seriously, but it is nothing to be unduly alarmed about. The United States is now merely in the same relative position long occupied by other countries, including Great Britain; up until the recent war, they managed to get along pretty well. British experience indicates that a national debt can be serviced without too much difficulty so long as it does not amount to more than twice the national income. Therefore if our national income were maintained at around $140 billion to $150 billion, we should encounter little trouble. According to the president of the National Association of Mutual Savings Banks, who said in 1942 that a national debt of $250 billion is safe so long as the national income remains above $100 billion, even this may be too conservative a proportion.

Whatever the ratio of debt to income may be, however, it is obvious that the only way to finance the government and retire the national debt is to keep the national income at a high level. In 1929 our national income amounted to only $83 billion—and that, you will recall, was a year of prosperity. In 1932 the national income had dropped to $40 billion. An annual climb after this low point brought the figure to $78 billion in 1940—when defense expenditures by the federal government were already beginning to stimulate a sharp rise. The following year the national income had grown to $96 billion, and in 1942 it stood at $120 billion. In 1945 it reached $160 billion, which was nearly twice the size of the national income in 1929. The C.E.D. does not predict that a postwar national income of $140 billion *will* be reached; it merely points out that this figure would be a desirable goal. A serious inflation or a serious depression that might make this goal unattainable is the greatest potential threat to our economic stability. We have been compared to a Flying Fortress that must either maintain its speed or crash.

As a nation, we have usually ranked high in the matter of national income. The following table, showing comparative figures for 1937, gives the national income picture for eight nations in a year that was more or less "normal":

NATIONAL INCOME OF THE UNITED STATES AND FOREIGN COUNTRIES, 1937

Country	In millions of dollars	Per capita, in dollars
United States	69,246	536
Australia	3,065	446
Canada	4,162	374
France	9,801	234
Germany	28,542	421
Japan	5,413	76
New Zealand	648	408
United Kingdom	23,672	500

Source: Economic Almanac, 1943–1944, p. 454.

A high national debt requires a high national income. Under these circumstances, a program of high taxes is in the public interest, for a national debt

the size of ours may be inflationary if it is not offset by an appropriately high tax level. The editors of *Fortune Magazine* pointed this out in the issue of May, 1943: "Administration of a huge debt for decades to come," they say, "will be an inescapable necessity. And since it is now a well-established fact that movement of the debt up or down has profound effects on the level of economic activity, we look forward to seeing the powerful instrument thus at our disposal used boldly. It must be used to prevent deflation and waste of productive resources, or inflation and economic disruption, as the needs of any particular future period may indicate."

Generally speaking, a nation goes into debt either to undertake revenue-producing programs, in which case the debt can be paid off out of income, or for nonproductive purposes, and here other sources of income must absorb the load—at least to the extent of payments on interest. Examples of revenue-producing indebtedness include those involved in building war plants which can be converted to peacetime production, or the expenditures on the Tennessee Valley Authority, where a regular income is received from the sale of power. Wars and relief are examples of unproductive indebtedness. Indeed, throughout history war has been the principal cause of public debt. If we could eliminate war, we might approach the ideal state of pay-as-you-go.

Realistically considered, the losses due to war are not measurable in money terms. Money is merely a shorthand expression for consumable and reproductive wealth. The real losses of war lie in depleted natural resources such as petroleum and iron, in the destruction of cities, and in the millions of human lives affected.

The national debt of the United States is now so widely distributed among the citizens of this country, especially through the sale of war bonds, that national bankruptcy is next to unthinkable. Of the cost of World War II, 44 per cent was raised through taxation and 56 per cent through loans, as of October, 1945. Thus we owe ourselves the debt. No one outside ourselves can foreclose if the payments are not prompt. Besides, there can never be a foreclosure in a realistic sense so long as a nation has adequate men and resources. They are the sinews of economic welfare.

The Debt Policy of the United States

Granted that it would take us many decades to retire a debt of $280 billion, the question arises whether we should attempt to pay off the principal at all, or whether we should not be content merely to meet the interest payments. There are two schools of thought on this issue. One group contends that there is no virtue in trying to retire a debt so large; the other maintains that it is imperative to do so and the sooner the better. What are the general considerations in this important question? The following arguments and rebuttals have been made:

Argument: As long as businessmen know that the debt must eventually be

paid, then if it is not reduced it acts as a depressant on business activity. *Reply:* This is merely a state of mind; so long as national income remains at a satisfactory level there is nothing to worry about.

Argument: Business confidence depends on the soundness of the public credit. Credit is not good when the country is up to its ears in debt. *Reply:* So long as the payments of interest maintain business confidence, there is no reason why the principal must be reduced in substantial amounts. Besides, national income is all that matters.

Argument: A high national debt requires high service charges and they in turn make high taxes necessary. High taxes depress business activity. This in turn lowers production and employment. Consequently the national debt should be reduced as rapidly as possible. *Reply:* It is a good idea to reduce the national debt a little at a time, as we are able, but we should not be alarmed if debt reduction is very slow. Would not the excessively high taxes required to reduce the debt also have a depressing effect? Again we come back to a state of mind. The country is as sound as its production, its employment, and its national income.

There is an interesting paradox about debt policy. The same businessmen, for example, who worry because the national debt is not paid off in full at the earliest possible moment are likely to be most disturbed at the suggestion that the debts of private corporations be retired and the "investments" withdrawn from the market. According to this point of view, the soundness of the capitalist system is apparently measured by the amount of bonds (indebtedness) which our corporations have outstanding, but in government the opposite principle applies.

In this connection it is interesting to note that during the 1930's, for example, net private debt in the United States was from two to three times as high as the net public debt during the same period, and that not until 1943 did the public debt become larger than the total of private debt.

Why not be consistent? If it is a good thing for the government to pay its debts, why is it not an equally good thing for private enterprise to do likewise? If the railroads, for example, could substantially reduce their indebtedness, could they not compete more successfully with newer forms of transportation such as the airplane and the automobile? Would our capitalist system be weakened or strengthened if the only securities available were in the form of shares of stock and if virtually all bond issues were liquidated? This inconsistency has been noted by Stuart Chase in his book, *Where's the Money Coming From?* "Thus when people who do not look like communists," says Chase, "tell me that we ought to get rid of debt, I stand amazed at such a revolutionary proposal. They are saying, in effect, that they want to abolish the capitalist system. No debts, no banks, no bonds, no stock markets. Even the Russians have not gone to such lengths."

Tax-exempt Government Securities

The issue of the payment of the national debt is given added importance because of the great totals of tax-exempt government securities outstanding. These securities pay a low rate of interest as a group and are in demand by conservative investors primarily because they are not subject to taxation. It is now increasingly recognized that the tax exemption of such investments is an outworn relic of the past and has no justification in economic or social policy. In 1940 the total of federal bonds that were wholly or partially tax exempt amounted to more than $45 billion, with state and municipals—as they are called—totaling another $20 billion. This was three times the value of all manufacturing facilities ($22 billion) at the time the United States entered World War II in 1941, and all of it was exempt or largely exempt from taxation. The federal government has now, however, made all of its own current security issues fully taxable. Furthermore, since 1940 there has been a reduction in the totals of tax-exempt securities outstanding. For the federal government the figure stood at $31 billion in 1944, and at $17 billion for the states and municipalities.[1] If these would now follow the example of the federal government with regard to current issues, the problem would eventually solve itself as outstanding obligations are liquidated.

Until a few years ago both the federal and state governments refrained from taxing the salaries of each other's employees. That immunity has now been wholly removed, apparently causing little hardship or commotion. The same might be true if the tax exemption on bonds were abolished. In the case of salaries it generally meant a wage increase. In the case of bonds it might mean higher interest or the adoption of a retirement policy, either alternative probably being preferable to the inequities of tax exemption.

CONSTITUTIONAL PROVISIONS RELATING TO PUBLIC BORROWING

Through its domination of the Federal Reserve System and our whole credit structure,[2] the federal government is in a position to exercise a good deal of control of the borrowing policies of state and local governments. In this respect, ours resembles every other central government in the world: the broader the scope of government, the greater its access to funds; the more narrow the scope of a subordinate government, the more it is limited by the government above it. An extreme example of this may be found in the vicissitudes of the municipalities in the German Reich after World War I. The national administration in Germany at that time was liberal and in sympathy with local self-government, and yet it increasingly pushed in on the cities, taking one tax revenue after another, until at last some of the cities were virtually bankrupt.

The framers of our federal Constitution were generous with regard to the financial powers of Congress. Article I, section 8, dealing with the powers of

[1] *Annual Report of the Secretary of the Treasury,* fiscal year ended June 30, 1944, pp. 802–803.

[2] This subject is dealt with in Chapter 45, "Financial Stabilization Programs of Government."

Congress, provides that "the Congress shall have power . . . To borrow money on the credit of the United States." This power is unlimited. The amounts, the nature, and the methods of repayment are left open for Congress to decide. Unlike many of the states, Congress is not restricted by any *constitutional* debt limit. When the receipts from taxation and other sources approximately meet the expenditures of government, there is said to be a balanced budget. However, when wars, depressions, and other unforeseen contingencies arise, the budget gets out of balance and borrowing becomes necessary. As a rule, voluntary subscription to government bonds can be relied upon because they are considered the safest form of investment, the federal government has never defaulted, and the interest rate, although low, is thought satisfactory by banks, insurance companies, and private investors. In times of emergency, of course, other less voluntary means of securing revenues, such as so-called deferred savings, may be resorted to. Moreover, under the existing banking system (Federal Reserve) the method exists whereby bank loans to the government may be made virtually mandatory if the need arises.

Congress not only has express power to borrow money, but the same section of the Constitution gives it power to "coin money" and to "regulate the value thereof." The bearing that these clauses have on the borrowing power may not at first be apparent, but it is, in fact, close. Following the Civil War, for example, Congress forced the public to accept "greenbacks"—the popular name for a United States note, a form of unredeemable or fiat currency. The law stipulated that these notes should be "legal tender" in payment of private debts, although the government would not accept them in all cases. Thus greenbacks were, in effect, a form of forced or concealed loan from the general public. The greenback issue gave rise to two famous Supreme Court decisions. In the first of these, by a close vote, Congress was held not to possess the "necessary and proper" power to issue greenbacks; but a short time afterwards, when the membership of the Court had changed, the authority was upheld.[3] Thus Congress has the power to make greenbacks legal tender although, in end result, such currency is hard to distinguish from "bills of credit," the use of which the Constitution denies to the states. Several times since 1871 when the first of these cases arose—as in the Greenback party's espousal of the continued issuance of fiat money—cheap money has become a leading national political issue.

Limitations on State Borrowing Power

The provision of the federal Constitution that forbids the several states to "emit bills of credit" has been strictly enforced by Congress. When a state-chartered bank was authorized to issue its own notes for circulation as money, for example, Congress imposed a 10 per cent tax on the notes and put them out of existence. This was in the leading case of *Veazie Bank* v. *Fenno* (8

[3] *Knox* v. *Lee* (12 Wallace 457. 1871); also *Legal Tender* cases (110 U. S. 421. 1884).

Wall. 533. 1869). Since this decision, shortly after the Civil War, the states have not attempted to issue bank notes even indirectly, so that the federal government has had the entire field to itself.

After some states lost heavily in such ventures, several have amended their constitutions to prohibit the lending of state credit to various improvement schemes, such as canals and roads. Some states have also adopted constitutional amendments limiting state indebtedness and stipulating other conditions of various kinds. Debt limitations are imposed in over half the states, and often the provisions are so complex that they lead to all kinds of difficulties. Generally speaking, however, it is a questionable policy for a state to include in its constitution rigid restrictions limiting its own sovereign acts. It is debatable whether such restrictions are not circumvented as often as they are observed. Certainly as public morality and official competence grow, obstacles of this kind should be removed.

Financial Limitations on Local Governments

The states are relatively free and uninhibited, however, compared to the situation of the cities, counties, and other local subdivisions that the states themselves empower and control.

Here restrictions are of two kinds, constitutional and statutory. Constitutional provisions applicable to the state itself do not automatically extend to the political entities that the state creates, and hence additional provisions enacted by the state legislatures are necessary. In the constitution of Indiana, for example, it is provided that "no political or municipal corporation . . . shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two per centum on the value of the taxable property within such corporation." Provisions such as this are commonly referred to as "real-estate" prohibitions because often it is the real-estate interests that attempt to attract industry and new residents by holding out the prospect of low taxes, made possible by restrictions on indebtedness. Actually, they are insulting to the intelligence of citizens and officials alike. For the most part, such provisions stem from a time when honesty and efficiency in state and local governments were at a low ebb and hence they were regarded more as a pious admonition than a strict command.

The following table shows the legal borrowing capacity of ninety-one of our larger cities, excluding New York and Chicago, in 1942 and 1943.

As a rule, the financial limitations on local governments, like those imposed on the state itself, can be circumvented if there is the will to do so. For example, the counties, the towns, and the special districts can each go up to the debt limit, with the result that the final total is 6 per cent instead of 2 per cent. A worse feature is that the constitutional limitation is an inducement to create additional units of government, once the limit of indebtedness has been reached by existing subdivisions. This is a factor in the multiplication of special dis-

LEGAL BORROWING CAPACITY OF SELECTED CITIES HAVING POPULATIONS OVER 50,000 AND OF COUNTY GOVERNMENTS: 1943 AND 1942

Type of government	Total debt capacity allowed by debt limit (*in thousands of dollars*)		
	1943	1942	Per cent increase 1942–1943
91—City total*	$4,614	$4,440	4.0
Total—(except Chicago and New York)	2,744	2,704	1.6
Population Groups			
5 cities over 1,000,000	2,649	2,508	5.6
9 cities 500,000-1,000,000	586	556	5.3
23 cities 250,000–500,000	826	821	.6
18 cities 100,000–250,000	247	247	.2
36 cities 50,000–100,000	306	308	−.7
Counties in 38 states with general limits	5,637	5,391	4.6

* The 91 cities represented account for 85 per cent of the debt of the 197 cities having populations over 50,000. All the 37 cities having populations over 250,000 are included in the reported groups. Of the 55 cities having populations from 100,000 to 250,000, 18 are reported; and, of the 105 cities having populations from 50,000 to 100,000, 36 are reported.

Source: U. S. Bureau of the Census, *Governmental Debt in the United States, 1944.*

tricts, with resulting overlapping jurisdictions and administrative confusion, discussed in Chapter 8.

Legislative stipulations limiting indebtedness can also be circumvented, but they are not so objectionable because they can be modified or removed more easily than constitutional provisions. Both kinds of restrictions belong to an era which is now happily passing—an era in which prohibitions were considered more efficacious than positive methods of improving efficiency and economy. There is still the problem of debt limitation, but the solution here is to be found in improved responsibility, organization, and administration.

One reason these restrictions on indebtedness have tended to break down is that the federal government, as noted in Chapter 10, has increasingly gone to the aid of local governments in depression and war. In the long run, there is no substitute for intelligent citizenship and competent management. We cannot bolster the states or sit on the debt limits of local governments simply by passing prohibitions or enunciating pious hopes. In the life of government, as of the individual, there is nothing that will take the place of competence.

If the United States should again be faced with a serious depression, the cities, counties, and local governments would have to prime their own pumps by extensive public works and improvements such as roads, bridges, parks, schools, and other public buildings. To prepare for such a contingency they, as well as the federal government, should put themselves in the best possible financial condition, which means the adoption of a sound debt-retirement

policy.[4] Under an improved debt policy in the localities, the federal government would not again have to bear the brunt of the financial load, almost alone and unassisted, as it did in the last depression.

With state and local debts amounting to $20 billion and the federal debt now nearly fifteen times that figure—whereas before the war it was only double it—the state and local governments would be well advised to count on bearing a larger share of the future financial load.

SUPPLEMENTARY READING

1. Leading references on public finance: Three good textboooks are Clyde L. King, *Public Finance* (New York, 1935); Harley L. Lutz, *Public Finance* (New York, 3rd ed., 1936), and Jens P. Jensen, *Government Finance* (New York, 1937). One of the best authorities in this field is Harold M. Groves; see especially *Financing Government* (New York, 1939), Chapters 23–31. For a comprehensive survey, see Daniel T. Selko, *The Federal Financial System* (Washington, 1940), Chapters 1–3.

2. Recent trends: Interesting reading is found in Stuart Chase, *Where's the Money Coming From? Problems of Post-War Finance* (New York, 1943), Chapters 2, 10. See also Committee for Economic Development, *A Postwar Federal Tax Plan for High Employment* (Washington, 1944). Other references dealing with the effect of war debts are W. Warren, *Financing the War* (Philadelphia, 1942); University of Alabama (Bureau of Public Administration), *National Defense and State Finance* (1941), and A. G. Hart, *Paying for Defense* (Philadelphia, 1941). Good surveys of the social effects of taxation are M. S. Eccles, *Curbing Inflation through Taxation* (New York, 1944), and R. Magill, *The Impact of Federal Taxes* (New York, 1943).

3. Debt policy and administration: This subject is discussed in most of the general references. In addition, see P. W. Stewart and R. S. Tucker, *The National Debt and Government Credit* (New York, 1937), and C. Shoup, *Federal Finances in the Coming Decade* (New York, 1941). On state indebtedness, see B. U. Ratchford, *American State Debts* (Durham, N. C., 1941). On municipal debts the best reference is C. H. Chatters and A. M. Hillhouse, *Local Government Debt Administration* (New York, 1939).

4. Books of readings: A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), pp. 655–676; John M. Mathews and Clarence A. Berdahl, *Documents and Readings in American Government* (New York, rev. ed., 1940), pp. 552–570, 812–837.

5. Periodic publications of value: *Annual Report of the Secretary of the Treasury on the State of the Finances* (Washington); U. S. Bureau of the Census, *Financial Statistics of State and Local Governments* (Washington), and *State and Local Government Debt* (Washington). Also National Industrial Conference Board, *Cost of Government* (New York); and The Tax Foundation, *Tax Facts and Figures* (New York).

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[4] Constructively discussed in Harold D. Smith, *The Management of Your Government* (New York, 1945), pp. 121 ff.

CHAPTER 13

The Sources of Public Revenue

WHEN FROM a quarter to a half of the national income is required for governmental purposes—depending on the conditions of peace or war that prevail at the time—how the burden of taxation is spread over the people and their associations makes some difference. As suggested in the preceding chapter, fiscal policy has become a means of regulating the national economy. Equality or inequality of treatment and opportunity, diffusion or concentration of the sources of public income, prosperity or depression, stability or weakness of the business community—these are pivotal relationships and end results that the tax policy of the nation directly affects.

Some writers on public finance compare private and governmental economy by posing an antithesis. They say that the individual cannot spend his money until he earns it, but that government, knowing that there is always more money where the last taxes came from, spends whether it has the cash on hand or not. It is curious how this half-truth has been handed down from one generation of economists to the next. That it is a half-truth is evident, for governments today budget their funds at least as carefully as the average citizen does.[1] Instead of saying that government is characteristically more improvident than the individual, therefore, it is nearer the truth to say that government, like the individual, is sometimes confronted by unexpected crises. War is the most serious of these. When a nation is plunged into war, it must cast its old budget aside and arm itself as quickly as possible, even though it means going heavily into debt. The effect of depression is much the same. If the depression is a major one involving large outlays for relief and public works, the administration cannot allow itself to be too greatly concerned over balancing its budget. It must meet the emergency and worry afterward. Do not we, as individuals, experience the same kind of crises? A sudden catastrophe or an expensive operation has the same effect on our own budgets. It is more accurate, therefore, to compare the similarities of private and public economy instead of stressing their differences. This is increasingly true as precise budgeting has become an established procedure in most governments. The government says in effect, "This is what we are going to spend; this is how much we need to raise from current revenues and taxes; this is the way we intend to divide the tax load."

This chapter will deal with the principles of public policy which enter into

[1] The question of budgets and budgeting will be dealt with in Chapter 37 as part of the discussion of the administrative aspect of the governmental process.

the question of taxation, together with certain problems which arise in their application; next it will take up the constitutional provisions authorizing the raising of revenues, it will study the types and sources of taxation, and it will conclude with a discussion of other forms of public revenue.

PRINCIPLES OF PUBLIC POLICY ENTERING INTO TAXATION

In its broadest sense, *a tax is a compulsory payment for the support of the public services.* The extent to which taxation policy is a fundamental regulator of the economy is reflected in a headline that appeared in a metropolitan daily in 1945, following an important conference of business associations. The main headline read, "Small firms to need tax relief, House body told." The subhead is revealing because it stated, "Big business is willing to become small business if the tax advantages are great enough." In an increasing number of business enterprises the rate of taxation on business has become the principal determinant of profit.

The guiding principles of taxation policy may be stated fairly simply because over a period of years there has come to be a more or less common agreement as to what they should be. But when an attempt is made to reconcile these various rules and to apply them to concrete situations, the matter becomes far less simple. Nevertheless, they may be set forth as follows:

Ability to pay. A fundamental rule of taxation is that persons and corporations should be taxed in proportion to their ability to pay, so that the burden will fall with relative evenness. The strong should pay larger amounts than the weak. But in the determination of ability to pay, tax rates should be adjusted to net earnings, because the total amounts taken in prior to the deduction of expenses are often misleading.

Taxation relative to benefit. Although ability to pay is the general test of fairness, it sometimes happens that benefit to individuals or to their property is a better rule. In some cases, public improvements add to the value of private property. The construction of a sidewalk, for example, or the laying of a gas main, increases the value of undeveloped land. If the whole community were forced to pay the bill equally, the owners of the property affected would find their private wealth increased without paying their just share of the improvements making the increment possible. The benefit rule, therefore, is a corollary to—rather than a competitor of—the doctrine of ability to pay.

Equality of treatment by classes. Another sound rule of public tax policy provides for equality of treatment among those who are equally situated—as with regard to income levels for income tax purposes—in order to avoid unjust discriminations. Equal treatment is secured by dividing individuals and groups into classes, and then imposing a tax rate appropriately adjusted to progressively higher levels of ability to pay. This system is comparable to the classification of cities according to population, as a means of determining the charter and the form of government for each, as discussed in Chapter 7. It should be noted, however, that there are individual differences in each classification,

and hence the rule of classification, as it is called, is only a means of securing approximate justice rather than absolute equality of treatment.

A progressive—rather than regressive—tax burden. In accordance with the principle of ability to pay, sources of taxation should be chosen which will bear more heavily on the wealthy than on the poor. Regressive taxes, such as a general sales tax on food and the necessities of life, should be avoided. *A regressive tax is a tax that bears relatively more heavily on the poor than on the well to do.* The sales taxes paid on food by a wealthy family and by a poor one, for example, are not in proportion to the differences in their incomes. In fact, statistically it is more likely that the poorer man will have a larger family than the wealthier man, and hence even his food bill may actually be proportionately much higher.

A progressive tax is the opposite of a regressive tax. *A progressive tax is a tax that is stepped up according to ability to pay, with the amount increasing from lower income to higher income groups and falling more heavily on the rich than on the poor.* Examples are inheritance and income taxes. Both are levied at different percentage rates at different levels. Moreover, the increase in rates is very rapid, as illustrated by the maximum rates on personal income taxes in 1944 (net income without capital gains or losses):

Income	*Tax rate*
$2,000	3%
4,000	23
10,000	33
25,000	62
100,000	90
1,000,000	94

APPLYING THE PRINCIPLES OF TAXATION

Ease and Assurance of Collection as Factors

Fiscal policy—like most matters in the field of public affairs—involves a reconciliation of sometimes opposing factors in the determination of the best tax program. Expediency is one of these. Some forms of taxes, for example, are easier to collect or may be more reliable sources of income than others. In some there is less chance of evasion and hence less likelihood of the government's falling short of needed totals. Also, if a tax can be evaded, that fact is damaging to public morality and respect for the law.

Recognizing such factors, governments sometimes adopt tax policies which cannot be squared with the fundamental principle of ability to pay. For example, the general sales tax is a sure source of income. People must eat and they must clothe themselves. Moreover, even at a low rate, the sales levy will return a large total. On the other hand, it is unquestionably regressive, it is more difficult to administer than some, and evasion and dishonesty cannot be alto-

gether ruled out. The property tax, in contrast, is hard to evade and relatively easy to collect. The income tax is difficult to evade (although not so hard as the property tax, as a rule), but receipts from this source—since they must be estimated in advance—cannot be predicted with certainty. From the standpoint of expediency, therefore, there are advantages and drawbacks in all sources of public revenue, and each must be fully studied before a final determination of a tax policy is made.

Sufficiency of Amount

If the government is to balance its budget, the income from all sources of revenue must add up to the necessary total. The usual practice of public finance, therefore, has been to rely on a number of different tax sources, so that errors in estimating the returns from one will be compensated by unexpected yields from another. Moreover, this policy is usually more popular with the taxpayer, because when revenues are derived from transactions of many kinds, he does not feel the pinch at any point as much as he does when the total tax is taken from him at one time.

On the other hand, diversification of tax sources makes it more difficult for the citizen to follow and control governmental expenditures. If a source of public revenue could be found which would surely produce the required amounts, and which at the same time would encourage industry, increase employment, and further our well-being, and if also it were practical from the standpoint of collection, it would possess the principal desiderata of a good tax.

Encouragement of Production and Employment

The tax load should be distributed in such a way that the political economy is encouraged to increase production, employment, and economic well-being. It is easy to state the goal but more difficult to get the experts to agree as to how best to achieve it.

The Committee for Economic Development—whose monograph "A Postwar Federal Tax Plan for High Employment" was discussed in the preceding chapter—argues that the individual income tax should become the principal source of public revenue. The committee believes that excise taxes—with the exception of those on liquor, tobacco, and possibly gasoline—should be repealed, that income from all future securities issued by state and local governments should be made fully taxable (as suggested in the preceding chapter), and that double taxation should be avoided so far as possible. Most open to debate is the recommendation that income taxes on corporations (taxation at the source) be eliminated or greatly reduced.

These proposals of the C.E.D. are based on the following assumptions: Only greater production can assure greater employment; production will be increased only if fresh capital is invested; capital will not be invested without adequate incentive; incentive will be killed if the tax burden falls too heavily on corporations and on people with money to invest; taxes, therefore, should

be leveled on individuals rather than on the business system which produces profits to individuals. "Both through their effect upon incentives," says the C.E.D. monograph, "and through lessening of business savings, heavy taxes applied directly against corporate earnings have a peculiarly damaging effect upon the volume of employment."

A view opposing that of the C.E.D. has been stated by the late John Maynard Keynes, one of the leading economists of this century. Keynes reversed the assumptions that he, like other classical economists, had long held. "Interest today rewards no genuine sacrifice," he wrote, "any more than does the rent of land. . . . I see, therefore, the rentier aspect of capitalism as a transitional phase which will disappear when it has done its work. . . . I expect to see the State, which is in a position to calculate the marginal efficiency of capital goods on long views and on the basis of general social advantage, taking an ever greater responsibility for directly organizing investment. . . . I conceive, therefore, that a somewhat comprehensive socialization of investment will prove the only means of securing an approximation to full employment." [2]

From the standpoint of both effect on government and effect on the economy, the ultimate decision of the American people as between these two opposing views of political economy—that advocated by the C.E.D. and that held by Keynes—is perhaps the most important decision, in the realm of finance, of the next fifty to one hundred years.

Taxation as an Instrument of Social Control

In theory, the fiscal policies of a nation could be the means either of bringing about equality of income and wealth, or of fostering the widest possible differences in these respects. The power to tax is one of the so-called sovereign powers of the state. Constitutional provisions and legislation may specify the manner in which the various forms of taxation are to be distributed, and they may even prohibit them altogether, as the federal Constitution prohibits export taxes. Within these limitations, however, the power to set the amounts of taxes is discretionary.

Fortunately, popularly controlled governments generally try to avoid extremes and to shape basic economic and social policies within this area of discretion which, in fact, allows a good deal of room for social controls. Should small business be encouraged and monopoly avoided? Should home industry be helped and foreign manufactures excluded? Should the products of child labor be kept out of interstate commerce? Should earned income be encouraged and the returns on bonds and securities more heavily taxed? Should people be induced to stay on the land by lightening the load on the farmer? Should downtown real estate be taxed more heavily so as to speed up suburban decentralization?

These and many other forms of social control may be exercised through the

[2] *The General Theory of Employment, Interest, and Money* (New York, Harcourt, Brace and Company, 1936), pp. 164, 376, 378.

tax policy. John Marshall characterized taxation as "the power to destroy." It is also the power to remold the institutions and forces of society, the basic underpinnings which provide government with its problems, possibilities, tensions, and ultimate stability.

CONSTITUTIONAL PROVISIONS RELATING TO TAXATION

We have seen that the federal Constitution contains several provisions relating to taxation. Some of these have led to the formulation of important rules regarding the imposition of indirect and direct taxes, the prohibition of export taxes, and the sources and purposes of taxation in general.

In the field of indirect taxation, Article I, section 8, of the Constitution provides that "all duties, imposts, and excises shall be uniform throughout the United States." Duties and imposts are taxes on imports; excises are taxes on goods and services circulating within the country. The term "excise" has been greatly broadened and may now be used interchangeably with "internal revenue tax." The rule, therefore, is that *all indirect taxes must be uniform.* For example, you may have to pay more money in federal taxes on tobacco than your neighbor because you buy more tobacco than he, but the Constitution protects you in that *you pay the same rate on the same goods, no matter where you are in the country.*

Then there is the matter of direct taxes. These used to be important but are not so today—at least so far as federal revenues are concerned. Article I, section 2, of the Constitution provides that ". . . direct taxes shall be apportioned among the several states." In practice, direct taxation has proved very hard to administer. *A direct tax must be apportioned (spread out evenly) among the several states on the basis of population,* as determined by the census. This means a different rate of taxation in each state and runs into the difficulties noted above relating to practicality and ease of administration.

But there are also problems of definition. A property tax, for example, is a direct tax; but what is property? Is it the property itself, or the income from it? It has always been hard to draw a sharp line between direct and indirect taxes, with the federal income tax a notable case in point.

The federal income tax presents a special situation which, in the last half of the nineteenth century, led to a crisis in our national life. During the Civil War, Congress levied an income tax. It was applied uniformly throughout the nation and was upheld by the Supreme Court in the leading case of *Springer* v. *U. S.* (102 U. S. 586. 1880), apparently on the assumption that it was an indirect tax. In 1894 a new law took its place, but the general purpose and provisions were unchanged.

This law also was contested but this time the Supreme Court held that the income tax was a direct tax and hence must be apportioned according to population. This was the notable decision of *Pollock* v. *Farmer's Loan & Trust* (157 U. S. 429; 158 U. S. 601. 1895), and was a much-debated, five-to-four

decision. Apparently the shift in attitude between the first decision and the second was due to changes in the personnel of the Court.

This second decision seemed to abolish the federal income tax because to attempt to apportion it would have meant different scales of rates in each state; hence it not only was obviously unfair but administratively was virtually unworkable. Not until 1913, some eighteen years after the *Pollock* case, was the federal income tax revived. To do this required an amendment to the Constitution, the Sixteenth Amendment, which reads: "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."

Thus was settled the problem of the constitutionality of a federal income tax, but whether it is a direct or an indirect tax remains a moot question. The amendment, which merely authorizes the tax, does not say. Happily, however, the question is a legal and not a practical matter. Congress at once enacted an income tax law that is the principal source of federal revenue today. It is hard to imagine getting along without it.

In another field of taxation, export taxes are prohibited by the Constitution. The wording is precise and the meaning unmistakable, Article I, section 9, providing that "no tax or duty shall be laid on articles exported from any state." Why did the framers of the Constitution decide to tax imports but not exports? Apparently it was in order to encourage the great export trades in cotton and tobacco, which at that time constituted the mainstay of the economy of whole sections of the country, particularly in the South.

Congress has faithfully abided by the injunction. It does not mean, of course, that firms engaged in an export trade may not be taxed on their profits; they are taxed just as anybody else is. It is the commodities themselves in export trade which are exempt.

For what purposes may Congress levy taxes? On this point, Article I, section 8, of the Constitution says, in part, that taxes may be levied "to pay the debts and provide for the common defense and *general welfare* [italics ours] of the United States . . ." The words "general welfare" constitute a saving clause similar in import to the "necessary and proper" (elastic) clause that follows the enumeration of the powers of Congress. Were it not for the words "general welfare," the history of the United States might have been quite different because "debts" and "the common defense" obviously do not cover the whole function of the federal government. "General welfare," on the other hand, is sufficiently comprehensive to include every conceivable situation.

In a strictly legal sense the general welfare clause does not expressly convey to the federal government any powers that are not clearly provided, but in practice both Congress and the Supreme Court have been influenced from the first by the intent expressed therein. Thus interpretation has been able to stretch almost indefinitely the powers covered by these two words.

PRINCIPAL TYPES OF TAXES

Not all public revenues are derived from taxes, as we shall see, because there are also nontax revenues which come from the earnings of public enterprises such as municipal waterworks and power projects. Here the element of compulsion is not present—or perhaps it would be more accurate to say that in theory, at least, the revenues from a public enterprise are more voluntary because we may choose, if we wish, not to accept the services offered. But taxes are universal. Every country collects them. The government may be socialistic or primitive, advanced or decadent, but taxes in some form are invariably present. That this has apparently always been the case is revealed by the studies which anthropologists have made of primitive societies.

In the United States there are many sources of taxation on which the federal, state, and local governments may draw.

Payments in services or in kind. These are the oldest forms of payment, especially among primitive peoples. A South Sea Islander will turn over cocoanuts or grain to his chief; an Eskimo will give up a portion of his salmon catch. This is sometimes called payment in kind. It is rare in the United States today, although formerly it was common, especially in newly settled areas. We do find, however, the payment of taxes by means of services rendered, particularly in rural sections. A farmer, for example, may spend a certain number of days each year helping with the road maintenance work of his township. This is still a common practice, although increasingly the tendency is to compensate for such services out of the town treasury and to collect in a separate transaction the tax which is due.

Property taxes. These also are an old form of taxation, particularly taxes on land. A property tax is broadly defined today and includes the amount, value, and enjoyment of something which has economic worth, including anything tangible such as land, or an idea such as a patent or an exclusive privilege. For the most part, property taxes are now levied by the states or their local subdivisions.

Income taxes. These are levied by the federal government and by many of the states. An income tax is a tax levied on wealth in the process of acquisition, in the form of salaries, wages, commissions, rents, royalties, interest, dividends, business profits, or increase in capital actually realized. The income tax has become the principal source of federal revenue since the income tax amendment to the Constitution in 1913.

Inheritance and estate taxes. The inheritance tax is a tax levied on the share of the estate of a deceased person which an heir receives. It differs from the estate tax, which is a tax levied on the value of the whole estate.

Foreign trade taxes. There are several kinds of import taxes, including tariffs, import duties, and customs taxes. Usually they are ad valorem (literally, of the value), which means they are in proportion to the value of the goods; or they are a specific duty levied according to the amount of the commodity or goods

in question—so much a yard, a pound, or other unit of measurement. A tax on a person coming into the country is called a head tax.

Gasoline and automobile taxes. These deserve separate mention because they have become a principal source of state revenue. They are levied in the form of a tax on each gallon of gasoline, and as a registration fee on automobiles, trucks, and other motor vehicles, according to formulae which may differ in each state. The federal taxes on gasoline and motor vehicles, however, are uniform.

Sales taxes. During the past generation the sales tax has become an important source of state revenue, as previously explained. A sales tax is a tax levied by a state or a local subdivision on the sale of commodities, usually constituting a fixed percentage of the price and normally, although not always, paid by the consumer. A sales tax may be imposed for a particular purpose such as unemployment relief, or for general purposes, and the rates vary among the states and from city to city.

Excise taxes. These, as has been explained, are internal revenue taxes on a long list of commodities such as tobacco, liquor, minerals, theater tickets, and the like, in proportion to the value of the product or to the amount or value of the goods sold. Excise taxes are indirect taxes and must be uniform.

Business or professional license taxes. There are many of these, especially at the municipal level. They include the licensing of drugstores, barber shops, liquor stores, restaurants, and business establishments of many kinds.

Taxes on legal privileges. These also are of many types. For example, corporations are taxed on the right to do business, public utilities on their franchises, and railroads on their rights of way.

THE PRINCIPAL SOURCES OF REVENUE AT EACH LEVEL OF GOVERNMENT

The revenues that a government derives from its various sources present a constantly changing picture. New inventions such as the automobile, the telephone, the radio, and the airplane gradually create new sources of funds. Ideas of what constitutes a desirable tax policy also fluctuate, and expediency plays its role. One government may virtually pre-empt a particular field so that others must rely more heavily on the remaining sources of revenue. Or the financial needs of all governments will increase, as they have since World War I, and in consequence there will be a reshuffling of tax policy and an intensification of effort all along the line. But the general trends are sufficiently clear over periods of time to justify certain general characterizations:

Federal Revenues

The following table shows the picture so far as federal revenues are concerned. Certain trends stand out, notably the rapidly growing importance of the personal income tax as a source of funds. Corporate income taxes also have increased in amounts, although as a portion of the total they are less productive

than formerly. Miscellaneous internal revenues have also declined in importance, although not in amounts.

RECEIPTS OF THE FEDERAL GOVERNMENT, FROM ALL SOURCES, 1941 THROUGH 1944

(In millions of dollars)

	1941		1942		1943		1944	
Income taxes:								
Corporation	$ 1,852	18%	$ 3,069	17%	$ 4,521	13%	$ 5,284	9%
Individual	3,470	34	7,961	43	16,094	49	34,655	57
Total	$ 5,322	52%	$11,030	60%	$20,615	62%	$39,939	66%
Excess profits taxes	$ 201	2%	$ 1,675	9%	$ 5,148	15%	$ 9,483	16%
Miscellaneous internal revenue	2,967	28	3,847	20	4,553	14	5,291	9
Miscellaneous receipts	508	5	277	2	906	3	3,280	5
Customs	392	4	389	2	324	1	431	1
Employment taxes and railroad unemployment insurance contributions	932	9	1,194	7	1,508	5	1,751	3
Total	$10,322	100%	$18,412	100%	$33,054	100%	$60,175	100%

Source: Annual Report of the Secretary of the Treasury, fiscal year ended June 30, 1944, pp. 12, 13, 17.

It is also interesting to note that federal revenues have increased each year by approximately 100 per cent from 1941 through 1944.

State Revenues

By 1940, just prior to the entry of the United States into World War II, motor vehicle and gasoline taxes had become the principal sources of state funds, far outdistancing the general property tax, formerly the leader. In 1919, for example the general property tax accounted for 45 per cent of all state income, whereas in 1942 it yielded less than 4 per cent of the total. There were two reasons for this shift: gasoline taxes, income taxes, and sales taxes had rapidly increased; and second, the general property tax had been relinquished to the local subdivisions, several states having discontinued it entirely as a source of state funds. Furthermore, by 1942 almost two thirds of the states had adopted personal and corporate income taxes.

In 1941, when we entered World War II, the gasoline tax fell temporarily in importance because of the restricted use of automobiles. The sales tax rose to first place in over thirty states, unemployment compensation taxes came second, and state income taxes third. The following is a summary of state tax collections for 1942 and 1943, and a comparison between the two, by source.

In the future we may expect the gasoline tax, income tax, unemployment insurance levies—and possibly also sales taxes—to lead the list in state finance. It seems safe to say that the general property tax will finally be left to the municipal and other local governments altogether.

SUMMARY OF STATE TAX COLLECTIONS FOR 1943 AND COMPARISON WITH 1942

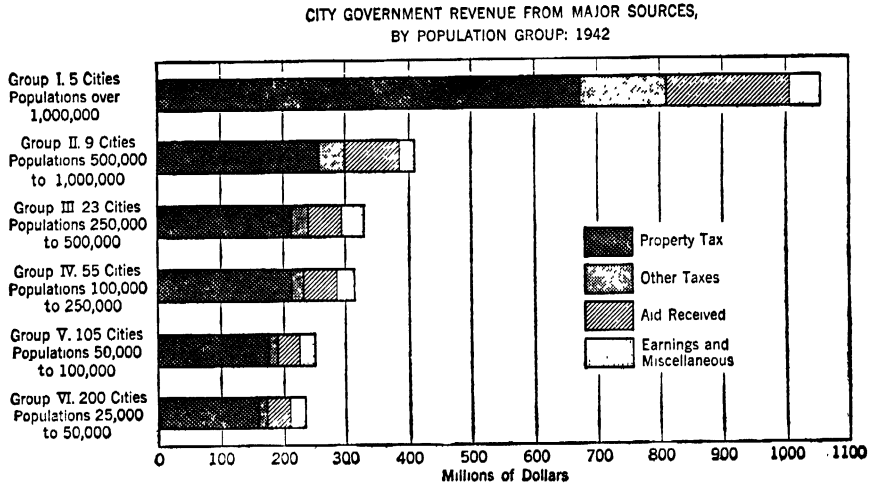
(*Dollar amounts in millions*)

Tax source	1943	1942	Comparison of 1943 with 1942 (1942 = 100)
Total collections:			
Including unemployment compensation	$5,094	$4,975	102.4
Excluding unemployment compensation	3,923	3,899	100.6
Sales and gross receipts	2,152	2,219	97.0
General sales, use, or gross receipts	671	633	106.0
Motor vehicle fuels	777	942	82.5
Alcoholic beverages	280	256	109.4
Tobacco products	141	131	107.6
Insurance companies	120	113	106.2
Public utilities	115	99	116.2
Other	48	45	106.7
Licenses and privileges	670	686	97.7
Motor vehicles and operators	395	431	91.6
Corporations in general	107	88	121.6
Alcoholic beverages	55	56	98.2
Hunting and fishing	23	24	95.8
Other	91	87	104.6
Individual income	293	249	117.7
Corporation income	340	274	124.1
Property	258	271	95.2
General	163	175	93.1
Selective	95	96	99.0
Death and gift	109	112	97.3
Severance	75	62	121.0
Other	26	25	104.0
Unemployment compensation	1,172	1,076	108.9

Source: U. S. Bureau of the Census, *State Finances, 1943.*

Municipal and Local Revenues

The general property tax has long been the principal source of income for counties, cities, and other forms of local government. In 1943, for example, the cities depended on this tax for two thirds of their general revenue. Now that the states have virtually withdrawn from this field, the general property tax will probably continue to lead at the local level for some time to come. Other elements in the picture, however, are becoming increasingly prominent. Thus large amounts of state revenues derived from the gasoline tax and other sources are now turned back to local governments for their own uses. The federal government, as noted in Chapter 10, has rendered considerable financial assistance at the local level. Licensing and other forms of municipal revenue produce substantial totals; and many municipalities derive large sums from productive sources of their own, principally public-utility services. He is a rash person, therefore, who would predict that twenty years hence the general property tax would still constitute the major source of municipal, county, and local finance.



Source: U. S. Bureau of the Census, *City Finances, 1942.*

Double Taxation and Tax Conflicts

Because of the multiplicity of governmental units in the United States, we have more than our share of problems arising from conflicting and duplicating taxation. In recent years the cry of double taxation has been wide and loud. The federal government levies a personal income tax, as do many of the states. The federal government taxes corporate earnings at their source and also taxes the stockholder to whom the dividend is paid. These and many other examples—such as property or gasoline taxes imposed by two or more governments—cause people to complain that taxation is illogical and unfair when it doubles up on a single source. But from the government's standpoint it may not seem illogical at all. The sources of revenues are limited and some are much better producers than others. It is argued, therefore, that one must pick where the pickings are good. And yet most of us would agree that, as a wise over-all policy, conflicting taxation should be avoided where possible.

If state and local tax duplications are to be avoided, it seems clear that the state legislature must assume the responsibility for their elimination, because it is the legislature that controls the sources from which local subdivisions derive their funds, as well as the incidence of their own tax laws. But state legislatures do not always assume this responsibility. And then, of course, there remains the complication of what the federal government will decide to do. What, therefore, is the solution of double taxation and conflicting tax jurisdictions? This will be one of the most important questions for countless taxpayers and citizens in the years which lie ahead.

There are several possible answers. First, the various levels of government might divide all the sources of revenue among themselves and agree that they would not deviate therefrom. This is impractical, however, for several reasons,

but principally because no such agreement could be expected to materialize. Nevertheless, it is encouraging to note that it has been attempted in some states and although the results are not outstanding, the system remains in effect. Perhaps it is worth further investigation.

Second, the federal government might collect virtually all taxes and turn back to the states their appropriate share, after which the states could finance county and local units. This sounds like a logical and simple scheme. A highly centralized government would doubtless look on it with favor, but the states' rights sentiment in this country can be relied on to make any such undertaking seem visionary for the present.

Under a modification of this plan the federal government would collect a certain (and growing) number of taxes, portions of which would be turned back to the states. This is a current development especially in the field of social security, and further extensions seem likely. Still another variation of the same principle would be an extension of federal aid to the states which, as we have seen, is already substantial. This also may be anticipated.

Where a state imposes a tax in a field already occupied by the federal government, the latter might grant the taxpayer an allowance for that percentage of the tax collected by the state. This is already done in the case of inheritance taxes. The effect, of course, is to encourage all states to adopt uniform tax laws. But this system would be resisted, particularly by those states which do not levy state income taxes.

Finally, administrative coordination might help, even when separate laws and sources of revenue are left in existence. For example, why not collect all federal and state income taxes, all gasoline taxes, and the like, through a single set of officials? Each government would then get its share by a simple bookkeeping device. This procedure would reduce the expense of administration and in some cases might be less of a burden on the vendor (in the case of sales or gasoline taxes) and on the public. There are seemingly large possibilities in this area.

Ultimately, however, we cannot escape the realization that so long as the units of government in the United States are diverse, and state and local freedoms unrestricted, we can hope for only a gradual improvement in solving the problems of double taxation. Apparently this is part of the price we pay for democracy—experience in other countries seems to confirm such a conclusion—and who will say that the price is not worth it?

REVENUES OTHER THAN TAXATION

It is estimated that in 1940, the last year before the United States entered World War II, the *nontax revenues* of American governments at all levels amounted to the respectable total of over $2 billion. This is a little less than half of the amount which the states alone, that same year, collected through taxation. This figure does not include another billion dollars in grants-in-aid paid out by federal and state governments. Since these grants-in-aid were funds

originally derived from taxation or borrowing, they should not be classified as a nontax revenue. Nevertheless, they did materially reduce the remaining sums that local governments had to collect through outright taxation.

Where do these nontax funds come from? Principally from earnings of one kind or another, and from fines or other income, mostly from the courts. Of these two sources, the greatest yield was from the earnings of various public enterprises. The United States Post Office, for example, took in $750 million. Then somewhere between 100 and 150 municipalities were entirely tax free because of the income from one or more municipal utilities such as water, electricity, fuel gas, local transportation, and so on. The total receipts from revenue-producing enterprises of all kinds—state and local—amounted to almost as much as the income from the Post Office. The financial situation of nearly 500 municipal enterprises is shown in the following table:

SELECTED TRANSACTIONS OF CITY-OWNED-AND-OPERATED PUBLIC-SERVICE ENTERPRISES, 1942

(Dollar amounts in thousands)

Item	*Total*
Number of enterprises	498
Water supply	321
Electric light and power	45
Transportation (transit, toll highways, and terminals)	13
Airports	52
Other	67
Operating revenue	$610,874
Operating expense	331,560
Contributions from city	92,737
Grants from other governments	7,792
Contributions to city	25,016
Debt service	220,235
Interest	123,406
Provision for debt retirement	96,829
Gross debt	3,334,758

Source: U. S. Bureau of the Census, *City Finances, 1942.*

These revenue-producing enterprises are customarily labeled "business" and hence they are generally viewed differently from other public programs. It is not that a business enterprise provides a service while those of the government do not. Rather, the difference is in the financial methods used. We pay an electricity bill instead of an annual tax bill; theoretically we can take the service or leave it; and these enterprises keep their own accounts.

This whole matter will be gone into more fully in a later part of the book.[3] At this point it is important simply in order to complete the total revenue picture, although this source of income is of interest as a possible means of bringing about lower tax rates. With our total tax bill now so large a portion

[3] Part Eleven, "Government and Economic Welfare."

of our national income, we may anticipate added pressures to increase the receipts of revenue-producing public projects, thereby reducing the amounts to be raised in taxes. What would be the effect of this development on other sources of revenue? These and many similar questions must be postponed for a later consideration.

The emphasis in this chapter has been on the importance of money to government, which cannot operate without funds. Public services require a large chunk of our national income. Wars—the indebtedness of past wars and preparedness for future possible wars—easily constitute a third of the financial requirements of the federal government in peacetime. But in the war year of 1944, federal expenditures on wartime activities alone reached a peak of $87 billion, or 93 per cent of the total. A study of the administrative problems of budgeting and finance and the discussion of the business functions of government will come later. We must now see how we as citizens, and the groups to which we belong, go about forming the policies and shaping the practical politics of government.

SUPPLEMENTARY READING

1. Texts on public finance: See "Supplementary Reading," Chapter 12.

2. Additional references on revenues and taxation: Twentieth Century Fund, *Facing the Tax Problem* (New York, 1937); Tax Institute, *Tax Policy* (monthly, Philadelphia); Roy G. Blakey, *Taxation in Minnesota* (Minneapolis, 1932); Illinois Tax Commission, *The Illinois Revenue System, 1818–1936* (Springfield, 1936); and the annual and biennial reports of the various state tax commissions. One of the best surveys is that of Clarence Heer, "Taxation and Public Finance," in *Recent Social Trends* (New York, 1933), pp. 1331–1390. See also A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 23, "Raising the Money for Government."

3. Forms of revenue and taxation: R. G. and G. C. Blakey, *The Federal Income Tax* (New York, 1940); C. Shoup, "The Taxation of Excess Profits," *Political Science Quarterly,* LV (Dec., 1940), 535–555, and LVI (Mar., 1941), 84–106; P. A. Bidwell, *Tariff Policy of the United States* (New York, 1936); and G. Beckett, *The Reciprocal Trade Agreements Program* (New York, 1941).

4. State and local finance: R. Blough, *Tax Relations among Governmental Units* (New York, 1938); R. G. Hutchinson, *State-Administered Locally Shared Taxes* (New York, 1931); A. G. Buehler, *General Sales Taxation* (New York, 1932); J. D. Silverherz, *The Assessment of Real Property* (Albany, 1936); C. E. Rightor and I. A. Applebee, *Property Taxation* (Bureau of the Census, Washington, 1942); and R. M. Haig, *The Sales Tax in the American States* (New York, 1934). On conflicting taxation, see Interstate Commission on Conflicting Taxation, *Conflicting Taxation* (Chicago, 1935).

PART FIVE THE PEOPLE AND THEIR GOVERNMENT

CHAPTER 14

Citizenship as Participation in a Democracy

THUS FAR several of the basic factors of government have been considered: its history, definitions, and concepts; its development in the United States, constitutional settings, levels of authority and coordination, and the financial energy that keeps it running. What follows here is a series of chapters on highly human matters, chapters that study the people, what they want out of government, and how they secure it.

In the present chapter, the basic question of citizenship as participation in the control of government precedes a subsequent examination of the relation of human nature to government, the influence of public opinion, and the devices of propaganda. Next comes a study of the machinery of the political process, including the organization and functioning of political parties, the mechanics of the electoral system, and the way people behave when exercising their right to the franchise. This part of the book concludes with a study of the effect of pressure groups on American politics.

Basic to all these questions is an understanding of citizenship, citizenship as membership in a political community, citizenship as the right to participate in other forms of political activity. Citizenship identifies us with our community, establishes our political loyalties, and carries with it the obligations to defend the country and to support it by the payment of taxes. But most important of all, citizenship provides the basis for taking part in government, for helping to establish its policies and control its personnel—legislative, executive, and judicial. Widespread citizen interest and participation are the only guarantees of popular government; if they fail, then written constitutions, independent courts, bills of rights, and all the other bulwarks of freedom must eventually prove inadequate. *To the degree that a government is narrowly controlled by the few, to that extent do individuals become subjects, with their duties exceeding their rights; but to the degree that government becomes broadly controlled, to that extent do individuals become participants or partners in it, with their rights and duties determined by themselves.*

Citizenship in Historical Perspective

If we look back over history we find that citizenship was usually a minority privilege and hence highly prized. Often it was considered as precious as life itself. Citizenship was not within the reach of all, and hence it was the more valued by both the citizen and the noncitizen alike. The principle here is akin

to the scarcity theory in economics: men seem to desire that which is scarce more than that which is common.

In Athens at the time of the Peloponnesian War (431 B.C., during the so-called Golden Age of Pericles), of a male adult population of 115,000, 50,000 were Athenians, 15,000 were metics or foreigners, and 50,000 were slaves. Since only a child of Athenian parents could become a citizen, less than half of the male adult population was admitted to citizenship. The rights of participation among the citizens were extensive, as has been noted,[1] whereas the 65,000 noncitizens who were excluded from the active government of the city-state were only subjects.

In Roman history the situation was at first substantially the same. At the time of the Twelve Tables (451 B.C.), citizenship was confined to the patrician class in Rome itself. Two hundred years of effort on the part of the plebeians to secure citizenship, with its property, marriage, and political rights, were finally successful. In 90 B.C., Roman citizenship was extended to all free men in Italy. Then, as the empire spread over Europe, North Africa, the Near East, and the British Isles, the demand for Roman privileges appeared over wide areas, and in 212 A.D. all free men in the empire were permitted to become citizens.

Two factors have brought about the nearly universal citizenship that exists in the Western world today: the abolition of slavery, serfdom, and other forms of subjugation; and the division of the world into sovereign political states with fixed boundaries within which the inhabitants owe definite allegiances. When nomadism came largely to an end and debarments to citizenship were removed, there followed an enormous extension of citizenship rights, so that in countries like the United States and Great Britain it is almost universal.

Does citizenship mean as much to the possessor when it is universal as when it is monopolized by a minority? When they become universal, are the right to vote and other opportunities for participation in the control of government as highly prized as they might be? Or is scarcity the necessary condition for sustained value? An affirmative answer to this last question bespeaks a pessimistic view of human nature, but it does call attention to an ever-present problem of representative government. We who have acquired the rights of American citizens by the fact of our birth seem to appreciate them less than many aliens who have lived under less democratic regimes and who must struggle to qualify for what we take as a matter of course.

LANDMARKS IN AMERICAN CITIZENSHIP

Until the Civil War, citizenship in the United States was primarily state citizenship. Since the adoption of the Fourteenth Amendment to the federal Constitution, citizenship has been both national and state. This development is in line with other state-federal equilibria noted in the preceding chapters, with

[1] Above, Chapter 2, pp. 19–20.

the balance of influence and growth of power usually shifting from the state to the federal government.[2]

The Constitution as originally adopted referred to citizenship no less than seven times, but in no instance was the term defined. The presumption, therefore, was that although citizenship could be both state and federal, state citizenship predominated. The *Dred Scott* case,[3] decided shortly before the Civil War, seemed to confirm this view. In this historic instance, it will be recalled, the Supreme Court held that a native-born Negro who was taken into a "free" state could not thereby acquire citizenship and freedom.

The adoption of the Fourteenth Amendment to the Constitution in 1868 superseded the *Dred Scott* decision and made United States citizenship paramount in all cases. According to this basic citizenship provision, "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." (Italics ours.)

There are four important inferences to be made from this wording: (1) The foundation is laid for universal citizenship because birth and naturalization cover every case. (2) There is an important proviso—a person must be *subject to the jurisdiction* of the United States or citizenship may be withheld. (3) National citizenship is paramount. (4) A citizen of the United States automatically becomes a citizen of any of the forty-eight states, whether he is born there or moves there. Thus state citizenship, like national citizenship, is potentially available to all, through either birth or naturalization.

The Doctrines of Jus Soli and Jus Sanguinis

Generally speaking, two theories of citizenship exist in the world today. The British follow the rule of *jus soli,* law of the soil or birth. This means that a person is a citizen of the country in which he is born. The other doctrine, which is the Continental rule and traceable to Rome, holds that citizenship derives from the nationality of the parents; this is called *jus sanguinis,* law of the blood. Under this concept, no matter where a person is born, his citizenship remains that of his parents. In the United States, *jus soli* is the predominant rule, and all persons born in this country automatically become citizens thereof. But we also recognize *jus sanguinis,* in that children born abroad of American parents may also acquire American citizenship.

The *Dred Scott* decision jeopardized the dominant rule of *jus soli,* as did the dicta (words expressed by the Court) in the famous *Slaughterhouse* cases (16 Wallace 36. 1873), which were decided following the Civil War. Here the Supreme Court went out of its way to express the opinion that a child born in the United States of parents who were citizens of a foreign state did not acquire American citizenship by birth because he was not subject to the jurisdiction of the United States. It began to look as though the rule of *jus soli*

[2] See Chapters 9 and 10.

[3] *Dred Scott* v. *Sanford* (19 Howard 393. 1857); discussed above in Chapter 9.

might be even further weakened, until the decision in the case of *Wong Kim Ark* firmly re-established its position.

The Wong Kim Ark Case

This case (169 U. S. 649. 1898)—which related to the citizenship of a son born in the United States of Chinese parents—was destined to become the leading case relating to citizenship. Wong Kim Ark had been born in San Francisco but was refused readmission to this country as a citizen on his return from a visit to China. His parents were not citizens and could never become so because of the provisions of the Chinese Exclusion Acts. How would the Supreme Court interpret the provisions of the Fourteenth Amendment? Was Wong Kim Ark a citizen of the United States even though his parents could never be naturalized?

The Court decided that he was. The words "all persons born . . . in the United States" mean exactly what they say—namely, "all" persons—so long as they are "subject to the jurisdiction" of the United States. How could a person not be subject to the jurisdiction of the United States? The Court mentioned two possibilities: (1) children born of alien enemies in hostile occupation—something that we hope will never occur; and (2) children of diplomatic representatives of foreign states, who are held to share some of the sovereign immunities of their parents.

The real importance of the *Wong Kim Ark* case, however, was to make it clear that no matter what a person's nationality, race, color, religion, or previous condition of servitude, he automatically becomes a citizen of the United States so long as he is born in this country and is subject to its jurisdiction.

LAND OF THE IMMIGRANTS

The United States is an international government on a national scale. We have drawn our population from the four quarters of the earth. To the extent that we have lived in national harmony and have prospered—both of which statements are largely true—our experience seems to indicate that all peoples of diverse races and languages may some day live in harmonious international relationships. Except for the Indians, everyone in the United States is an immigrant or the descendant of an immigrant. Although outstanding cases to the contrary may be cited, in general our characteristic attitude of tolerance and mutual adjustment in the relations between races is one of the best aspects of our American tradition.

In 1945 the population of the United States was estimated at more than 140 million people. Altogether, some 40 million have entered this country as immigrants, with 30 million arriving in the nineteenth century alone. These 40 million immigrants constitute the basic stock of our population, with those of us who were born here being merely derivative. According to the 1940 census, half of us still have one or both parents who were born abroad. And yet ours is literally a country of "the vanishing alien." The number of aliens

is now in the neighborhood of 3 million, whereas, ten years ago it was twice that many. In our lifetime we may see the melting pot stop boiling, except for the annual trickle of restricted immigration allowed by law.

The rapidity of immigrant assimilation in this country has been remarkable. "They are all Americans," says D. W. Brogan in *The American Character.* America denationalizes quickly, he points out. "The American Pole is more like the American Finn than either is like a pure Pole or a pure Finn." And yet this British writer emphasizes what we all know—that, culturally and politically, in some ways we are less unified than we were at the time of the Revolution when the stock was more homogeneous and language and customs were less diverse. Nevertheless, there is an American unity. It is a unity of ideas, a common belief in certain values. We believe in the dignity of man, the improvability of human nature under desirable conditions, freedom of opportunity, freedom to experiment and to be different, and the necessity of reconciling personal interest with the common interest. Here again we find a possible clue which may help to unify the world: unity of race is not necessary so long as there is unity of human values.

Principal Stages of Immigration

There are five principal periods of immigration history which may be noted:

1789–1891—a period of a century, from the first Congress to the imposition of the first restrictions on immigration with the adoption of the Chinese Exclusion Acts.

At the time of the Revolution, the three million people living in America were primarily from the British Isles and Northern Europe, and they were strongly Protestant. In the nineteenth century, however, the Irish came in large numbers, as did the Germans, particularly after the ill-fated liberal revolutions of 1848. And finally, Chinese workmen were brought over in large numbers when the Western railroads were built. Because these people worked for a low wage and were seemingly a threat to American labor standards, the Chinese Exclusion Acts were passed. Organized labor was primarily responsible for securing restrictive immigration laws and for setting up federal machinery to administer them.

1891–1917—a period during which immigration hit its peak, reaching a high mark of nearly 1,300,000 in 1907. This was followed by another major influx, in 1913 and 1914, just before the outbreak of World War I.

The preponderance of national origins shifted during this time from Northern and Western to Southern and Eastern Europe, increasing the Catholic influence in the United States. Moreover, unlike the earlier immigrants—especially the Germans—who settled in rural areas, the new immigrants tended to congregate in the larger cities, providing a steady stream of new labor for industry but also raising many new problems of city government and welfare.

1917–1924—A relatively short period but significant from the standpoint of legislation. Modern immigration policy properly begins with the year 1917,

when a drastic immigration restriction law was passed. Again because of the competition of immigrants who were content to work for low wages, organized labor took an active part in seeking to impose controls. The new law established additional qualifications for admission to the United States, provided for exclusion under certain circumstances, and invoked the severe power of deportation, authority which could be used retroactively in certain specified situations.

Two other basic enactments, the quota law of 1921 and the national origins law of 1924, were also adopted. The 1917 legislation was merely restrictive; the 1921 and 1924 laws went further and became selective.

The quota law of 1921 provided that the various countries were to be allowed up to a certain number of immigrants each year on the basis of census data. The national origins legislation of 1924 set the total number of persons who might be admitted to the United States at a specific figure (153,879 as of 1945) and allowed each country a quota based on the proportion of its population to the white population of the United States as it stood in the census of 1920. Except for the Philippine Islands, which were allowed only 50, no quota could be smaller than 100. Under this plan, Great Britain and Northern Ireland got 65,721, Germany, 27,370, the Irish Free State (Eire) 17,853, and other nations considerably less—Poland 6,524 and Italy 5,802, for example. In addition, the quotas are available only for persons who are admissible under specified rules and who are eligible to citizenship.

1924–1940—a period between two world wars, during which immigration dropped off rapidly following the depression which began in 1929. For several years before World War II, the number of aliens deported, or who left the United States of their own accord, exceeded the number of those who came in under the quotas. This resulted in a net emigration over immigration. Furthermore, naturalization was speeded up, contributing to the rapid assimilation of the foreign born.

During this period also, two important laws were passed. These were (1) the Alien Registration Act of 1940, which provided for a complete and mandatory census of aliens, and for legalizing the status of so-called hardship cases otherwise subject to deportation; and (2) the Nationality Act of 1940, which codified all law relating to naturalization and citizenship. It was because of these enactments that the Immigration and Naturalization Service was in so favorable a position when the United States entered World War II and the service was entrusted with the administration of the enemy alien program.

1940 to the present—the period of World War II, during which both immigration and deportations virtually came to a standstill. At the beginning of the war Alien Enemy Hearing Boards—consisting primarily of lay members —were set up to hear cases to decide which aliens could be left at large and which should be kept in custody. A remarkable degree of fairness was secured in the conduct of these hearings. Sabotage was limited to the vanishing point.

The civil liberties of aliens were never more securely preserved in wartime than during this period.[4] America has reason to be proud of the loyalty of her millions of immigrant citizens and of the high standard of justice maintained during the war.

Also during this period the Chinese Exclusion Acts were modified by Congress to allow the admission of Chinese on a quota basis (105 each year) along with other eligible peoples.

The Future of Immigration

During the past half century the United States has added to its population approximately 24,000,000 aliens—a remarkable total. What does the future hold? The trends indicate that the rate of population increase through immigration will be nowhere near as rapid as in the past. In 1940, for example, 144,000 aliens left the country while only 70,000 out of a possible total of 153,000 entered as immigrants for permanent residence. In this same year, 18,000 deportation proceedings were undertaken, a large percentage of which, however, had to be postponed until after the war. A quarter of a million persons moved from alien status to citizenship via naturalization. Thus the alien portion of our population is diminishing.

In the future, however, millions of homeless persons throughout the world will want to enter our country. Millions of others would eagerly move to the United States, where opportunities of all kinds are greater, if given the chance. What are the factors to be weighed in the balance? On the side of a liberal immigration policy is the fact that America still has plenty of room; opportunities in war-torn countries are not good; and there are many desirable immigrants who would come. On the other hand, we would not want additional workers and wage earners if another depression were to appear, because we would need the jobs for our own citizens; any large number of immigrants might have a depressing effect on wages; and we should thoroughly assimilate those who have come in recent years before adding to their number.

These are the general arguments in this hotly contested issue. In recent years the prevailing temper of Congress has been exclusionist, and proposals have even been advanced to cut off new-seed immigration entirely. It seems, therefore, that existing totals are not likely to be raised and may even be reduced.

Some question exists as to whether national origins is a satisfactory basis on which to determine selective immigration. In fact, there can be no real selection under the present system. It is merely a perpetuation of percentages. Some of the British dominions have gone further than we in this matter, sending their immigration officials abroad to interview applicants at firsthand. Under a positive program of this kind, they decide what particular skilled groups are needed and then go out after those who qualify. If Canada, for example, needs Dutch bulb-growers to round out her agricultural economy, emphasis is at

[4] For a criticism of our treatment of Japanese-Americans during World War II, however, see Eugene V. Rostow, "Our Worst Wartime Mistake," *Harper's Magazine*, 191 (Sept., 1945), 193.

that point. Or Australia may require trained workers in the dye-stuff industry. We might profitably take a cue from the experience of these nations.

There are many difficult questions of national policy in the field of immigration. To what extent, for example, should we emphasize literacy and a knowledge of government? Some European countries make an understanding of their governmental system a rigid requirement for naturalization. And how can citizens be expected to participate actively in the operation of popular government unless they can read and write?

In this country we have recognized the importance of trained citizens—somewhat belatedly, perhaps—and in the past few years have been carrying on a National Citizenship Education Program designed to improve the literacy of all aliens and to give them a knowledge of our governmental purposes and institutions. The program has done a great deal of good. But we now realize that such training is equally needed among our own native-born adults, and it is possible that it will be extended in that direction.

Deportation is also a difficult question of public policy. Some of the grounds for deportation are illegal entry, criminality, prostitution, the likelihood of becoming a public charge, and advocacy of anarchism or violent overthrow of the government. A majority of deportation cases involve entry without proper documents and inspections. Aliens who enter illegally are called "wet" aliens, to signify that many of them wade or swim across the rivers which separate us from Canada and Mexico.

There is no question that deportation is necessary if the gates are not to be thrown wide open; otherwise there would be no effective deterrent to illegal entry. But how far we should go in insisting upon deportation is often a difficult decision. When a man has lived in the United States for forty years, is married to an American wife and has four citizen children, should he be returned to a country he has not seen since childhood and whose language he cannot speak? Should we separate husband and wife, father and children, and leave a family without support? In thousands of such cases, under the law, deportation has been mandatory.

The difficulty was partly corrected, however, under Title II of the Alien Registration Act of 1940, which provides that in deserving hardship cases—where the only offense is illegal entry and where other factors are favorable—the Attorney General may recommend to Congress that individuals be allowed to remain with their families and to have their status rectified. Scores of such cases are laid before Congress annually and if that body does not act unfavorably, the recommendations have the force of law.

The ten states which lead in the percentage of their alien population, in order, are New York, California, Pennsylvania, Massachusetts, Illinois, Michigan, New Jersey, Texas, Ohio, and Connecticut. Since the alien population has an important bearing on the composition and strength of American political parties, it is a factor to be considered.

SOME RULES REGARDING CITIZENSHIP

The law of citizenship is complex, but a few guiding principles kept in mind will make it easier to understand:

A child born outside the United States of parents who are American citizens may, by compliance with laws of Congress, secure his American citizenship even if he does not come to these shores immediately.

On reaching the age of majority, a person may be admitted to American citizenship even though his parents may have relinquished their American naturalization while the child was a minor in this country. This is the rule laid down in the case of *Perkins* v. *Elg* (307 U. S. 325. 1939).

The inhabitants of annexed territories may be naturalized en bloc. This has been done, for example, with regard to the citizens of Alaska, Hawaii, and Puerto Rico.

Dual citizenship is possible. Since 1922, for example, a woman may retain her American citizenship even though through marriage she automatically acquires the citizenship of her foreign husband.

American citizenship may be given up or lost by expatriation (this takes several forms) or, in the case of a naturalized citizen, by living in a foreign country for a longer period than provided by law. Citizenship may also be taken away by court proceedings when it can be shown that a naturalized person was disloyal to the United States and failed to renounce his previous loyalty. This extreme penalty is vigilantly guarded by the courts. It was invoked, however, in some of the Nazi Bund cases during World War II.

Naturalization Procedure

The power to naturalize aliens, like the power to admit immigrants to the United States, is one of the express powers of Congress found in Article I, section 8, of the Constitution, where it is stated that Congress shall have the power to "establish an uniform rule of naturalization." The states are powerless in the field of naturalization. This was held as early as 1817 in one of Chief Justice Marshall's decisions (*Chirac* v. *Chirac,* 2 Wheaton 259), in which the Supreme Court held that the naturalization power is exclusively federal and not concurrent.

There are two ways of acquiring citizenship in the United States, by birth or by naturalization. Naturalization, in turn, may be subdivided into group naturalization, naturalization by reason of service in the armed forces (provided by Congressional action during World War II), or—the common method—individual naturalization.

Group naturalization is sometimes called collective naturalization or naturalization en bloc. It consists of the admission, by act of Congress, of the entire body of inhabitants of a territory or dependency of the United States. The inhabitants of Louisiana, Florida, Alaska, and the Virgin Islands were naturalized in this manner. Annexation, however, does not automatically result in

the granting of citizenship; it is a matter to be determined in each case by Congress. When the Philippines, Guam, and Puerto Rico were acquired after the Spanish-American War of 1898, for example, the treaty of peace specifically barred their inhabitants from American citizenship, a policy which was later modified by Congress.[5] Where citizenship is withheld, the inhabitants of ceded territories are designated "nationals" of the United States, in the eyes of international law, but they are nonetheless entitled to the diplomatic protection and immunities of citizens.

There had been rudimentary legislation relating to naturalization as early as 1790, but the basic act relating to individual naturalization was passed by Congress in 1906. Under the provisions of this law, naturalization procedure was seemingly entrusted almost wholly to the court system of the country. Increasingly in recent years, however, it has become an administrative procedure, with a court of competent jurisdiction merely approving or rejecting the recommendations of an official of the Immigration and Naturalization Service. The revised system has worked well, on the whole, because it saves the time of the courts, makes a more thorough investigation possible, and provides an opportunity to prepare candidates for admission to citizenship by instruction, if necessary, in the language and in citizenship. The final decision is made by the courts, however, and hence the judiciary acts as a check on the administrative procedure.

In the series of steps involved in the naturalization process, the alien must first prove that he has been legally admitted to the United States and that he has resided here the requisite length of time. He must then give certain assurances in his petition for naturalization, among them a statement that he intends to remain permanently in the United States and that he supports our form of government.

Next, a hearing is held before the naturalization examiner, and two witnesses who know the petitioner must appear in his behalf. Following this, an investigation is made into the alien's loyalty, character, and the like. He must also be able to pass the loyalty and citizenship requirements, the latter consisting of a knowledge of our form of government and its operation.

If the applicant satisfies the Immigration and Naturalization Service on all these scores, he appears before the court with the examiner and receives his final papers. At this time he may be questioned further by the judge, although this procedure is now uncommon. Usually petitioners are given the oath of allegiance in groups and with appropriate ceremonies.[6]

If, before his appearance in court, the alien fails to satisfy the naturalization

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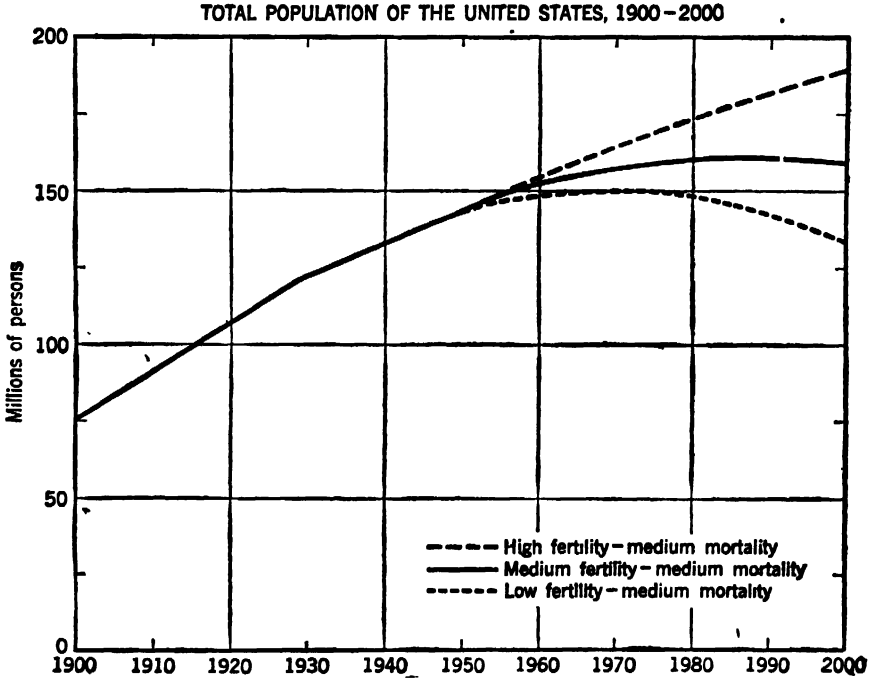
[5] The legal status of territories and dependencies is dealt with in Chapter 42, "The External Affairs of the United States."

[6] For more detailed information regarding naturalization requirements, consult Luella Gettys, *The Law of Citizenship in the United States* (Chicago, 1934), Chapters 3, 4, and 6. On the reforms of recent years, see Marshall E. Dimock, "Administrative Standards for Improving Naturalization Procedure," *American Political Science Review*, XXXVII (Feb., 1943), 81–90.

officials as to his lawful admission, residence, loyalty, morals, or literacy, he must rectify these matters even if it involves additional time. In the case of an alien married to a citizen, the procedure is somewhat shortened. Some groups are still ineligible to naturalization because they do not qualify as "white Caucasians." This means that most Asiatics are barred.

THE POPULATION PROSPECT IN AMERICA

The population of the United States, now approximately 140,000,000, makes this country one of the largest in the world. Only China, India, and the Union of Soviet Socialist Republics are larger. However, the average density of our population per square mile—44.2 in 1940—is considerably below that of many countries, especially those with smaller land surfaces. Moreover, the rate of our population growth is slowing down. In the period of rapid expansion due



TREND OF THE TOTAL POPULATION

Actual 1900 to 1940, estimated 1950 to 2000, under alternative assumptions of fertility and mortality.

to immigration, 1900–1920 (with peaks in 1907 and 1914), the increase was 21 per cent; from 1920 to 1930 it was 16 per cent; whereas from 1930 to 1940 it was only 7 per cent. The explanation of this trend is found in a declining birth rate as well as in restricted immigration. Despite a slight upswing during the war, beginning in 1941, population experts expect the trend toward a

slowing increase to continue—unless, of course, our immigration policy is much liberalized or an unexpected rise occurs in the birth rate, neither of which is likely. By 1980 the population may be stabilized at around 158,000,000; after that, if the present course is continued, it will probably begin to decline.

These population trends are basic to many of our governmental and social problems. For one thing, we may expect the assimilation of our aliens to proceed much more rapidly than in the past. The disparity between our standard of living and that of more populous but less wealthy countries, such as India and China, may become even sharper unless those nations increase their productive resources or curtail their rate of population growth. If, because of restricted population, our average income per capita increases while that of more populous countries declines, then we will be viewed with an envy which may complicate our international relations. But if, on the other hand, other nations increase their populations more rapidly than we and also succeed in raising their standards of living, then the United States may have to look to some of its laurels as a leading nation of the world.

If our population becomes stabilized and our average incomes and educational opportunities are increased, then the American citizen may attain a higher level of political and cultural development. Knowledge and education are basic to a wider participation in government and to universal opportunities for officeholding by all segments of the population. It is only by greater citizen participation that we may safeguard and strengthen our American traditions of equality, liberty, and regard for the common man.

SUPPLEMENTARY READING

1. Population: Two chapters in *Recent Social Trends* (New York, 1933) are invaluable: Chapter 1, entitled "The Population of the Nation," and Chapter 11, "The Status of Racial and Ethnic Groups." See also a monograph by W. S. Thompson and P. K. Whelpton, *Population Trends in the United States* (New York, 1934), prepared in connection with the above report. There is also an excellent article entitled "Population" in the *Encyclopedia of the Social Sciences* (New York, 1930), VI, 240–253. F. Lorimer and F. Osborn, *Dynamics of Population* (New York, 1934), Chapter 1, is also good.

2. Aliens and immigration: There are three good selections in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 8, "The Alien—A Potential Citizen." On the historical aspects, see C. P. Howland (ed.), *Survey of American Foreign Relations* (New Haven, 1929), pp. 415–518; L. G. Brown, *Immigration* (New York, 1933); and A. E. S. Beard, *Our Foreign-Born Citizens* (New York, 1932). On the law and procedure of admission and deportation, consult Secretary of Labor's Committee on Administrative Procedure, *The Immigration and Naturalization Service* (mimeo., Washington, 1940); Jane P. Clark, *The Deportation of Aliens from the United States* (New York, 1931), Chapters 1–3; and W. C. Van Vleck, *The Administrative Control of Aliens* (New York, 1932), Chapter 1.

3. Citizenship: The most useful short reference is Luella Gettys, *The Law of Citizenship in the United States* (Chicago, 1934). See also C. H. Maxson, *Citizenship* (New York, 1930), Chapters 1–14, and C. B. Moore, *Our American Citizenship* (New York, 1936). Recent procedural changes in naturalization are considered in Marshall E. Dimock, "Administrative Standards for Improving Naturalization Procedure," *American Political Science Review,* XXXVI (Feb., 1943), 81–90. On the loss of citizenship consult C. Seckler-Hudson, *Statelessness, with Special Reference to the United States* (Washington, 1943), and J. L. Cable, *Loss of Citizenship: Denaturalization—The Alien in War-Time* (Washington, 1943). On protection abroad, see F. S. Dunn, *The Protection of Nationals* (Baltimore, 1932).

CHAPTER 15

Human Nature, Public Opinion, and Propaganda

IF WE COULD transfer over into the field of government our understanding of why people behave as they do, we might then plan our political life more wisely and the science of government might more accurately predict the outcome when various human drives produce institutional maladjustments. If we could learn to apply the comprehensions we have gained of the persistent wants and appetites of the human animal, perhaps we could then figure out which of them other institutions—such as business, the home, the trade union, and the church—should take care of. Although some basic knowledge in this field has been gained, it must be more widely diffused and acted on to become effective; failure to do this so far as government is concerned is one of our major problems today.

Popular government normally tries to make it possible for man to satisfy his hungers and wants and to avoid his aversions. In this, government is influenced by public opinion as to what such wants may be. Government seeks to further a normal release of energies and to forestall the development of tensions, and here it makes use of public opinion. In attempting to guide society along a stable, normal, purposeful course, government maintains the institutions of justice and the processes of representation in order that men may compose their differences peaceably and satisfy their human needs without resort to socially disturbing violence.

In the two-way relationship between government and the public, propaganda is a tool employed by both sides. This chapter, therefore, will consider the influence of psychological assumptions on government, and will briefly discuss public opinion and propaganda.

The advance of political science will depend largely on the insights into human nature that the physical sciences and psychology are able to give us. In no area of social behavior are the strings of human nature so fully vibrated as in political activity. In no other fields of knowledge are the conclusions reached so largely determined by the initial psychological assumptions made.

A principle of psychology is that *what we assume ourselves to be constitutes a potent factor influencing our behavior.* This is also true of social psychology in so far as it is distinguished from personal behavior. If, for example, we assume that power is one of the mainsprings of human motivation, then we will hardly be surprised if men act as though a desire for power were socially endorsed, or at least acceptable. Or if men agreed with Machiavelli that cun-

ning, deceit, and violence are legitimate tools of government, then they would be establishing rules of the game which would be unhesitatingly followed.

A second principle of psychology applicable here is that *if our goals are high, we will strive the harder to attain them.* Thus, if we assume that man and government are inherently evil, then it is hardly to be expected that we will try to bring about improvements either in human nature or in government. But if, on the other hand, we assume that man is more good than bad, and that both man and government are capable of improvement, then we shall more earnestly work toward that end. As with the individual, in society our basic assumptions are controlling.

Psychology, therefore, is a useful key to political behavior, although its importance has only recently been realized. Political philosophers began to pay conscious attention to the psychological bases of political activity at about the time of Hobbes at the end of the sixteenth century, although a hundred years earlier Machiavelli also made a good many assumptions about the nature of man. But it was Hobbes who doubtless inspired Locke, Rousseau, and his other immediate successors to look more deeply into human nature in the course of their study of politics, sovereignty, government, and the state. Further advance was made in the writings of the utilitarians, where the pleasure-pain analysis as applied to human behavior sounds very modern in the light of some of our current psychological emphases.

It was not until the last quarter of the nineteenth century, however, that psychology made any real impact on the development of governmental science. In recent times, as exemplified by such books as Paul Lazarsfeld's *The People's Choice* and numerous articles that have appeared in the *Public Opinion Quarterly,* the rate of progress has been rapid, thus holding out great promise of a complete understanding of political motivation and problems of social control.

Psychological Motivation as Applied to Political Behavior

A previous chapter,[1] after analyzing the functions historically performed by government, suggested a fivefold classification of state activity, including protection, assistance, regulation, service, and international relations. Here this analysis will be tested in terms of what the psychologists have discovered about human drives, motivations, and aversions.

Human drives may be subdivided into those that are primary and those that are secondary, those that are internal and those that are external. However, as might be expected, there are many overlappings between the two categories, for every motive depends on both internal and external factors.[2] Two important books dealing with this subject are those by Paul T. Young, *Motivation of Behavior,* and Edward C. Tolman, *Purposive Behavior.* Among the pri-

[1] See Chapter 3, "Forerunners of American Government: Functions and Concepts."

[2] An excellent discussion of this subject is found in Steuart Henderson Britt, *Social Psychology of Modern Life* (New York, Rinehart & Company, 1941), Chapter 6.

mary or internal urges or drives these authors mention hunger, thirst, and sexual drives; to these Young adds the maternal and Tolman adds excretion, contact, rest, and sensory elements as being basic. Britt's classification is similar: sleep, hunger, thirst, sex, "maternal motives based on known hormones," sensitive-zone demands, and homeostasis (keeping the blood in order).[3]

Until fairly recently, psychologists placed a good deal of emphasis on instincts, the outstanding proponent of this approach being William McDougall. Now, however, most psychologists regard this viewpoint as outmoded. There seemed literally to be no limit to the number of instincts that might be identified, Woodworth's list, for example, running to 110 separate items.[4] The current tendency, therefore, is to speak of "unlearned and learned behavior" instead of simple instincts. Moreover, most psychologists now believe that the human being has few instincts as such (involuntary reactions) at birth, and that most human behavior is learned and conditioned by environment. "Modern culture," says Britt, "is built primarily, if not entirely, out of *acquired* behavior patterns. Our civilization in particular may be referred to as a complex of acquired characteristics."[5] Since government does so much to determine what our environment shall be, this modern emphasis constitutes a challenge to the student of political science.

Our interest as political scientists naturally centers on the list of drives that psychologists refer to as secondary or external—those that are conditioned by the environment to a greater extent than mere reflexes or instincts. Britt specifically states that his list is incomplete but he mentions exploration, curiosity, escape, fight, ascendance, submission, rivalry, competition, and gregariousness. There is no "fighting" instinct, he says, because like so much else it is conditioned by one's culture.[6] Tolman's list of secondary drives is of special interest to the student of government, including as it does *curiosity,* to be stimulated by some distant and unfamiliar object; *gregariousness,* to seek and stay in the presence of others; *self-assertion,* to dominate and control others; *self-abasement,* to submit to others; and *imitativeness,* to copy the action of others.

Each of these key words suggests applications in the field of political science. Curiosity, for example, has stimulated the creation of public libraries and museums, highways, and national parks. And partly because of gregariousness, three quarters of the people of the United States live in settled areas, thus creating complicated governmental and social problems. Note also how Tolman keeps the power emphasis in balance by putting self-assertion and self-abasement side by side. In government, both of these drives are satisfied in the course of a political campaign.

The social psychologist William McDougall, in *The Energies of Man,* also places self-assertion and self-abasement together in this manner. In his list of

[3] *Ibid.,* p. 92.
[4] *Ibid.,* p. 74.
[5] *Ibid.,* p. 81.
[6] *Ibid.,* p. 78.

eighteen drives, which he calls propensities—and which includes the drives the other two writers have mentioned—McDougall lists to domineer, to lead, to assert oneself over, or display oneself before one's fellows (self-assertive propensity); and to defer, to obey, to follow, to submit in the presence of others who display superior powers (submissive propensity). This part of the analysis is especially interesting to the political scientist because it shows the two sides of the power theory in psychological perspective. It is too simple to say that the universal quest of human nature is for power, or that all leaders in government are chiefly influenced by this urge. Government, as a human institution, includes both leadership and following, power and service, self-seeking and welfare-seeking.

At this point two important observations may be made: First, man does not have a single-track mind or "will." Now he goes in one direction, now in another. Man is complex, not simple. And although he is not as a rule averse to power for himself, he is more often inclined to be diversified in his interests, and easygoing rather than ambitious to push himself to the top. It is fortunate for society that he is this way. Second, social organization requires a blending of leadership (domination) and consent (submission). But all people cannot be divided into these two categories, like the sheep and the goats, because everyone has both traits in varying degrees. All lead and all follow, even he who is chief of state. The important question is not *power* or *position*, but *function*. The social need to be discharged requires that the individual hold the power and position that go with it. Thus viewed, power is merely a *via media* of society, never its ultimate goal.

Additional Human Wants

The psychologists whose analyses we have been consulting suggest some additional drives that sound familiar to the political scientist. One of these is called the "protective or parental propensity," which McDougall defines as the desire to feed, protect, and shelter the young. In government this is part of the assistance or welfare function, shared with the family—primarily responsible in this field—and other welfare groups.

Neither Young nor Tolman mentions shelter as a primary need of man, although many writers rank it with food as a basic want. In his eighteen propensities, McDougall includes shelter as a desire "to construct shelters and implements (constructive propensity)." An example of the recognition of this urge may be seen in recent public housing programs and the construction of new plant and equipment during World War II. Housing falls under the heading of assistance when the state merely helps private enterprise to do the job, and under the heading of direct service to consumers when government does the job itself.

The acquisitive and migratory propensities, also mentioned by McDougall, have played leading roles in the history of government. Acquisitiveness is defined as the urge "to acquire, possess, and defend whatever is found useful

or otherwise attractive." How many political applications this suggests! Imperialism, for example, or our war with Mexico in 1847. Indeed, most wars have involved the grasping or attempted possession of the territories of one country by another.

Migration is simply defined by McDougall as the propensity "to wander to new scenes." Historically, this has been of the greatest import, suggesting the almost constant migrations of man that have gone on until fairly recent times: the invasion of the Roman Empire by the barbarians, the Great Crusades, the Moorish and Turkish invasions of Europe, and the forty million immigrants who came to our own shores.

Imitativeness is another trait that should be underscored. Imitation forms the basis of habit, convention, formalities, fictions, and custom. Government abounds in such manifestations of human nature. The crowd mind, for example, is more imitative than the individual mind. Our allegiances to political parties are largely the result of conformity to environment and habit. These and many other aspects of political behavior are explained by the forceful and pervasive effect of imitativeness.

Summary of Governmental Responses to Human Needs

Not all of the drives—primary, secondary, or derivative—that various psychologists have thought important will be listed here, because some of them are not especially helpful explanations of political behavior. This section will merely summarize the factors that present a picture of human drives and aversions as they affect government.

If it is assumed that the principal needs of man are for sustenance, shelter, sexual relations, and recreation and play, then government will be seen to have a primary or secondary role in connection with each. The primary responsibility for food and shelter lies in the economic system, but government creates the conditions of economic success, provides many forms of assistance, regulates many aspects of business and industry, and itself provides some economic services such as housing, electrical power, or transportation. The family is the institution that deals primarily with marriage, the raising of children, and all the problems that go with married life. But here again, government does much to create and maintain stable relationships through laws, courts, and welfare programs of many kinds. Recreation and play are divided responsibilities. Partly they are individual, partly business (motion pictures, for example), and largely governmental through public playgrounds, parks, libraries, and many such facilities, especially in cities where the need for planned recreation is greatest.[7]

As a suggestion of how certain governmental programs correspond to the secondary drives that have been mentioned, and without any thought that this is a final or exhaustive list, let us present a picture of human drives and the governmental programs which attempt to meet them:

[7] This is dealt with in Chapter 51, "The Community's Safety and Social Environment."

Drive	*Examples of governmental responses*
Hunger and thirst	Department of Agriculture programs, pure food and drug programs, municipal water supply
Shelter	Public housing programs, loans to private housing, financial assistance to individuals
Sexual drives	Laws regarding marriage and family relations
Fear	Police protection to persons and property; fire protection; maintenance of the armed forces
Pugnacity	War and defense, pressure groups, political campaigns, legislative debate
Curiosity	Research in all fields; educational facilities; museums; travel through public parks and forests, highways
Gregariousness	Urbanism, parks, community centers
Self-assertion	Leadership provided in legislatures and in the executive branch of the government; voting
Self-abasement	The opportunity to follow; political campaigns
Imitativeness	Political parties, campaigns, elections, bureaucracy
Parental responsibility	Social security, child care, public welfare, the regulatory commissions, public health
Acquisitiveness	The acquisition of new lands and new markets by war; regulation of social conflict situations
Migratory urge	Immigration, relocation, resettlement
Play and aesthetic factors	National museums, parks, monuments, camps, highways

Returning to our fivefold classification of governmental functions into protection, assistance, regulation, service, and international relations, we find a marked correspondence between this classification and the psychological drives we have been considering. However, the human drives explain *why* government undertakes duties, while the list of functions explains *what* is undertaken.

The Danger of Oversimplification

The foregoing analysis may suffer from oversimplification because human drives and motivations are extremely complex. There is the danger that oversimplification here may be a half-truth that is sometimes more misleading than an outright falsehood. We are tempted, for example, to say that this or that is *the* motive, whereas more often we should be searching for a variety of factors constituting a multiple motive. This observation applies to the social sciences generally but with particular force in the field of political behavior.

It is also dangerous to segment man's total nature, calling one part economic, another political, and a third social. The anthropologists and the psychologists know that this cannot be done without distortion. Segmentation distorts because concentration on the parts diverts attention from the interconnections that provide the key to a faithful portrayal, be it human nature or political behavior.

It is misleading, therefore, to build a science of politics, as some have tried,

on the one simple assumption that man universally seeks power (domination) for himself. If we subscribe to this interpretation of political behavior we must also assume that man is typically egocentric, whereas fortunately he is not. It is just as misleading as to try to build a science of economics on the oversimplified assumption that man seeks financial profit solely as a result of intelligent self-interest and an overwhelming passion for economic power.

One does not need much experience of life to realize that intelligent self-interest is rare in practice, and that even those who do exercise it are consistent only for short periods. Considering how complex man really is, how large a part of his attention animal appetites and creature comforts occupy, how greatly emotion sways the attitudes of even the most intellectually developed individual—we may wonder that political scientists and economists can reason from such simple primary assumptions concerning human nature as intelligent self-interest and the drive for power.

Furthermore, assumptions such as these, taken alone, are bound to lead to doubtful conclusions which may even be dangerous for society, because when we assert that political man seeks only power for himself, then we become propagandists for the exploitative philosophy.

GOVERNMENT BY PUBLIC OPINION

The Spanish writer José Ortega y Gassett, in *The Revolt of the Masses,* knocks down the power theory of political rule in order to set up his own, which is public opinion. "This stable, normal relation among men," he says, "which is known as 'rule' *never rests on force;* on the contrary, it is because a man or group of men exercise command that they have at their disposition that social apparatus of machinery known as 'force.' The cases in which at first sight force seems to be the basis of command are revealed on a closer inspection as the best examples to prove our thesis. . . . Never has any one ruled on this earth by basing his rule essentially on any other thing than public opinion." [8]

This provides the basis for an interesting debate. But the debate would not settle anything because—if we believe the truth to be found in a synthesis of all the factors entering into the explanation—both the power and the public opinion theses are at least partially applicable.

James Bryce, in *The American Commonwealth,* seems to have achieved a better balancing of elements when he said: "Opinion has really been the chief and ultimate power in nearly all nations at nearly all times. . . . I mean the opinion, unspoken, unconscious, but not less real and potent, of the masses of the people. Governments have always rested and, special cases apart, must rest, if not on the affection, then on the silent acquiescence, of the numerical majority. It is only by rare exception that a monarch or an oligarchy has

[8] José Ortega y Gassett, *The Revolt of the Masses* (New York, W. W. Norton & Company, 1932), p. 138.

maintained authority against the will of the people."[9] In this way, Bryce acknowledges the influence of both power and public opinion as factors in political behavior.

What Is Meant by Public Opinion?

The rejection of the oversimple explanation, however, is no excuse for fuzziness or a self-defeating cynicism. Professor Arthur Holcombe tells about a meeting of political scientists in which the concept of public opinion was being dealt with. "But even before a beginning could be made," says Holcombe, "it was necessary to come to some agreement concerning the meaning of terms. Some members of the round table believed that there is no such thing as public opinion; others believed in its existence but doubted their ability to define it with sufficient precision for scientific purposes. Others again, more sanguine or more credulous, believed that the term could be defined, but were of different minds concerning the kind of definition that should be adopted."[10] This is a good illustration of the difficulties encountered in the study of this particular concept of political science.

The reaction of our friend "the man in the street" is often a corrective to overrefined academic analyses. Ask him if there is such a thing as public opinion and he will reply, "Of course." Ask him what he means by the public and he will tell you, "The people." This same individual may be intrigued by the title of Walter Lippmann's book, *The Phantom Public,* but that will not shake his belief that there is a tangible and effective force called public opinion. He has seen what it can do.

Perhaps we can best define this term by breaking it down into its parts. To take the first, what is meant by the public?

A simple but satisfactory definition of public, when used in conjunction with opinion, is *the opinion of the community, the opinion of the people.* Why complicate it unnecessarily? The community may be a village, a large city, a nation-state, or even the whole world. It may be all the people or only those entitled to vote. It may be even smaller groups. But if confusion is to be avoided and if we are to consider the broadest definition, the public is everybody. And the opinion of everybody, as part of a larger total, does count. When we speak of that collective singular, therefore, *the public,* let us agree that we mean everybody in the community.

This does not prevent us from using the word "publics"—that is, smaller groups within the larger entity. But we must be sure of what we are doing. Publics is not a substitute for the public, as some writers have suggested, but merely a subclassification under it. A public, being smaller, is more precise and

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[9] *The American Commonwealth* (New York, The Macmillan Company, rev. ed., 2 vols., 1910), II, 259. In this famous book, Bryce devotes not less than 125 pages to a discussion of public opinion.

[10] *American Political Science Review,* XIX (1925), 123.

hence easier to measure, but it is not for that reason more "real" than the larger public.

Next, what is meant by opinion? Let us follow the method used above and stick to the common-sense, garden variety of explanation which the public understands. When used in conjunction with the word "public," *opinion means the view of the people relating to certain general or specific questions.*

The reason that the experts fail to agree on this question is that so many tricky problems are connected with it. For example, must an opinion be "rational" before it can be called an opinion? Obviously, the answer depends on the definition of the word "rational." If we mean by that a calculation devoid of preconception or emotion, then the answer is "no," because there are few opinions of this kind. Or again, is an opinion something deeply ingrained in our thinking and convictions, or may it be just an off-hand expression of viewpoint?

If we are not to become hopelessly entangled in word interpretations, therefore, we had best adhere to the simple definition already suggested. And since this is what the average citizen would tell us, it must be the most reliable explanation. We are interested in what makes sense to the mass of the people.

Public opinion, says Bryce, means the will or desire of the people, no matter how they arrived at it. This is a good definition. It calls attention to the fact that a great variety of factors and influences enter into the compound. How should admiration, gratitude, hate, pugnacity, malice, cupidity, and greed, for example, be classified? They are certainly not primarily rational characteristics, as that word is customarily employed, and yet it cannot be denied that they influence opinions and attitudes. "In the midst of this diversity and confusion [of opinion]," continues Bryce, "every question as it rises into importance is subjected to a process of consolidation and classification until there emerge and take definite shape certain views, or sets of inter-connected views, each held and advanced in common by bodies of citizens."[11]

Opinion is based on personal sentiments and community values. Bryce pointed out that the soundness and elevation of the public's sentiments will more surely place them on the side of justice, honor, and peace than any fine-spun reasoning which might be offered. "Trust the instinct of the common man" has always been a first article of faith in the lexicon of democracy. In the recent political history of the United States, for example, newspapers and radio have sometimes been predominantly in favor of a particular candidate or issue, but in its final decision the public came down firmly on the opposite side. The presidential campaigns of 1940 and 1944 are cases in point.

Sometimes it seems almost as though the public had access to a kind of telepathic grapevine. This is probably the operation of the sentiments, instincts, and community values that Bryce and others have noted. Said a great Ameri-

[11] James Bryce, *Modern Democracies* (New York, 1921), I, 154.

can, "Give the public the facts and I will trust the wisdom of the decision." Sometimes it seems as though the public doesn't even need the facts.

It is appropriate here to note that *opinion involves a more or less conscious choice between different views which may be held.* For our purposes this is important because choice among alternatives is of the essence of government, especially in the field of political parties and legislation.

Imitation of others and conformity to a common view are strong determinants of opinion. The tendency to imitate is closely related to gregariousness. The French author Tarde, in his *Laws of Imitation,* argues that views spread downward from originating minds through a whole community. These few minds, therefore, become the source of national traditions. Tarde further argues that most men take the opinion, coming from above, which prevails in their environment; or, having conceived an admiration for some particular personality, they echo his views.

We should remember this. Studies of voting behavior confirm it. "The opinions entertained by the voters," said E. M. Sait in his *Political Institutions,* "may be their offspring only through the polite fiction of adoption and would sometimes, were their lineage known, exhibit a most respectable family tree. . . . He borrows an opinion, because, without it, he would lose prestige with his family, his barber, and his fellow Rotarians." Unflattering, but true. Rationality and intelligent self-interest have a long way to go before they can hold their own with tradition, imitativeness, and emotion.

We are now involved in an apparent contradiction, because although we have said above that the public seems to possess an innate wisdom, we have also said that much opinion is merely a hand-me-down or something borrowed from the environment. This illustrates the point, made earlier, that the most accurate explanation of a social phenomenon is found in a blend, in a synthesis of all the factors involved. In this case, public opinion may contain elements of both thinking and imitativeness. We must now understand the relationships between these two factors and how they work together in order to produce the phenomenon we are studying.

This particular relationship is influenced by a development of modern civilization that holds great potentialities for both a more effective public opinion and a more effective government, namely, the expanded facilities of communication offered by the radio, the press, and the motion picture. The point to be noted here is that these new facilities are like government in that they may be used for good or for evil. They may serve the many or the few. They may emphasize the public interest or the selfish interests of particular groups. In any case, they help increasingly to shape the opinions we borrow as well as those we formulate for ourselves. But it is not always easy to determine just where our own independent thinking gives way to an uncritical acceptance of what we read or hear. We should see to it, therefore, that these powerful instruments of public opinion remain in our own control.

Actually, there is a disturbing tendency in this field. As Morris Ernst has

pointed out in his book, *The First Freedom,* the number of newspapers and the degree of newspaper competition have decreased since 1909. In 1939, only 14 per cent of our cities had the benefit of rival papers. In the 92 largest cities the average number of papers was two and a half, and of the total 239 papers in these cities, 59 were owned by chains. Ten states have no local newspaper competition anywhere within their borders. Three news services divide the national field, the most powerful being controlled by 10 per cent of its newspaper members. In the field of radio, four networks working out of New York monopolize the air. Furthermore, in 1943, 144 advertisers provided more than 97 per cent of the total network revenue. And finally, the motion-picture industry is controlled by five major producing companies, which also own the best and most lucrative of the country's motion-picture theaters.

It has been remarked in an earlier connection that furnishing more complete information to the public and furnishing it quickly makes it possible to delegate governmental powers further from the people and the local centers without increasing the danger of the abuse of power, because the sooner we learn of an abuse, the sooner may we move to correct it. The progress in communicating news and opinions has been impressive; but if with it goes a tendency toward the exercise of control by relatively few companies, the potential threat to freedom cannot be overlooked. In our modern technology, therefore, the press, the publishers of our books and magazines, the radio, and the motion-picture industry—all who communicate knowledge, opinion, and attitudes—share with us the responsibility for the furtherance of popular government.

Some Principles Relating to Public Opinion

In summary, it may be said that in the long run, public opinion is the strongest force in a political community. Even Machiavelli, counselor of princes, realized this fact. The public includes everyone in a particular political collectivity. Within the public are smaller publics or interest groups, forming opinions and programs of their own that may deeply influence the over-all opinion.

The share of the individual in the total opinion will vary in accordance with the respect that others entertain for his views. This respect is influenced by such factors as age, wisdom, and deference, but especially by position because the positions of power or responsibility that men occupy in key institutions—business, the church, a labor union, or the government, for example—usually carry influence irrespective of the qualities of the incumbent. The greatest weight attaches to the opinions of those who participate in and exercise control over government. Children have less influence than adults. The insane are obviously handicapped. Aliens typically have less influence than citizens unless they possess wealth and power.

Individuals may be predisposed to particular opinions because of the circumstances of their birth and environment and the values emphasized by the

group with which they are identified. This is especially significant, as we shall see, in explaining loyalties to political parties. The influence of emotional factors and symbolic reactions is strong in the field of political behavior. Symbols of identification, such as national banners, anthems, and well-chosen titles of governmental units, play a powerful determining role.

The opinion of the community is never unanimous. There may be many opinions and sharp divisions of opinion on particular issues. Society, therefore, establishes rules for peaceful decision. The ballot box, the legislative assembly, and the judicial tribunal are the principal means of reconciliation.

Majority rule is the division of opinion most often followed. Majority rule requires forbearance, moderation, and generosity on the part of those in power, together with good will and acquiescence on the part of the minority.

The welfare of the state requires the cultivation of the largest possible number of rational opinions. Rationality plus fixed human values is the combination to be sought. Education, in the broadest sense, is the means of achieving it.

THE ROLE OF PROPAGANDA IN GOVERNMENT

Judging by the currency of that term in recent years, particularly in America, we might think that propaganda had become a national pastime. To many people it is more than that—it is a full-time job. The reasons why so much more is heard about it today are that the techniques involved have been perfected, it has become widespread throughout the world, and as a result has been purged of most of its odious connotations. Originally, propaganda implied deceit. Now it is defined as *the utilization of words, objects, or persons in an attempt to influence or control the opinion and actions of groups and individuals to predetermined ends.* Propaganda is the act of manipulating opinion or action with a particular purpose in view, and it may be a perfectly respectable purpose.

Propaganda does not always have as its object an immediate decision or action. The purpose may be long range. But it must have as its object the attainment of a certain effect. Propaganda by particular groups, for example, is carried on in order to prevent the extension of so-called governmental interference with business; other groups, using the same techniques, work just as hard for the opposite course. Both attacks are aimed at the public or at some influential segment of it—frequently the legislature. The methods are legion—speeches, letters, telegrams to legislators, the grapevine, paid advertising, radio broadcasts, the buttonholing of Congressmen.[12] An attempt may even be made to influence the integrity of schools and colleges by providing free materials or endowing chairs.

Some excellent work on propaganda was done by the Institute of Propaganda Analysis in New York. In an article entitled "How to Detect Propaganda" we are told, "Without the appeal to our emotion—to our fears and to

[12] Examples of propaganda techniques will be found in Chapter 20, "Interest Groups in American Politics," and Chapter 25, "Lobbying."

our courage, to our selfishness and unselfishness, to our loves and our hates —propagandists would influence few opinions and few actions."

Man is largely the creature of his emotions; this is especially true in the field of politics. To say this is not to criticize or belittle our emotional natures, for they are the source of much that is good as well as of much that is not. But we should realize that we are all deceived daily by propagandists and that most of us would avoid such pitfalls if we were conscious of their existence.

That there is a wide and fertile field of investigation in propaganda analysis is suggested by the following classification of propaganda devices developed by the Institute for Propaganda Analysis:[18]

The name-calling device—applying "good" or "bad" names to persons or groups, causing others to reject or condemn them when they do not belong to "our side."

The glittering generalities device—wherein the propagandist uses "virtue" words such as love, brotherhood, or patriotism to cause us to accept and approve the position he favors.

The transfer device—here the manipulator causes us to be for or against something because he succeeds in identifying it with something we are already for or against.

The testimonial device—in this case we support the position of the propagandist because of our regard for the individuals or groups supporting it.

The plain folks device—here the politician identifies himself with the farmers, the mothers, the man on the front porch, or whatever other group of common people he chooses in order to gain support.

The card-stacking device—here there is a joker, a deliberate deception aimed at making us think something is true when it is not.

The band-wagon device—this is the operation of the crowd mind; we follow because we think it is the popular thing to do; "everybody's doing it"; so many people cannot be wrong. Actually, of course, the whole thing may be engineered and manipulated by clever propaganda.

Keeping these methods in mind, scan carefully today's newspaper, or listen critically to the campaign techniques of political contestants. Not until we have learned to identify propaganda and to sift the truth from the impression the propagandist is trying to create, can we claim to be free men and women and in a position to guide our own and our country's destiny.

Walter Lippmann did not overstate the importance of propaganda in government when he wrote in his *Public Opinion* that the most significant revolution in modern times is that which is taking place in the art of creating

[18] The Institute for Propaganda Analysis, "Propaganda Analysis" (October, 1937), Vol. I, No. 1, pp. 1–2; and "How to Detect Propaganda" (November, 1937), Vol. I, No. 2, pp. 1–4. Reprinted in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), pp. 249–255.

consent among the governed. "Within the life of the new generation in the control of affairs," continues Lippmann, "persuasion has become a conscious art and a regular organ of popular government. None of us begins to understand the consequences, but it is no daring prophecy to say that the knowledge of how to create consent will alter every political premise."

André Siegfried, the brilliant French author, saw the dangers of propaganda carried to excess in the United States. "Publicity, which is reduced to an exact science," comments Siegfried, "provides an automatic means of reaching the masses. The temptations are too great and the weapons too efficient. . . . In this land of exaggerations, where ideals are pushed to extremes, public opinion is a formidable weapon. The methods of organizing it, crystallizing it, and inflaming it to the point of hysteria are so well understood and the technique is so perfect that, given the malleability of the people, there appears to be no limit beyond which they cannot be led."[14]

There is much validity in Siegfried's warning, but he overlooks a significant factor. The manipulators are not the only ones who come to understand the uses of propaganda. The public becomes equally sophisticated. We build up an immunity to it as to a disease through the use of vaccines. By some kind of sixth sense, we learn to recognize propaganda and so it loses much of its effectiveness and becomes less dangerous. Perhaps in time the excesses will disappear as the people learn to resent the insult to their intelligence. Each generation born under modern conditions of high-pressure propaganda seems to develop more of an immunity to that which is misleading. With motion-picture, radio, and newspaper propaganda techniques at their present levels of intrusiveness, it would be a sorry prospect indeed if this were not so.

SUPPLEMENTARY READING

1. Psychological bases of political behavior: A good brief discussion is found in Leonard W. Doob, *The Plans of Man* (New Haven, 1940), pp. 149–160. Two of the best scientific treatments of human nature are Edward C. Tolman, *Purposive Behavior in Animals and Men* (New York, 1932), Chapter 18; and Paul T. Young, *Motivation of Human Behavior* (New York, 1936), pp. 78, 130, 163. S. H. Britt's *Social Psychology of Modern Life* (New York, 1941) is excellent; there are also good books on social psychology by O. Klineberg, C. Bird, D. Katz, and R. L. Schank, and Kimball Young. One of the classics in this field is Graham Wallas, *Human Nature and Politics* (New York, 1921).

2. Public opinion: Two of the earliest studies were those of A. Lawrence Lowell, *Public Opinion and Popular Government* (New York, 1926), and *Public Opinion in War and Peace* (Cambridge, Mass., 1923). All of the following are good: Walter Lippmann, *Public Opinion* (New York, 1922), and *The Phantom Public* (New York, 1925); Peter Odegard, *The American Public Mind* (New York, 1930); Harwood L. Childs, *An Introduction to Public Opinion* (New York, 1940); Harold D. Lasswell, *Democracy through Public Opinion* (New York, 1939);

[14] *America Comes of Age* (New York, Jonathan Cape, 1930), pp. 244–246.

W. Albig, *Public Opinion* (New York, 1939); and W. B. Graves, *Readings in Public Opinion: Its Formation and Control* (New York, 1928). There are some excellent selections in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 10, "Public Opinion, Propaganda and Democracy." One of the most rewarding single chapters is E. M. Sait, *Political Institutions* (New York, 1938), Chapter 21, "Public Opinion and Party."

3. Propaganda: For a comprehensive study, see Leonard W. Doob, *Propaganda—Its Psychology and Technique* (New York, 1935). An excellent case study is Harold D. Lasswell's *Propaganda Technique in the World War* (New York, 1927). Most of the references to public opinion also deal with propaganda.

CHAPTER 16

Politics and Political Parties

THE POLITICAL party is so essential to popular government that we could not imagine getting along without it. Consider what would happen to the governmental framework of the United States, for example, if there were no major political parties to select, groom, and run candidates, to help define and resolve public issues, and to tie the processes of government together by a flow of common energy. The whole machinery of representation and popular control is built on party organization. Legislation, administration, and even the election of judges depend on the dynamic drive of political parties. They are an essential part of the political process.

Yet in the Constitution of the United States there is no reference to political parties and the central role they were destined to play in crystallizing public policy and making the segments of the government work together in effective fashion. Nowhere in the whole area of the "unwritten constitution" is to be found so clear cut an example of custom and contrivance completing the formal processes of government.

A study of political parties involves a good many points. The discussion here will start with an attempt to answer the question "What is politics?" by taking up the three major approaches to that subject. Next will be indicated some of the influences on politics which stem from economic causes, together with a brief outline of certain principles of politics which are pertinent to this study. The discussion of political parties in historical perspective, the nature and functions of the political party, the two-party system, and third or minority parties will be concluded with an outline history of party control in the United States. The succeeding chapter will describe the structure of party rule.

WHAT IS POLITICS?

There are many ways in which the word "politics" is used. Politics may be considered as broad a concept as government, and as such may be used interchangeably with that term. We do not object to this approach but we do not use the word in so wide a sense ourselves. Nevertheless, a narrow definition is difficult to arrive at. Today there are three main approaches: politics is process, it is influence, and it is policy. Let us see what each of these involves.

Politics as Process

One of the oldest uses of the term "politics" connotes the means by which public policy is determined through representation. In this sense, politics

means what the people, acting through their government officials, decide to do, and how. This approach emphasizes process, and includes such factors as these: What do individuals and groups want, and how do they go about getting it? What are the respective functions of political parties and pressure groups? What functions are performed by public opinion and elections? How do candidates succeed in getting themselves elected to office? The nation-state is a territory on which an institution called government has been erected, and this institution is activated by the political process. Money, social and economic problems, and needs keep government running. The government turns out laws and enforces them. The people of the community run the government and are ruled by it. All of the forces engendered in society provide its drive through the mechanisms of politics. Politics as process deals with that part of the machinery of government by which the wants of citizens are transmitted into decisions having the force of law and the power of the government behind them.

Politics as Influence

The second approach to politics emphasizes status and political power, or influence. This point of view is expressed in the title of a book by Harold D. Lasswell, *Politics: Who Gets What, When, and How.*[1] Politics, says this author, is "the study of influence and the influential." Politics deals with the rulers and the ruled, the elite and the masses, the powerful and the deferential. People, says Lasswell, want three things—deference, income, and safety—and they strive to achieve them through politics.

Politics as influence runs throughout the entire course of governmental activity. It may or may not be organized, but it is universal and omnipresent, like law, or human beings, or custom. As a common aphorism states, "Government, like a clock, goes from the motion men give it." Government is an instrument which must be wound up and kept running. Like a clock, also, the control of government may change hands, belonging at different times to different groups. In technical language this is sometimes called the "circulation of the elite." Let us see what this means.

Lasswell points out that in the Western world slogans have been widely used by one controlling group or another to maintain their dominant position —from the monarchic divine right of kings to the popular-rule cry of the rights of man, and from the present liberal-democratic rule of the middle class to the socialistic demands for the rule of the proletariat. By propaganda and the use of slogans—and the occasional use of force, to be sure—these groups have succeeded each other in the control of governments.

The middle class now dominates in the United States, as it has ever since the American Revolution. Like Professor Arthur Holcombe and others, Lasswell raises the questions of whether this class can hold its own in this

[1] New York, 1936. See especially Chapter 1, entitled "Elite."

position of influence; whether it can continue to expand and to solve, through the traditional methods of law and freedom, the perplexing problems of rapid adjustment; or whether it will have to give ground before the greater influence of some other elite. According to this reasoning, politics is primarily a question of getting control of government in order to increase one's influence as a class or an elite. This is the so-called realistic approach to the study of government. It is not new but it has never before received the emphasis that it has in recent years.[2] Taken alone, it may lead to oversimplification and a resulting distortion of the facts, but considered in relation to other approaches to the study of politics, it has much to contribute. It relies heavily on psychological assumptions and stresses the strong bond between economic and governmental forces.

Politics as Policy

According to the third approach to this subject, politics is not merely how or why we decide our questions of public policy, it is also what we decide. In this sense, politics is policy itself. This view of politics held by such Greek writers as Plato and Aristotle is still a valid assumption. In the recent past, however, the tendencies which we have noted to consider politics primarily, if not wholly, as institutional procedure or as competition for power, have gained much support. Both assumptions may be valid in themselves, but they are not the whole of the matter. A better balancing of emphasis would come nearer the truth of the situation.

Power is no more the whole of the political process than profit is all of economics. Power for what? It takes power to get things done, but for what purpose? That is the important aspect of power. The way this question is answered makes a good deal of difference.

Overemphasis on the power theory of statecraft encourages the mistaken assumption that most men possess a lust for personal domination, that we would all be Alexanders, Napoleons, or Hitlers. Of course, any such idea is ridiculous. The power philosophy overlooks the urge to cooperate, the team spirit, which most men possess and which has no place in the domination-dominated relationship. The power philosophy, if carried to unreasonable lengths, therefore, is a peril to cooperative democracy.

Government rules, but government also serves. Government is power, but it is also a tool. We cannot reduce complicated explanations to a single term. Human nature is complex, and politics reflects these complexities of motivation and institutional behavior.

In this study of politics, therefore, the policy and its effect should be considered as well as the manipulation involved in its adoption. Political science

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[2] Leading examples of this viewpoint are Charles E. Merriam, *Political Power; Its Composition and Incidence* (New York, 1934); G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930); Gaetano Mosca, *The Ruling Class* (New York, 1939); and Harold D. Lasswell, *World Politics and Personal Insecurity* (New York, 1935).

would be a useful discipline if it merely explained how institutions operate, but under those conditions the content of public policy would have to be dealt with in courses in economics or sociology. This procedure would be confusing and misleading. Economics already shows the effect of an artificial segregation which has caused it to neglect such related disciplines as the organization and psychology of government and business and the processes flowing through them. Political science must suffer equally if it fails to pay sufficient attention to the substance of policy, as well as to its form and the processes of its adoption. If politics ignores such questions, it must be called unrealistic.

Politics Defined

Politics, therefore, is a composite of the problems and the motive power which are fed into government, the manner in which they are registered by the citizens and voters, and the institutional procedures by which interest groups, political parties, party leadership, and legislative assemblies translate these common drives into laws and programs. Once the programs have been sifted and formulated in the legislature, then the administration takes over and in the administration of the law the judiciary may be called on to decide contests of authority between various units of government, between different competing groups and individuals of society, and between the government and its citizens. Thus there is a continuous, unbroken circuit from citizen motive power to decision, to administration, to the settlement of disputes arising under the law. Government is a constantly moving process of interacting programs and parts. Government is segmented only for purposes of analysis and orderly thinking—but in practice there is no segmentation. The motive power, politics, runs throughout—controlling, guiding, and checking direction and accomplishment from start to finish.

In the light of these considerations, how shall we define politics—politics as a process and as a quest for the things people want? This should not be too difficult because in fact there is more in common among the various approaches to the question than there is of significant difference.

Politics deals with what society, groups, and individuals want from their governments and how they organize and register their wills to make their wants effective. Politics is institution and method (process); it is equally wants and desires (influence); it is also policy itself (content). The study of practical politics in the chapters which follow, therefore, will deal with citizens as individuals, as members of governing groups, as members of pressure groups, as supporters of political parties, as voters in elections, as large or small units in party machines, and as candidates for public office.

A political party is a body of voters organized for the purpose of influencing or controlling the policies and conduct of government through the nomination and, if possible, the election of its candidates to office. At the center, a political party is formally organized, but at the edges it trails off into allegi-

ances and preferences which are not a formal part of the group and which may change from one election to the next.

ECONOMIC FACTORS IN POLITICS

Many factors feed the force of political activity, but none is so important as the economic. Some of them will be discussed here, and will figure even more prominently in later chapters.

To begin with, is the nation-state merely a means of legitimatizing class rule and exploitation? The Marxian view of the state holds that it is, and that coercive government will disappear when "real" socialism has been established.[3] This being the case, Marxists believe that politics and political parties are merely evidences of a decaying capitalist class employed to divert the people's attention from real economic issues.

The rejoinder, of course, is that freedom of political association, free elections, and peaceful change are possible only where democracy exists and dictatorship is absent. Moreover, even in the Union of Soviet Socialist Republics—the nation where Marxian doctrine has been most fully applied—there has been an increase of government function rather than the "withering away" that was anticipated. The Marxian theorists explain this by saying that it is merely a transitional stage.

The accentuation of classes is usually due to economic causes. Lasswell defines class as a "major social group of similar functions, status, and outlook," adding that the important classes in recent world politics have been aristocracy, plutocracy, the middle class, and manual toilers. We Americans pride ourselves on our classless society. We realize that class cleavages weaken popular government and increase the dangers of crises ending in minority rule. The authors of *The Federalist* resolutely faced this issue when they said that "the most common and durable source of factions has been the various and unequal distribution of property." Are class lines growing in the United States, or are we successfully resisting that tendency?

Recurring crises place a heavy strain on popular government. To the extent that crises are induced by economic forces, therefore, the American economy controls political success or failure in this country. The seemingly inevitable effects of major wars and depressions are to bring about concentration and centralization in government, to intensify obedience, and to encourage intolerance. These are forces which lead to dictatorship. To resist them requires large amounts of stamina, goodwill, conviction, and tolerance—qualities which, as a nation, we have already demonstrated so magnificently. The question is: How many crises can we weather before our vitality is undermined?

Finally, ruthless and unfair competition in business, together with a philosophy of selfishness, affects the governmental system in a direct and powerful fashion. Let no one think that realistic politics can be divorced from questions

[3] This is dealt with briefly and understandably in a book by James W. Shotwell (ed.), *The Governments of Continental Europe* (New York, 1945), pp. 813–836.

of economic morality. On the contrary, when the community tolerates a low standard of ethics in business, labor, and the professions, we must expect a proportionate lowering of morality in government, together with a loss of respect for the democratic solution of public problems.

The decline of morality in government is not quantitatively so great as in other segments of society, however, because the public expects and generally gets a higher level of ethical conduct on the part of its governmental leaders than on the part of its economic leaders. Nevertheless, graft and shady dealings in business, labor, and elsewhere are bound to infect the field of government and to leave their mark. This is because politics is not something apart from society; rather, it is a central design in the single fabric of society.

PRINCIPLES OF POLITICS

Before taking up the various aspects of the political process in the chapters which follow, let us stake out some points for further reflection:

Man is largely the product of his environment. His personality, character, powers, and possibilities develop only as he comes in contact with his fellows. If the individual wishes to control his environment, therefore, he must be a participant in the forces which help to shape it.

Citizenship is a basic need of man. It gives him status and affords him the basis for participation in and influence over his own government. The right to vote increases his dignity. It involves the reciprocal duties of qualifying himself for responsible citizenship and making use of the franchise.

Politics and political parties are likely to become more important in periods of rapid social change, when powerful readjustments are in process, than during periods of relative quiescence. We are currently in a period of rapid change. The discovery of atomic energy has increased the speed to a rate which we can scarcely comprehend.

The policies of modern governments determine our progress or setbacks as individuals and as members of particular groups. Business, for example, is no more sound than the public laws and policies under which it operates; the world is no more secure than our competence in controlling the use of atomic energy. Since politics includes the determination of policy, it is to our advantage to be interested in politics and to play an active role in it.

Politics, defined as competition for personal influence in and gains for the community, is a universal activity. Politics is found in business and industrial life, as in government. Competition and conflict are objectionable only if they stem from social, economic, or political difficulties which cannot be handled by peaceful and lawfully determined measures. A world wholly free of competition would be a dull world indeed.

The right to take a part in politics is concrete evidence of our freedom. Politics is a substitute for violence and the private settlement of feuds. On the other hand, an excess of private political maneuvering may indicate an unhealthy

situation. It may mean self-seeking on the part of those in power, impaired citizen morale, or widespread dissatisfaction in the community. In every political situation, therefore, we must look beneath the surface and understand what is taking place. Politics, up to a certain point, is healthy; beyond that it may be harmful. Alert citizens will check each situation and decide where to draw the line.

Politics, if viewed merely as a selfish quest for power, influence, and domination, will undermine public order and stability. Politics is properly the quest for the public welfare. It is a program of action conducing to the fullest development of the public interest. The public interest is the happiness of people. It is the securing of what people want in a way that produces the greatest satisfaction, in a frame of government which assures freedom of preferences and individual development.

POLITICAL PARTIES IN HISTORICAL PERSPECTIVE

Political parties, as we know them today, developed fairly late in the growth of representative institutions, but the function they perform has been an element of statecraft from the earliest times. It is generally agreed that there were no political parties as such in the life of the Greek city-state, although there was an equivalent in the organization of Athenian society into families and tribes. We have noted, for example, that the five hundred members of the council in Athens were drawn from the tribes, which took turns in presiding over the affairs of the council. In minimal form, this was party organization. The analogy should not be pressed too far, of course, but it need not be.

Similarly in Rome, the tribes performed party functions when they chose the two consuls, decided important questions of war and peace, and constituted the source from which members of the Senate and Assembly were drawn. This, too, was primitive compared with present-day techniques, but for the social structure of the times it was the natural method of supplying political leadership and deciding the direction of public policy. In the Middle Ages, the "estates" (major classes) provided the counterpart of today's party system. The nobles, the clergy, and the burghers (townspeople, merchants) were represented in parliament to assist the king in governing the state.

In all of these forerunners of modern representation, however, a sharp difference from our own system stands out: representation then was by groups (families, classes, estates) rather than by individuals, as is the modern practice. The explanation lies in the fact that at that time the family organization was stronger than now, class lines were more finely drawn, and power was concentrated in blocs rather than in persons.

The Reformation and the Renaissance shade off into the following period of liberal constitutionalism, in which the individual increasingly became the center of political reckoning. The rights and powers which previously had attached to the king, the family, and the estates were transferred to the people.

Then, as we have seen, the people took control of and operated the government themselves through their representatives in parliament.

The cabinet form of government evolved in Great Britain following the revolution of 1688, and from this time forward political parties were inevitable as the most natural means of elevating men to positions of leadership, and of arriving at peaceful decisions between alternative lines of policy. There the early alignment was between the conservative Tories and the liberal Whigs, one favoring protection of national industry, the other free trade; one advocating a strong policy toward Ireland and India, the other a policy of moderation; one standing for the least possible amount of state activity, the other urging welfare and regulatory functions as required.

In time, these two major groupings occasionally shifted sides on such issues, but eventually the custom of the majority and the opposition became established. The tradition of the British constitution assumed that on every great issue there were two sides, two programs, and two sets of leaders between which the voters were expected to choose.

English government today is, above everything else, party government, and the role of the parties is crucial. Everything revolves about them. The majority party controls the bills that may be introduced and passed in Parliament. It monopolizes with a firm hand the monies that may be appropriated. It creates the Cabinet—which is the executive branch of the government—out of its own parliamentary membership. In short, the majority party secures real responsibility and unity in the government.

In the United States the party system stands in striking contrast to the British. Here the majority party may attempt to influence the course of legislation and money bills but it cannot surely control the actions of its members. Because of the system of separation of powers, the President is independent of Congress and hence the two branches may not be in accord. In short, we do not have a full-fledged system of party responsibility, as conditions now stand, with the legislature and the executive working as one. Consequently, the functions of our political parties in the governing process are largely theoretical and potential rather than real.

When America was first settled early in the seventeenth century, political parties had not yet become central in British government, and so there was no question of transferring a party system to the colonies. By the middle of the eighteenth century, however, popular representation had come into being and parties were established in Britain. But even at the time of the First Congress of the United States under the Constitution of 1787, the assumption here remained that parties were unnecessary. Was not everyone in accord on the desirability of liberty, equality, natural rights, and limited government? As long as there was agreement on fundamentals, there seemed little need for factions. But experience soon proved that this was a mistake. Indeed, the opposition of the authors of the Constitution to factions or parties largely

explains the difficulties we have had in adjusting our party system to the Constitution.[4]

James Madison expressed the prevailing attitude of the founding fathers in these words: "By a faction [party] I understand a number of citizens whether amounting to a majority or a minority of the whole who are actuated by some common impulse or passion or of interest adverse to the rights of other citizens or to the permanent and aggregate interests of the community." And one of the most familiar features of our first President's Farewell Address warned our forefathers against the disruptive effect of parties.

Washington's first term as President was relatively free from politics, but in his second, he himself reluctantly became political. Did not the Constitutional Convention itself disclose deep-rooted differences as to policy and interest? There were the questions of a strong central government versus strong state governments; broad suffrage and limited suffrage; slave states and free states; the business interests of the tidewater against agriculture and the frontier; the assumption of state debts and nonassumption; a plan of manufactures accompanied by tariffs and aid to infant industries, versus free trade and *laissez faire*. These were basic problems on which the country was divided. The natural method of peaceful solution was to define the issues, choose rival groups of candidates to support them, and then let the voters decide. Parties arose, therefore, but the party system was only slowly accepted.

WHAT IS A POLITICAL PARTY?

During the past century and a half, political parties have become so vital to our governmental system that even the most important decision of the people —the choice of a President every four years—revolves about them. As many as twenty-seven million voters have marked the ballot of a single party. Millions of dollars are spent and thousands of people work arduously as party regulars. Indeed, party government has now become a major industry.

A satisfactory definition of a political party is difficult to formulate. Professor E. M. Sait, who has called the party "an organized group that seeks to control both the personnel and the policy of the government," has provided a simple, useful description.

When it comes to the functions of the political party, it must be confessed that in the United States there seems to be more agreement on what a party should do than on what it actually does. Thus, for example, Odegard and Helms suggest that political parties pick candidates and that pressure groups (private associations attempting to influence legislation) formulate issues, although these authors agree that parties should properly do both. Writers on American political parties increasingly refer to them as "primarily electoral devices," interested in "job or personnel politics," almost exclusively bent on

[4] The best treatment of this subject is found in E. E. Schattschneider, *Party Government* (New York, 1942), Chapters 1–3.

winning and holding office.[5] This realistic and perhaps slightly cynical view is in sharp contrast to the classic statement of Edmund Burke: "Party is a body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed." Is this the ideal? And how far short of it do American political parties fall in practice?

There are some things about political parties of which we can be sure: They wield an enormous power in American government. They have large memberships. Most of us are virtually born into them, in that affiliation is more likely to be the result of "environmental determinism" than of conscious choice. As will be seen, they operate an intricate and efficient internal administrative machinery extending from the grass roots to the national capital. They contain an inner core of professional politicians who exert great influence. And their official character today is eloquently testified to by the extent to which they are recognized and regulated by law.

The Functions of the Political Party

There are at least three vital governmental functions which the party system should ideally perform, although our practice in the United States falls considerably short of the standard in important respects. These functions relate to issues, candidates, and coordination.

Issues. Political parties play an essential role in *defining and laying the groundwork for decision at the polls among alternative issues.* To have an opinion, to be free to express it, and to be sure it will be counted are rights that popular government must secure. But it is the function of the party to help you make your selection as between issues. If you favor a candidate simply because he seems honest or you like his looks, you have no way of knowing how he will behave when public questions come up for decision. But if he subscribes to the program of a party, as expressed in its platform and its promises, then you can vote your political opinions as well as your personal preferences as between individuals.

Political parties are the means by which public opinion eventuates into something concrete. In this process, parties provide an opportunity for educating the public, indulging in propaganda, letting off steam, working for a cause, and effecting social, economic, and political change by persuasion instead of by force. Decisions on public policy are made final in the legislature when they take the form of law, but the party holding the majority of seats in that body is morally bound to carry out the program on which it was voted into office. In so far as it does carry out that obligation, the principle of trusteeship may be said to operate honestly and effectively.

When political parties clarify and facilitate the final adoption of important issues, they pave the way for peaceful social change. The ballot box is substi-

[5] See, for example, V. O. Key, *Politics, Parties, and Popular Government* (New York, 1942), pp. 243–250.

tuted for class war and violence. The political party controls the approaches to political power, group influence, and reform by legislation. It mobilizes consent and advances candidates who presumably are sympathetic to party programs.

Candidates. Political parties *present a choice between rival candidates and provide responsible leadership in the ensuing campaign.* This point is related to the first because when we vote for particular candidates it is largely because of the policies and programs they stand for. If we were voting merely for men whom we knew and trusted, we might not necessarily vote for party candidates. But there is an additional important factor: since the candidate has been selected by the party, we have the right to assume that he acts responsibly for the party, and that the party as a whole will cooperate to carry out the program announced in its platform. Further, since the party is a training ground for future political leaders, we may also assume that the candidate will make the strongest possible bid for election and would make the best record in office.

Furthermore, instead of fifty candidates for mayor, for example—as might be the case if there were no parties—we are asked to choose between three or four, depending on the number of parties entered in the race. This reduces the job of the voter to manageable proportions and assures him that the label of approval has been placed on a person whom the party thinks can win.

The larger the governing unit, the less most of us can be expected to know about individual candidates, and hence the greater the responsibility of the political party to offer candidates of a high caliber. This is the theory—practice does not always measure up to the ideal.

Coordination. In theory, *political parties help to secure harmony and effective coordination between the branches and levels of government.* Individuals and interests are likely to be competitive under any circumstances. The political party is assumed to reconcile conflicting interests and viewpoints, taking as much as accords with the basic principles and programs which the voters have endorsed.

If there were many political parties in the legislature and none had a working majority, the issues of public policy would be dubious and chaotic indeed. Similarly, if the executive branch is controlled by one political party and the majority in the legislature by another, constant stalemating will forestall constructive action. Party leadership in the legislature, therefore, should provide the connecting link between the legislative and executive branches, which must cooperate if action and responsibility are to result. But here again the system does not always operate in practice as the function seems to require.

It is also the function of the party to coordinate the different levels of government—city, county, state, federal, and even international—when the same party in control in each area stands for the same basic policies and programs. If, for example, the national administration develops a plan for dealing with unemployment, the work will be speeded if state and city administrations favor that kind of action. And if they are controlled by the same

political party, the chances are they will. This factor is important, but not as essential as the smooth functioning of the party at a given level of government.

Does the American party system actually succeed in doing these three vital things? The record is spotty. As a rule, issues are not clearly defined in terms of alternatives, nor have they been significantly successful in tying the branches and units of government together through a system of party responsibility. The inability of political parties to coordinate American government, says one authority, is probably the most important single fact about American politics.

We are driven to conclude, therefore, that the picking of candidates for political office is the function in which our parties are chiefly interested. It is this emphasis on the selection of rival candidates that has been largely responsible for the development of our two-party system.

THE TWO-PARTY SYSTEM

Throughout our entire history as a nation a remarkable feature of American political experience has been our adherence to a system of two major political parties, one in power and the other in opposition. In most European countries other than England this seems almost incredible. The reasons usually suggested for the two-party division are conflicting and often confusing. However, there is no ready-made answer. Theoretically, of course, there can be as many different political groupings as there are points of view—and surely it would not be seriously suggested that there are only two conceivable alternatives on all major questions. Experience in other countries demonstrates the opposite. In France prior to World War II, for example, there were as many as thirteen or fourteen groups in the Chamber of Deputies and at election time the voter was customarily called on to choose among four or five parties.

Why have France and Germany characteristically had a multiple-party system while the United States and Great Britain have adhered to the two-party plan? Have France and Germany been more acute in their political analysis than we? Or have we had better sense than to permit the number of major parties to multiply? This would be an easier view for us to subscribe to. Is it temperament, tradition, lack of interest, paucity of real issues? It is possible that each one of these points has some bearing on the explanation.

The two-party system, says one writer, is a sign of political maturity. On the contrary, comes the reply, it is evidence of just the opposite, because when society becomes old it becomes complex; whereupon people disagree on fundamental economic programs and differences are accentuated.

An English writer has suggested that in both Britain and the United States the people regard politics as a kind of sporting contest, similar to a baseball or football game, and hence naturally tend to think in terms of sides. Lord Macaulay attributed the division to subtle psychological differences which *naturally* cause people to choose one of two groups, and two groups only—

the conservatives and the liberals, the Hamiltonians and the Jeffersonians. This explanation does not seem to have much psychological foundation.

Professor Arthur Macmahon believes that the two-party system in the United States has grown out of basic cleavages of interest current at the time the Constitution was drafted, plus the structure of government itself. He particularly stresses structure, saying that "the system of separately elected state executives, capped by the Presidency, has disposed political groups toward a two-party alignment." Thus, if a party is working to capture a particular office, it must win a majority of the voters, and in practice, in such a duel, there is scarcely room for more than two parties. In line with this interpretation, Odegard and Helms observe that under any government where public officials are elected from single-member districts, there is a strong tendency toward a two-party setup. This reasoning also emphasizes structure.

There are other factors. For one thing, it is difficult for a new political party to get started, to finance itself, and to qualify under the laws of all the states in which it must operate in national elections. And when a new party does get started, if we are average voters we are likely to withhold our support in the belief that it could not win the election anyhow. We would rather conform to previous voting habits than run the chance of having the major party we oppose profit as a result of ballots drawn off by a third. In addition, we become attached to labels and tend to conform to the expectations of our own social groups which do not, as a rule, support third parties.

In the final analysis, the structure of the American representative system, involving the election of top executives and candidates from single-member districts, seems largely responsible for the two-party alignment. Taken alone, the effect of structure might not be conclusive, but it is reinforced by the legal and financial obstacles to the establishment of a third party as well as by the fact that the major parties have preferred to absorb the programs of minor parties rather than face competition from that quarter.

The principal arguments in favor of continuing the two-party alignment are its simplicity—reducing as it does the number of choices which the voter must make—and the fact that government is more responsible and stable under that plan. It provides a strong working majority as well as a strong opposition. The multiple-party system, on the other hand, is unpredictable, because which way the smaller parties will gravitate cannot always be accurately foretold. In addition, because differences among parties seem to beget differences within parties, so that pieces of them are constantly splitting off and changing the alignment, the more parties there are, the more there are likely to be.

The chief argument in rebuttal is that multiple parties are more representative and hence better express real differences and real programs of improvement. It is said that the two-party system involves so many compromises that it becomes insipid, ineffectual, and in the long run invites abrupt and ill-considered change. Moreover, it is argued that the seeming faults in the multiple-party system are not serious faults in practice. Coalitions must be

formed, to be sure, but they are no worse than the coalitions which exist within two major parties based on diversity of interest. There is no real instability under multiple parties, it is said, so long as candidates are elected for fixed terms of office, as they are in the United States. And as for the contention that division begets division, this remains to be proved. If the division is an important one, it should be registered because concrete programs are the way of peaceful, continuous progress.

THIRD-PARTY MOVEMENTS

We must not minimize the influence of protest movements in American politics. In new party alignments, the role of a minor party may be determining. "As Jefferson walked to the Capitol to take the oath of office," say Odegard and Helms in *American Politics,* "there walked with him in spirit the democratic rebels who had followed Nathaniel Bacon, the North Carolina Regulators, the radicals of 1776, and the insurgents of 1786." Throughout our history, third parties have forced the major parties to absorb their programs or face competition from a new front.

Among third-party movements, labor began to exert an influence in New England as early as 1825. The Liberty party came in about 1840, the Free Soil party in the election of 1848. Robert Owen and Horace Greeley were leaders to reckon with. The Know-Nothing party, secret and intolerant, appeared in 1854, especially attacking aliens and Catholics. The Republican party was once a coalition of the politically homeless and discontent. After the Civil War, Granger parties and the National Greenback party acquired real political force in their impact on the major parties. The Prohibition party dates from 1869, the Socialist-Labor party appeared in 1874, the Social Democrats about 1897. The Farmers' Alliance, numerous independent and People's parties, and the Knights of Labor—all protest groups—merged to swell the Populist upheaval in 1890. In the election of 1892 these elements polled a million votes, received twenty-two electoral votes, and elected eight or ten Populists to Congress along with a larger number of Republicans and Democrats who also owed their election to them.

In the 1912 campaign there were three parties in the field, Republican Theodore Roosevelt having split with Republican Taft. The Progressives, or Bull Moosers, who followed Roosevelt, did not win, but they secured nearly 35 per cent of the vote and succeeded in defeating the conservative Republicans, thus making it possible for Wilson, who was in sympathy with their program, to ride into power. In 1924 the Progressive party, headed by Senator Robert M. La Follette of Wisconsin, polled 17 per cent of the popular vote, also an impressive showing.

This, in outline, is the history of third-party movements in the United States. The interesting points to remember are that the Republican party, founded in 1854–1856, won the presidency on the second occasion that it put a candidate in the field. Twice in this century, in 1912 and in 1924, third parties have

shown real influence—in 1912 to the extent of altering the probable outcome of the election and the history of an important period. Finally, since the beginning of our political history, third parties have exerted an influence on the policies of both major parties quite out of proportion to their numbers. Such policies as the abolition of slavery, the prohibition of the sale of liquor, the right of women to vote, the eight-hour day, and the income tax, for example, were all urged by minor political parties before they were sponsored by one of the major groupings.

In recent years the minor parties that have generally appeared on national ballots are the Socialist, Communist, and Prohibition parties, besides regional or local groups such as the Progressive party in Wisconsin or the Labor and Liberal parties in New York. In the national election of 1944, the voting strength of the American Labor party was so great in New York City—amounting to three quarters of a million ballots—and the influence of labor's Political Action Committee was so marked throughout the country that many people are now wondering whether a national labor party may not be in the offing.

In Great Britain the Labor party has displaced the Liberal party in the two-party alignment there. In 1929 the Labor party had its first major taste of governing responsibility, an earlier but short-lived experience having occurred shortly after World War I. In 1945 the British Labor party again came into office, this time by a decisive majority. In numbers, labor is the strongest single group in both Britain and the United States. Will the labor unions become increasingly political here, or will they adhere to their traditional policy of exercising economic power through collective bargaining and strikes, leaving political activity an individual rather than a trade-union matter? The answer to this question will go a long way toward determining the future alignment of political parties in this country.

The following table shows the percentage of third-party votes in relation to the total votes cast in presidential elections from 1900 through 1940:

Year	*Per cent third parties*	*Winning candidate*
1900	2.8	McKinley
1904	6.0	Theodore Roosevelt
1908	5.3	Taft
1912	34 9	Wilson
1916	4.7	Wilson
1920	5.5	Harding
1924	17.1	Coolidge
1928	1.1	Hoover
1932	2.9	Franklin D. Roosevelt
1936	2.6	Franklin D. Roosevelt
1940	.5	Franklin D. Roosevelt

Obstacles to New Political Parties

Most of the smaller parties in American history have been sectional—that is, their influence has been chiefly limited to a particular geographical area. Thus

they have never constituted much of a threat to the two major groups. There are some notable current exceptions, however, in the activities of the Prohibition, Socialist, and Communist parties. Another characteristic of the smaller parties is that they have been either urban, relying primarily on the support of labor, or agrarian, reflecting unrest among farming communities.

The reason why the smaller parties have not remained in existence for very long is to be found in a number of factors. Some we have already mentioned, such as frequent internal dissension among minority groups, and the reluctance of voters to throw away a vote on a weak minority party for fear the major party they favor least may triumph. But additional factors should be noted because they not only explain the handicaps under which new parties operate but also throw some light on the reasons for the continued strength of the two-party system.

In many states the election laws, through their definitions and legal requirements, make it difficult for new political parties to get on the ballot. The two major parties go on the ballot automatically, but new parties must petition to be placed on it as well as go through fixed procedures. In Ohio, for example, over 200,000 signatures, constituting 15 per cent of the vote at the last preceding election, are required in order to place a minority party on the ballot in a gubernatorial election. Furthermore, the names of the petitioners are made public, and many possible signers hesitate on this account to declare their allegiances.

Another factor is expense. In Nevada, for example, a new party must not only present a petition signed by 5 per cent of the voters, but must also pay a nonreturnable filing fee of $1,500. This is not a universal requirement, but it is symptomatic of the general attitude in the states with regard to minority parties.

In some states the requirements are technical and difficult of fulfillment. In Nebraska, for instance, a new party must nominate its candidates in a state convention attended by at least 750 delegates, while at the same time 100 other delegates are participating in county conventions.[6] Another requirement—that a majority of the voters must favor a particular candidate of a new party in national elections—is also a deterrent.

If proportional representation were widespread, as it is not, then minority parties might be encouraged. *Proportional representation (PR as it is called) is a system whereby representation is based on interests, opinions, and party affiliations rather than on geographical areas.* It will be explained further in Chapter 19.

In short, lethargy and the tendency toward divisiveness, fear of throwing away one's vote, the long tradition of two-party rule, and the legal and financial obstacles which states create to discourage new parties all tend to maintain the *status quo.*

[6] Peter H. Odegard and E. Allen Helms, *American Politics* (New York, 1938), p. 791.

THE HISTORY OF AMERICAN PARTY CONTROL

Is there any basic cleavage running through American political history, dividing the two major political parties? There have always been the Hamiltonians and the Jeffersonians, the advocates of business interests on the one hand and of agricultural and workingmen's interests on the other. Nevertheless, the two sides have had much in common. "We are all Republicans, we are all Federalists," said Thomas Jefferson in 1801. Thirty years later, Alexis de Tocqueville who, like Burke, believed in great principles, lamented the absence of great parties in the United States. James Bryce in his *American Commonwealth* felt the same way about it: "Neither party," he commented, "has as a party any clean-cut principles, and distinctive tenets. . . ." To which V. O. Key today replies that our parties have their principles, only they "tend toward similarity."

The explanation of this apparent similarity between our two major political parties is that our great wealth and expanding industry throughout most of our history have made people content with their lot and agreed on fundamentals, such as the capitalist system and representative government. It is perhaps largely for this reason that government—and hence the political parties—has not been accorded as much attention as it might otherwise have received.

If crises and class cleavages become accentuated in the course of our readjustment to a peacetime economy, however, we may anticipate a sharpening of political alignments. The signs of such a realignment had already begun to appear before World War II, but the exigencies of war placed political rivalries in a temporary and partial eclipse. Now that the war emergency is over, we may expect renewed activity among the parties.

In the past, there has been a good deal of shifting of control between the two major parties. Perhaps the best way to summarize this aspect of the history of our parties is to present brief characterizations by periods:

1788–1800 (Washington, Adams)—Federalist supremacy and the growth of party divisions. Hamilton's policies predominated during this period. He advocated a strong central government, the federal assumption of state debts, plans for business expansion, and a national bank.

1800–1828 (Jefferson, Madison, Monroe, Adams)—Democratic-Republican supremacy. During these years the emphasis was on such matters as agrarian and workers' needs, extension of the franchise, and free education.

1828–1860 (Jackson, Van Buren, Harrison, Tyler, Polk, Taylor, Fillmore, Pierce, Buchanan)—largely Democratic supremacy. The last of Jefferson's Virginia dynasty in the preceding period had turned conservative. Jackson represented the liberal opposition and brought the frontier again to the White House. This was a time of sectional conflict leading up to the Civil War. States' rights were the important issue. Much of Hamilton's work was undone.

1860–1884 (Lincoln, Johnson, Grant, Hayes, Garfield, Arthur)—Republican supremacy. In 1856 the Republican party as we know it entered the field. Abraham Lincoln became President in 1860. The Civil War and reconstruction followed. The Republican hold lasted until the election of Cleveland. The issues of states' rights and slavery predominated. This period also saw the expansion of the nation toward the West, the growth of corporations, and the rise of agrarian discontent.

1884–1896 (Cleveland, Harrison, Cleveland)—revival of the Democratic party. Cleveland, a Democrat, was elected in 1884. Following an intervening term by the Republican Harrison, Cleveland was re-elected. In this period of discontent within both parties agrarian discord increased. The Populist party grew in power. Labor became a force to reckon with. The Sherman Antitrust Act was passed in 1890. The gold-silver controversy raged. This was a turning point in American political history. Business, agriculture, and labor were now powerful forces on the national scene.

1896–1912 (McKinley, Theodore Roosevelt, Taft)—Republican ascendancy again. In this period America became a "businessman's civilization." Tariffs were enacted. There was an extension of government assistance, regulation, and control. Big business was dominant.

1912–1920 (Wilson)—Democratic supremacy. This period included World War I and "The New Freedom" under Wilson. Labor and agriculture grew in power. The regulation of business was extended and the income tax adopted.

1920–1932 (Harding, Coolidge, Hoover)—Republican supremacy. Business was in the saddle. The tariffs went higher. In this era of "normalcy" agriculture and labor became increasingly political. The stock market crashed in 1929 and the depression set in.

1932–194— (Franklin D. Roosevelt, Truman)—Democratic supremacy. There was an extension of government control because of the depression and World War II. Labor and agriculture occupied the limelight. The "New Deal" emphasized urbanism, planning, social security, and government ownership.

This telegraphic account may help to place historical figures and events in perspective and to suggest the strength and direction of the current running throughout the alternating control of the government by the two major parties.

What does the future hold? At the time of Abraham Lincoln's election, our population was only 30 million, business was effective but small, labor and agriculture were neophytes in the political field. Today our population, having been swollen by millions of new immigrants and their descendants, is more than four and a half times as large as it was then. Business is large and powerful, and so are agriculture and labor. Our major economic interests are now politically energized. How will these changes affect party alignment?

SUPPLEMENTARY READING

1. The political process and its study: One of the shrewdest and best-balanced approaches to practical politics is that of V. O. Key in *Politics, Parties, and Pressure Groups* (New York, 1942), Chapter 1. Of equally high quality is a textbook entitled *American Politics* (New York, 1938), by Peter H. Odegard and E. Allen Helms; the approach is explained in Chapter 1. The Lasswellian "influence" approach is most succinctly stated in *Politics: Who Gets What, When, and How* (New York, 1936), Chapter 1. Another example of the "realistic" approach is that of J. T. Salter, *The Pattern of Politics* (New York, 1940), Chapter 1. Policy and decision making are emphasized in Charles A. Beard's book, *Public Policy and the General Welfare* (New York, 1941), Chapters 1 and 2. See also H. S. Oliver, *Politics and Politicians* (London, 1934), Chapter 1; Roy V. Peel and J. S. Roucek, *Introduction to Politics* (New York, 1941), Chapter 1; and Robert Michels, *Political Parties, A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York, 1915), Chapter 1. For the dynamic problems with which government must deal in a changing world, S. McKee Rosen's *Political Process* (New York, 1935), Chapter 1, is highly recommended. See also E. Pendleton Herring, *The Politics of Democracy* (New York, 1940), M. Ostrogorski, *Democracy and the Organization of Political Parties,* 2 vols. (New York, 1908), and Alexis de Tocqueville, *Democracy in America,* various editions, the latest being in two volumes (New York, 1945).

2. The party system: One of the most incisive and interesting books is E. E. Schattschneider, *Party Government* (New York, 1942), Chapters 1–4. The principal texts are E. M. Sait, *American Parties and Elections* (New York, rev. ed., 1939); Peter Odegard and E. A. Helms, *American Politics* (New York, 1938), Chapters 1, 5–8; V. O. Key, *Politics, Parties, and Pressure Groups* (New York, 1942), Chapter 1 and Part 2, "The Party System"; R. C. Brooks, *Political Parties and Electoral Problems* (New York, 3rd ed., 1933); H. R. Bruce, *American Parties and Politics* (New York, rev. ed., 1932); and C. E. Merriam and H. F. Gosnell, *The American Party System* (New York, 3rd ed., 1940). Read Madison's famous essay on factions in *The Federalist* (various editions), No. 10. A journalist's slant on politics is F. R. Kent's *The Great Game of Politics* (New York, 1928). Excellent readings are found in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941) pp. 265–299, "The Political Party." On the influence of sectionalism, see Frederick J. Turner, *The Significance of Sections in American History* (New York, 1937).

CHAPTER 17

The Structure of Party Rule

As is equally true of most other groups, including business, labor, agriculture, and the professions, party government in the United States has become a business in which professionals exercise a controlling influence. Ours is an age of specialists and of the division of labor.

The strength of a political party is in its regulars, its party workers, few of whom are qualified to deal with difficult economic and social issues. They are in the work for what they can get out of it, or they have a strong love of teamwork, or they are opposed to the other crowd, or their position in the community makes it profitable for them to carry on political activities. For many it is simply a way to the top. A young lawyer, for example, will do precinct work in the hope of securing the favorable notice of a partisan judge or a job in the city attorney's office. Another may become a precinct captain in the hope of advancing to the position of ward committeeman or district leader, and eventually city or county boss. Sometimes altruism predominates; sometimes it is simply selfish design. To many, party politics is merely an interesting game.

This chapter will describe the structure of political parties in the United States, from the precinct to the national level, together with the problem of party finances. Next it will take up the future of the major parties in this country, as well as the relation between party rule and municipal reform; and it will conclude with a discussion of the place of party government in a democracy.

THE STRUCTURE OF POLITICAL PARTIES

The Precinct

Most of the power of political parties is found at local levels where party workers can be relied on to build up and keep intact a solid following. Both of our major parties are somewhat loosely knit aggregations of city, rural, and county organizations, with definite leaders and party machinery. The precinct is the base of the pyramid. The size of the precinct varies: in a large city it may be a city block, so congested is the population; in a country district it may include an entire county. In the United States there are some 120,000 local voting districts or precincts, although of course no one party has an effective organization in each one. This is especially true where one party dominates, as in the South.

In charge of each such local unit is a recognized leader, usually called a precinct captain or precinct committeeman, generally appointed by the higher party chieftains but sometimes elected by the party. He is expected to take his orders from above. He is rewarded and advanced on his record as a vote-getter and a money-raiser. This means that he must acquire a personal following, must be active and energetic, and must keep his finger on the faithful as well as the doubtful.

The precinct leader must see that the regular party members vote, must persuade the vacillating, and must bring new, active workers into the organization. He must stage benefits and secure donations for election purposes, particularly from administrative and judicial appointees indebted to the party. He recommends his supporters for government positions and helps those of his followers in need to get jobs, relief, and other forms of assistance. It is the precinct leader's job to select judges and clerks to preside over elections and count the ballots, and to recommend them to the Board of Election Commissioners, which generally accepts such nominations. He calls on doubtful prospects before election and, if necessary, provides transportation to the polls. He must be a good mixer and a popular fellow. To be successful, a precinct committeeman must not only love his work; he must have the qualities of a salesman, a social worker, and an executive. It is not a frequent combination of skills.

The Ward Committeeman or District Leader

The district leader is like the precinct committeeman except that he has a larger bailiwick, consisting of a number of precincts, perhaps even a whole city. The work of the district leader requires greater coordinating and executive talent, less of personal buttonholing and pounding of shoeleather. He has more jobs to give out and greater influence generally. He may be compared to a broker—in contact with businessmen, labor leaders, and claimants to services and favors of all kinds. Perhaps a contractor wants a paving job, a labor leader must have a bill blocked, a clergyman wants Sunday closing laws—in each case the district leader is the man to see.

Social service is also a part of his job, just as increasingly it commands the attention of outstanding business leaders. In both cases it is usually a mark of sincerity, of genuine feeling for one's fellows, something more than just a front designed to secure reputation and influence. But social service is also good politics. Said the head of a Boston settlement house in referring to a ward leader who served on her board for years, "His generosity and sympathy made him so popular with the poor that they 'naturally' voted as he advised."

The City or County Leader, or Boss

The head man in the city or county party organization is the boss of the district and precinct leaders. Sometimes he is the mayor, or the chairman of the municipal party committee, or chairman of the county party committee,

or even the governor. But wherever he is located, there is always a top man and everyone knows who he is. Usually, he is elected to his position as committee chairman, but if he is a real boss he does not need to be elected. Pat Nash, boss of the Democratic party in Chicago for many years, was such a person. Nash held no elective or appointive office within the gift of the people, but he was chairman of the county committee of the party and held court for a constant stream of callers from the poorest inhabitants on Chicago's West Side to mayors and governors. Bosses are found in both the city and the rural districts all over the nation, but we are much more likely to be aware of the importance of the city bosses, for their names are seldom long absent from the news columns.

A combination of circumstances has made boss rule possible in the United States, but perhaps the central factor is our national immaturity. Thus bossism stems partly from our popular lethargy toward government while we pursue the almighty dollar. This traditional indifference toward civic responsibilities made it possible for predatory interests to create a profitable business out of selling favors and illegal protection. As a nation we have been too busy with other things and too impatient with self-discipline to learn the art of skilled government.

The rapidity of our migration and continental development is another factor, creating as it did an environment in which crude methods were not at first frowned on. This also was a symptom of political immaturity. As a result, we have had ballot box stuffing, patronage, and spoils, the "protection" of vice and crime, and the plundering of the public treasury by crooked contracts and outright theft.[1]

Boss rule has also been helped—especially in our larger cities—by the masses of immigrants who came here prior to World War I. In general, these people, with little education and less knowledge of our institutions, being naturally fearful in a new land, tended to stay together. Through their own leaders they became attached to political bosses who had power, who could give them protection, who could help them adjust, and who provided them with shoes, food, clothing, and jobs as required.

In the past, political machines and boss rule have thrived on such unassimilated national minorities. But as assimilation takes place and the native-born children of these immigrants launch out on their own, municipal bossism weakens its hold. Although it will take some time to complete, the transformation is under way in every large city. This breaking down of racial separatism and the corresponding amalgamation of cultures, due to a common language and social intercourse, will ultimately change the character of American political parties in the larger cities.

Furthermore, as a people we are beginning to take a more active interest in politics. The facts of war and depression have brought government home to

[1] On this seamy side of government, V. O. Key's chapter in *Politics, Parties, and Pressure Groups*, "Pecuniary Sanctions," Chapter 23, is recommended.

the citizen in a manner which he could scarcely ignore. As a result, over a period of a dozen years or so, we have gained a measure of political maturity. So far as local politics are concerned, we may eventually begin to approach the example of Great Britain, where there are no bosses and where municipal corruption is practically unknown. All groups, including organized labor, are active in municipal politics.

As national origin becomes less important in this country, therefore, differences in economic and social policy will be more emphasized in party affairs than allegiance to a boss. As the second generation takes advantage of better educational opportunities than most of their parents had, American democracy will be strengthened at its foundations, because knowledge is both power and independence.

The County Organization

In rural areas the center of party activity is in the county. But as we have seen in an earlier chapter, county government may also be important for urban areas, as in the case of Cook County and the city of Chicago in Illinois. A strong county party committee under these circumstances can wield substantial power. But even in a rural county, the chairman of the county party committee—who may be a boss in his own right—controls the village, town, and precinct leaders in his jurisdiction, which may add up to a respectable total.

Of the 3,050 counties in the United States more than 1,000 are in the South, where one party dominates. There is probably a total of some 5,000 separate county committees of the two major parties, therefore, with the Democrats having somewhat more than the Republicans. County committees are chosen in one of several ways. The state may provide by law for the election of their members at regular primary elections or in party conventions; or they may be chosen according to the rules of the party itself, in which case the selection will probably be by caucus.

The professional politician has a fairly free rein, as matters now stand, so far as the counties are concerned. In general, voters are not as interested in county affairs as they are in government at other levels. This gives the county boss freedom to do pretty much as he pleases with the fifty to several thousand jobs he may have to distribute. Indeed, the county party committee generally controls more patronage than the party organization at any other level. Politics and patronage have come to be a principal reason for the fact that county governments have not more generally been consolidated, modernized, and made administratively more efficient.

In addition to distributing county jobs, the county politician can usually influence village, town, and special district appointments, control the votes of the delegation to the state and national conventions, influence the votes of local delegates to the state legislature, and have a hand in federal and state appointments in his area.

State Organization—Center of Party Power

Every state in the union has a central committee for each of the major parties. And although the state organization is not the top of the pyramid—the national committee enjoys that distinction—it is actually the center of power in party organization. Here the central committee is composed of key leaders from the counties, wards, and precincts.

As in the case of county committees, there are different methods of selecting the members of the state party committee. Generally speaking, state laws provide that on or before a certain date, the party voters shall choose the members of the state central committee, either by direct primary (a preliminary election in which the voters decide directly) or by party convention. State central committees range in size from eleven members in Iowa to five hundred in California, again illustrating the striking diversity of American governments. Continuation activities between sessions of the state committee are carried on by an executive committee.

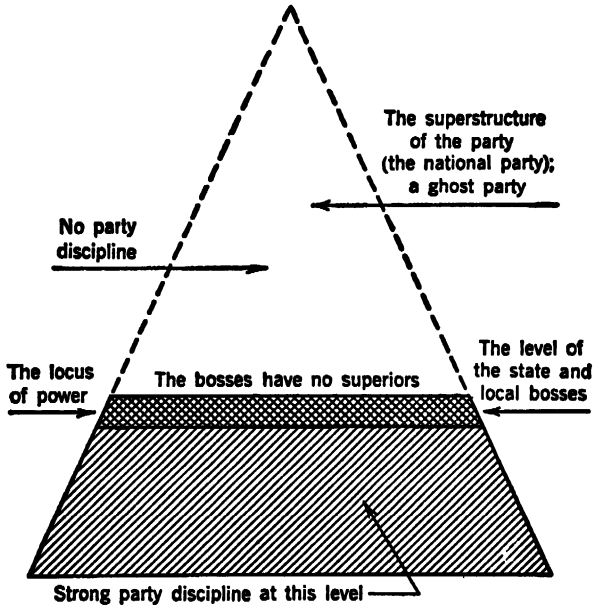
The power of the state committee generally lies in the hands of its chairman. This is especially true if he also happens to be a member of the national party committee. But even without this added prestige, the chairman is powerful enough. The United States has never had a national boss—unless Mark Hanna or Jim Farley might be so regarded—but individual states have. Elihu Root's description of the situation in New York state may be taken as an example. "What is the government of this state?" asked Root. "The government of the constitution? Oh, no . . . . For I don't remember how many years Mr. Conkling, the state boss, was the supreme ruler of this state; the governor did not count, the legislature did not count. . . . Comptrollers and secretaries of state and what not did not count . . . . Then Mr. Platt ruled the state . . . and the capital was not at Albany; it was at 49 Broadway . . . . The ruler of the state during the greater part of the forty years of my acquaintance with the state government has not been any man authorized by the constitution or the law."

It should be remembered that Mr. Root was in politics himself—a former United States senator and Secretary of State—and, like all political contestants, he sometimes exaggerated for the sake of emphasis. But even when allowance is made for this and for the fact that the situation described is by no means typical, it may still be appreciated how much influence a state boss may come to have.

The diagram on page 261, from E. E. Schattschneider's *Party Government,* shows the pyramid of authority in the American party, with control at the state and local boss level.

The National Party Committee

The apex of the party pyramid is the national committee. It consists of one committeeman and one committeewoman from each state, plus delegates from



Source: E. E. Schattschneider, *Party Government* (New York, 1942).

the territories and the District of Columbia, making about one hundred in all.

There are three principal ways of choosing state representatives on the national party committee. In some cases, state delegates to the national party convention select the national committee members—this is the oldest method. In other states, selection is by the state convention. In the remainder, the representatives are either appointed by the state central committee or elected by direct primary. All selections so made, however, must be ratified by the national convention.

The national committee passes most of its power on to the chairman, especially in election years. Appointed by the party's presidential candidate soon after the national party convention, he supervises the headquarters staff, which consists primarily of publicity and public relations personnel. If he has sufficient personality and influence, he can exercise real power, for if anyone can pull together the diverse elements in a major party, it is the chairman of the national committee. When internecine strife breaks out, it is he who must set things right. When a housecleaning is necessary at the state or county level, it is he who must maneuver it, if he can, without making enemies among those who count. Much of the credit attaching to a presidential candidate is more properly assessable to the handling that he gets from his party chairman.

The chief prize sought by the national party committee, of course, is the presidency. In order to concentrate their fire, therefore, both the Republican and the Democratic parties have created two additional committees each: a Congressional committee and a Senatorial committee. Both have full-time

staffs which support the party candidates in national elections for the two houses of Congress.

Party Finances

From what has been said, it will be realized that party government closely resembles a business activity. There is a carefully thought-out, hierarchical organization, with power concentrated in the hands of a leader. There is a keen sense of competition. In addition, political parties raise and spend a great deal of money. In recent presidential campaigns, for example, the Democratic and Republican parties have spent in the neighborhood of $25 million each, which, even in these days, is no small sum.

Where does this money come from? There are five principal sources: (1) special benefits, such as Jackson Day or Lincoln Day dinners which cost from $5 to $100 a plate; (2) from candidates and their personal friends; (3) from friends of the party; (4) from assessments of party officeholders; and (5) from contributions of business interests, some of which play safe by contributing to both parties.

The following table shows party expenditures in connection with the 1936 and 1940 presidential campaigns:

EXPENDITURES OF NATIONAL COMMITTEES, STATE COMMITTEES, AND MISCELLANEOUS NONPARTY ORGANIZATIONS, 1936 AND 1940

Organization	*1936*	*1940*
Republican National Committee	$ 8,892,971.53	$ 2,242,742.47
Democratic National Committee	5,651,118.40	2,438,091.88
Communist party	162,040.45	89,548.26
Socialist party	24,962.43	
Socialist Labor party	31,659.28	
Union party	65,696.28	
Prohibition party	13,081.67	
State committees for all parties	7,876,533.74	11,896,992.00
Miscellaneous political organizations	1,255,266.04	6,072,313.42
Totals	$23,973,329.82	$22,740,313.42

Source: 1936 figures, *Lonegan Report*, p. 27; 1940 figures, Senate Report No. 47, 77th Congress, 1st Session, p. 142. The 1936 figure is somewhat inflated since some amounts given by the national committees to state committees are recorded twice. In the 1940 figures the Senate committee apparently made some allowance in the total for transactions between committees.—Appearing in V. O. Key, *Politics, Parties and Pressure Groups*, p. 447.

Although Congress has passed corrupt practices laws attempting to regulate and control the amounts which may be contributed to election purposes, they are difficult to enforce because not all contributions can be traced to their source, and many forms of subterfuge have been invented. This problem will be discussed further in Chapter 20.

THE FUTURE OF THE MAJOR PARTIES

During the twelve-year period from 1920 to 1932, many political commentators openly questioned whether the Democratic party could ever regain power.

In another twelve-year period following the return of the Democrats to office in 1932, an equal number of observers wondered if the death knell of the Republican party had not been sounded. Probably the second guess is as unfounded as the first. The older parties are tough. After a period of inner romolding they often reappear in a new form and with increased effectiveness.

And yet there is little doubt that a new leaven is at work. The future of the two-party system does not seem as secure as it has been during the past century and a half. The matter has been well summarized by Odegard and Helms in *American Politics:* "The future may see not two but three or four major parties and a host of minor ones. Whether or not this happens will depend largely upon the flexibility of the existing major parties, upon their capacity for readjustment and absorption, their democratic management and their knowledge of when to yield to and when to resist new pressures. For politics will continue to be the translation of social pressures into policy; and political parties, as aggregations of interest groups, will remain, so long as democracy endures, the chief agencies through which this is done."

And then these authors add the prophetic words: "That a major realignment is in the offing, if indeed it has not already occurred, seems clear. This need not and probably will not mean, in the visible future, the abandonment of traditional party labels, although that is not impossible."[2] This was written in 1938. We are so close to the events that future outcomes are difficult to guess even now.

Sectional Strength of Major Parties

Any attempt to assess the future prospects of the two major parties must take into consideration the traditional allegiances which have predominated in particular geographical sections of the country. What have they been, and what is the outlook for the future?

Ever since the Civil War the so-called Solid South has been considered safely in the Democratic column even before the candidates were selected in national convention. An exception was the presidential election of 1928. In the South, historical factors play a part not equaled elsewhere. But since the Solid South was broken into in 1928 when several of the states in that area supported Hoover, it is not unreasonable to suppose that this fortress could be stormed again.

The degree to which sectional changes occur is well illustrated by New England, once considered as solidly Republican as the South was Democratic. But this is no longer true. The Democratic party in New England has found strong support among the urban population, swelled in comparatively recent years by hundreds of thousands of immigrants. Even in Vermont, which was one of the two states in the Union to support the Republican candidate in the 1936 national elections, the towns have shown a growing Democratic strength with the result that the ratio of Republicans to Democrats there is now only

[2] From *American Politics* (1938), p. 809. By permission of Harper & Brothers, publishers.

about 60–40 in national elections. It seems safe to say that New England will never again be as overwhelmingly Republican as it once was.

Recent political tendencies indicate that the center of Republican strength has shifted to the Middle West, which has long had a Republican tradition. Nevertheless, in the cities, including Chicago and more recently Detroit, St. Louis, and Cleveland, the Democratic party has won control. This is in line with the general rule that the strength of the Democratic party in the North is in the urban centers.

The record of the twelve Far Western states reveals less solidarity than in other major sections, alternately showing Republican and Democratic strength, with the balance tipped toward the latter in national elections since 1932. As unpredictable are the so-called border states, such as Maryland, Kentucky, and Tennessee, which have often changed from one party to the other in national elections.

In general, geographical or sectional allegiances are becoming less certain than they were even a generation ago. Except in the Solid South, the national elections in the last twenty years seem to indicate that social and economic factors are increasingly important as traditional factors decline. The Democratic party has added to its strength in the cities where labor is strong. In recent years the party has had the support of the young people as well. Agriculture, too, has veered in its direction. Republican strength, on the other hand, has come from business groups and from rural areas traditionally allied to that party. In the middle, tending to throw the election one way or the other, is a large group consisting of professional people, white-collar employees, small businessmen, and elements of both labor and farming. In other words, the situation seems sufficiently fluid to permit a major realignment of allegiances that may bring about something new in the way of parties.

Political Parties and Municipal Reform

In assessing the future of our two major political parties, another factor to be considered is the role of party politics in municipal government. Municipal reform has been a major activity in America since the turn of the century. The muckraking era of a generation ago stirred up an interest in municipal politics that led to the reform movements on a wide scale, in cities such as New York, Cincinnati, Dayton, Cleveland, and Los Angeles, among others. Each time reform is undertaken, however, those who seek better government must decide whether to work through existing political parties or to set up a nonpartisan coalition. This will continue to be a difficult problem because much additional municipal house cleaning is necessary.

Those who argue that city government is primarily a matter of good administration would eliminate national politics from municipal rule. It should be efficient and businesslike, not political. Municipal functions are engineering, education, welfare, and protection. National issues such as the tariff policy, preparedness for war, and foreign relations have but remote reference to city

government. It is held, therefore, that whereas the city dweller may properly vote the party ticket in state and national elections, in municipal affairs he should vote only for qualified candidates irrespective of their party.

Reformers who would divorce city government from national politics urge the fact that many civic-minded people will work hard to bring about municipal reform but are unwilling to mix in party politics. They argue, therefore, that in order to make the greatest use of this able group, civic reform must be independent and nonpolitical. Moreover, in some of our largest cities, party bosses and machines are so deeply intrenched that it seems hopeless to try to work through the existing party framework.

These are strong and persuasive considerations. But opposing factors make it seem desirable to keep the party organization and influence intact if possible. For one thing, experience has shown that if a nonpartisan reform movement succeeds in purging a city of its boss and his machine and in setting up a businesslike administration, the incentive then disappears and citizen participation lags. Even in Cincinnati, where the nonpartisan Charter Group did so magnificent a job twenty-five years ago, it has been found difficult to sustain the initial enthusiasm. Furthermore, it takes a strong, well-organized group to run a large city. In fact, it takes a machine to beat a machine. Any successful nonpartisan group, therefore, must, in effect, become a political party whether it is called that or not.

Another argument is that the function of the national political party is so important in representative government that it must have its foundations in the cities, where the largest number of voters is found. If the political parties are weakened in the cities, their effectiveness is also weakened for state and national purposes.

And finally, municipal party organizations, with their machines and their bosses, cannot be effectively eliminated so long as there are county, state, and national spoils to be had. The party merely bides its time until the reform movement has spent its force; then it comes back into power when citizen interest lags, and stays there until popular disapproval results in another wave of reform. Is it not better, therefore, to work within the party, to "bore from within"? The results may not be so immediate, but in the long run they may be more lasting.

These are the principal factors to be considered in setting up an independent, nonpolitical group for reform purposes. On which side of the balance the advantage tips it is difficult to decide. It is true that nonpartisan fusions, as in New York until the Democratic party returned to power, have accomplished much lasting good in a short time. But on the other hand, if the prominent citizens from whatever group were to roll up their sleeves and take an active part in political parties—not being afraid to get their hands dirty, as Theodore Roosevelt expressed it—then much more progress might be made through existing municipal party organizations, with resulting benefits to county, state, and national governments as well.

In addition, as government extends its activities into the economic realm—dealing with employment and financial problems, relief of the unemployed and the underprivileged, and the stabilization of the economic system—national activities increasingly involve municipal programs of the same sort, and here the normal party channel becomes a useful tool by means of which to gain citizen support. An earlier chapter described how the federal government has become banker to the cities, and how it works with them in connection with federal programs. This is symptomatic of a trend. So long as relations between the national and municipal governments remain close, therefore, there seems to be no substitute for reform from within the party.

How Party Government Can Be Made Responsible

Responsible party government is as essential to free government as the best of written constitutions. The constitution is the framework of government; the party is the mechanism that operates it. Neither constitution nor public opinion is self-executing. Both require the machinery of party government.

Public opinion must be organized, directed, and made responsible. Voters must be given an intelligent choice between alternative courses of policy. Government must be controlled, staffed, and provided with a leadership capable of transforming individual and group aspirations into public legislation and administration. The larger the nation becomes and the more complex its interests become, the greater is the need for effective party government. Political parties are the medium through which representation flows. Parties, like law, are the means by which the elements of government are meshed and made to operate efficiently and responsibly. Party government is the method of accomplishing these objectives most in line with democratic principles and methods. But the degree to which our political parties perform these functions depends on how clearly we comprehend what their role needs to be.

There are no alternatives to responsible party government. Pressure groups cannot qualify: they represent fractional interests, they seek primarily their own ends irrespective of the broader public interest, and they lack the organization and the experience to nominate candidates, run elections, choose leadership, explain issues, and hold themselves responsible for operating the legislative and executive departments of government.

A professional bureaucracy is an equally unthinkable substitute for party rule. Continuously in office and holding no direct mandate from the voters, a bureaucracy performing the functions of party government would soon become an intolerable dictatorship.

Political wisdom in this field, therefore, begins with the recognition that party government is a good and necessary thing, that there is no alternative to responsibility in this field, and that responsibility rests primarily with the citizen.

Instead of holding this positive attitude, however, many of us have come to regard parties as merely a necessary evil. This is largely because in practice

political parties have become little more than a means of choosing between rival candidates. The parties' functions in policy determination, leadership, and governmental coordination are ineffectual. They do not present us with real alternatives on which to vote. And even when party platforms are adopted and party candidates are elected, there is no assurance that campaign promises will be or can be carried out. Hence we become cynical. We see the bosses growing in power and oligarchic tendencies within the party organization increasing, and we take for granted that these are inevitable developments. We observe that the interests in control are local and sectional in character and are unconcerned with broad national and international problems. There is a weakening of responsibility and effective leadership in the government, together with a lack of cooperation between the legislative and executive branches, each of which seems often to be going in a different direction.

We see, too, the uncontrolled raids of pressure groups on public resources and programs, inviting extravagance, planlessness, and conflicts of policy. No government in the world has ever been as vulnerable to the importunings of hundreds of pressure groups of all kinds as the government of the United States. Where the party should be exercising responsible control, its attention is elsewhere. Too often party leadership is in the hands of professionals who play the game for their own interest and benefit. In despair and disgust, we turn our backs on the whole business.

And this attitude, of course, is partly responsible for the entire difficulty. The weakness of responsible party leadership is due, first of all, to the mental set that has been hostile to real party leadership. This attitude is traditional with us. We merely tolerate the party system; we have not yet rationally decided that it is a beneficial and necessary thing, the very center of representative government. We expand our sentimental attachment on the Constitution—an admirable loyalty so far as it goes. But too exclusive an emphasis on the Constitution must not be allowed to result in the neglect of the central position of party government. If we lose faith in party government, we lose faith in representative government itself, in which case even the Constitution will lose its vitality and eventually the ability to protect us.

Another factor militating against responsible party government in the United States is the separation of the legislative and the executive branches of the government. Consequently, party regularity is not required to keep the victorious majority in power, as is the case in Great Britain, for example. Because in the United States the members of the majority party in Congress feel perfectly free to vote as they please, it is impossible for the legislative and the executive to adopt and be responsible for a common policy under a joint party leadership which would stand or fall on its program.

The peculiarities of our party system are partially explained by the fact that either in theory or in practice, every candidate for the legislature must reside in the district in which he seeks office. For each district there is one elective official; this is what is meant by the single-member district, which distinguishes

our election system from that of Great Britain. The single-member district further strengthens the hand of the local boss, intensifies localism and sectionalism, and weakens the central influence and responsibility of national party leadership. The system makes political careers difficult to fashion. In England a man stays in politics even when his party is out of power, running for Parliament as often as he chooses. But as a general thing in the United States, we have a constant ebb and flow of political officeholders, thus wasting the experience of individuals of superior ability.

Other major factors are federalism, the continental size of our nation and the diversity which characterizes it. Party government, therefore, has become decentralized rule—the rule of local machines and bosses. We lack a centralized, disciplined organization. Power resides at the boss level, wherever that may be located. As a result, local party organizations perform in much the same way that pressure groups do—they bargain and barter, holding out for the highest price which aspirants to office will pay for their services.

Paradoxically, therefore, short-term elective officeholders are at the mercy of professional local political leaders, who often occupy no elective position at all but hold permanent oligarchic control over the very centers of governmental power—the election machinery, nominations, candidates, the appointing power, and the party platform. Here is power without a corresponding responsibility. If the American people were to realize how important party government is to them, in time this anomalous situation could be corrected.

If party government is to play the role dictated by its necessity, therefore, we must change our traditionally negative attitude for a positive one with regard to the party. We shall discover in the long run that there are strict limits to what a nation can accomplish in the way of internal tranquillity unless the problem of party responsibility is solved. We shall also discover that no change for the better will occur of its own accord. The next step, therefore, is up to the citizen.

SUPPLEMENTARY READING

1. The references listed under "The Party System" at the end of Chapter 16 will be found useful.

2. **Trends in political parties:** Three books by Arthur N. Holcombe are excellent: *Political Parties of Today* (New York, 1924), especially good on sectionalism; *The New Party Politics* (New York, 1933); and *The Middle Classes in American Politics* (Cambridge, Mass., 1940). Another interesting book is E. B. Logan (ed.), *The American Political Scene* (New York, 1936).

3. **Local politics and "bossism":** Harold F. Gosnell, *Boss Platt and His New York Machine* (Chicago, 1924), and *Machine Politics: Chicago Model* (Chicago, 1937); Roy V. Peel, *The Political Clubs of New York City* (New York, 1935); J. T. Salter, *Boss Rule: Portraits in City Politics* (New York, 1935); Harold Zink, *City Bosses in the United States* (Durham, N. C., 1930); and D. D. McKean, *The Boss: The Hague Machine in Action* (Boston, 1940)—are all recommended.

CHAPTER 18

The Electorate and Voting Behavior

GOVERNMENT is an instrument, its use determined by who controls it. How much influence we as individuals may have in shaping the goals and methods of government depends on the degree to which we qualify ourselves for participation in the various processes of government.

First, we must be citizens or we cannot even get a foot in the door so far as influence is concerned. But second, we must also qualify as voters if we want a voice in deciding who is to hold office and what the policies and objectives of the public business are to be. Affiliation with a political party adds to personal influence, but such affiliation depends on our right to vote to make it significant.

There are several synonyms or variations of the expression "the right to vote." Voting is called the suffrage, the franchise, or balloting; and those who possess the right to vote are called voters or the electorate.

The right to vote, like the antecedent right of citizenship, is something men have struggled for centuries to obtain. To the inhabitant of Greece or Rome, citizenship meant two things. First, it was a symbol of the fact of having "arrived," of being socially and politically approved; and second, it meant the right to a voice in molding policies of peace and war, and in choosing leaders in whom he had confidence. Twenty centuries ago, both the symbol and the right to vote were important. They are even more important today when the affairs of state are closer to men's lives than at any time in the past.

This chapter will start with a brief historical outline of the extension of the franchise in the United States, next discussing suffrage requirements today, and the special problem of Negro voting. This is followed by a study of voting behavior, including failure to vote and why people vote as they do. The concluding section deals with public opinion polls.

EXTENSION OF THE FRANCHISE

One of the proudest aspects of our American tradition is the extension of the franchise so that now, among adults, whether male or female, the right to vote is well-nigh universal. But like the enjoyment of citizenship, the right to vote will serve to strengthen and perpetuate popular government only to the extent that we prize and learn to use it intelligently.

Why is the franchise so much more widely distributed today than at the time of the founding of our political institutions? The passion for liberty and equality was apparently stronger at the time of the Revolution in this country

than it is now, judging by what people at that time wrote and did, and yet the franchise was considerably restricted. The explanation lies in certain traditional assumptions which then prevailed, even though a belief in social improvability through popular rule had come to be recognized in the preceding century.

The first of these assumptions was that unless a man owned property, he could not be expected to vote his own interests soberly and with respect for the property rights of others. Hence the nearly universal requirement of property qualifications as a condition of the franchise, evidenced by the poll tax and similar payments.

A second assumption—not quite so widespread—was that unless a man knew how to read and write he could not be expected to learn the facts and form a valid opinion on community affairs. The enfranchisement of the illiterate, it was argued, would lead to blind and mistaken policies. Hence the requirement of literacy qualifications in some cases.

A third assumption was that women should be satisfied to be represented by the men of the family. A good woman was a housewife and a mother, too busy to know much about public affairs, and naturally in accord with her husband's viewpoint.

And finally it was assumed that the control of the franchise should be held by the white population, and that Negroes should be excluded.

In the political history of America we have seen the broadening of the franchise. Under the influence of Jeffersonian democracy and the frontier influence of Lincolnian equality, we have eliminated most of the legal barriers that the founding fathers took for granted. Confidence in man has caused the franchise to be more widely used as an instrument of government in the United States than in any other country the world has ever seen. Not only have we removed most of the bars to adult participation—except for aliens, now a small group—but we have used the franchise in many ways to produce a more popular democracy than was originally intended. The initiative and referendum, the direct primary, the popular election of United States senators, the changed method of electing the President, the election rather than appointment of most chief executives and many minor ones, show the impact of a people's belief in universal suffrage on legislatures, political parties, public administration, and the judiciary.

Suffrage Landmarks

In terms of particular groups affected, there have been three principal stages in the extension of the franchise in the United States.

Universal, white, manhood suffrage, 1789–1850. The democracy of the Western frontier and a growing interest in political parties hastened the establishment in the United States of universal suffrage among white males of voting age. Before the close of the eighteenth century, Vermont, Kentucky, and Tennessee had come into the Union with the principle of universal white man-

hood suffrage practically established. Vermont, the fourteenth state, pioneered here.

The states of the old Northwest Territory that were admitted to the Union early in the nineteenth century frequently enfranchised all white citizens of voting age, including aliens who had merely taken out first papers. Maryland, one of the original thirteen states, abolished all tax and property qualifications and established the suffrage for white male citizens in 1809—which makes the Free State something of a pioneer among the older commonwealths. New York followed her example in 1826, and Virginia in 1850. By the middle of the nineteenth century the principle of universal manhood suffrage for whites was widely recognized.

Enfranchisement of Negroes, Civil War amendments to the federal Constitution, 1868–1870. The Fifteenth Amendment to the Constitution reads: "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."

The Fourteenth Amendment (section 2) attempts to provide the sanction to enforce this right: "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 [Congress] 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."

The intent was clear, the enforcement difficult, as will be seen in the discussion of this matter later in this chapter.

Woman suffrage, the Nineteenth Amendment to the Constitution, 1920. The Nineteenth Amendment to the Constitution, enfranchising women, doubled the number of qualified voters in the United States. This amendment was passed during the administration of Woodrow Wilson, but only after nearly a century of agitation on the part of its supporters.

As early as 1848 a Women's Rights Convention, held at Seneca Falls in New York, to protest against disenfranchisement as well as against legal incapacity arising from marriage, unequal divorce laws, the "double standard of morals," occupational limitations, the denial of educational opportunities, and subordination in church government brought agitation into the open. Five years later an advocate of woman suffrage told a constitutional convention in Massachusetts: "I maintain first that the people have a certain natural right, which under special conditions of society manifests itself in the form of a right to vote. I maintain secondly that the women of Massachusetts are people existing under these special conditions of society. I maintain finally, and by necessary consequence, that the women of Massachusetts have a natural right to vote."

The first guaranty of equal suffrage to women in the United States was contained in the act of 1869 of the territorial legislature of Wyoming, a provision carried over into the constitution of that state in 1890. By 1914, determined suffragettes, whose demonstrations resulted in the charge of disturbing the peace, were going to jail in support of their convictions. Of course it was inevitable that they should get what they so badly wanted. The surprising thing is that the men, with so few arguments on their side, held out as long as they did.

However, it is one thing to possess a right and another to exercise it. Although women have had the franchise since 1920, there is a higher percentage of nonvoters among women than among men.

PRESENT-DAY SUFFRAGE REQUIREMENTS

Voting is both a right and a privilege. When the law grants the franchise in specific terms, then individuals who qualify thereunder may view it as a legal right in precisely the same way they would regard any other legal right. But in nonlegal terms, the right to vote is a privilege because voting is something men have struggled to obtain, because only those who qualify under the law are entitled to vote, and because voting makes one a full participant in public affairs.

How Voting Rights Are Determined

There are three important rules relating to the determination of the right to vote.

First, the only extent to which the suffrage is regulated on a uniform, nation-wide basis is in pursuance of the Fifteenth and Nineteenth Amendments to the Constitution, and these merely forbid the denial or abridgment of the right of citizens to vote on account of race, color, previous condition of servitude, and sex.

Second, this leaves a wide latitude to the states in the area of the suffrage. Suffrage requirements are primarily set forth in the state constitutions. The importance of this point is that the legislatures cannot thereafter add to the legal requirements or deny the right to vote to those entitled to it under constitutional provisions because legislative enactments must conform to the higher law of the Constitution.

Third, within these two sets of limitations, the states are free to make all other determinations of the right to vote. The cities and municipalities may also impose qualifications for voting in local elections, but only in accordance with authority contained in municipal charters or other law.

Three General Requirements for Voting

Because of the latitude given the states in the field of the franchise, voting requirements among them are far from uniform. Although generalization is

precarious, three nearly universal conditions relating to age, citizenship, and residence may be mentioned.

Age. The general provision is twenty-one years for both men and women.

Citizenship. The citizenship requirement is now universal, but not always strictly enforced. Whether aliens may vote is optional with the state. As we have seen, several of the states once extended the franchise to aliens, but judging by current attitudes this is unlikely to be repeated.

Residence. The residence requirement is not so simple to dispose of. The general rule is that the voter must reside in the place of voting. But what place? The state, the county, the city, or the precinct? Each of these units may have its own residence requirements for its own elections.

In almost two thirds of the states the residence requirement is one year. In most of the remainder it is six months, but in a few it is two years. In the counties, a residence of three to six months is the most common rule, but it may be as little as ten days and as much as a year. The precincts usually require a residence of ten to thirty days, the longer period becoming rather general, but the requirement may be as much as a year.

Residence requirements have an important effect on the total vote. Since urbanized civilization is nomadic, people are constantly on the move, and hundreds of thousands are denied the right to vote every year.

Other Voting Qualifications

Strictly speaking, *registration* is not a voting qualification, but a means of recording qualifications. However, registration is generally required before a person may vote.[1] This type of control is particularly important in the large cities where even next-door neighbors are often not acquainted and where false and fraudulent registration, ballot box stuffing, and similar dishonest practices are difficult to control.

Other qualifications are increasingly rare. *A poll tax is a direct personal tax levied as a rule by a local government under state authority at a stated rate per head on all adult persons or classes of persons.* As a prerequisite for voting it is now found in only seven states, all in the South.[2] Four states in this region, North Carolina, Louisiana, Florida, and Georgia, have abolished it entirely as a voting requirement. The poll tax is still used for revenue purposes, however, in the South and other parts of the country, including New England where in some cases, at local option, the towns may impose a poll tax as a voting requirement as well. The amount of money involved is usually relatively small, but it has been used for a number of ancillary purposes. Long before the poll tax became a means of discouraging Negro voting it was effectively employed to prevent the lowest income groups among the white population from sharing the ballot. Today it is sometimes used as a condition precedent to obtaining an automobile license.

[1] Registration is discussed in Chapter 19, "The Voters Decide—Nominations and Elections."

[2] Council of State Governments, *The Book of the States*, 1945–1946 (Chicago), p. 88.

In recent years a spectacular controversy in Congress over the abolition of the poll tax has centered chiefly around the question of the enfranchisement of Negroes in the South. Those who favor the payment of a poll tax as a voting qualification for primary or general elections argue that it discourages the indigent and helps to insure compliance with tax laws. In some isolated instances this may be true, but more often it is not. The poll tax as a regulator of the franchise goes to the roots of our assumptions about popular government.

Literacy tests are required in about a third of the states. If they are nondiscriminatory and well administered, there is much to be said in their favor. Since knowledge and vigilance are requisite to popular rule, it seems reasonable to require voters to qualify by being able to read and write. On the other hand, there are thousands of elderly people in the United States with little formal education who are the salt of the earth. Educational opportunities were lacking when they were of school age. They have raised fine families, they inform themselves before voting, and they are public spirited. It is probably just as well, therefore, that literacy requirements have been extended only slowly, for people of this type would be denied the franchise. As educational opportunities increase, however, we should be able to demand more in the way of literacy qualifications.

At present, New York state probably has the fairest system of literacy requirement. All who have completed the fifth grade in an approved school are automatically excused from further test. Those required to take the examination go before the regular school authorities and take qualifying tests given at stated intervals. It has already been said once before in these pages, but it bears repeating: we Americans should do more than we do at present to educate our native-born adult population in the American political tradition and in how it can be strengthened.

The remaining voting qualifications may be disposed of briefly. *Conviction of crime* disqualifies persons from voting in some states, even after the sentence has been served. The governor or the pardon official must act positively to restore the right to vote to these disenfranchised persons. *Mental incompetency,* as determined by a court, disqualifies persons in many jurisdictions. *Paupers*—the chronically indigent—are ruled out in about a quarter of the states. This last qualification leads into a difficult and complicated field and one that has explosive possibilities, especially in times of major economic depression.

NEGRO VOTING IN THE SOUTH

Despite the sanction provided in the Fourteenth Amendment to the Constitution, threatening to reduce a state's representation in Congress in case Negroes are not permitted to vote, states with large Negro populations have succeeded in limiting Negro voting by a variety of methods. Decisions of the Supreme

Court have been unable to force these states into line because when one practice is ruled out another is invented. Among the methods which have been used or are still in operation are the so-called grandfather clause, the white primary, the poll tax requirement, literacy tests, and manipulation of registration provisions such as fixing the time for registration long in advance of the election.

Supreme Court Cases

The history of the question of Negro voting is found in a series of Supreme Court cases which make interesting reading. *Anyone who qualifies to vote for representatives to the lower house of the state legislature is entitled by the federal Constitution to vote for senators and congressmen in the national government.* This is the rule, but it has often been circumvented.

In the famous case of *Ex parte Yarborough* (110 U. S. 651. 1884) involving Ku Klux Klan activity the Supreme Court held that the right to vote for representatives in Congress is derived from the federal Constitution, even though its precise measure is determined by suffrage qualifications set up by the states. In addition, it was held that action by the states or their officials to prevent qualified Negroes from voting is illegal and punishable.

The requirement of the so-called grandfather clause led to the celebrated case of *Guinn* v. *United States* (238 U. S. 347. 1915). Several Southern states had passed legislation imposing a literacy test but excusing all whose ancestors were permitted to vote in a given year prior to the adoption of the Fifteenth Amendment—in this case, 1866. Automatically most whites were excused, all Negroes required to qualify. The Supreme Court had no difficulty in finding this openly discriminatory and in violation of the Fifteenth Amendment.

A similar case related to a law which excused from registration all who were registered in or before 1914 but gave others only twelve days in which to register in 1916, this being the only time provided. In *Lane* v. *Wilson* (307 U. S. 268. 1939), this provision was held discriminatory against Negroes.

Restricted Primaries

The exclusion of Negroes from party primaries has been a most effective way of limiting the number of Negro votes in some Southern states. Where single-party rule is strong, the decision in the primary is tantamount to election. Hence if Negroes can be barred from the primary, they are virtually deprived of the franchise.

The Court decisions in cases involving restricted primaries have gone both ways. In the case of *Nixon* v. *Herndon* (273 U. S. 536. 1927), a Texas white primary law was declared invalid. It was held that the exclusion of Negroes from the primary violated the "equal protection of the laws" provision of the Constitution, making this case one of the leading pronouncements on that point. Primaries, said the Court, are preliminary public elections wherein the

political party chooses its candidates for the final election. Hence primaries are as important and as integral a part of voting rights as the general election.

Texas then took a new tack: political parties were authorized to make their own rules in party convention; whereupon membership and participation in the convention were limited to white people. This time, in *Grovey* v. *Townsend* (295 U. S. 45. 1935), the Supreme Court upheld the law, deciding that the party primary was strictly a party affair and not an official responsibility of the state. Thus matters stood until 1944 when, in the case of *Smith* v. *Allwright* (321 U. S. 649), the Supreme Court returned to its earlier position in the *Nixon* case and held that all elections, whether primary or general, are a part of the official process of government. In the *Allwright* case, it is important to note, the issue concerned the Fifteenth Amendment (federal power over elections), whereas in the *Grovey* case the Fourteenth Amendment (referring to state action) was in question. In a strongly worded opinion, the Court said: "The exclusion of Negroes from voting in a Democratic primary to select nominees for a general election—although by resolution of a state convention of the party its membership was limited to white citizens—was State action in violation of the Fifteenth Amendment. . . . *When,* as here, *primaries become a part of the machinery for choosing officials, state and federal, the same tests to determine the character of discrimination or abridgement should be applied to the primary as are applied to the general election.*" (Italics ours.) Here the Supreme Court expressly overturned the holding in *Grovey* v. *Townsend* referred to above.

This brief history of discriminatory action illustrates how strong the states really are in matters affecting the franchise and elections. It also throws additional light on man's age-old propensity to get around the law where effective public opinion is unsympathetic to the law and the motive to circumvent it is sufficiently strong. We had the same problem during the prohibition era. Similarly, the self-government of business is rendered difficult because of a small percentage of firms which somehow always seem to circumvent the rules.

The Negro question in the Southern states is much more difficult and ramified than any of these analogies, however, and manifests itself at many points. Our ability to solve the underlying problem peaceably and understandingly is a severe test of our democracy.

VOTING BEHAVIOR

In so far as human behavior can be studied at first hand and analyzed by the statistician, the psychologist, and other technicians, we may expect to develop a science of political behavior. Voting is an area in which significant advances have been made. We are beginning to get a good deal of accurate knowledge as to the reasons for nonvoting, what makes people vote as they do, why people vote at all, why individuals change party loyalties, and what influences them at election time. Hence a rather high degree of accurate prediction as to the

outcome of elections is already possible, as shown by the results of opinion polls.

The following discussion takes up some of these points.

Failure to Vote

Despite the discrepancies between theory and practice, we Americans have an enfranchisement record to be proud of. We realize that the exercise of the franchise is a basic test of popular government. During the past century and a half we have constantly enlarged the franchise, so that those who were previously barred from this form of participation in government are now eligible. We do not have self-government without the right to vote. It is well to remind ourselves of this because in recent years we have shown signs of a tired cynicism on this score. When people say, "Oh, what does the old vote mean anyway?" then we had best be on guard. "The vote means everything," is the reply. The vote means that we are free and equal, that we possess the right of self-determination.

If voting means so much, why do so many people fail to take advantage of the opportunity? Before we assume that we are so remiss, let us look at the favorable side of the picture. To begin with, in no other country in the world today—with the possible exception of the Union of Soviet Socialist Republics—does more voting take place than in the United States. Our elections are more frequent and cover a larger percentage of public positions than in England, France, or Canada.

The fifty million people who cast their votes in the presidential election of 1940 constituted approximately 60 per cent of the adult population over twenty-one years of age. When from the remaining 40 per cent are subtracted those who are not qualified (such as aliens) or not registered (because of changed residence), the conclusion is reached that only about from one fifth to one quarter of the adult population failed to vote. This is not a bad record, but it should be better. Moreover, it must be admitted that the United States has consistently fallen behind several other countries in the percentage of actual to potential voting over a period of years. Belgium, among others experimenting with compulsory voting prior to World War II, succeeded in getting to the polls from 80 to 90 per cent of those qualified. The sanction—a small, temporary fine or the loss of the privilege—was apparently successful.

From some points of view the exercise of the franchise is more vital to the future of popular government than the payment of taxes. Nonpayment of taxes is penalized; why should not the same principle apply to failure to vote? The constitutions of Massachusetts and North Dakota have authorized the legislature to impose penalties for nonvoting, but so far neither state has made positive use of the power. The proposal has been considered in several others but has not been favored. Partly this is because Americans are constitutionally opposed to compulsion, feeling that the right to share in the conduct of the

government is a privilege and that people should not be coerced into exercising it.

Why Citizens Do Not Vote

There are many reasons for nonvoting. The following summary will be more useful if it is remembered that the combination of factors differs in almost every instance.

In the Southern states the important election decisions are made in the primary, and hence there is not the same inducement as elsewhere to turn out in force at the final election. For example, in some Southern states the ratio of votes to population in a final election has often been from 75 to 80 per cent below that of top-ranking Northern states. The difference is accounted for by the fact that in the North not so large a percentage of the population is barred from voting and the final outcome of the election is generally a closer decision.

Reasons for nonvoting that have national application include the fact that women have not yet learned to vote as regularly or in as large numbers as men; rain or inclement weather keeps people way from the polls; and distance from the voting place is sometimes a deterrent. Another factor is that people become cynical as to how much influence a single vote may carry, or suspect the honesty of party machines and their candidates, especially in city elections. People also become discouraged because of past failures of the party or individual candidates to carry out promises or pledges.

Sometimes, of course, the issues are not sufficiently compelling or the differences in party platforms not sufficiently pronounced to arouse voting interest. A factor here is that we are notoriously wrapped up in our own affairs, and may think the issue not important enough to justify the time spent on voting. Many voters are too negligent to register and cannot vote even when they want to. Failure to register is one of the most common reasons for failure to vote.

A final explanation affects government at many points. Until fairly recently, we in the United States did not take government as seriously as people in other countries have done. Many of us have mistakenly assumed that because we are a "businessman's civilization" we are of necessity indifferent toward government. But the depression of the 1930's and the regulations imposed during World War II have disabused us of that notion. In the presidential elections since 1932 there has been an upsurge of interest in voting on national issues and candidates. The same trend is observable in any state or city election where candidates and issues are such as to get people really stirred up. There is nothing very complicated about the fever chart of voting: people become warm when issues and candidates command attention, and they cool off when interest flags. Voting participation may be expected to increase in the United States because government means so much more to the individual than it used to.

Why People Vote as They Do

"In an important sense," says Paul F. Lazarsfeld, "modern presidential campaigns are over before they begin." [3] This sounds like a bold claim, and yet Lazarsfeld's studies, like those of others working in the field of voting behavior, make it possible to support such a statement. For example, in Erie County, Ohio, an intensive study was made of the presidential campaign of 1940. Erie County is half urban, half rural. For decades it has rested near the national average in distribution of party strength.

The method used in this study differed from the usual opinion poll. In the period before the election, six hundred persons were interviewed once a month for seven months, and were asked 250 questions. These questions went beyond the simple opinion poll. They probed into attitudes, conditioning, and why people changed their minds, when they did. The conclusions are illuminating and for the most part confirm what had previously been surmised. In a few instances, however, the results shed new light on the problem.

On the question of why people vote as they do, Lazarsfeld's study found that most people's predispositions determine their votes, even before the nominating convention. Elections are decided by the events occurring in the entire period between two presidential elections and not by the campaign. Most people vote traditionally, but propaganda is necessary to reinforce and keep in line the voting intentions of those who are predisposed. A political party could not expect to win if it sat back and did nothing.

The principal purpose of the campaign is to activate the latent predispositions of those who are undecided. "The campaign is like the chemical bath which develops a photograph," explains Lazarsfeld. "The chemical influence is necessary to bring out the picture, but only the picture prestructured on the plate will come out." Our environment and conditioning have predetermined our normal behavior.

People tend to vote as their group votes. Where one party or the other is dominant, nonconformism is likely to result in loss of status. By the same token, where voting strength is evenly divided, individuals generally vote in accordance with their economic, religious, and social groups. A person inherits his political party just as he inherits his religion or his physical characteristics. The stronger the cohesiveness of the group, the less likely are individuals apt to deviate.

In the Ohio study—and the same thing would doubtless be true in the North generally—there was an increase in Democratic votes as the income scale went down and an increase in Republican votes as the income scale went up. Thus wealth and economic status are important determinants. This generalization would have to be modified, of course, in sections such as the South.

[3] See his summary of an extensive study in "The Election Is Over," *Public Opinion Quarterly* (Fall, 1944), p. 317.

In the Ohio study also, the urban areas were Democratic, the rural areas Republican. Immigrant stock and the labor vote in the cities were predominantly Democratic, the earlier American stock and the farmers in the rural areas chiefly Republican. These were the principal variants.

It was also shown that religious affiliation may have a bearing on voting behavior. In this area, the Democratic party drew a preponderance of the Catholics, the Republican party was strongly Protestant. Wealthy Protestant farmers were 74 per cent Republican; poor Sandusky (urban) Catholics were 83 per cent Democratic.

Age, too, is an important factor in voting behavior. The behavior patterns of older people tend to become fixed. In the Ohio study, for example, the older the group, the more predominantly was it of a particular party, whether Republican or Democratic. Younger people more easily break away from their economic, social, and religious loyalties than do their elders. If a person is rising in the social or income scale, for example, he may change his political affiliation because his new friends are of another party. The younger people's choice, therefore, is part of the crucial vote on which a campaign must concentrate.

There is more nonvoting among women than among men. Lazarsfeld found that in October preceding the November election, 6 per cent of the men and 20 per cent of the women said they did not intend to vote. His comments are interesting: "The vast majority of 'Don't knows' just prior to an election, are women who end up by not voting or by going to the polls under the influence of their husbands. Especially striking was the large number of female citizens who bluntly stated that they did not see why women should vote at all."

Finally, it was found that the press and the radio are less effective in changing votes than personal influence and solicitation, and that during presidential election campaigns more people are influenced by the radio than by the newspapers. Republicans were generally more sympathetic to the printed word, Democrats to the radio. The most effective means of winning the fence sitters, however, was by personal solicitation through party workers.

Personal Contacts Most Effective

In the Ohio study, three quarters of those who had not intended to vote, but who were finally persuaded at the last moment to do so, said they had responded because of personal contacts. The party regulars are apparently right when they say that in close contests it is their work that tips the elections one way or the other.

Lazarsfeld explains the effectiveness of personal solicitation by pointing out that such contacts are more flexible than the impersonal press or radio. The clever campaign worker—professional or amateur—can fit the argument to the person. He can shift his tactics as he analyzes the reactions of the other person. Futhermore, face-to-face contacts make the consequences of yielding to or resisting an argument immediate and personal.

Another factor is that more people rely on personal contacts to help them select arguments which are relevant for their own good in political affairs than rely on the more remote and impersonal newspaper and radio. Personal contacts are more casual. If we read or tune in on a speech, we usually do so purposefully and have a definite mental attitude that tinges our receptiveness. On the other hand, people we meet for reasons other than political discussion are more likely to catch us unprepared and so cut through our barriers more easily. Also, personal contacts can get a voter to the polls without relying too heavily on his comprehension of the issues of the election. This is not so easy where the more formal media of persuasion are concerned.

People are accustomed to accepting the judgment and evaluations of the respected members of their community. The most respected individual in any group is the one who can best change people's minds or get them to vote. He may be a neighborhood boy with an Italian accent, living on the East Side of New York; or he may be the president of a billion dollar corporation. In either case, people are influenced by the man whom they like and trust. Is it any wonder, then, that the political parties have developed so complicated a web of cells in their organizations? Wherever there is a group, no matter how small, there is a leader. And where there is a leader, the political parties will try to line him up and use him for the sake of the support he commands.

The more we know about political motivations and behavior, the more aware we become of the techniques by which we are manipulated. With this knowledge, it is not too much to hope that we may all take more pride in getting our own facts, in making our own determinations, and in reaching our own independent conclusions.

Samuel Grafton, writing in the Chicago *Sun* after the presidential election of 1944, commented that of the things we had learned during that campaign, an outstanding lesson was the fact that a more mature appeal to the voter is now needed. "The American voter," says Grafton, "seems to be resisting the corny, familiar old technique which once used to scare him, or seduce him, or stampede him, or dazzle him. . . . It doesn't work. Americans are serious, and they seem to know what they want. There is going to have to be a new maturity in our political activity to match the increasing maturity of the people whose favor it is hoped to win."

More intelligently conducted political campaigns would be a fortunate thing for the future health of popular self-government.

PUBLIC OPINION POLLS

Little by little, as scientific method makes predictability possible, we are beginning to apply this device to the science of government. The public opinion polls—such as those of the American Institute of Public Opinion, Crossley, and *Fortune Magazine*—have made promising strides in recent years and further refinements may be anticipated.

The success of opinion polls depends more on the accuracy of the sample than on the number of persons polled. Some of the guiding principles, statistical and otherwise, are these:[4]

First, the sample must represent a cross section. Interviews must be secured from each of the important and heterogeneous groups in the country "in exact proportion to the size of that group in American life or in proportion to its numbers on election day." In most political polls, six major controls are used: the sample must contain voters from each state, from both sexes, and from rural and city areas; it must contain voters of all age groups, of all income groups, and of all political party affiliations.

Reliable results can be secured on the basis of a few thousand interviews. The Gallup polls range from three thousand to sixty thousand. The error should not exceed 3 or 4 per cent and should be in the neighborhood of 1 per cent. Deviations of Gallup poll estimates from the actual Roosevelt vote in 1940 ranged from none in five states to 7 per cent in one state, with more than half at from 2 to 3 per cent. "The Institute does not believe," says Mr. Gallup, "it can be right 100 per cent of the time. Indeed, by the same token that we expect to be right 95 times out of a hundred, we expect to be wrong five times in a hundred."

One of the most important considerations is the neutral wording of questions. Pointed questions elicit pointed replies. In some cases, therefore, it becomes necessary to make a sample run, using different ways of asking the same question before a satisfactory wording is found. Added requirements, of course, are that the sponsorship be honest, the statisticians competent, and the interviewers well trained. The necessary sample is so small that few persons are interviewed compared with the population as a whole. The usual ratio is one to twenty thousand of the adult population.

The opinion polls have shown that political behavior can be accurately predicted. The question is, do the polls do more than that? Do they—as some critics claim—also help to determine the outcome of elections by creating the desire to get on the band wagon? Do the results of polls, when released periodically in advance of the election, tend to influence voters in favor of the candidate who is running ahead?

This is a nice question. If such is the case, then public opinion polls constitute a serious threat to freedom of choice in a democracy, and instead of being a tool of science they become an instrument of propaganda. Studies to date, however, lead to no such definite conclusion. On the contrary, the famously inaccurate *Literary Digest* poll in 1936 and several others since then seem to indicate that in general people are not greatly influenced by this factor.

Another suspicion that people naturally entertain is that when the result of an election is predictable, persons on both sides may be discouraged from go-

[4] George Gallup, "Polling Public Opinion," *Current History*, Vol. LI (Feb. 1940).

ing to the polls on election day. But here also, the record points to an opposite conclusion. The trend since 1936 in national elections has been sharply upward so far as national interest and participation are concerned.

Rather than the enemy of popular government, therefore, the honest public opinion poll may be an actual friend. It changes "the public" from what Walter Lippmann called a "phantom" into a living, concrete reality. It makes it possible to discover what the public wants, not merely what the public's representatives want. In other words, the effect of the scientific testing of public opinion may be to increase the voter's influence over the government's decisions and personnel. The average American is more competent to judge what his best interests are than ever before, says George Gallup. "What has been provided by the polls," he continues, "is a means of ventilating the gigantic structure of modern government with fresh draughts of what the usually silent and inarticulate people are thinking."

SUPPLEMENTARY READING

1. General references: For a good brief discussion, see V. O. Key, *Politics, Parties, and Pressure Groups* (New York, 1942), Part 3, "The Electorate and Electoral Methods," especially Chapters 17, 19, and 21. Alternatively, see Peter Odegard and A. E. Helms, *American Politics* (New York, 1938), Chapters 12 and 13. See the article on "Suffrage" in the *Encyclopedia of the Social Sciences* (New York, 1937), VII, 447–450. For readings, A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 9, "The People and Suffrage." There are good chapters in R. C. Brooks, *Political Parties and Electoral Problems* (New York, 3rd ed., 1933), Chapter 14; and P. Orman Ray, *Introduction to Political Parties and Practical Politics* (New York, 3rd ed., 1924), Chapter 12. See also A. W. Bromage, *State Government and Administration in the United States* (New York, 1936), Chapter 6; or A. F. Macdonald, *American State Government and Administration* (New York, rev. ed., 1940), Chapter 5. On the historical aspects, the best source is K. H. Porter, *History of Suffrage in the United States* (Chicago, 1918). A useful monograph is Joseph P. Harris, *Registration of Voters in the United States* (Washington, 1929), Chapters 1, 3, and 12. See also also A. J. McCulloch, *Suffrage and Its Problems* (Baltimore, 1929).

2. Special problems: On woman suffrage, Carrie C. Catt, *Woman Suffrage by Constitutional Amendment* (New York, 1917), E. C. Stanton, *et al., History of Woman Suffrage,* 4 vols. (New York, 1881–1902), and I. H. Irwin, *The Story of the Woman's Party* (New York, 1921). On Negro suffrage, P. Lewinson, *Race, Class, and Party: A History of Negro Suffrage and White Politics in the South* (New York, 1932), and G. Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy,* 2 vols. (New York, 1944).

3. Voting behavior: An extremely valuable study is that of Paul F. Lazarsfeld, *et al., The People's Choice* (New York, 1944), Chapters 1–4; see also a useful summary by the same author entitled, "The Election Is Over," *Public Opinion Quarterly* (Fall, 1944), p. 318. Harold F. Gosnell has written *Getting Out the Vote: An Experiment in the Stimulation of Voting* (Chicago, 1927), and "Voting,"

Encyclopedia of the Social Sciences (New York, 1937), VIII, 287–291. The best reference on nonvoting is C. E. Merriam and H. F. Gosnell, *Non-Voting: Causes and Methods of Control* (Chicago, 1924). See also C. H. Titus, *Voting Behavior in the United States* (Berkeley, Calif., 1935); E. H. Litchfield, *Voting Behavior in a Metropolitan Area* (Ann Arbor, Mich., 1941); and D. Anderson and P. E. Davison, *Ballots and the Democratic Class Struggle* (Palo Alto, Calif., 1943).

4. Straw votes: A good brief account is found in V. O. Key, *Politics, Parties, and Pressure Groups* (New York, 1942), Chapter 20, "Straw Polls." See also Claude E. Robinson, *Straw Votes* (New York, 1932). There are many good articles on forecasting, as well as other aspects of opinion pools in the *Public Opinion Quarterly*. See also George Gallup and Saul Rae, *The Pulse of Democracy* (New York, 1940). For a critical analysis, see Lindsay Rogers, "Do the Gallup Polls Measure Opinion?" *Harper's magazine*, 183 (Nov., 1941), 623–632.

CHAPTER 19

The Voters Decide—Nominations and Elections

THE EFFECTIVENESS of democratic processes sometimes fails to measure up to the enlightened principles on which they are built. Our election machinery is a case in point. Elections in the United States are numerous, complex, and involved, and the popular lethargy with regard to them is responsible for the survival of old methods although better ones have been devised.

Dishonest election practices have been common, in our large cities especially—and throughout the country to some extent. We have an unfortunate reputation for civic immorality, abroad as at home. In consequence, even our public-spirited reformers sometimes grow discouraged and conclude that perhaps the best way to check dishonesty and the malfunctioning of election machinery is to reduce the number of elections and the burden placed on the voters. "Give them less to do," it is argued, "and the faults may disappear."

But such a solution is of doubtful value. Democracy thrives on participation and shrivels from lack of it. Actually, in the United States today there is a growing interest in voting. It is not fewer elections or less public responsibility that we need, but better methods of transacting the public business, including the nomination and election of our public officials. The way to solve the problem is to simplify and strengthen the administration of our election machinery. This is possible if enough people are interested in doing it. Universal experience shows that the interest is forthcoming when the public's over-all interest in government is strong. By that test, the time should now be right for puting our electoral machinery in order, because our interest in government in America today is stronger than at any time since the struggle over the adoption of the federal Constitution.

That the processes of elections are complicated must be admitted. It is difficult even to explain the problem so that it will be understood, and still hold the reader's interest. Such being the case, an attempt will be made here to stress the points of interest to the citizen and the participant who wants to help strengthen our democracy, omitting as much as possible of the technical detail that tends to complicate and confuse. If we understand the principles and the problems, we can always dig out the details when we need them. But if we are confused and bored, the incentive to do anything further will be lost.

ELECTIONS

It has been estimated that the average qualified voter in the United States is called on to participate in a minimum of two elections a year. Study has also

revealed that in at least one state there are no less than six annual elections which the voters are expected to turn out for. Indeed for most of us, one election is scarcely over before we must begin to think about the next, either a primary or a general election.

The reason for this, of course, is the multiplicity of governing units. So long as there are over 155,000 in all, we must expect that there will always be numerous officials to elect and decisions to resolve at the ballot box. Another reason —and this also has been previously mentioned—is our democratic conviction that the people should act directly in choosing their representatives.

There are in the neighborhood of a million elective offices in the United States, according to Professor William Anderson in *The Units of Government in the United States*. So far as the average voter is concerned, of course, this huge figure makes the situation sound worse than is actually the case. But even on an individual basis, the job of voting is impressive enough. Here is what we are expected to do at elections: vote for senator, congressman, presidential electors (for President and Vice-President), state executive officers, state senator and assemblyman, county officers, school board members, and the members of the judiciary who are elected rather than appointed. In addition, city dwellers must choose mayors and other municipal officials, and those who live in rural areas have town, township, and village offices to fill, depending on which type of local government prevails. Of course, these are not all separate elections; many of them are combined. But it is quite a wide area of decision for the voter. The number of different elections by type of governmental unit, in 1943 and 1944, is shown in the following table:

Type of governmental unit	1944		1943	
	Number of elections	Per cent	Number of elections	Per cent
All elections	126,840	100.0	137,660	100.0
State and federal	114	0.1	23	*
County	5,113	4.0	1,005	0.7
Township	16,085	12.7	16,556	12.0
Municipal	6,585	5.2	11,784	8.6
School district	96,382	76.0	106,261	77.2
Special district	2,561	2.0	2,031	1.5
All elections except school and special district	27,897	100.0	29,368	100.0
State and federal	114	0.4	23	0.1
County	5,113	18.3	1,005	3.4
Township	16,085	57.7	16,556	56.4
Municipal	6,585	23.6	11,784	40.1

* Less than 1/20 of 1 per cent.
Source: U. S. Bureau of the Census, *Elections Calendar for 1944.*

Representative government expects a great deal of its citizens because it is the only adult form of government that has ever been invented. Monarchies

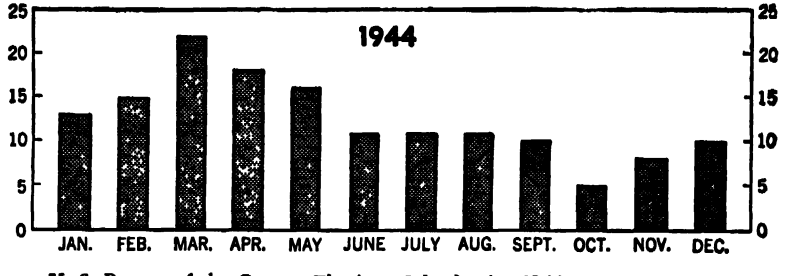
and oligarchies are designed according to the pattern of a family, with the people treated as children. Our forebears, although aware of the hazards and weaknesses of popular election, deliberately extended their voting functions in the belief that it was better for the voters to commit an occasional mistake and to run the danger of having some of the elected officials fail in their responsibilities, than to give up the right of choosing their own officials and determining their own public policies.

If the election machinery can be simplified and improved so as to make more sense, and if a workable balance can be struck between too few elective officials and too many, then confidence in popular decision will be strengthened. The proposal to appoint instead of elect public officials is the easiest method in practice, but is it the wisest in the long run? It is not popular interest in voting that is flagging. Let us try, therefore, to improve the machinery of election before we conclude that we must substitute appointment for popular decision.

Periodicity of Elections

If there were but one election every year or two, and if all elective offices were filled at that time, the problem of the voter would be enormous and much more difficult than at present. There is an obvious advantage in holding more frequent elections, therefore, even though it costs more. If the money is spent efficiently, we should not begrudge the expense because elections are the insurance premiums we pay on our right to be free and to make our own decisions.

There is a certain periodicity or rhythm about elections in the United States.



Source: U. S. Bureau of the Census, *Elections Calendar for 1944.*

National and state elections, and to a considerable extent county and judicial elections, are held on the same day. The federal Constitution calls for the election of all members of the House of Representatives and one third of the senators at the regular election every second (even-numbered) year. Presidential electors are chosen at the same time every four years. Most of the states also hold their elections at this time, which is the first Tuesday after the first Monday of November.

Local elections (city, village, town, school district, and so on) are usually

held separately, at a different time from national elections. Added to this are the primary elections, which come in advance of the general election, and which bring up the average to two elections a year. The number of different election days in the United States in 1944 is shown in the chart on page 287.

REGISTRATION

On election day the voters make final decisions between rival candidates and issues. Elections on the scale needed today, however, would not be possible without two prior steps: the registration of the voters, and the preliminary winnowing out of candidates—chiefly by means of the primary—so as to present the voter with a final choice.

The function of a system of registration is the recording of the names and qualifications of all persons who meet the voting requirements in the particular jurisdiction. In some rural areas where everyone knows his neighbor, registration is little more than a formality. In the cities and other populous regions, however, registration becomes an important means of preventing dishonesty in elections.

The objectives of a good registration system are to make sure that only those register who are entitled to do so; to encourage all who register to vote; to keep the records up to date by removing the names of those who have died, have moved to another jurisdiction, or have become otherwise disqualified; and to insure that all who apply for ballots at the polls are the same persons who registered—a necessary precaution if personation (representing oneself as someone else) and similar frauds are to be avoided. Registration of some kind is now a requirement with regard to both primaries and general elections in every state. In the past, registration was generally periodic—that is, it was up to the voter to keep his name on the lists by re-registering at intervals. This method, however, was inconvenient for the voter; many neglected to stay on the lists and were, of course, deprived of the franchise.

An improvement, therefore, is the increasingly popular system of permanent registration which has developed during the past fifty years. *Permanent registration is the method whereby a voter registers once, and then stays on the lists so long as no reason appears for his removal.* Some form of permanent registration is now employed in thirty-six states. Generally it is on a uniform, state-wide basis, but sometimes it applies only to designated cities and counties where the population is most heavily concentrated.

The principal advantage of a system of permanent registration is that the applicant makes but a single appearance before the registration officials, instead of coming in periodically as under the former plan. Registration may take place at any time except just prior to an election, whereas under the old arrangement the designated time was strictly prescribed.

The lists are continually revised by a central staff created for that purpose in order to keep them up to date. Various sources of information are used: death notices, court records dealing with criminality or the insane, telephone

directories, and records of the public utilities. In some jurisdictions, registrations are canceled for failure to vote in a certain number of consecutive elections. Sometimes, also, officials must make firsthand investigations following charges of illegal registration or voting. In this they may secure the help of the police department.

Permanent registration is not a panacea. It does not cure all the ills of our election system, but no single device will. Nevertheless, permanent registration has helped to secure participation and honesty. Combined with other progressive measures, it is a means of maintaining our confidence in democratic control.

NOMINATING CANDIDATES

Before there can be a general election, some method must be found to nominate candidates, eliminate the runners-up in each party, and arrive at election day with one candidate from each party for each position to be filled. Then from among the parallel lists offered by the several parties the voter merely chooses the candidate he favors for each job. Without this preliminary sorting step, the task of the voter would be hopeless. If there were ten Republicans, ten Democrats, ten Socialists, and ten Prohibition party candidates for each office, for example, think what confusion there would be. Something in the nature of a trial heat, therefore, is required. As our political history demonstrates, there are a variety of ways of narrowing the field. The direct primary is now most in favor.

The direct primary came relatively late in our American history—not until the last quarter of the nineteenth century. Since then, however, it has proved to be the means of extending the control of the people and weakening the hold of political cliques. Both the direct primary and the secret (Australian) ballot were developed in the generation between 1888 and the outbreak of World War I in 1914, an outstanding period in the history of representative government.

The direct primary is a preliminary election, held at public expense and under express provisions of law, wherein candidates whose names are to go on the ballot at the general election are nominated by the elimination of their rivals.

Historically, a progression of steps led to the adoption of the direct primary. In the early days of our nation, when political parties had not yet appeared, numbers of like-minded men often banded together in a spontaneous caucus in order to put up a particular candidate. These caucuses were not the function of any political party and had no legal status, but their activities helped to develop political parties.

Later, when parties were formed, members of Congress or of the state legislatures who belonged to a particular party customarily convened to choose candidates for party slates. They had no specific mandate from the voters or any formal legal sanction. This method was denounced as undemocratic, and

the cry "King Caucus" brought it into disrepute. By this time the caucus was sufficiently established to be defined as *a meeting of all of the members of a particular political party in a legislative body for the purpose of arriving at common decisions that are binding on all.* As the use of the party caucus spread, it came to be adopted at all levels of the government where political parties were active—precincts, counties, and states—and became the means of galvanizing support behind favorite sons. The boss would draw up a slate of candidates and get the boys in the back room to endorse it. Then when he went to the party's nominating convention he could claim solid support, thus putting himself in a position either to further his own candidate's interest or to make a profitable deal. Popular distaste for the caucus grew.

The party convention system of selecting candidates had been advocated as early as 1800, but the party chieftains clung to the caucus method as long as they could. After 1820, however, a rising sentiment favoring state-wide party conventions appeared in some of the states. Then in 1831 the Anti-Masonic party—one of the sporadic third parties—held the first national nominating convention in the history of the country. The idea caught on at once. In the following year, 1832, the present system of national party conventions to nominate President and Vice-President went into operation. But although the adoption of the nominating convention was favorably received, the caucus method of selecting candidates was not thereby abandoned. Rather, the two were amalgamated. For fifty years or more, party caucuses and party nominating conventions were both used. The combination presented a pyramid reflecting party organization, local caucuses and county caucuses building up to state and national conventions. Often both the caucus and the convention were used together at all levels save the national. In this event, from the precinct to the top of the pyramid, the smaller group chose delegates to the larger until the structure had built up to the national party convention at the apex.

But the people, growing increasingly restive under continued boss control and the domination of caucus cliques, wanted to see the nominating machinery made more representative. Something better than the convention was needed. There was a cry for the head of King Caucus. At the state and local levels the reformers were finally almost completely successful; there are but few remaining states where the convention-caucus system is found. The federal level, strange to say, is now the only important point where the convention survives. There the nominating conventions of the two major parties still hold the center of the nominating stage.

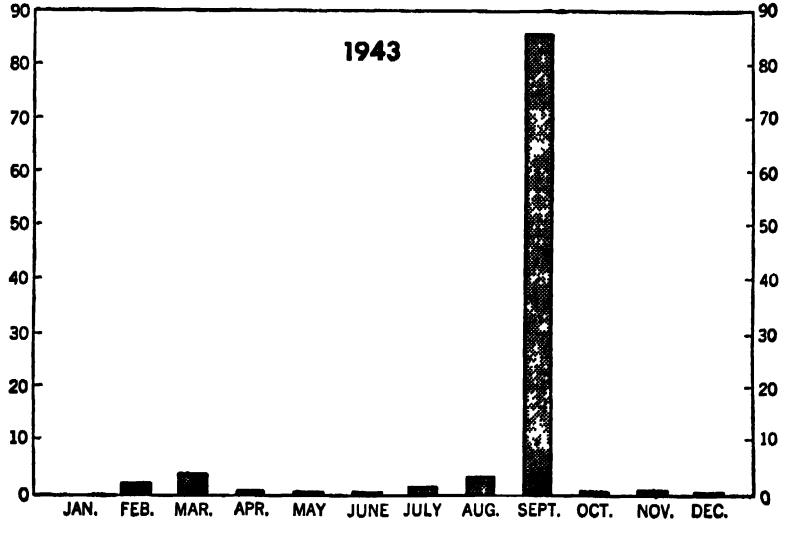
The caucus-convention system of nominating candidates presented to the voters a situation which they might have summed up about as follows: "Political parties are necessary in our form of government. Shall we allow them to get into bad odor, or shall we take steps to save them from their own excesses?" The voters chose the latter course; the method was legislation. Beginning about 1888, the states gradually passed laws regulating nominating conventions and caucuses. This meant the formal recognition of political parties

and opened the way to the possibility of extending control over them. It also gave the party in power the opportunity to take steps which might prejudice the interests of its rivals. Eventually, as we have seen in connection with Negro voting in the South, it led to the recognition that party matters are public matters.

Direct Primary Laws the Solution

Under the influence of Theodore Roosevelt, Woodrow Wilson, and other progressive leaders, however, few of the states were content merely to tinker with the caucus and the nominating convention. Further reforms were needed in order to permit the selection of candidates by the voters themselves.

A substitute for the caucus-convention system was found in the direct primary. Today all but two states require the primary election in some form, although—as in New York—not all offices are affected by it. The incidence of primary elections in 1943, according to months, is shown in the following illustration:



Source: U. S. Bureau of the Census, *Elections Calendar for 1943.*

Some distinctions may prove useful. Primary elections are either *mandatory* or *optional,* the former being required and the other discretionary under set rules. At first, most of the state laws made these elections optional, but since 1904 they have become increasingly mandatory.

Primary elections are either *closed* or *open,* depending on whether or not tests of party affiliation are required for participation. The open primary has gradually lost ground in favor of the closed primary in which (in theory) only party members may vote. The best control of the closed primary is a system

of enrollment, similar to a registration, in which various tests are applied to determine party affiliation. At the ensuing primary election, only those who have enrolled may vote. Where controls are not adequate, there is nothing to prevent one party from raiding the primaries of another.

Primary elections are either *partisan* or *nonpartisan*. If nonpartisan, party designations do not appear on the primary ballot. This is sometimes called the office-group type of ballot, so named because under each office (such as mayor) the names of the various candidates are listed without designation of the party to which they belong. The office-group type of ballot is used in several states for both state and local nominations and in other states for local offices only, including positions in the judiciary—a use for which it is especially appropriate.

In several states the primary serves a double purpose. It is the means of nominating candidates to be voted on in the general election, and in addition it is used to elect party officials, from precinct leader to national committeeman, as well as delegates to party conventions. The primary election, therefore, is sometimes advantageous to the political party, although in general party leaders have fought it on the ground that it weakens party organization and responsibility. The people, however, uninfluenced by such representations, see in the direct primary a growth of popular influence and control over the conduct of government and a means of discouraging party machines and cliques. The temper of the people makes it fairly clear that they have not had enough of electoral reform even yet.

VOTING AND BALLOTS

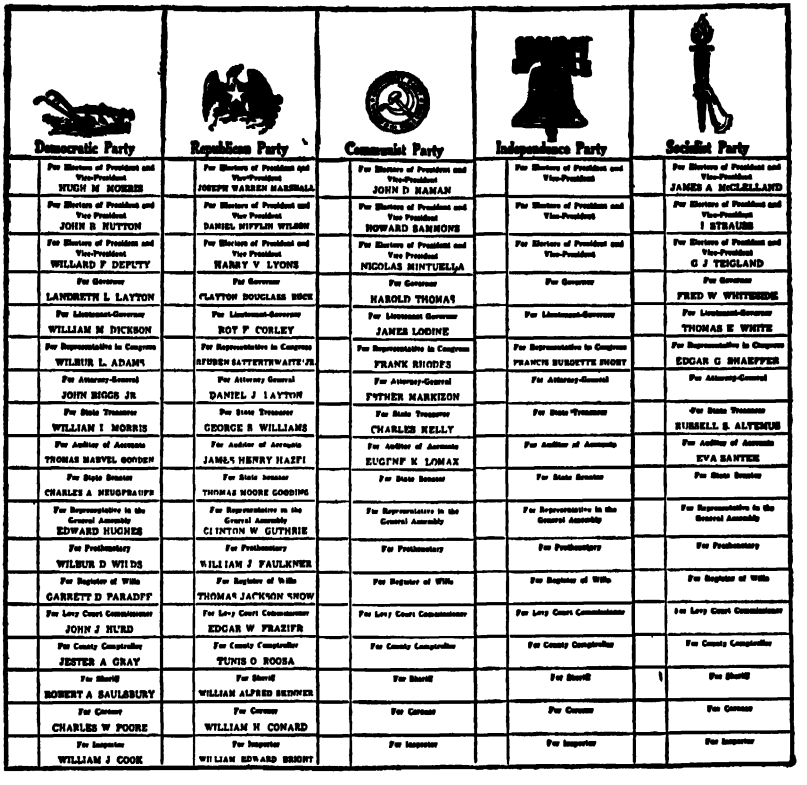
Since the founding of our political institutions, we have made a good deal of progress in the method by which we actually cast our votes. In the colonial period and immediately after the adoption of the Constitution, voting was viva voce (oral)—as, indeed, it still is in some small jurisdictions like a rural town. Later, written ballots were adopted, but little or no attempt was made to keep the individual's choice a secret. The parties themselves furnished separate ballots, often of a distinctive color for each party, a method which survives in some local jurisdictions. After the Civil War, however, the demand for secret ballots increased rapidly. Some states, usually without much success, tried to control the matter by requiring a single ballot printed at public expense. The ultimate solution was the adoption of the Australian secret ballot about 1890.

The Secret Ballot

In the adoption of the secret ballot, the United States lagged somewhat behind other English-speaking countries. To the Australians, who developed the secret ballot in 1858, goes the credit for pioneering in this field. At the time that Australia was strengthening her democracy by breaking up large estates and giving the people a chance to own their land, it was felt that a man should be free to vote his interest and his conscience without his employer or his land-

lord knowing of his choice. Hence the secret ballot, which reduced the possibilities of coercion. The advantages of the system were soon recognized and it spread. The British Parliament adopted it in 1872 and in this country, Kentucky, in 1888, was the first state to give it official sanction. Other states followed rather quickly, so that adoption of this type of ballot was complete in less than a generation.

There are three principal forms of the secret ballot in use in general elections. The most common is the *party-column ballot* (or Indiana type), used in thirty states. Each party's candidates are arranged in columns and the voter has merely to put a cross at the top of one of these. This is *straight ticket* voting. Because it discourages split voting and independent voting, party workers naturally favor it.



Democratic Party	Republican Party	Communist Party	Independence Party	Socialist Party
For Electors of President and Vice-President HUGH M MORRIS	For Electors of President and Vice-President JOSEPH WARREN MARSHALL	For Electors of President and Vice-President JOHN D NAMAN	For Electors of President and Vice-President	For Electors of President and Vice-President JAMES A McCLELLAND
For Electors of President and Vice President JOHN B NUTTON	For Electors of President and Vice President DANIEL MIFFLIN WILSON	For Electors of President and Vice President HOWARD SANMONS	For Electors of President and Vice-President	For Electors of President and Vice-President I STRAUSS
For Electors of President and Vice-President WILLARD F DEFLTY	For Electors of President and Vice President HARRY V LYONS	For Electors of President and Vice President NICOLAS MINTUELLA	For Electors of President and Vice-President	For Electors of President and Vice-President G J TEGLAND
For Governor LANDRETH L LAYTON	For Governor CLAYTON DOUGLASS HICK	For Governor HAROLD THOMAS	For Governor	For Governor FRED W WHITESIDE
For Lieutenant-Governor WILLIAM M DICKSON	For Lieutenant-Governor ROY F CORLEY	For Lieutenant Governor JAMES LODINE	For Lieutenant-Governor	For Lieutenant-Governor THOMAS E WHITE
For Representative in Congress WILBUR L. ADAMS	For Representative in Congress REUBEN SATTERTHWAITE JR	For Representative in Congress FRANK RHODES	For Representative in Congress FRANCIS BURDETTE SHORT	For Representative in Congress EDGAR G SHAEFFER
For Attorney-General JOHN BIGGS JR	For Attorney General DANIEL J LAYTON	For Attorney-General FYTHER MARKISON	For Attorney-General	For Attorney-General
For State Treasurer WILLIAM I MORRIS	For State Treasurer GEORGE S WILLIAMS	For State Treasurer CHARLES KELLY	For State Treasurer	For State Treasurer RUSSELL S ALTEMUS
For Auditor of Accounts THOMAS MARVEL GORDEN	For Auditor of Accounts JAMES HENRY HAZEL	For Auditor of Accounts EUGENE K LOMAX	For Auditor of Accounts	For Auditor of Accounts EVA SANTEE
For State Senator CHARLES A NEUGRAUFF	For State Senator THOMAS MOORE GODDING	For State Senator	For State Senator	For State Senator
For Representative in the General Assembly EDWARD HUGHES	For Representative in the General Assembly CLINTON W GUTHRIE	For Representative in the General Assembly	For Representative in the General Assembly	For Representative in the General Assembly
For Prothonotary WILBUR D WILDS	For Prothonotary WILLIAM J FAULKNER	For Prothonotary	For Prothonotary	For Prothonotary
For Register of Wills GARRETT D PARADFF	For Register of Wills THOMAS JACKSON SNOW	For Register of Wills	For Register of Wills	For Register of Wills
For Levy Court Commissioner JOHN J HURD	For Levy Court Commissioner EDGAR W FRAZIER	For Levy Court Commissioner	For Levy Court Commissioner	For Levy Court Commissioner
For County Comptroller JESTER A GRAY	For County Comptroller TUNIS O ROOSA	For County Comptroller	For County Comptroller	For County Comptroller
For Sheriff ROBERT A SAULSBURY	For Sheriff WILLIAM ALFRED SKINNER	For Sheriff	For Sheriff	For Sheriff
For Coroner CHARLES W POORE	For Coroner WILLIAM H CONARD	For Coroner	For Coroner	For Coroner
For Inspector WILLIAM J COOK	For Inspector WILLIAM EDWARD BRIGHT	For Inspector	For Inspector	For Inspector

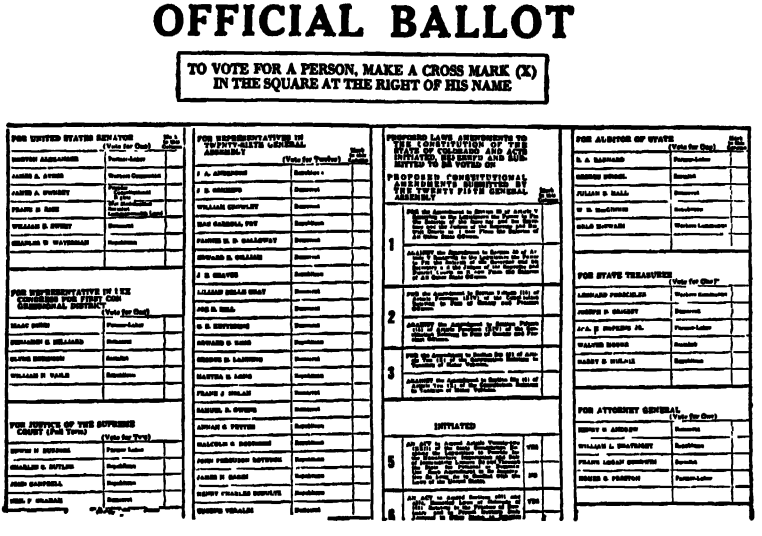
PARTY-COLUMN BALLOT (INDIANA TYPE)

The second type is the *office-block ticket* (Massachusetts type), which lists the names of candidates under offices to be voted for, with party designations attached. In other words, where the Indiana type emphasizes party, the Massachusetts ballot stresses the office to be filled.

Finally, there is a modification that incorporates the central features of both of the other forms. This is called the *office-block ballot with supplementary*

provision for straight ticket voting. On this ballot the voter may pick and choose, or he may vote a straight ticket as he wishes.

This is important detail. The manner in which the ballot is set up has much to do with the discrimination and independence with which a voter exercises



OFFICE-BLOCK BALLOT (MASSACHUSETTS TYPE)

the franchise. The secret ballot, we now realize, is one of our basic liberties, not to be given up without a struggle.

Short Ballot Reform

Because we have confidence in representative government, we elect most of our public officials instead of permitting our highest executive officers to appoint them. As a consequence, the ballots in general elections have become long and the names appearing on them rather numerous. Were it not for the primary elections, which in a trial run eliminate most of the contenders for particular offices, the general election ballots would be even longer. A study of state elections in 1932 revealed that in thirty-one states, ballots with the names of the candidates of political parties set forth in parallel columns presented each voter with a state ballot containing an average of 101 names. In sixteen additional states the average number was 76. This did not mean that the voter had to mark his ballot a great many times, of course, because if he voted a straight ticket he marked it only once. But these figures do give some idea of the number of names and the length of ballots in modern elections.

During the past fifty years, the short ballot reform has been advocated by many political scientists who have contended that in trying to select so many officials from so many rival candidates, we are weakening rather than rein-

forcing representative government. The arguments point out that when the voter must make more choices than he can be reasonably expected to inform himself about, he is discouraged from voting at all; and that in addition, when he must choose between many candidates and he has personal knowledge of only a few, there is greater danger of electing weak candidates than if minor offices were filled by executive appointment.

It should be noted that this problem of the long ballot is not a federal problem at all because the President, the Vice-President, and members of Congress are the only federal officers for whom we vote. Consequently in that field we already have what amounts to a short ballot. The issue arises at the state and local levels. Those who favor the short ballot believe that we should elect only the governor and perhaps four of five of his chief cabinet members (the lieutenant-governor, secretary of state, auditor, state treasurer, and attorney general, for example), and that these officials should then be allowed to choose the remainder of the department heads from the ranks of qualified members of the party.

If the two advantages claimed for the short ballot reform are valid they are strong arguments. It is held, first, that the short ballot would add to the responsibility of the party in power, with the result that the voters could more easily hold it accountable for its actions. Second, it is argued that the short ballot would make possible the simplification and general integration and improvement of state administration.[1]

The arguments against carrying the short ballot idea too far, however, are at least equally strong and should be given serious consideration in arriving at a balance in each case. In the first place, the more we as voters are required to do, the greater will be our interest in popular candidates and issues. This is an established principle of social psychology.

Second, elective officials naturally feel a sense of responsibility to those who elect them, and hence they are more likely to be sensitive to the voters' desires and disapprovals if they are elected than if they are appointed and hence feel a primary loyalty to the officials who gave them their jobs.

In addition, if the short ballot reform were carried too far, it would inevitably enlarge the areas controlled by the permanent bureaucracy in the executive branch of the government. As a result, the legislature, the political parties, and the voters would all come to have less influence in popular government. With the short ballot, our governments might be more efficient in an administrative sense, but they would also be less responsive to the voter and less alert.

And, finally, as has been pointed out, the number of elective offices need not be greatly reduced if the election laws and their administration are simplified, streamlined, and made generally more effective.

[1] This question, as related to administrative reform, is discussed in Chapter 36, "Government Reorganization."

Short Ballot Reform—Additional Considerations

The need for the adoption of the short ballot seems greatest at those levels of government where the largest number of offices is to be filled. County government is one of these. The extension of the county-manager movement is a "must" and would bring with it the short ballot. Ballot simplification is also needed in municipal elections. Town and village government, on the other hand, present no real problems. Special districts do, but the most numerous of these are the school districts, and the voters will hesitate a long time before relinquishing popular control in this area. Parents are deeply concerned in the education of their children and generally take keen interest in school board candidates, insisting that they be popularly chosen. As a rule, therefore, the sound principle seems to be that the short ballot reform is less necessary where there is marked popular interest and participation.

A more debatable area is the election of judges.[2] It is argued that judges should be immune from politics, and those who feel strongly about this also favor the short ballot from which judges would be eliminated. But to this it is replied that judges are capable of remaining nonpolitical while at the same time enjoying the feeling of public confidence which comes from election to office. There are arguments both ways. If, under party machine control, the judges nominated are inferior, the independence and prestige of the judiciary will suffer. But it is not likely that appointment under these circumstances would be any improvement. The solution, in either case, therefore, would seem to be the cleansing of the party organization. As a stream rises no higher than its source, so also are appointments no better than the central control of government, whether that be a political party machine or the electorate.

A final argument in favor of the short ballot holds that appointive officers are preferable to elective officers because politicians and their machines are weakened when elections are less influential in the filling of public positions. But this is specious reasoning. As has been pointed out, politicians have at least as much power over appointments as over elections. The short ballot does not deprive the politician of his spoils; if carried too far, it merely limits the taxpayer's control of government. As the taxpayer's influence becomes less, it is to be expected that his interest in government will also wane.

Because short ballot reform is a central issue of government and affects the whole theory and practice of popular rule, we must beware of drastic proposals and plausible nostrums. The solution is not a simple one for there are strong arguments on both sides. But the long-run stakes are more telling than the short-term advantages. As in all such cases, therefore, the statesmanlike solution is a blend, a compound of compensating considerations tested by pragmatic standards to produce the best balance.

[2] This is taken up in Chapter 30, "Judicial Administration."

Voting Machines

The culmination of ballot reform is the adoption of the voting machine, advocated by its proponents as the means of reducing to almost nil the possibility of dishonesty in counting ballots. The voting machine, a mechanical substitute for the paper ballot, has on its face a lever above the name of each candidate or referendum proposal. The voter expresses his preference among candidates or proposals by pulling down the appropriate levers and leaving them down. Then as he opens a curtain preparatory to leaving the voting booth, the levers spring back into place and the machine automatically registers and counts the vote. When the polls are closed, election officials may read the results at a glance when they unlock the machine.

Although the voting machine reduces the possibilities of fraud, it is no guarantee of honest elections because, if permitted, one person may pull the levers several times before finally leaving the booth. Nevertheless, the voting machine is one of the best election devices we have. For example, in New York City, which has adopted it, it has had much to do with civic reform. The success of the voting machine there suggests that Chicago and other large cities would do well to follow that example. In communities notorious for the continued perpetration of dishonest practices, people become cynical and lose interest in their government. The voting machine gives them the assurance that the counting, at least, is accurate.

Why, then, has the plan advanced so slowly? The cost of installation is the principal factor against it. And yet when the savings in printing, in the time of election clerks and officials, and in all the other expenses entering into the use of the paper ballot, including the cost of the time required for counting, are considered, the cost of mechanical voting is not so much greater. The original purchase price is high but maintenance is cheap. If only from the standpoint of convenience, it may be expected that eventually all voting, with the exception of that in the smallest rural areas, will be by machine. Properly controlled, it is a tool of good government the people will demand.

THE WILL OF THE MAJORITY

The purpose of an election is to make known the will of the majority. For ordinary purposes, the election performs this function in a satisfactory manner, so long as the election units remain small. The larger the size, the more shortcomings appear. Three devices which help to correct these shortcomings are proportional representation, the popular initiative, and the referendum. And a procedure which operates to defeat the will of the majority is gerrymandering. These aspects of the election system are discussed below.

Proportional Representation

If we believe that the more or less accurate representation of differing viewpoints and interests is high on the list of governmental desiderata—higher, let us say, than the stability of the two-party system—then we will probably favor

proportional representation. *PR (as it is called) is a system which gives a voice to minority viewpoints.*

PR is based on the theory that differing interests, opinions, and programs should be reflected in the outcome of the vote, irrespective of party alliances and in proportion to their relative strength in the electorate. This is in contrast to the traditional theory that representation should be based on geographical area, in which case the winner takes all in each district.

The plan of proportional representation was advanced by Thomas Hare, an Englishman, in 1859, and was taken up by John Stuart Mill, the brilliant and persuasive utilitarian. Under the Hare plan—which is also called the single-transferable vote system—electoral districts and the number of members chosen from each are enlarged. The voter expresses a first choice for a single candidate, and second and other choices for as many candidates as there are posts to be filled. The first choices are counted and an electoral quota is determined by dividing the total number of valid ballots cast by the total number of positions to be filled, plus one. All candidates whose votes equal the quota are then declared elected. The surplus votes of each candidate receiving more than the quota, plus the votes of those too weak to place, are then transferred to the next strongest candidate until all positions have been filled. Thus the vote of every individual—even though it may have been his second or third choice—is used in favor of a candidate.[3] There are a number of variations of this plan, especially the so-called "list" system popular in Europe. All are designed to provide representation by groups and classes of opinion.

In the United States, PR has grown slowly in influence. It has appealed especially to municipal reformers as a means of breaking the control of party machine rule. New York, the largest city in the world, operates under PR for municipal elections. Other cities that have used it or use it now are Cambridge, Cleveland, Cincinnati, Sacramento, Kalamazoo, and West Hartford. It has never been applied in state or national elections.

In Europe, PR and especially the list system have been more widely adopted than in this country. Under the list system, a voter expresses a choice for a whole list of candidates drawn up by his party organization, with the names arranged from the top down according to party preference. This concentrates the vote by party, if not by individual candidate. Successful candidates are determined by computing the number of votes each list receives and declaring elected those who are highest on it, again from the top down, so far as there are offices to be filled. Under the Weimar Constitution in Germany the Reichstag was elected according to the list plan. It was also used at various times, and with individual variations, in Italy, the Scandinavian countries, Czechoslovakia, Poland, Switzerland, and several others.

The principal advantage of PR is its representative quality: the voter can

[3] The best treatment of proportional representation is found in a book by C. G. Hoag and G. H. Hallett, *Proportional Representation* (New York, 1926); see also Hallett's volume, *Proportional Representation, The Key to Democracy* (New York, 2nd ed., 1940).

express his opinion and it will not be thrown away. It assures a voice to minorities, gives the majority the representation to which it is entitled, and wastes no ballots. It makes gerrymandering difficult and, under the Hare plan, makes it unnecessary to hold costly primary elections. The principal disadvantages are the complexity involved in determining the winners, the confusion to the voter on account of the larger number of candidates, and the tendency to splinter political groups which weakens the party and dilutes responsibility.

The Direct Vote: Initiative and Referendum

The initiative and the referendum, which have been widely adopted by most of the states of the Far West, were borrowed from Switzerland, where they have long been used to strengthen the direct control of the voters.

The initiative is a device by which a draft of a statute or a constitutional amendment may be proposed by a petition signed by a certain number or percentage of the voters of a state, and which must be submitted to the electorate (referendum) for adoption or rejection even though the legislature previously may have turned it down. The initiative may be indirect, in which case the draft proposal goes on the ballot only if the legislature has rejected it. Or it may be direct, when it goes directly on the ballot.

The referendum is the process whereby a proposed new state constitution or amendment or a law is referred to the electorate for approval or rejection.

In the United States the adoption of the initiative and the referendum coincides with the so-called progressive era, which set in at the turn of the present century. Voters were then incensed at the domination of the state legislatures by group interests; party caucuses and professional politicians were in disfavor; the muckrakers were busy in the larger cities. The cure of the faults of democracy, it was staunchly held, was more democracy—the direct action of the people by means of the initiative and referendum.

California, Oregon, and Washington pioneered in this movement. One of the first instances of the use of the initiative and the referendum occurred when Governor (later Senator) Hiram Johnson of California undertook his spectacular attack on the Southern Pacific ring. The initiative and the referendum were the "shotgun behind the door" which prevented the abject surrender of the legislature to the powerful railroad interests. Said Johnson, ". . . they do place in the hands of The People the means by which they may protect themselves." The initiative and the referendum were popularly referred to as direct legislation and popular lawmaking. Conservatives, on the other hand, viewed them with misgiving and as an excess of democracy.

Nevertheless, other states followed the example of those in the West. Massachusetts, Michigan, and Missouri are now in the group of a dozen that permit a referendum on both statutory laws and constitutional amendments. These same states are among a group of twenty that provide for a popular referendum on measures that citizens have been unable to obtain or to block in the legislature.

The initiative and the referendum are of interest for several reasons. They show the extent to which the American people have faith in the ballot box and direct action on the part of the voter. They reflect popular discontent with politicians and with the domination of legislative assemblies by interest groups. Nevertheless, these same interest groups also use the initiative and the referendum for their own purposes, so that the device is a two-edged weapon.

Several good studies have been made of the initiative and the referendum in action, one of them being a monograph by Key and Crouch, *The Initiative and Referendum in California,* published in 1939.[4] Certain things stand out in all these studies. Thus, some states, notably California, have widely employed these instruments of direct popular control, while others, where the authority also existed, have used them very little. They have been taken up largely by interest groups favoring or resisting particular pieces of legislation or constitutional amendments, often the same organized interests that were battling it out in the lobby of the state legislature. Minority groups—some of them popularly considered "crackpots"—have been encouraged by the availability of these devices. Just how effective they are as reserve weapons of the people in toning up the performance of lawmakers and executives is hard to say, but it is clear that in some cases they have produced this result.

As against this verdict, however, is the fact that the initiative and the referendum may have somewhat diluted the sense of responsibility of party leadership in the legislature and in the governor's office. They have naturally increased the number of issues on the ballot, thus preventing the use of the short ballot in elections. Moreover, except on hotly contested issues, the degree of popular interest in these questions at election time has lagged considerably behind the interest in candidates for public office.

This is as far as generalization may safely proceed. Even these statements must be weighed in the light of the first caution: that popular interest has been far greater in some states than in others. In recent years the spread of the initiative and referendum reform has slowed down to a virtual standstill. It would be a mistake to conclude, however, that these two devices of popular control and participation are on the way out in those states which are most attached to their use.

A summary of state proposals voted on in 1942, by type of proposal, and the outcome, is shown in the table on page 301.

Gerrymandering

The will of the majority is sometimes restricted by crooked or shady redistricting. Redistricting for Congressional elections, state legislatures, and municipal councils is supposed to take place at stated intervals provided for in the constitutions and by law. But often redistricting fails to take place when it should. This is particularly true when city populations outstrip those of the

[4] See also V. O. Key, *Politics, Parties, and Pressure Groups* (New York, 1942), Chapter 8.

SUBJECTS OF STATE PROPOSALS VOTED UPON IN 1942, BY TYPE OF PROPOSAL AND OUTCOME

(Unit = 1 subject)

Subject	Total	Approved	Defeated	Constitutional amendments			Initiated proposals			Referenda		
				Total	Approved	Defeated	Total	Approved	Defeated	Total	Approved	Defeated
All subjects	149	76	73	117	65	52	14	6	8	22	6	16
A. Organization, personnel and elections	56	23	33	51	22	29	3	1	2	5	1	4
1. Calling constitutional convention	2	1	1	..	..	..	..	..	..	2	1	1
2. Legislature	13	5	8	13	5	8	..	..	..	.	..	..
3. Governor	3	..	3	3	..	3	..	..	..	.	..	..
4. Constitutional officers	5	3	2	5	3	2	..	..	..	.	..	..
5. Boards and commissions	19	9	10	17	9	8	3	1	2	1	..	1
6. Judiciary	8	3	5	8	3	5	..	..	..		..	..
7. Miscellaneous personnel	4	.	4	2	..	2		..	..	2	..	2
8. Elections	7	5	2	7	5	2		..	..	.	..	..
B. Taxes	26	18	8	20	16	4	2	1	1	5	1	4
1. New taxes	6	3	3	4	3	1	.	..	..	2	..	2
2. Change certain taxes	3	3	.	3	3	..		..	..		..	..
3. Abolish certain taxes	1	..	1	1	..	1	1	..	1		..	..
4 Farmark taxes	6	5	1	5	5	..		..	..	1	..	1
5 Shared taxes	1	1	.	.	.	..	1	1	.		..	..
6. Tax exemption	7	5	2	7	5	2		..	..		..	..
7. Servicing debt	2	..	2	..	..	..	..	..	..	2	..	2
8. Miscellaneous	1	1	..	..	..	..	..	..	.	1	1	..
C. Bond issues	5	2	3	3	2	1	.			2	..	2
D. Regulations	15	6	9	5	2	3	3	1	2	7	3	4
1 Liquor	2	1	1	..	..	.	2	1	1			..
2. Workmen's compensation	2	1	1	1	..	1		..		1	1	..
3. Physicians	1	.	1	..	..	..	1	..	1	.		..
4. Milk industry	2	1	1	..	..	..		..	..	2	1	1
5. Employer-employee relations	1	1	..	..	..	..		.	..	1	1	..
6. Chain stores	1	.	1	..	..	.			..	1	..	1
7. Miscellaneous	6	2	4	4	2	2	.	.	..	2	..	2
E. Political subdivisions	26	17	9	24	15	9	3	2	1	.	..	..
1 Counties	9	5	4	9	5	4				.	..	..
2. Municipalities	6	5	1	5	4	1	1	1			..	..
3. Specifically named	4	2	2	4	2	2	1	.	1		..	..
4 Miscellaneous	9	6	3	8	5	3	1	1	.	.	..	..
F. Other	13	6	7	8	4	4	3	1	2	2	1	1
1. Old-age pensions	2	1	1	.	.	.	2	1	1	.	..	..
2. Land	4	2	2	4	2	2						
3. Miscellaneous	7	3	4	4	2	2	1		1	2	1	1
Duplicate counting resulting from multiple-subject proposals	25	15	10	19	14	5	1	1		5		5

Source: U S Bureau of the Census

rural areas, as Chicago has outstripped the rest of Illinois. But even when redistricting does occur, it may be manipulated in such a way as to produce an unfair result. One method is called gerrymandering, so named for Governor Gerry of Massachusetts. According to the story, an artist is said to have added wings, claws, and teeth to the map of a sprawling district created in Massachusetts in 1812 and suggested that it be called a salamander. A Federalist editor changed the designation to gerrymander.

Gerrymandering is the redistricting of a state for the election of Congressional or legislative representatives by a method which violates the principles of compactness, homogeneity, popular interests, and often equality of population, in order to secure the future advantage of the party or group in control of the state legislature. The district line is drawn in such a way as to distribute the strength of a particular party to the greatest possible advantage and to give the opposing party the greatest possible disadvantage where its strength is concentrated.

THE ELECTION OF THE PRESIDENT

Having viewed the main outlines of election machinery and electoral reform in the United States, we have reason to be encouraged by much that has been accomplished, although a good deal remains to be done. The convention system, for example—discarded by most of the states as a nominating device—is still in vogue at the national level, and some students of government believe that it should be abandoned there also. Nevertheless, the national party conventions of the Democratic and Republican parties, held every four years, are probably the most interesting and colorful spectacles of all American politics. Because of the importance of the presidency and the peculiarities of the national convention and the electoral college, some special attention must be devoted to these matters.

One of the few provisions of the federal Constitution that was found almost immediately to be unworkable was that which regulated the election of the President and the Vice-President. An indirect and involved method had been worked out at the convention at Philadelphia. Electors were to meet at the state capitals and cast their votes simultaneously for the candidates; the one who got the largest number of votes was to become President, the candidate with the next largest number of votes became Vice-President.

But the system failed: there were ties, disputes, charges of "robbery." The Twelfth Amendment to the Constitution, hastily adopted before the 1804 election, provided that electors shall vote for President and Vice-President separately. The main difficulty was thereby eliminated, but there is a growing feeling today that direct election is the ultimate solution.

The Party Nominating Conventions

The party conventions now have a continuous history of over a hundred years. They are held every four years at the beginning of the summer, about

four months in advance of the November election. We are all familiar with the spectacle staged at these gatherings. The setting and the trappings never seem to vary. The meetings coincide with hot weather. They must be held in large cities because of the need for enormous auditoriums. There are placards and bunting and flags. Shouting and frequent and noisy demonstrations provide almost continuous sound effects. Under these conditions the varied manifestations of the crowd mind present unusual opportunities for the social psychologist. The party convention is like a revival meeting, a baseball game, and a Fourth of July rolled into one.

The state delegates to the national conventions are chosen either by direct primary (called the presidential primary), or by state and district conventions, or by the state central committees of the parties. Selection by means of a primary election became popular in the early years of this century, but the disadvantages of the system soon became apparent. The cost to presidential candidates of campaigning all over the nation; the diversity among states as to election dates, resulting in the undue influence of the outcome of one primary on that of another; and the failure of some candidates to enter the race in some states—all these factors operated to slow the spread of the presidential primary, and several states even abandoned it. At present it is mandatory in only fourteen—including New York, Pennsylvania, and Illinois, however, which count heavily in national elections; the delegates of the remaining thirty-four states are chosen chiefly by the convention method and occasionally by the state central committee.

In the Democratic national convention, each state is entitled to twice as many delegates as it has presidential electors, plus two delegates at large if it went Democratic at the last presidential election—a bonus for good work. In the Republican national convention, each state is entitled to four delegates at large, two delegates for each congressman at large, one for each Congressional district casting at least 1,000 votes, and an additional delegate if the state cast 10,000 Republican votes in the previous presidential or Congressional election. A bonus of three delegates at large is provided if the state went Republican at the last presidential election or if it later elected a Republican United States senator.

A keynote speech opens the convention. The next order of business is the selection of officers of whom the most important is the convention chairman. Special committees are then set up. One examines the credentials of the delegates and reports on their right to their seats; another, the most influential, deals with the party platform. Here the various interests represented at the convention—tariff, agriculture, labor, professional, and scores of others—have a chance to say their say. The oral testimony before the platform committee is largely window dressing, a prepared statement which the interest group in question can be counted on to print in its trade journal, whether or not it gets a line or two in the metropolitan dailies. The real heat is applied in hotel rooms and away from the bright light of publicity. Each hopeful candidate has his

headquarters, his handlers, his organization, and his workers attempting to line up support and trying to prevent defection. In smoke-filled rooms, in crowded halls, amid confusion, heat, and the glare of flash bulbs, it is a constantly moving kaleidoscope of personalities, interests, humidity, and human drama. Then come the nominating speeches, some so impassioned as to rank with Patrick Henry's famous appeal for liberty or death. When the nominations are completed, the roll call begins, the states voting in alphabetical order on the candidates. The chairman of the state delegation announces the state's vote.

Under an historic practice, the so-called unit rule was long applied to state delegations at Democratic conventions. According to this procedure, every member of a particular delegation was supposed to support the same candidate. The Republicans have traditionally allowed greater individual choice, and in their conventions the state delegations were permitted to divide their support. Because of the influence of the presidential primary, however, the Republican delegates have considered themselves instructed with regard to particular candidates—at least on the first ballot—whereas since 1936, when the Democrats abandoned their rule requiring a two-thirds vote for the presidential nomination, Democratic delegations have felt less compelled to follow the traditional unit rule. The upshot, therefore, is that the procedure in both the Republican and the Democratic conventions has tended increasingly to converge. Individual delegates are free to vote their choice, but solid voting by state delegations is the more usual practice.

Before the required majority vote is reached several roll calls may be necescary. Each is punctuated by shouts, demonstrations, band music, and marching around the auditorium. After the final selection comes the climax of fanfare and celebration. The successful nominee flies to the convention, if he is not already there, and makes a triumphal entrance. He delivers an acceptance speech and the convention comes to an end.

At this point the chairman of the national party committee takes over and the local organizations go to work. The campaign builds up to fever pitch just before election. Each candidate covers as much of the country as he is able, with special attention to the doubtful areas. When election day finally comes the people vote and then go home to sit around their radios listening to the returns as they come in. Finally, the beaten candidate concedes his defeat and everyone goes to bed. It is all over. The subsequent meeting of the electoral college is a sheer formality.

The Electoral College

The federal Constitution actually provides for forty-eight electoral colleges, or one in each state. The number of electors in each state is equal to its representation in Congress, including senators and representatives. Article II of the Constitution provides that the electoral college shall be constituted in whatever manner the state legislature may decide, and that "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." Today the laws of every state require electors to be popularly chosen. Meeting at the same time in their state capitals, the electoral colleges cast their ballots separately for President and Vice-President.

Originally the newly elected President, Vice-President, and Congress did not take office until the March following the election, but the Twentieth Amendment to the Constitution changed that. The new members of Congress now take office on January 3 and the President and Vice-President on January 20 following the election, thereby eliminating the "lame-duck" feature of our system which had become objectionable.

Why Not Direct Election?

Every governmental system has its fictions, formalities, and trappings. The electoral college is one of ours. Customs and conventions are not objectionable in themselves. As a matter of fact, we all get a certain vicarious satisfaction from such things. But on the other hand, we Americans seem to realize that for our own good—for the sake of the strength and perpetuity of popular government—we should keep our governmental procedures as functional and free from frills as possible. This is why our dissatisfaction with the cumbersome method of electing our President and Vice-President has grown so steadily.

The striking fact about our present method of electing a President is the sometimes wide discrepancy between the popular and the electoral votes which a candidate may receive. Thus, in 1944, Dewey received nearly 47 per cent of the popular vote, but only about 18 per cent of the 531 electoral votes.

The table on the following page shows the popular and electoral votes in presidential elections from 1900 through 1944.

As yet no alternative plan for the election of the President has been suggested that seems capable of gaining effective support. Direct election by a majority vote of the nation instead of by states has often been proposed, but powerful interests are against it. Granted, says the opposition, that the present method is cumbersome and that it does not assure a popular majority for the winner—because the winner takes all in each state—nevertheless, it argues, direct action is not the answer.

The chief difficulty lies in the fact that a uniform national suffrage and election law would apparently be required before a direct national vote for President would be possible. The champions of states' rights would certainly resist to the last breath a move of this kind. The more populous states would gain in influence at the cost of the thinly inhabited ones. Nevada, for example, has three presidential electors and less than 100,000 population—or about 33,000 inhabitants for each elector—compared with 250,000 inhabitants for each elector in New York. Then, too, so long as the Southern states exclude Negroes from voting, these states would oppose any system of direct presidential election where the advantage would lie in getting out as many votes as possible. What,

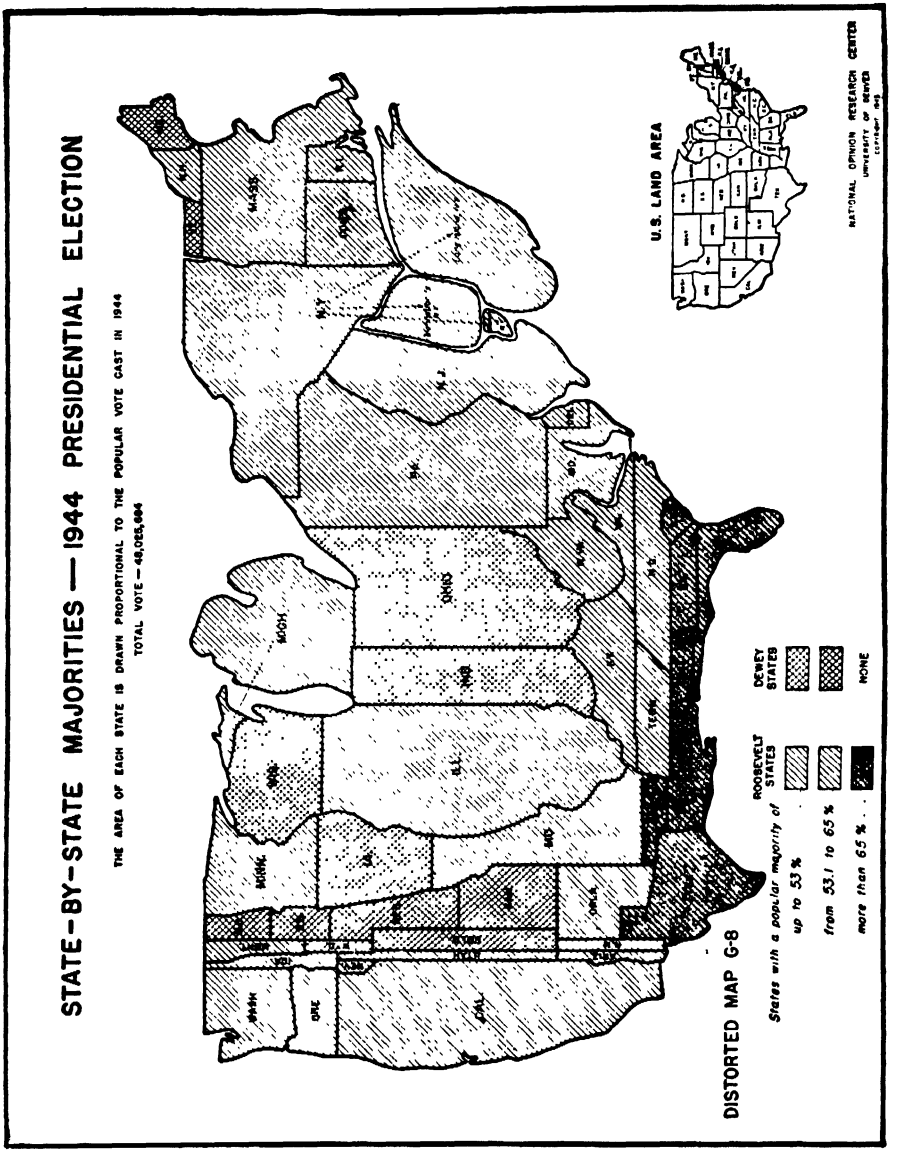
POPULAR AND ELECTORAL VOTES IN PRESIDENTIAL ELECTIONS, 1900–1944

Candidates	*Popular vote*	*Electoral vote*
1900		
McKinley (R)	7,218,491	292
Bryan (D)	6,356,734	155
1904		
Roosevelt (R)	7,628,461	336
Parker (D)	5,084,223	140
1908		
Taft (R)	7,675,320	321
Bryan (D)	6,412,294	162
1912		
Taft (R)	3,486,720	88
Wilson (D)	6,296,547	435
Roosevelt (Prog.)	4,118,571	8
1916		
Hughes (R)	8,533,507	254
Wilson (D)	9,126,695	277
1920		
Harding (R)	16,141,536	404
Cox (D)	9,128,488	127
1924		
Coolidge (R)	15,718,211	382
Davis (D)	8,385,283	136
La Follette (Prog.)	4,832,614	13
1928		
Hoover (R)	21,391,993	444
Smith (D)	15,016,169	87
1932		
Hoover (R)	15,758,901	59
Roosevelt (D)	22,809,638	472
1936		
Landon (R)	16,679,583	8
Roosevelt (D)	27,476,673	523
1940		
Willkie (R)	22,327,226	82
Roosevelt (D)	27,241,939	449
1944		
Dewey (R)	22,018,177	99
Roosevelt (D)	25,610,946	432

Source: The World Almanac, 1945.

then, is the solution? It has not yet been found but it will be surprising if a compromise is not worked out in the near future.

Let us not become cynical and dispirited about our voting. The right to vote is evidence of our freedom. It is a right which we have won only after generations of struggle. Once lost, it is hard to regain. The sensible course, there-


STATE-BY-STATE MAJORITIES — 1944 PRESIDENTIAL ELECTION
THE AREA OF EACH STATE IS DRAWN PROPORTIONAL TO THE POPULAR VOTE CAST IN 1944
TOTAL VOTE — 48,025,884
U.S. LAND AREA
DISTORTED MAP G-8
States with a popular majority of
up to 53 %
from 53.1 to 65 %
more than 65 % .
ROOSEVELT STATES
DEWEY STATES
NONE
NATIONAL OPINION RESEARCH CENTER
UNIVERSITY OF DENVER

fore, is to use our vote whenever we can in order to eliminate the anachronisms and inefficiencies in our election methods.

SUPPLEMENTARY READING

1. Election laws and their administration: Joseph P. Harris has written two books, *The Registration of Voters in the United States* (Washington, 1929), and *Election Administration in the United States* (Washington, 1934), both useful. There are some excellent readings in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 12, "Nominations and Elections." See also National Municipal League, "A Model Election Administration System," *National Municipal Review,* XIX (Sept., 1930), 625–671. S. D. Albright has written, *The American Ballot* (Washington, 1942) and *Ballot Analysis and Ballot Changes since 1930* (Chicago, 1940). There are also sections in the textbooks referred to in the bibliography at the end of Chapters 17 and 18.

2. Primary elections: Charles E. Merriam and Louise Overacker, *Primary Elections* (New York, 1928); A. Harris and C. Uhr, *Direct Primary Elections* (mimeo., Berkeley, Calif., 1941); and J. K. Pollock, *The Direct Primary in Michigan* (Ann Arbor, Mich., 1943).

3. Nominating conventions: E. S. Corwin, *The President: Office and Powers; History and Analysis of Practice and Opinion* (New York, 1940), Chapter 2; K. H. Porter, *National Party Platforms* (New York, 1924); James A. Farley, *Behind the Ballots* (New York, 1938), by a politician who knew the game; Louise Overacker, *The Presidential Primary* (New York, 1926); C. A. M. Ewing, *Presidential Elections* (Norman, Okla., 1940).

4. Campaign methods and ballot behavior: On expenditures, see J. K. Pollock, *Party Campaign Funds* (New York, 1926), Chapter 3; and Louise Overacker, *Money in Elections* (New York, 1932), Chapters 1–3. Two excellent studies are E. E. Robinson, *The Presidential Vote, 1896–1932* (Palo Alto, Calif., 1934), and *The Presidential Vote* (Palo Alto, Calif., 1940). See also L. H. Bean, *Ballot Behavior: A Study of Presidential Elections* (Washington, 1940), and P. F. Lazarsfeld, *et al., The People's Choice; How the Voter Makes Up His Mind in a Presidential Election* (New York, 1944). See also the texts by Key, Sait, Ray, Brooks, and Odegard and Helms, referred to in the previous chapter.

CHAPTER 20

Interest Groups in American Politics

In a comprehensive and realistic sense, all of modern life is organized into a series of more or less formal governing units. These are the governments of business, labor, agriculture, the professions—all the numerous and varied groups that men form for common purposes. From this standpoint, political government—the kind primarily considered thus far—is only one among many kinds and varieties of government. Political government is at the top. It is the most powerful and the most respected one, to be sure, but it is not the only government in our society. Call the others anything you like—private, semi-private, semipublic, or public—but if they make an impact on political government and resemble it to any degree, they become a necessary part of the study of political science.

Is Private Government on the Increase?

Private government is primarily government by interest groups representing particular segments of society such as business, labor, or agriculture. The competition offered by these groups is a major difficulty encountered by American political parties. It has been increasingly remarked by political scientists, for example, that these groups have weakened one of the political party's two most important functions—the determination of decisions on public issues.

In the opening pages of *American Politics,* Odegard and Helms suggest that political parties have virtually relinquished to the pressure groups responsibility for the determination of issues. Political parties today, they say, are mainly though not exclusively concerned with *who* shall exercise power—that is, who the officials shall be. Pressure groups, on the other hand, are mainly concerned with *how* the power shall be exercised—that is, what the policy and the law shall be. Succinctly, "Political parties are primarily electoral devices to which matters of policy are incidental and secondary; in the case of the pressure groups the order of importance is reversed."

Although this characterization is probably somewhat overdrawn, it does call attention to an alarming tendency. Moreover, as will be seen in the next part of this book, interest groups tend to rival and in some ways to detract from the influence of the legislative assembly, the very center of representative government. This would seem a convenient place, therefore, to deal with pressure politics, because it is becoming obvious that representative government in important aspects is deeply influenced, and in some respects challenged, by the so-called private governments.

A pressure group is any organized association which attempts to influence legislation and elections by lobbying, by endorsing or rejecting candidates nominated by political parties, or by conducting systematic educational or propaganda campaigns designed to promote or oppose specific decisions. There are better than five hundred more or less formally organized pressure groups represented in Washington, and they abound at every other level of American government.

Stuart Chase felt strongly that unbridled selfishness threatened to ruin our country when, in 1945, he wrote about interest groups in *Democracy under Pressure.* "Will Big Business, Big Labor, and Big Agriculture take up where the Germans and Japanese left off?" he challenged. Will Main Street, U.S.A., become the victim of a "dangerous and bitter battle between warring pressure groups"? Chase found entirely too much evidence that such might in fact become the case unless we pay greater attention to the reconciliation of our special interests with the common interests of all.

The difficulty is that the leaders of powerful pressure groups are all too often exercising what are virtually governmental powers without apparently realizing that statesmanship, not merely politics, must necessarily be involved. Chase's broadside was directed against all the wielders of power—capital, labor, agriculture—and his comments are caustic and biting: "Pressure groups," he said, "have long been 'the despair of patriots'. . . . The men who run pressure groups seem to assume that their crowd can go it alone. . . . The pressure groups seem to be led by men who are ignorant of the fact that we are our brothers' keepers."

There is a distinction between interest or pressure groups and lobbies. An interest group includes many informal as well as formal affiliations. Thus a farmer may not belong to any farmers' organization, yet he is a member of a particular interest group. The largest interest group in the nation—the consumers, who are everybody—is almost wholly unorganized. *A lobby, on the other hand, is a formal entity supported by an organized interest group to further its cause and protect its future at the hands of governments.*[1]

Government gets its dynamic drive from interest groups. They set the problem; government is supposed to find the answer. They do what they can for their own advantage; government coordinates them, backing them up or restraining them if it is able. The question here is this: Can the power of pressure groups be directed into the channels of public interest? It is an age-old problem. The intensity of group influence through these private governments is greater than it was a generation ago; so also is the need to relate group interests to the public interest.

PRINCIPLES RELATING TO THE PUBLIC INTEREST

We have learned from long experience that group interest and public interest do not always coincide. The only way to discover and safeguard the public

[1] Dealt with in Chapter 25, "Lobbying."

interest is to set out deliberately to compose and reconcile conflicting points of view in order to reach a working compromise among them. And by the very necessity of the case, no one special interest is capable of doing this.

Political government, therefore, has a job that no private government or subordinate group should be allowed to take over or seriously to interfere with. The distinctive job of representative government is to concentrate on the public interest, not the fractional interest; and to compromise and balance competing interests so that all the major groups in society get what is needed for the public welfare, but none gets too much for itself.

The following guiding principles are suggested for further reflection and exploration:

The public interest is whatever serves the basic, long-range interests of humanity. The public interest is the same as the goals or objectives of society. Whether these objectives are human, or purely mechanical and material, is a matter of choice on the part of the people and determined through the exercise of effective democratic control. Man's basic physical needs, in addition to the opportunity for him to grow in cultural, intellectual, and political stature, are the goals of organized society. If these goals are corrupted, it is because democratic control has been lost.

The fractional interest may accord with the public interest but it is never to be mistaken for the sole interest. When the United States Chamber of Commerce, for example, adopts the slogan, "What is good for business is good for the country," and places it on billboards in the hope that citizens generally will accept it, we must be sure that business is defined broadly to include farmers, laborers, professional workers—in fact, all producers and consumers—and that it is not limited to the owners and operators of particular business concerns. Rarely is a special interest set forth without the attempt to rationalize it into the public interest. A study of the program and propaganda of any group indicates that even special interests realize the necessity of at least seeming to put the public interest ahead of the fractional interest. Intellectual integrity must be combined with honest sentiment if both the particular interest and the public are not to be misled. When artifices are detected—and they usually are—they may cause the perpetrator serious damage.

The public interest is determined by the public, not by a clique or a class. The sentiments of common humanity, soberly expressed over a period of time—not in the passion of the crowd mind—are a more reliable indication of the public interest than the sentiments of any fraction of society. A recognition of what constitutes the public interest is initially an intellectual appreciation, based on the relation of the parts of society to the whole. There is no substitute for thorough analysis, which is increasingly important because of the complications due to technological advance. We must do the job of analysis ourselves, but an enlightened educational system would make it easier. When men and women in all walks of life are trained to consider the larger interest, the problem is

already on its way to solution. The worst foe of the public interest is unawareness. It takes the form of lethargy, smugness, and self-righteousness.

The final synthesis must combine sentiment with analysis. Man is an emotional, feeling creature, as well as a thinking one. In order to function normally, he must permit sentiment to have its proportionate part in his attitudes. And man's highest sentiments, throughout the ages, have fostered a brotherly feeling toward others rather than sheer self-interest, however enlightened. The traditions and aspirations of a people, which grow out of sentiment, constitute a compass and a stabilizer for society.

When the individual interest cannot be reconciled with the public interest, the former should give way. It is better for society that the individual should learn to make for himself the decision to retreat. Not all interests are equally legitimate because some serve humanity more than others. There are gradations of usefulness, and some interests do not qualify at all. In such cases, either the individual must discipline himself or society must restrain him. Liberty becomes license when it injures the public interest. But because it is hard to analyze all the factors and to predict accurately the consequences of a particular social action, an attitude of toleration is a necessary part of freedom.

A function of government is the resolution of differences among conflicting groups in order that society may proceed peacefully toward its human objectives, that is, the public interest. Government is the stabilizer of society.[2] Only an institution superior to all other groups can properly discharge this function. But government does not always succeed as a stabilizer. Success depends on a variety of factors, chief among which are popular control over the government, reliable processes of representation including political parties and legislative assemblies, and a citizenry and leadership trained to test policies in the light of the public interest. The indispensable requirement here is an enlightened educational system. The interest group also has a legitimate part in the representative process. This question will be developed further in later pages; it is enough here to say that the interest group should represent but not dominate. It should speak for the group interest while squaring it with other interests to form the public interest. Infractions of the public interest may be minor or long range. Minor infractions are inevitable in a free society, where trial and error is the normal process. Infractions are serious only when they are long continued.

A final point to be mentioned is the fact that *in every government, whether public or private, there is a tendency for the permanent officials—those who might be called an administrative oligarchy—to dominate through long-continued control of the organization and by a gradual narrowing of their horizons.* This complicates the work of the interest group and of the government in determining the public interest, and makes a guiding public control the more necessary. The administrative oligarchy constitutes the problem of

[2] This problem is further dealt with in Chapters 26, 44, 45, and 49.

bureaucracy—the central difficulty of all institutional life—and raises the question of how the rank and file may retain control of the organization and prevent its leaders from exercising irresponsible domination, oblivious to popular wishes and sentiments. How also can representation and democracy be kept effective so that the energy and humanity of the people in the ranks will diffuse themselves throughout the organization, including the top areas of leadership where oligarchy is the inherent tendency? The ultimate determination of the public interest will be influenced by conditions such as these.

HOW INTEREST GROUPS INFLUENCE AMERICAN GOVERNMENT

It is important to think clearly about the role of interest groups in government because the balance that they form with the representative processes of popular rule partly determines the effectiveness of the liberal-democratic state. Their necessary and legitimate functions will be understood if the following points are kept in mind:

Most interest groups are only incidentally concerned with government. Their major objective is to further their guild (group) interest. The American Federation of Labor, for example, is primarily concerned with wages, hours, and working conditions. This means collective bargaining and trade-union tactics first, legislation second. Similarly, the Farm Bureau Federation and the National Association of Manufacturers are first of all interested in the processes of production and distribution in their respective fields, and would come into existence even if there were no governmental policies to watch and influence. The fact that there are such policies merely turns their attention in the direction of government, among others.

On the other hand, government has now become so powerful that its policies, if independently determined, may make or break the strongest interest groups in the country if it decides to do so. Fiscal, labor, and other public policies are now the chief x factor in the success or failure of business. The Wagner Act, for example, is labor's Magna Carta. And when the government secured parity prices for him, the farmer acquired a measure of prosperity and security for the first time in many years.

In its dealings with government, every interest group must secure two objectives. First, it must seek positive action that will be helpful to itself; second, it must prevent harmful policies from being adopted at the instigation of rival groups. The principal points of impact by interest groups on government, therefore, are the legislative and executive branches, although the judiciary is not immune. The question of lobbying before representative assemblies will be dealt with in a later chapter; group pressures on administration will be taken up in the discussion of public administration. It is the purpose of this chapter merely to set the stage for an understanding of the broad implications of pressure groups.

As has already been pointed out, interest groups have become the rivals of political parties and account for much of the complexity of interest within

the latter. They force compromise and the balancing of opposing considerations in the determination of public issues. They guide the course of elections both by independent organization and through the parties so as to favor or defeat particular candidates and issues. Their influence is even felt on the judiciary, especially where judicial offices are filled by means of election, and it is also present in the case of appointments, including even those to the Supreme Court of the United States.[3]

Thus no area of government is immune from the influence of interest groups. Their impact is merely a matter of degree, being strongest on the political parties and legislatures and next strongest on the administrative services.

Pressure Groups and Changing Political Patterns

In the structure of our American economy three principal economic groups —business, labor, and agriculture—wield the greatest influence. Following closely are the professional groups, but they are diverse and individualistic and form no solid front in their approach to the legislatures and the administrative departments. The largest group, the consumers, have few spokesmen.

In the case of the Big Three, however, the situation is different. In the past fifty years the pattern of American politics has radically changed because both labor and agriculture have become highly organized and politically effective, whereas prior to that time business had dominated the political and economic scene.

In consequence of this new development, interest representation through the nonofficial channels of government (that is, the lobbies) has vastly increased. So also have the dangers of frontal clashes between the three major interests. The more tightly knit the pressure groups become, the greater is their tendency to follow the procedures of power politics, and hence the greater is the danger of conflict unless the government correspondingly increases its effectiveness and the people keep their heads.

BUSINESS AS A PRESSURE GROUP

American business has always been in politics. Alexander Hamilton's plan of manufactures, the funding of state debts, and the establishment of national banks are all examples, taken from our early history, of the influence of business on government. Business interests began to work for restrictive tariffs almost from the opening day of the first Congress.

Indeed, so active has business been that Samuel O. Dunn, former editor of *The Railway Age* and an outstanding opponent of government interference with business, once called businessmen "practical socialists." No group has done more than business, said Dunn, to extend governmental functions. Business has lobbied for subsidies and has sought to regulate and restrict compe-

[3] See Chapters 28 and 30.

tition. It has done more than any other class to increase governmental expenditures while at the same time paying lip service to the notion of "the less government the better."

Business interests exert their influence on government primarily through the United States Chamber of Commerce and the National Association of Manufacturers, plus scores of separate trade associations, many of which maintain lobbies in Washington and in the larger state capitals as well.

The United States Chamber of Commerce

Whereas the National Association of Manufacturers represents big business, the United States Chamber of Commerce has tended in recent years to become increasingly representative of all sizes and sections of American business, so that it now reflects a cross section of private business enterprise. In 1940 the Chamber spoke for some 1,500 local chambers and more than 7,000 individual firm members. Its headquarters in Washington is an imposing marble building directly across from the White House.

The Chamber of Commerce holds an annual meeting where, like a political party, it draws up a platform, much of which deals with public policy and legislation. Like a political party, also, it comes out flatly on some issues, straddles others, and deftly side-steps the undesirable. Generally speaking, however, it has become increasingly forthright. More than any other business aggregation, the Chamber's pronouncements reflect a broad, nation-wide, and statesmanlike approach to questions of political economy and government.

Just prior to World War II, for example, some of the Chamber's planks included such statements as this: "Laws regulating the issuance of private securities should be modified without removal of essential safeguards for investors." It endorsed "the principle of federal financial assistance in necessary relief expenditures." The well-being of agriculture, it said, is essential to the public welfare; and further, "We believe in the maintenance of a balance between agriculture, industry, and labor, in a parity of income between the groups, in a concerted attack on recovery problems, and in expansion of the national income."

This is statesmanship of the highest order. Moreover, concerning the rights of agriculture and labor to organize, the same platform said unequivocally, "Freedom to organize and to seek sound solutions through democratic process in an organized way is an essential of any program."

The Chamber of Commerce attempts to increase and to safeguard its representative character and influence by the use of referenda among its members on all important issues. This is good strategy. When a question is "national in character, timely in importance, and general in application to business and industry," the board of directors orders a referendum.

First the question is referred to a special committee for study and recommendation. Its report, with arguments pro and con and a recommendation, is then sent to the constituent members, each having as many votes as it is

entitled to delegates at the annual meeting of the Chamber. Usually such recommendations are endorsed by a large majority. As a result of the democratic procedures followed, the programs and policies of the Chamber—this representative assembly of business—carry increased weight with the public and with government officials.

Because the Chamber in recent years has indulged in less sloganizing and propaganda than formerly and has given more attention to concrete problems of legislation and administration it has become of greater practical assistance to government than in the past. One hears less of such slogans as "More business in government and less government in business," and "What is good for business is good for the country." Rather, the emphasis today is on the difficult but important questions of self-government in business, tax reform, a better balance between the main segments of our economy, and greater efficiency and economy in carrying on the work of government.

Other Associations of Business

In contrast to the United States Chamber of Commerce, the National Association of Manufacturers in recent years has emphasized "public education," or propaganda. The Association employs a large staff and spends a good deal of money in an attempt to swing public opinion to the support of business and against governmental programs which are thought to be opposed to its interests.

A National Industrial Information Committee of the N.A.M., with state and local subsidiaries, has spent the following sums on public information work:[4]

1934	$ 36,500.00
1935	112,659.58
1936	467,759.98
1937	793,143.06

Billboard sloganizing was widely used in a program directed primarily against New Deal economic policies and the growing power of the trade unions, especially the Congress of Industrial Organizations. The La Follette Committee of Congress, which reported on business policies toward labor in 1939, stated that "the National Association of Manufacturers has blanketed the country with a propaganda which in technique has relied upon indirection of meaning, and in presentation upon secrecy and deception. Radio speeches, public meetings, news, cartoons, editorials, advertising, motion pictures and many other artifices of propaganda have not in most instances disclosed to the public their origin with the Association." Needless to say, the N.A.M. called this an unfair characterization.

There are other associations of businessmen. The Association of Life Insurance Presidents, formed in 1906, operates a network of lobbies in all forty-eight

[4] See V. O. Key, *Politics, Parties and Pressure Groups* (New York, 1942), p. 130.

states. The National Lumber Manufacturers Association—a powerful trade association with headquarters in Washington—expressed the views of many similar organized interests in these words: "An industry and its members get or do not get their due at Washington, as they are, or are not, well represented."

There are so many organized business interests that only a few can be mentioned here. Reference will be made later to some additional ones in the discussion of lobbying activities before legislatures and administrative departments. The techniques of lobbying will also be dealt with later, but one example may be appropriate here. An executive of the National Association of Manufacturers, in a letter to local employer associations, gives the following tips:

> Don't overlook the oft-repeated suggestion that the bringing of delegations to Washington is effective. One of the most representative groups of this character that has yet been brought down was engineered by E——— D——— [we have omitted the name] of the Associated Industries of Missouri, who brought in a special train of 48 Missouri business leaders on Sunday, April 7, and held meetings with the Missouri delegation in Congress. The next three or four weeks are going to be propitious times for such visits to Washington and the NAM will be glad to cooperate with you in any fashion in arranging such a visit.[5]

This was from a letter brought to light by an investigating committee of Congress. Is it any wonder that lobbyists sometimes feel it safer to use the telephone?

AGRICULTURE BECOMES A POLITICAL FORCE

Since the American farmer, the traditional stronghold of individualism in this country, has joined with his fellows in recent years, he has become a political force of unsurpassed potency. The three principal interest groups representing farmers are the National Grange, the Farm Bureau Federation, and the National Farmers Union.

The National Grange, which dates from 1867, lobbied for railroad legislation in its early years and was considered so radical that it caused chills in Wall Street. Today, with a membership of over 750,000, the Grange has become the conservative right wing of agricultural politics.

The Farm Bureau Federation occupies a middle ground, drawing its chief strength from the corn-hog states of the Middle West. In recent years, with a membership of around 700,000, it has been particularly effective in Washington, and commands respectful attention when it speaks. In *Democracy under Pressure,* Stuart Chase described a view generally held there with regard to the power of this organization when he said, "The Farm Bureau is tied up in a direct way with the Department of Agriculture. Some of its local representatives hold appointments as government county agents—which raises the

[5] V. O. Key, *Politics, Parties and Pressure Groups, op. cit.,* p. 131.

interesting question whether a lobby should be paid by the government to bring pressure on the government. Sometimes the Bureau dictates department policy. It would like to control the department completely, and is in a fair way to do so."

Fortune Magazine commented in 1944 that "as matters now stand, few things in politics are as certain as Ed O'Neal's ability to get votes. . . . On the floor of the House the Farm Bureau can pass or stop *any* farm measure on which it makes a determined fight." In the last generation no economic phalanx has been as powerful as agriculture.

The Farmers Union is still small, with only about 100,000 members, but it is growing. It constitutes the progressive, liberal wing of the agriculture bloc and has fought to retain such programs as the Farm Security Administration. Its leader, Jim Patton, has become almost as well known in Washington as big Ed O'Neal of the Farm Bureau. The strength of the Farmers Union is with the small farmer and the share cropper. Geographically its center of influence is west of the corn-hog area. Politically it is significant because it has tended to cooperate closely with organized labor.

Kenneth Crawford, the Washington correspondent, in his book *The Pressure Boys,* remarks that "once the farm organizations stand united they can get anything out of Congress short of good growing weather." And according to a farmer, "If the government should step out of the picture today, American farming would collapse." A later chapter will examine the operation of the farm lobbies.

LABOR BECOMES POLITICAL

Organized labor began to take roots early in the nineteenth century, but it did not become a substantial economic and political force until the last quarter of that century. In general, its emphasis was primarily economic rather than political, although its members were influential in such protest movements as populism and agrarianism. They formed the backbone of the Progressive movement in 1912 and again in 1924. But only since 1932 has organized labor become a political force of the first magnitude, equal to if not potentially more significant than organized business and organized agriculture.

The founding of the American Federation of Labor coincided with the growth of the trusts in the latter part of the last century. In the 1870's the Knights of Labor crusaded for a better world. During World War I, Samuel Gompers, the Grand Old Man of the A.F. of L., agreed to a no-strike pledge and, with Bernard Baruch and others, played a prominent role in the war effort. By 1920 the A.F. of L. had a membership of four million. During the boom era which followed, however, membership declined until in 1933 it was barely over two million.

Two years later, in 1935, John L. Lewis and his United Mine Workers "took a walk" and formed the C.I.O. The traditional craft unionism of the A.F. of L. and the new industrial unionism constituted a cleavage of organization and strategy. So also did the question of political activity by the unions, as such,

as against the traditional hands-off policy of the older A.F. of L. unions. Later John L. Lewis was also to part company with the C.I.O. and in 1946 he took his United Mine Workers back into the A.F. of L.

Meanwhile the Railroad Brotherhoods—the aristocracy of the labor movement—maintained their independence and, like the A.F. of L., engaged in political activity as unions only when union interests were directly affected. In addition, of course, their members were free as individuals to take sides in politics as they saw fit.

In terms of numbers, organized labor is the largest amalgam of all organized interest groups. In 1945 there were some 13 million to 15 million trade-union members out of a possible total of from 35 million to 40 million "organizables" in nonagricultural pursuits. This compares with the total of only 6 million organizables for farming. Organized labor, therefore, was actually more than eight times as large as organized agriculture (1,550,000), and, even if both were fully organized, labor would still be six or seven times as large as organized agriculture.

Labor is most fully organized in the heavy industries, and much less so in the retail and wholesale establishments. Of organized labor's 13 million in 1945, approximately 12 million were accounted for by the A.F. of L. and the C.I.O., with the A.F. of L. the larger of the two. The remaining 2 million were found in the Railroad Brotherhoods and other independents. The House of Labor, therefore, is composed of three chambers: the A.F. of L., the C.I.O., and the Railroad Brotherhoods.

In assessing the future influence of organized labor in the political field, two important questions arise: Will there be a greater unity of action, or will other splits take place? Because of the force of numbers, a united, organized labor group would constitute an unbeatable combination. And second, will organized labor form a political party of its own and attempt to achieve its goals through governmental measures, or will it continue to adhere primarily to economic sanctions such as collective bargaining and the right to strike, leaving direct political activity to its individual members?

The tradition of the A.F. of L. favors an emphasis on economic sanctions, while the ideology of the C.I.O. inclines it toward an active part in politics. The traditional attitude of the A.F. of L. was expressed by Samuel Gompers in 1917 when he said, ". . . the wage-earners have been united to one or the other of the two strong, political parties and they are bound to these parties by ties of fealty and tradition. It would take years ever to separate any considerable number of workers from their fealty to the old party. . . ." Nevertheless, as has been noted on an earlier page, if the influence of the Political Action Committee (P.A.C.) of the C.I.O. during the 1944 presidential election is a reliable indicator, we may expect labor to wield a constantly increasing political influence.

W. N. Kiplinger, known for his newsletters and for his book, *Washington Is Like That,* has pointed out that organized labor owns more elaborate build-

ings in Washington than any other interest group. In 1945 they were conservatively valued at $10,000,000. Moreover, although the A.F. of L. was not so openly political as its rival, it was the opinion of experts that its lobbying finesse excelled that of the greener C.I.O. In a recent annual report of the A.F. of L., exactly 100 pages of small print are required to review one year's legislation and administration affecting A.F. of L. interests.

There are many resemblances in organized labor to politically organized government. The A.F. of L., for example, is a loosely knit confederacy of unions with all the advantages and disadvantages which such organization entails. The main feature of labor's institutional development, says Selig Perlman in *The Theory of the Labor Movement,* has been "a perpetual struggle to keep the organization from going to pieces for want of inner cohesiveness." Business interests, on the other hand, seem to be relatively more closely tied together. "From the first to last in the history of government," said political scientist William Bennett Munro in commenting on this fact in *The Invisible Government,* "this money power, the interest of vested wealth, has been the best organized, the most inherently cohesive, and on the whole the most enlightened determinant of public policy."

Another analogy between government and the labor unions is in the degree of influence commanded by their permanent officials, the oligarchic bureaucracy. The extent to which popular needs and aspirations are filled depends, with regard to both labor and government, on the effectiveness with which the sentiment of the rank and file controls this permanent personnel, and on the degree to which officialdom becomes aware of the dangers and difficulties which beset it.

DANGER OF OVEREMPHASIZING INTEREST REPRESENTATION

If we as individuals had but a single strong allegiance, and that was to our interest group, we would quickly see the end of democracy and the setting up of a dictatorship. Representative democracy is based on a fusion of individual interests resulting in decisions made for the common good by the organized political state.

In emphasizing the powerful influences exercised by capital, labor, and agriculture, therefore—as any realistic explanation must—there is the danger of giving the impression that individual segmentations are greater than is actually the case. No such hard and fast segmentations occur, of course, in America, where class lines and divisive ideologies have never been as strong as in the older countries of Europe.

Labor, for example, thinks of itself as middle class rather than as proletarian. It is attached to the concept of the individual ownership of property. On this point Perlman comments that "under no circumstances can labor here afford to arouse the fears of the great middle class for the safety of private property as a basic institution. Labor needs the support of public opinion, meaning the middle class, both rural and urban, in order to make headway

with its program of curtailing, by legislation and trade unionism, the abuses which attend the employer's unrestricted exercise of his property rights."

The results of an American public opinion poll in 1939 brought out the fact that although 54 per cent of the families of the nation received an annual income at that time of only $1,200 or less, 87½ per cent of the population thought of itself as middle class. Here is concrete evidence that we Americans have a stronger feeling of social equality than any other people in the world. We have confidence in ourselves and hence we have confidence that through democratic processes we can do the things which are necessary in order to make our common lot a better one.

Walter Lippmann, in his *Preface to Morals,* points out that man's multiplicity of interest "makes it impossible for him to give his whole allegiance to any person or to any institution." In an advanced society, "no grouping is self-contained. No grouping, therefore, can maintain a military discipline or military character. For when men strive too fiercely as members of any one group they soon find that they are at war with themselves as members of another group."

Harold Lasswell has illustrated this point in a humorous hypothetical case, but one that might very well occur in practice. "John Citizen," says Lasswell, "may pay his dues to a veterans' organization which seeks to raise the cost of government by demanding higher bonus rates, and he may also support a business association which tries to lower the cost of government by reducing payments from the public treasury. He may belong to an association of bondholders which strives to prevent the liquidation of fixed claims, and he may contribute to a trade association which urges inflation in order to reduce the burden of fixed charges on business enterprise. He may contribute to a civic league to improve the honesty and efficiency of government, and also pay the local bosses to protect his franchise. *Hence the person may in effect argue against himself in the press, lobby against himself at the capital, vote against himself in Congress, and defeat in administration what he supported as legislation.*" [6] (Italics ours.)

Despite its absurdities, this is a good example of the consistently calculating, selfish man who is the figment of the classical economist's fancy!

The Guild Tendency

"The tendency of professional associations to gain virtual control of the making and administering of laws vitally affecting their members," says V. O. Key in *Politics, Parties, and Pressure Groups,* "exemplifies a recurring and persistent drive by many groups to gain similar positions of influence." How far this movement has progressed and how serious it is will be more apparent after a discussion of lobbying in a later chapter, but some generalization about the problem should be made now.

Our theory of government holds that public power is vested in government

[6] "The Person: Subject and Object of Propaganda," *The Annals,* 179 (1935), 187–193.

and cannot be taken over or pre-empted by any interest group. Is this sound and necessary theory? Is it proper for a powerful interest to sponsor useful legislation and succeed in getting it passed, but improper for it to elect its own stooges to Congress so as to be sure to have its legislation enacted? Or is there nothing wrong with the latter practice? Is it legitimate for an interest to argue its case before an administrative tribunal, but wrong to force appointments on that agency so that it will always be sure of getting its way?

Our theory of government holds that it is a legitimate and proper practice to stand outside the formal framework of government and argue and exhort in favor of a particular interest, but that it is undemocratic to try to take over the government for the benefit of that interest. We also assume that any lobbying action should be open and aboveboard, not carried on in the dark. Moreover, as observed before, every proposed program must be weighed in the light of the larger interest and the opposing considerations. When government ceases to act as umpire and serves rather as special pleader, then most people lose confidence in it.

Interest groups have grown up and taken their legitimate place in our government because they tend to supplement the formal processes of representation. Our electoral system is strictly geographical. We choose our state legislators and congressmen to represent districts. But geography is not the only legitimate basis of representation. Nor is that basis an arbitrary number of people within a particular district. A third factor is the presence of cohesive groups in society—including business, agriculture, and labor—each with a sense of corporate identity.

And again, within each group there are smaller and competing groups. The apple growers of the state of Washington may be against the apple growers of the state of New York; the steel mills of Colorado versus those of Pittsburgh; the maritime union of the east coast against the sailors' union on the Pacific—all creating internal competitions within larger entities. Each of these local interests heads up through a larger interest group which has a right to be heard. They should be heard, furthermore, because they possess much knowledge and experience useful to legislators and administrators.

We conclude, therefore, that it is natural and desirable for interest groups to supplement the formal processes of political representation, but not to take their place or seriously to derogate from their authority. Interests should remain outside government as pleaders, not inside as chiselers. Political ethics control here. We must have independence in government or we shall lose confidence in it, and without confidence we shall drift into minority control.

People sometimes thoughtlessly suggest that the guild tendencies in our political life have become so pronounced that we might as well incorporate into our formal governmental framework the special interests they represent. The proposal for an official Third House of Congress, composed of such organized groups, will be considered in a later chapter. But what about the general idea? Do we want to experiment with the corporate type of political organi-

zation such as Mussolini set up in Italy? Should we force all laborers to join unions, all farmers to join their associations, all businessmen to enter cartels? Should government be run by a single party with corporate representation as stage property?

That is what Mussolini did in Italy. Guild socialism would be equally objectionable. Although it might not be as bad as fascism, it is something to think about. We should not lightly discard our traditional assumption that representation in government must be general, not particular. As difficult as it is to define and apply the concept of public interest in concrete situations, it is better to keep on making the attempt than to give in to the seemingly easier course of voting individual and dominant interests only.

We should understand that pluralism is compatible with democracy, while the domination of any one interest group or elite is antagonistic to it. *By pluralism we mean the theory that government is not the only institution in society to which men owe their loyalty and support.* Business, labor, agriculture, the church, the professions—all the institutions of the community—help to fulfill our common wants. Government does some things which other institutions cannot or should not attempt. But government does not have a monopoly either of power or of people's affections.

Doubtless we Americans have many difficult and stormy times ahead in our national life. Powerful interests face each other, creating the danger of open conflict. If we are to make peaceful progress it will take all the mutual understanding and tolerance of which we are capable. And we cannot be assured of these unless we temper our concentration on special interest with a more statesmanlike attention to what constitutes the public interest. It seems to be a race between education and drift.

SUPPLEMENTARY READING

1. General: V. O. Key, *Politics, Parties, and Pressure Groups* (New York, 1942), see Part I, "The Contenders for Power," especially Chapter 8; also Peter Odegard and A. E. Helms, *American Politics* (New York, 1938), Chapters 1 and 22; and E. E. Schattschneider, *Party Government* (New York, 1942), Chapter 2. The earliest significant work on pressure groups was that of E. Pendleton Herring, *Group Representation before Congress* (Baltimore, 1929). The following are useful and readable: Stuart Chase, *Democracy under Pressure—Special Interests* vs. *the Public Interest* (New York, 1945), Chapters 2, 3, and 11; Donald C. Blaisdell, *Government under Pressure,* Public Affairs Pamphlets, No. 67 (New York, 1942); and Kenneth C. Crawford, *The Pressure Boys* (New York, 1939).

2. Special studies: There are a number of excellent studies: Peter Odegard, *Pressure Politics, the Story of the Anti-Saloon League* (New York, 1928); E. E. Schattschneider, *Politics, Pressures, and the Tariff* (New York, 1935), Parts 3–5; Harwood L. Childs, *Labor and Capital in National Politics* (Columbus, Ohio, 1930); Belle Zeller, *Pressure Politics in New York* (New York, 1937); and Donald C. Blaisdell, *Economic Power and Political Pressure,* Temporary National Economic Committee, Monograph No. 26 (Washington, 1941).

PART SIX LEGISLATURES AND PUBLIC POLICY

CHAPTER 21

Legislatures—Center of Political Gravity

IN GOVERNMENT by the people, as contrasted with government by the few or the one, there are only two ways in which the popular will can find expression. The first is by the people's coming together in direct assembly to decide matters for themselves, which is feasible only in small communities such as the Greek city-state or the New England town. The second is by their delegating this responsibility to their representatives meeting in legislative bodies. This is representative government and involves the principle of agency. What cannot be done directly by the people must be done for them by their representatives, or agents.

In this age and in most periods of known history, popular government has had to rely primarily on representation instead of on direct action by the people. The members of our municipal councils, of boards of county supervisors, of state legislatures, and of Congress carry a direct mandate from the people by whom they are elected, and hence—as Woodrow Wilson expressed it—the legislative assembly becomes the rightful center of political gravity in a representative government.

To ascertain the prospects of democratic control in any country, investigate the degree of confidence with which the people regard their representative assemblies. If the prestige of the assembly is high, then the principle of agency is working satisfactorily. But if its prestige is low, then the people may lose confidence in themselves as well, and drift into a state of mind where a willful minority is able to grasp control of the government.

If the controversial issues with which it deals are primarily responsible for criticism of the legislative assembly, leading to discontent on the part of those who lose out in the voting or who are adversely affected by the administration of the laws of the majority, there is nothing particularly to be feared. Such criticism is normal and inevitable. But there is a real difference between such factional criticism and a fundamental loss of confidence. When there is loss of confidence, the integrity of lawmakers is impugned by their critics and the ineffectiveness of the popular assembly condemned in favor of direct action either by the people themselves through revolution, or by a dictator.

The weakening and eventual breakdown of popular rule, therefore, accompanies the people's loss of confidence in the center of rule, the legislature. Recent examples include Italy before Mussolini and his Black Shirts seized power; Germany, whose legislature was contemptuously referred to as a debating society by Hitler and his group; and France, where the prestige of parlia-

ment and representative institutions generally was dangerously low just before her defeat in World War II.

What about our own country? Are we in an impregnable position? Apparently not. When Woodrow Wilson wrote his *Congressional Government* over sixty years ago he pointed out that most Americans give thanks when Congress adjourns and goes home. How much has our understanding and appreciation of Congress improved since that time?

This chapter will discuss the relation of the legislature to the rest of government, the historical evolution of representative assemblies, and certain principles relating to representative government in general. It will then take up the characteristics and functions of legislative bodies and conclude by indicating some of the problems common to most legislatures.

LEGISLATIVE ASSEMBLIES IN RELATION TO THE REST OF GOVERNMENT

The popular assembly is not only the center of political gravity because of its closeness to the voters; it is also the center of government in terms of the procedures involved in the functioning of government.

There is a logical progression characterizing the flow of governmental work. First there is the human need. Then people register that need through the political party, the interest group, and the ballot box. These forces in turn impinge on the legislative assembly, where action is taken in the form of laws. After the law is enacted, the administration carries it into effect and the courts interpret it when disputes arise or citizens fail voluntarily to comply with its requirements. This series of steps is like channeling water through a conduit until it reaches the powerhouse, where it is converted into electricity to operate factories and light homes. The process includes elements of human contrivance, decision making, and choices between alternatives.

It is a common saying that "a stream can rise no higher than its source." Applied to government, this aphorism may read, "The level of performance elsewhere in representative government rises no higher than that of the legislature." This observation, however, must be qualified, for it may not apply in isolated instances over short periods of time, but it is generally valid in the administrative and judicial branches of government over a succession of years.

The legislature makes the law, which sets the task for the executive and the judiciary. Moreover, the legislature creates, organizes, and empowers the other two branches. It supplies them with funds that are the necessary basis of their survival. And finally—subject to the important exceptions of the presidency, the vice-presidency, and the Supreme Court—the legislature may abolish, combine, or modify the administrative and judicial mechanisms it has created.

The Legislature as Chief Regulator of Human Conduct

Between the three branches of government there is, of necessity, a close and intimate relationship. Law and the influence of the political process are factors

that they have in common. Failure to function at any point detracts from the remaining efficiency of the whole. Whether it be the making, the enforcement, or the interpretation of the law, each department of government has an essential and complementary function.

A discussion of the nature and development of law is reserved for the chapters in the following part, which relates to judicial institutions and their functioning. The emphasis here will be on one aspect of that analysis, namely, the primary role of the legislature in making the law and regulating human conduct.

Most of the essential services required in daily living are created and regulated by legislative enactments. The water supply, the construction and maintenance of streets, and the municipal transportation systems stem from the ordinance-making power of municipalities. Schools, the chartering of business corporations, and the licensing of professions are the handiwork of state legislatures. Price and quality regulation, social security, and protection from armed invasion are among the legislative responsibilities of the federal government. Today almost every area of life, personal as well as institutional, is subject to legislative regulation by local, state, or federal authorities. This is the price that apparently we must pay for increasing complexity in our social and economic institutions.

With every increase in complexity, an increment of governmental power is likely to occur, and with every increase in governmental power the area of legislation is enlarged. Beyond a certain point, therefore, the state becomes positive rather than passive, and legislation becomes the most important element of our common life.

Adam Smith, it will be recalled, looked on legislation—as did the utilitarians of the eighteenth and nineteenth centuries—as the art of the statesman and the legislator. Political economy (or economics, as it is called today) was a branch of the statesman's and the legislator's responsibility. When social and economic complexity reaches the point where the role of government becomes positive and legislation may control progress or cause ruin, this view of the central role of legislation is justified.

Legislation as the source of law came relatively late in national development. The original source of law is custom derived primarily from the institutions of the family and religion. Later the king or ruler supplements custom by royal decrees having the force of law. After a while the courts interpret and develop it. Positive legislation by a sovereign legislature responsible to the voters comes much later—in England not until the seventeenth century and in France and in the United States not until the eighteenth century. Thus legislation, which today regulates most of human life, was relatively unimportant until two or three hundred years ago. Growing complexity and increased popular control of government explain the change.

So great has been the revolution induced by the invention of steam, electricity, and aviation that civilization today has achieved a complexity beyond

anything the world has ever known. Complexity has created problems which legislatures are forced to deal with; consequently their decisions mold the destiny of the world. Our Congress is an example: in the field of foreign policy it must decide between war and peace, international organization or national rivalries, world leadership or isolationism. In the area of internal policy, Congress must decide such questions as how to deal with another major depression if it should occur; where to prod and where to check our economy in order to maintain an equilibrium; what tax policy to adopt in order to stimulate business and at the same time spread the burden of payments as equitably as possible in accordance with ability to pay.

If a successful world organization is created, Congress will deserve much of the credit. If economic prosperity is maintained along with essential freedoms, our legislative assemblies will have found the way. How can we afford to be neglectful of or cynical with regard to legislatures when all of our future, everything that most deeply affects us, is tied up with their actions?

The legislature is important for one additional reason—it is the center of political activity in the government, partisan and nonpartisan alike. As such, it is of unequaled interest to the student of dynamic politics. It is hard to capture and define the political side of legislative activity, however, because it almost seems as though such assemblies—and this is true of Congress in particular—are unwilling that the essential political character of their work be recognized, either by themselves or by outsiders; hence, as Roland Young has said, they tend to treat politics and the political organization of the legislature "as something belonging to the nether world which should not be mentioned very loudly." [1] To guard against the danger of insufficiently recognizing the politics of legislative life, we should keep the following points in mind: laws could not be passed without intricate political maneuvering nor could popular assemblies organize themselves without having the "ins" in power and the "outs" in the minority; and in addition to the politics of political parties, there are "politics" of many other kinds, including those which are personal, sectional, or pressure group. The legislature is politics par excellence, but much of it lies hidden beneath the surface.

HISTORICAL EVOLUTION OF REPRESENTATIVE ASSEMBLIES

The representative principle has been applied in government since ancient times. It is only the central position occupied by the people's representatives in the total governmental equation that is new. In the governments of Athens and Rome, as we have seen, representation was commonly by tribes or families, secondarily by towns or geographical sections. Mankind has had a continuous experience with representation since that time, and no nation or people can claim its exclusive invention. The device of representation seems to have spread from one country to another by a process of diffusion or imitation.[2] Until

[1] Roland Young, *This Is Congress* (New York, 1943), p. 88.

[2] Edward M. Sait, *Political Institutions* (New York, 1938), pp. 482–499.

fairly recently it had been assumed in English-speaking countries that representative assemblies originated in the Teutonic north, but this idea has been revised and corrected. The representative device was found in Southern Europe as well as in the north, and there is some evidence to suggest that it may have spread from early Greek and Roman examples, which were familiar to other Mediterranean peoples.

Spain was probably the first nation in the Western world to adopt representation in her national legislature, the Cortes. We do not know the exact date, but in any case it was as early as 1163 for Aragon and 1169 for Castile. This was 140 years before the French estates-general met for the first time in 1302, and almost 100 years before Simon de Montfort's famous Parliament in England. Professor Ernest Barker, a leading English political scientist, has shown that the Dominican monks from Spain undoubtedly influenced the parliamentary design used by Simon de Montfort.

Simon de Montfort has been called the father of the House of Commons. Whether or not such credit is justified, he supplied a powerful stimulus to the practice of representation. After the defeat of King John when he signed the Magna Carta (1215), De Montfort's first Parliament, meeting in 1264, included three knights from each shire. In his second Parliament, in 1265, he broke new ground in the idea of representation when he gave equal representation to both knights and burgesses—the baronage and the urban mercantile class. The precedent created here continued after De Montfort's death and prepared the way for the rule of the middle class and the supremacy of Parliament over the king, in the seventeenth century. How this power was acquired, largely through the control of the purse strings of the commonwealth, is familiar history.

The device of representation therefore goes back to the earliest governments we know anything about. The basis of representation has been extended over the centuries until today in the United States in theory all classes and interests are enfranchised. The basis of representation controls the government and what the government does. In its widest and most realistic application, therefore, legislation is an aspect of social pressures and the balancing of groups in an attempt to solve common problems.

PRINCIPLES RELATING TO REPRESENTATIVE GOVERNMENT

The following is a summary of the points that have emerged so far, together with some suggested principles to be examined later:

The confidence of citizens in their popularly elected assemblies is a reliable thermometer of the democratic health and vitality of a nation. The effectiveness of the legislature determines the degree of respect it receives from the public.

Where the people rule, the representative assembly is the center of political gravity. Executive and judicial officials may also be popularly elected, but they do not make the law nor occupy as express a relationship to the voters

as do legislators. Awareness of the central role of government is a determining factor in arousing public interest.

The legislature is also the center of political pressures because it is here that policy crystallizes and the law emerges. Legislators, therefore, must be sturdy. Both pressure groups and political parties hammer at the legislature. To the extent that these forces are channelized and regularized may we expect a statesmanlike balance in the work of those who make the law.

Any lasting reform in government begins with the legislature, again because the legislature is the center of government. There is an inherent tendency for legislatures to neglect their own organization and efficiency; it is a primary task of the political scientist to draw attention to this problem. But any attempt to strengthen the legislature leads in turn to every other area of decision throughout government.

The primary function of a legislative assembly is to formulate and enact laws which will stand the test of statesmanship. It is also responsible for seeing that its laws are administered in accordance with popular wishes and intent. But it is not the proper function of the representative assembly to attempt to execute and carry out the laws through its own instrumentalities, personnel, and devices.

The line between the making and the execution of the law must be maintained. The relation between the legislative and executive departments is one of the most difficult and at the same time most determinative areas of political science.

In the last analysis, all of government is divided into the making and the execution of public policy. The judiciary is concerned with both, particularly in the United States, where the courts have the final word on the actions of both legislation and administration.[3]

The ultimate test of a legislative assembly, as of a business concern, is the quality of product it turns out. Does the product promote human happiness? Does it serve a useful purpose? Does it further the goals of society? Is it "statesmanlike" in terms of protecting the public interest and fostering stability and progress?

CHARACTERISTICS OF LEGISLATURES—ALL LEVELS OF GOVERNMENT

A previous chapter has indicated the necessity of strengthening state governments. One method is to improve the organization, procedure, and personnel of state legislatures. The same criticism applies to Congress and, to a less extent, to county and municipal lawmaking bodies as well. The problems and characteristics of legislative assemblies are everywhere basically the same.

Definition helps to reveal these common identities. *The legislative function is the process of formulating and enacting policies into law. Legislation estab-*

[3] See Chapter 29, "The Judiciary as Policy Maker."

lishes the legal rights and duties, enforceable by courts and administrative agencies, applicable to citizens, agents of government, business corporations, and others.

The lawmaking body is variously designated. In England and France, for example, the national legislature is called the Parliament, in Germany it was the Reichstag, and in the United States it is Congress. In this country the designations at the subordinate levels of government are legislature or assembly in the states, board of supervisors or board of commissioners in the counties, and council or commission in the municipalities. There are, of course, other special nomenclatures in special cases.

As the lawmaking process has been defined above, each of these bodies possesses lawmaking powers. Some authorities would hold otherwise, arguing that only the federal and state governments have full-fledged lawmaking powers inasmuch as all other governments are legally subordinate to the states which created them. This is a point to keep in mind but it does not alter the fact that municipalities annually enact hundreds of thousands of ordinances having the force of law, and hence in a realistic sense these are law. Since county boards exercise some power of this nature, they also qualify. Both Congress and the state legislatures must comply with the higher law of the Constitution and yet it would not be seriously argued that for this reason they lack true lawmaking powers.

What are laws called? Here again there is a variety of terms. In general, however, federal laws are called laws, statutes, acts, or resolutions; state laws are called laws or resolutions; and in the counties and municipalities, they are called ordinances and bylaws.

Volume of Legislation

The best way to understand how extensive legislation has become is to analyze the various areas of human activity that are now controlled by governmental enactments.[4] For most purposes this method is more meaningful than the computing of totals. And yet the computing of totals is also interesting and significant. If it shows nothing else it indicates how much work and detail are involved in the operation of a modern legislature.

Congress is a striking example. In its report entitled *The Reorganization of Congress,* a committee of political scientists found in 1945 that "the business of Congress has become huge, complicated, and technical. Thousands of bills are dumped into the legislative hopper each session, of which several hundred receive attention." In the first session of the Seventy-eighth Congress (1943–1944) a total of 384 laws was enacted. Of these, 219 were public and 165 were private measures (that is, related merely to individuals—pension cases, for example). The printing of the public laws enacted by this session of Congress required 643 pages. The House passed 795 bills and resolutions; the Senate

[4] Chapter 26 is devoted to a discussion of this subject.

702. The number of bills passed was merely a fraction of those introduced or considered. In addition, 21 appropriation bills totaling $114 billion were enacted into law. Staggering totals, these! The report makes this comment: "Much modern legislation deals with complex industrial and administrative problems requiring expert knowledge, but few members of Congress are experts when elected."

A few years ago it was estimated that the annual output of legislation in the United States was in the neighborhood of 25,000 measures for all levels. This may be a bit high, but suppose it were true, what does it indicate? We know, for example, that the average output of state assemblies every two years totals some 18,000 measures, indicating an annual average of from 150 to 200 for each state legislature, or twice that for the biennial average. Here again the number of enactments constitutes only a fraction of the proposals dropped into the hopper. When to the laws enacted at the upper levels are added the thousands of ordinances passed by the 16,000 cities and villages in the United States, the total of laws passed each year becomes impressive.

But quantification of legislative output does not prove very much. As individuals we are affected only by the laws of the jurisdictions in which we happen to be, and not by all laws passed everywhere. Furthermore, most legislation merely amends existing legislation and hence does not set up brand-new fields of public control and service. Another large group of laws affects only a single industry, such as railroads, public utilities, or banking, and these generally have little direct bearing on the rights and duties of the general public. Basically new statutes such as those creating the National Labor Relations Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Agricultural Adjustment Administration are a small part of the total—probably less than 5 per cent on the average—although they are the ones with which we are most familiar.

Moreover, the major share of state legislation concerns the powers, duties, and organization of municipal, county, and local subdivisions, so that their effect on the individual is only indirect. At the city level most ordinances are amendatory rather than initiatory, because few cities can enter new fields of service or control before they secure additional enabling legislation from the state legislature.

After these deductions are made from the total of laws passed, the remainder is a relatively small group of new enactments affecting us directly as citizens each year. Chiefly they have to do with taxes, traffic regulations, and regulations affecting our particular business or profession. Cumulatively, however, over the period of a man's life they widen considerably the area in which we are regulated by legal enactments.

An Anatomical Comparison

Most legislative output is the work of the national legislature (Congress), 48 state legislatures, some 3,000 county boards, and 16,000 city and village

councils, although the county boards are not very important. In order to help in understanding how legislative bodies organize and operate, to show their points of comparison, and to provide a basis for recognizing their common problems, the following comparative data are presented in tabular form. Although precise averages and reliable generalizations are difficult to secure because of the great variety of American government, this provides some clues with regard to customary practice, which you may correct by reference to the institutions of your own particular state and local institutions.

COMPARATIVE DATA, LEGISLATIVE BODIES, ALL LEVELS

	Federal	State	City	County
Unicameral or bicameral	Bicameral	Bicameral*	Both, with unicameral trend	Unicameral
Size	531 (435 in the House)	157 (average)	10 to 12 (estimated average)	5 to 7† (typical)
Electoral district	Congressional district	State legislative district	Wards	Towns, townships, cities, or districts
Formal qualifications for membership	Required	Required	Rare	Rare
Sessions	Annual	Biennial‡	Regular§ (weekly, etc.)	Regular§ (monthly, etc.)
Compensation	$10,000 per annum	Average less than $10 per diem	Nominal, if any	Nominal, if any
Committees	Elaborate and powerful	Numerous and influential	Important	Relatively unimportant
Source and authority	Federal Constitution	Federal and state constitutions	State legislature and state constitution	State legislature

* Nebraska has a unicameral state legislature.
† Range in number from 3 to 152.
‡ A few are annual.
§ No adjournment sine die.

THE FUNCTIONS OF LEGISLATIVE BODIES

The principal function of the representative assembly is to sort out public policies, determine issues, and enact laws. In the legislature the official stamp of approval is either withheld from or placed on policies sponsored by interest groups, political parties, geographical sections, and administrative departments acting as pressure groups. As has been noted, this process of decision making is the central area of government, because it shapes our social future for good

or ill and establishes the work load for the rest of government. The deliberative activity, therefore, should be made as effective as humanly possible.

As a first requirement in the making of the law, legislative bodies must understand their representative function. The agent has a moral responsibility to his principal. The legislature must be sensitive to public opinion and allow itself to be educated by public opinion. The people, in turn, have a right to expect education from the legislature and, through the processes of debate and deliberation, an explanation of the factors entering into decisions on public policy.

The function of responsible leadership is to promote the public interest by encouraging all legitimate interests equally. The demands of special interests on the legislature must be tested and, if need be, modified in the light of the larger interest.

In order to arrive at wise public policies, complete data are needed. Hence the legislature must have regular and continuous access to reliable facts. In order to maintain its own objectivity and independence, these facts must be marshaled through its own employees and agencies.

The internal organization of the legislature should be so arranged that the majority political party can actually be held accountable for adopting and rejecting policies in accordance with the platform on which it was elected.

The test of legislation is not the number of laws passed but their social effect. Outmoded legislation should be wiped off the slate. Respect for law should be encouraged and maintained by keeping on the statute books only those laws which the government is prepared to enforce.

These, to be sure, are ideal requirements, and actual experience often falls short of their attainment. But the only way that democracy can succeed is by defining its objectives as clearly as those usually associated with minority rule.

The second major function of a legislative body, where the people rule, is surveillance of administrative performance in order to assure the voters that the original intention of the legislation is carried out and that financial and other accountabilities are enforced. Here again, some rules of guidance may be suggested in the *exercise of legislative surveillance:*

The desirable relationship between the executive and the legislative establishments is one of cooperation and accord accompanied by appropriate definitions and delimitations of responsibility.

Under no circumstances should the legislature itself attempt to administer the law as well as to make it. This simply confuses responsibilities and handicaps the two main functions of the legislature by loading it with duties for which it lacks the organization, methods, and personnel.

But it is appropriate and essential that the legislative body should exercise a general supervision over the executive in the operation of the law. Here a fine line must be drawn between the proper concerns of the legislature in its surveillance of the chief executive, and the supervisory responsibility of the

executive whose unquestioned duty it is to see that the law is administered by the department heads accountable to him.

Some political scientists hold that this line is so hard to draw that it should not even be attempted. They argue, therefore, that the legislature should not concern itself with administration at all except in so far as the chief executive renders reports on his trusteeship. But it seems that the adoption of so sharp a cleavage might be a mistake in basic policy and undesirable on grounds of administrative efficiency.

Legislative surveillance takes several forms, none of which necessarily interferes with the undivided authority of the executive in his own realm. There are regular reports to the legislature, the appearance of executive officials before the legislative body or its committees, improved budgetary and appropriation procedures, effective methods of accounting control, and the regular or occasional direct observation of work in progress by the members of legislative committees.

An added reason for legislative surveillance is that unless the legislature is acquainted with the practical problems of administration, it cannot be expected to legislate wisely. Furthermore, unless the laws are being satisfactorily carried out, bureaucracy will develop objectionable characteristics and citizens will come to be treated as subjects rather than as masters. This problem will be discussed more fully in a later chapter.[5]

THE COMMON PROBLEMS OF LEGISLATIVE ASSEMBLIES

In recent decades representative assemblies everywhere have been on trial. Are there serious faults in their functions, or do we merely set our standards too high? Certainly we expect a great deal, because representative government demands more of government and of its citizens than any other form of rule. The universal tendency, therefore, is to criticize any failure to live up to common expectations.

Criticism is a healthy attitude and one we should retain. But criticism without helpful collaboration may be carried too far. As Woodrow Wilson said—and as has been repeated here—it is clear that legislatures, which originally were so high in the esteem of the American people, have gradually lost ground over the past century and a half. Evidence of this is found in the increased activities of the voters themselves and in the growing influence of the judicial and executive departments, particularly the latter.

The explanation of this change of attitude is complex, but the factors can be isolated. Not only do we expect more of government than it can sometimes deliver—more than we did in 1789 or even twenty years ago, for that matter—but the technical decisions which legislatures are now called on to make stagger the imagination. It is not strange, therefore, that they should commit occasional errors.

[5] Chapter 38, "Holding Administration Accountable."

One factor is that government interferes with the life of the citizen more than formerly and hence arouses more enmity and outspoken criticism on the part of powerful individuals and groups. Virtually all of business and the professions is regulated, and the area of major regulation has been progressively extended to agriculture and labor, with the result that the base of opposition to interference also has been broadened. The legislature naturally bears the brunt of this instinctive reaction because it is the legislature which imposes the controls in the first place.

These might be called the social conflict situations in which legislative assemblies find themselves today. This climate of opinion does much to explain the widespread attitude of critical sensitiveness which we have come to hold toward legislative assemblies.

However, another factor in the demand that we improve the effectiveness of legislative assemblies is citizen interest in reform, stemming from a realization that the legislature should be the center of democratic control and aspiration, together with a desire to restore it to that position. In recent years this movement has grown considerably in extent and volume. It is a constructive approach.

What parts of the legislative process deserve our special attention? They are briefly enumerated here and analyzed and discussed in the chapters which follow:

Legislatures must sharpen their objectives. They must make a job analysis of their functions, stressing what is of primary importance and discarding what can be delegated or eliminated.

The complicated problems of today and tomorrow require improved methods of legislative fact finding, research, and bill drafting.

The organization and internal procedures of legislatures must be tightened if they are to carry their heavier load successfully.

There is the problem of party responsibility in the legislature and with regard to the executive concerning the legislative program.

The question of both formal and informal relationships between the legislative and executive departments is one of the most difficult in American government.

Personnel problems concerning qualifications, methods of selection, salaries, and the like, with regard to both legislatures and their staffs, are always interesting and their solution is a means of possible improvement in the quality of the legislative assembly.

All of our freedoms and opportunities are bound up in representative government. Can it be made to work better than it does? Can it be made to work well enough to avoid the trend toward minority control which inheres in complexity?

SUPPLEMENTARY READING

1. General: There are several good systematic treatments: James W. Garner, *Political Science and Government* (New York, 1928), Chapter 20, "The Legislative Organ"; Francis G. Wilson, *Elements of Modern Politics* (New York, 1936), Chapter 14, "Principles of Representation"; Herman Finer, *The Theory and Practice of Modern Government* (New York, 1934), Part 4, "Parliaments"; Carl J. Friedrich, *Constitutional Government and Politics* (New York, 1937), Chapter 16, "General Problems of Representation"; and W. F. Willoughby, *The Government of Modern States* (New York, rev. ed., 1936), Chapter 19. See also Robert Luce, *Legislative Assemblies* (Boston, 1924), Chapters 2 and 5; Joseph P. Chamberlain, *Legislative Processes; National and State* (New York, 1936), Chapters 1–3; P. S. Reinsch, *American Legislatures and Legislative Methods* (New York, 1907), Chapter 1; and Harvey Walker, *Law-Making in the United States* (New York, 1934), Chapters 1 and 6. For books of readings, see John M. Mathews and Clarence A. Berdahl, *Documents and Readings in American Government* (New York, rev. ed., 1940), pp. 407–421, 694–700; and A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 13.

2. Congress: For an over-all view, see Woodrow Wilson's classics, *Congressional Government* (Boston, 1885), Chapters 1–5, and *Constitutional Government in the United States* (New York, 1908), Chapters 1–3. For an analytical treatment, see W. F. Willoughby, *Principles of Legislative Organization and Administration* (Washington, 1934). For a recent critical view, see Roland Young, *This Is Congress* (New York, 1943), Chapters 1 and 2.

3. State legislatures: Any one of the following is recommended: A. N. Holcombe, *State Government in the United States* (New York, 3rd ed., 1931), Chapter 10; A. W. Bromage, *State Government and Administration in the United States* (New York, 1936), Chapter 9; J. M. Mathews, *American State Government* (New York, rev. ed., 1934), Chapters 10 and 11; F. G. Bates and O. P. Field, *State Government* (New York, rev. ed., 1939), Chapter 6; Austin F. Macdonald, *American State Government and Administration* (New York, 3rd ed., 1945), Chapter 8; and W. B. Graves, *American State Government* (Boston, rev. ed., 1941), Chapter 6.

4. City councils: See Austin F. Macdonald, *American City Government and Administration* (New York, rev. ed., 1941), Chapter 9; William Anderson, *American City Government* (New York, 1925), Chapters 14 and 15; H. Zink, *Government of the Cities of the United States* (New York, 1939); or T. H. Reed, *Municipal Government in the United States* (New York, rev. ed., 1934).

CHAPTER 22

Strengthening Legislative Effectiveness

THE RULES of social effectiveness are discovered through a study of comparative institutions. Clearly defined objectives, specialization of labor and performance, and the concentration of attention and effort are necessary to successful achievement, whether it be of the individual, the corporation, the labor union, or the university. Every institution of society must understand its own function and objectives if the needs of the community are to be met effectively and without gaps and maladjustments.

As an institution, the legislature is subject to the same rules of operating effectiveness that apply to business, schools, or the administrative side of government. In all these fields the importance of defining objectives has been widely understood and applied; but legislatures have generally been the exception. In part, at least, this is because legislative assemblies—as important as they are—have received less attention from political scientists than the administrative and judicial departments of government. This has been particularly true of the last twenty-five years. Recently, however, a concerted effort has been started among political scientists to rectify the deficiency and to pay more attention to the study of legislatures.

The present chapter deals first with the problem of sharpening the objectives of the legislature, and the question of providing legislators with the expert help they need. This is followed by a discussion of the size of legislatures as related to effectiveness, and is concluded with a study of unicameralism as against bicameralism at the various levels of government.

SHARPENING THE OBJECTIVES OF THE LEGISLATURE

A first step in sharpening the objectives of a legislative body is to understand that power cannot be effective if unreasonable and detailed obstructions are imposed on it. Equally important, however, is the fact that there must be a degree of self-limitation in the exercise of power if legislatures are to do outstanding work.

The principle involved is this: *Institutional effectiveness requires that first things be put first, that nonessential activities be relinquished entirely or delegated elsewhere, and that deliberation and lawmaking be given the concerted attention they deserve.* This principle is a factor in the strengthening of both Congress and the state legislatures, and it also applies in some degree to county boards and municipal councils, where the scope (except in large cities) is more narrow but the problem is generic.

Congress

It might be expected that with the breath-taking international and domestic policies to be determined today, Congress would strip itself of everything delegable and concentrate on its most urgent priorities. No criticism is intended—Congress does concentrate on its job. That it also carries around a good deal of excess baggage was the unanimous conclusion of the political scientists who drew up the report entitled *The Reorganization of Congress,* and of the business, labor, and agricultural leaders who signed the National Planning Association's report, *Strengthening the Congress*—both published in 1945.

Why has Congress not unloaded some of these nonessentials? Partly it is a matter of lethargy, tradition, and institutional psychology. Congress and the state legislatures are jealous of their authority, as anyone is inclined to be who feels he is losing to others some of his former power. In consequence, they are loath to relinquish any portion of their authority, even by delegating it more efficiently. Furthermore, it is only human for one man to believe he can do something better than the next fellow can.

Nevertheless, if Congress is to give first priority to lawmaking, institutional resistances must be overcome and some Congressional functions must be dispensed with or delegated elsewhere. *Private bill legislation,* for example, takes too much of the legislature's time and should be dealt with by a special procedure called provisional orders. The country cannot afford a system in which the interests of one person, as in a claims case, are dealt with by the sovereign assembly as a whole. And yet this is what Congress and the state legislatures do. In a single session, for example, Congress passed 165 private bills and 219 public bills. To be sure, the time required for the passage of a private bill is considerably less than that for a public bill, but the total amount of time spent on them is large, and time is something that Congress cannot afford to waste.

Why not, therefore, adopt the provisional order procedure used by the British House of Commons? *A provisional order is an administrative finding, issued after a hearing before the appropriate department, in which the cabinet official or his subordinate authorizes a certain action that has been applied for; the tentative order is then allowed to lie before the legislature, where it may be disallowed or revised in accordance with legislative instructions; but in case it is not acted on, it automatically becomes law.* In practice such an order is rarely disturbed. In Great Britain it is subsequently included in an omnibus statute called a Provisional Orders Confirmation Bill.

Congress has already authorized a similar procedure in some instances, but it should be greatly extended. Under the provisions of Article II of the immigration act of 1940, for example, the Attorney General may investigate the cases of aliens who have entered the country "without inspection," and in the event that separation from their families would create hardships and if they

are otherwise of good moral character and would make good citizens, he may submit their names to Congress within ten days of the opening of the session. If no adverse action is taken by Congress, those on the list may remain in the country, have their status legalized, and be eligible for naturalization. This efficient, timesaving procedure does not detract from the final authority of Congress; it is merely an application of the principle of division of labor and could be more widely used.

Another delegation would be to permit the population of the District of Columbia to exercise the franchise, at least in local elections, and to govern itself. There has been a militant movement for this reform among Washington's teeming population for many years. The Congressional committee responsible for the government of the District of Columbia does the work of a city council and a mayor combined. It has its hands full at all times, and members of Congress shy away from the thankless task when they can. The appointive commissioners who administer the city, under the aegis of Congress, find their work harder than if they constituted an elective city council. But the District of Columbia is technically a territory, and Congress is seemingly fearful of enfranchising the thousands of employees who work for the government. The result is a stalemate which satisfies no one and adds greatly to the burdens of Congress.

Another means of saving time is *the elimination of the filibuster and other time-consuming obstructions in Congressional procedure.* The House of Representatives has already done this; the Senate has not. *The filibuster is long-continued speech-making by a member or members of the legislative assembly, deliberately intended to compel the majority to abandon a particular part of its legislative program.* It is of fairly frequent occurrence in the Senate, where the rules make closure (shutting off debate and bringing the matter to a vote) almost impossible.

This issue goes to the heart of representative government: shall majority rule and responsible government prevail? If so, willful obstructionism has no proper place in a legislative assembly. The Senate can safeguard freedom of debate and the expression of minority opinion without continuing the undemocratic filibuster.

State Legislatures

The need of clarifying the functions of legislatures is nowhere more necessary than at the state level. The original theory of the American system, as we know, was that all powers not expressly granted by the Constitution to the federal government should inhere in the state legislatures or in the people themselves. This was supposed to mean that the state legislatures should enjoy virtually unlimited powers except as specifically circumscribed by the federal Constitution. But two factors have changed this: first, as has been noted, federal power has steadily encroached on state power; and second, the voters of most of the states have added numerous and important restrictions on the

authority of the state legislatures. Thus there has been a constriction at both ends.

The result, in many cases, is seriously to frustrate and embarrass the state legislature. The New England states, by and large, are the exceptions. The most pronounced legislative restriction is in the newer states of the West, but elsewhere throughout the country the trend has also been evident.

The state legislatures have been circumscribed chiefly through the restrictions added to the state constitutions, generally because of past mistakes or excesses on the part of the legislatures that have caused the voters to rise up and limit the financial and legislative powers of their representatives. The worst of it is that many of these limitations have long since outlived their usefulness—assuming that they were justified in the first place—and yet, like a Rock of Gibraltar, they are firmly imbedded in the state constitution. In consequence, the state legislatures are often prevented from undertaking socially useful and needed programs, so that the federal government assumes the function. Thus the states lose ground to Washington and incur the displeasure of the voters, who are often not aware of the limitations which past generations have imposed.

These frustrating restrictions are of several types:

Limits of indebtedness. Specific debt limitations, placing an upper limit on the total amount that may be borrowed or loaned on the state's credit, have been embodied in many state constitutions. The original purpose was to avoid extravagance, but today such a limitation may work a real hardship. The financial requirements of modern government are vastly greater than they were, and serious depressions make borrowing urgently necessary. When the state legislatures are impotent, the federal government is naturally called on for help.

Appropriation limitations. In most states the legislature has a free hand in making appropriations, but in four at least (including New York), constitutional limitations have been adopted. Moreover, in all except nine states, the governor has been given an item veto—that is, he may veto or reduce separate items in appropriation bills.

The item veto is for the purpose of discouraging unnecessary or extravagant items of expenditure that have been added to bills by log-rolling or pork-barrel methods. It may also be a means whereby the governor eliminates riders—that is, legislative clauses appended to financial measures in the hope of avoiding an executive veto which would jeopardize necessary funds. However, limitations of both kinds, constitutional and self-imposed, sometimes have the unfortunate effect of weakening the power and responsibility of the legislature.

Prohibition against special legislation. This limitation has been dealt with in an earlier chapter in connection with the granting of charters to municipalities. It applies also to class legislation, such as assistance to business corpora-

tions. Here, however, the prohibitions have been largely ineffectual because ways have been devised of getting around them.

Limitations on power over subordinate governments. An important type of limitation concerns the legislature's authority over local governments. For example, the state constitution may be rigid with regard to the number, method of selection, duties, and powers of certain state and county officers, and the fixing of salaries and terms of office. Such constitutional provisions are a heavy weight on governmental efficiency, especially when the need for particular state or county officers has disappeared. They tie the hands of the legislature, make it necessary to amend the constitution when population and problems fluctuate, reduce the authority and responsibility of newly elected legislatures, and eventually kill the spirit of governmental reform.

Such limitations on the freedom of the state legislatures violate a rule of institutional life which has universal application: *Institutions are dynamic; when times change, organization and methods must also change, else social lag and disequilibrium will result.* The provisions of state constitutions concerning internal organization and efficiency, therefore, should be kept general and elastic. Detailed administrative and procedural provisions are better handled by legislation.

The seriousness of this problem can be appreciated when it is remembered that the legislature not only enacts the laws for the state, but is also the dynamo powering all the cities, counties, and local subdivisions within the state. Failure at the source handicaps governments all along the line. When Albany is ineffectual, New York City is bound to feel it. When Springfield lacks power, then Chicago must suffer.

Implied or Resulting Limitations

Are state legislatures sinking into a status where, like municipal councils, they enjoy only those powers which are strictly delegated to them? What of the implied powers vested in them as a result of the wording of the federal Constitution?

Ernst Freund, Walter F. Dodd, and others have warned us of the weakening of state governments if the tendency of the past hundred years is not reversed. Indeed, our national and state governments seem to have reversed roles. The original limitations were on Congress. But restrictions placed in state constitutions, together with narrow interpretations by the courts, have reversed the original intent. We now have a doctrine of implied or resulting *limitations on,* rather than *powers of,* state legislatures. At the same time, since *McCulloch* v. *Maryland,* Congress has exercised implied or resulting powers in addition to those specifically granted by the Constitution. An example will show how the states are affected by these limitations. The 1875 constitution of Nebraska provided that the state legislature might establish reform schools "for children under sixteen years of age." Experience soon indicated the need of increasing the age limit. But the courts were literal—and properly so, no

doubt—holding that the legislature could not establish separate reform schools for those over sixteen since, by inference, this power was not specifically provided. Nebraska thereafter had no recourse save to amend her constitution, raising the age to eighteen.

One effect of the various limitations in our state constitutions, of course, is to confuse the issue so far as the objectives of the state legislatures are concerned. It is no longer a question of what *ought* to be the function of the legislature, but rather a problem of what functions the legislature *may* perform and how far it may go in any direction. The elimination of outworn constitutional limitations on the powers of the state legislatures, therefore, would do much to improve the effectiveness of the legislatures at a time when the complexities of our age demand a sharpening of objectives and the freedom to concentrate on essentials.

Local Legislative Bodies

It would be a mistake to regard local legislative bodies as at the bottom of the legislative pyramid in order of importance. The fact is, of course, that in our largest cities—such as New York, Chicago, or San Francisco—the ordinances passed by municipal councils and the matters of community life they regulate exceed in weight the enactments of our smaller state legislatures by a considerable margin because more people are affected, more money is spent, and more complicated equipment and control are needed. Indeed, the problems of the legislative bodies in our larger American cities are very similar to those of the larger state legislatures and Congress. Consequently, the foregoing analyses apply in large part to the municipal councils of the larger cities. Metropolitan city councils, for example, also suffer from limitations on their authority. And, like Congress, they detract from their own effectiveness by assuming functions which could be better delegated to others.

In the cities, too, there is a need for a clarification of objectives in the legislative branch. At this level a principal confusion arises from the fact that in many cities the council attempts to exercise wide administrative authority. Here the dividing line between policy and execution is neither clear nor respected, especially in the weak-mayor type of mayor-council government, where the mayor is more a figurehead than a general manager of the municipality. It is less true of the strong-mayor type or the city-manager type, where administration is under a stronger executive.

Nevertheless, whatever the plan of city government, the committees of the council are in almost continuous session and themselves discharge much administrative business. At the city hall in nearly any large city the principal committees of the council are in session almost every night. The weak-mayor type of municipal government, especially, is inclined to be government by committee. The strong-mayor type and the city-manager type, by contrast, are government by single-headed departments, with a mayor or city manager at the executive top. The commission type is different from both of these. Here,

as previously noted, there is a complete merger of policy-making and policy-executing authority.

Size is the principal determinant of the requirements of local governments. In our largest cities, municipal councils need three things especially: ample authority, primary emphasis on ordinance making and secondary attention to administrative surveillance, and a proper division of labor between the making and execution of the law, with the council making it and the chief executive administering it.

In cities, villages, towns, and the township, where populations are smaller and governmental problems simpler, clarity of definition is not so important as in larger jurisdictions. In the smaller units the mayor is usually a member of the council and has no more actual authority than his colleagues. Sometimes he is elected, sometimes he is appointed from the council membership. The business to be handled demands less in the way of technical qualifications. There is a flexible dividing line between policy and execution. Informality is the keynote and since everybody knows everybody else, government is based on friendship and public opinion, not on formal rules and procedures. In the administration of the public business everyone does his part, and in very small units there is no formally recognized chief executive. A few salaried employees are engaged for the maintenance of public utilities, roads, schools, and so on. As a rule the system works well.

The failure to define objectives, organization, and the division between policy and execution in large cities and counties is a remnant of a period when life in these units was more simple. Social lag, therefore, is a basic reason why large state and city legislatures have not adjusted to new requirements and conditions. Legislatures, like government generally, must become self-conscious, must formalize, sharpen their objectives, and follow the rules applicable to large institutions everywhere if they are to deal effectively with social complexity.

LEGISLATURES NEED MORE EXPERT HELP

Once the legislature has clearly defined its objectives, the next essential step is to provide the staff with which to improve the lawmaking function. For some reason, most legislative bodies fail in this respect. They appropriate millions and even billions of dollars to the executive and judicial branches of the government, but virtually starve themselves. The businessmen, labor leaders, and agricultural executives who in 1945 signed *Strengthening the Congress*[1] were truly alarmed at the parsimony of Congress with regard to its own financial needs. They found that in 1940, for example, Congress spent only one seventh of 1 per cent of the federal budget on itself, and that the expert staff assisting Congress was small and underpaid.

It seemed clear to these investigators that much more staff assistance, and

[1] A report prepared and published by the National Planning Association.

of a higher degree of skill and experience, is urgently needed if the law-making function of the nation is to be appropriately fulfilled. Their report did not mince words: the annual expenditures on Congress are so "infinitesimal," it said, "that no sound recommendation for strengthening Congress should be rejected because of cost considerations." A similar injunction would apply to almost every state legislature in the country and to many municipal councils as well.

Congress and most of the state legislatures do have some assistance, of course, but it is not enough. Bill-drafting agencies attached to them provide expert help in framing legislation. In this complex day, few legislators possess the knowledge required for such work. The technical requirements of the legislative body itself, as well as those of the courts where statutes must ultimately be interpreted if questioned, require painstaking attention to the language of the law. In the cities, ordinance-drafting is usually the responsibility of the city attorney's office, with the assistance of municipal research and reference bureaus.

Even expert bill drafters, however, can hardly be expected to conduct the necessary and extensive research that legislators also need. To meet this requirement, Congress, most of the state legislatures, and a large number of the principal cities have established legislative reference bureaus. Most of them are publicly financed and have a direct relation to the government, although not necessarily to the legislature alone. Work of this nature presents distinct and interesting career opportunities.

Knowledge is power. If the legislature had more knowledge, it could increase its own power and effectiveness. At present it must rely too heavily on outside sources of information. The executive departments, for example, employ many experts and have access to a great deal of information, but their objectivity is occasionally open to question, for they have their own axes to grind, they may be ambitious for power, and they may not present all sides equally. Lobbies, too, employ expert help and have many sources of information. But they are naturally biased and eager to put the best light on the facts that favor their programs. The same criticism may be leveled against the press and the radio which, in addition, deal primarily in spot news and editorial comment rather than in basic research; hence their value to the legislator is accordingly limited.

There is no escape from the fact, therefore, that legislatures must have their own access to information through their own staff experts. If the function of a legislature is to discover the larger public interest and translate it into laws regulating human conduct, independent research is the indispensable basis for such action.

How should this research assistance be tied in with the legislature? There are several ways. The existing legislative reference services and the staffs of Congressional committees should be expanded and improved. The staffs of outstanding research centers should also be encouraged to help. The office

staffs of individual legislators could be made more useful to the legislators and hence to the public by the addition of personnel trained in research techniques. Only with sufficient knowledge may we expect intelligent deliberation and decision making in our legislative assemblies. All the rest of government is only as effective as the legislature, for our lives today are controlled by legislative statesmanship or the lack of it.

THE SIZE OF LEGISLATURES

Large size creates a number of major problems that detract from the effectiveness of legislative assemblies at all levels of government. Common experience shows that when the size of a group is increased, certain consequences seem inevitably to result. Where in a small gathering people discuss the questions before them and arrive at understandings through simple cooperation, in larger meetings they tend to make speeches, and find it more necessary to observe formalized rules and organization. In the larger group also, there is the greater likelihood of factional cliques, strong leaders more easily assert themselves, and the leader-follower relationship becomes more pronounced than in smaller assemblies. And finally, with increased size the problems of planning and coordinating the several parts of the group become more difficult.

In a large assembly, centrifugal forces must constantly be resisted. It is harder to keep the group together. Complex problems must be reduced to simple terms or the group loses its sense of direction and even its sense of reality. When to these factors are added the demands on legislatures that the complexities of an atomic age create, the importance of the problems discussed here becomes more evident.

Congress is the largest of all American legislative bodies. The fact that it includes 435 members in the House alone helps to explain a lot of difficulties, including the low attendance during speech making, circumscribed debate, the prominence of rules, the felt but frequently unrealized need for party leadership, and the feeling of the individual congressman that he is a small fish in a big pond. These and other factors are partly the result of size. And yet Congress is smaller by two or three hundred members than the English Parliament or the French Chamber of Deputies.

Congressional Reapportionment

Would Congress not be a more effective instrument of the popular will if it were smaller? The Constitution does not fix its membership at any particular figure. The states were merely given provisional quotas at the outset and thereafter representatives were to be apportioned among them "according to their numbers."

Article I of the Constitution lays down the following additional rules: (1) each state shall have at least one representative; (2) the number of representatives shall not exceed 1 for every 30,000 of the population; (3) the enum-

eration used as the basis of reapportionment shall be made "within every subsequent term of ten years, in such manner as they [that is, Congress] shall by law direct."

The present figure of 435 members of the House of Representatives was established on the basis of the census of 1910. There have been three censuses since then, but Congress has not seen fit to increase the size of the House. Does this violate the Constitution? What meaning attaches to the words, "in such manner as they shall by law direct"? Apparently reapportionment was considered mandatory at least until 1910, because reapportionment was ordered each decade up to that time. With an exception which occurred in 1842, the number of representatives was always increased. The constant growth in numbers finally became a matter of concern. This is interesting because a criticism of the original Constitution was that the size of the House was too small, and one of the best papers in *The Federalist* (No. 57) was written in defense thereof. It is now almost unanimously agreed among the experts that the House of Representatives has become too large. Thus do institutional problems alter as society changes.

Congress did not touch the total of 435 members of the House in 1920 because it would have meant reducing the representation of 11 states or increasing the membership of the House beyond 435. It was unwilling to do either. Nine years went by without action. In 1929 Congress finally passed the legislation relating to reapportionment which forms the basis of our present policy. The total of 435 members was made permanent. The President was authorized to submit a statement to Congress, based on decennial census figures, which would provide the framework for altering the representation of the states either upward or downward as required. Congress has twice acted under this authority, in 1932 following the 1930 census and in 1941 following that of 1940. On the first occasion, 11 states gained from 1 to 9 seats and 3 lost 21 places in the House. In 1941, 7 states gained and 9 states lost a total of 9 seats.

Two effects of this legislation stand out: the continual increase in the size of the House has been stopped; and a good deal of political wrangling, which in the decade of the 1920's led to a stalemate, has been avoided. On the whole, the solution is probably both sound and fair. The size of the House of Representatives, therefore, will presumably remain as it is, unless the so-called general ticket can replace the district ticket, in which case some reduction might be expected.

District Ticket and General Ticket

There are two general methods of geographical representation according to which the members of legislatures are selected: the district system and the general ticket. The district method is traditional in the United States and is strongest in the case of Congress and the state legislatures.

The district ticket emphasizes sectionalism and local geography. The political unit is divided into districts, each entitled to one representative. This intensifies special interests and sectional considerations. But worst of all, it inevitably creates large legislatures. It also encourages gerrymandering—the device by which a political party in the state legislature may spread its majorities in electoral areas over as many newly formed districts as possible. But a gradual modification of the district system may be seen in the general ticket system. *The general ticket system elects members at large to represent an entire area such as a state or a city.* Even at the national level the armor of the district system has been punctured to some extent because the election of congressmen at large is directly counter to the parochial assumptions of the district procedure.

The strength of the general ticket system is found at the lower echelons rather than in the higher ranks of state and nation, and is the method used in a growing number of cities, counties, and townships. The general ticket emphasizes issues and personal qualifications rather than geography. It will be referred to later in the discussion of politics as a career in the United States.[2] The candidate's ability to stand for office wherever he and his political party think best largely explains why the British have succeeded in placing politics among the highest careers in their nation. In many cities in this country, the general ticket system has attracted into politics prominent business and professional leaders who otherwise would not have entered the field.

There is, of course, a place in government for both the district and the general ticket—the former to assure geographical representation and accountability to the constituents of a particular area, the latter to emphasize outstanding personal qualifications and ability to see issues in proper perspective. There is no reason why they cannot operate side by side. In that case, we could use the district system for wider areas but covering all sections, increase the number of at-large positions for which the whole area votes, and reduce the size of legislative bodies where necessary. Such a program would help the cause of good government.

The Size of State and Local Legislative Bodies

The problems attending size are by no means confined to Congress. Many of our state legislatures are also large enough to be so cumbersome that they are hampered by problems of poor attendance, limited debate, and undue prominence of rules.

Lower houses in the state legislatures average 120 members, the largest lower houses being found in New England where representation is on the basis of townships (or towns, as they are called). For example, the lower house in New Hampshire consists of 423 members, in Connecticut the membership is 272, and in Vermont 246. In these states the average number of

[2] Chapter 27, "Politics as a Career."

persons represented by each member of the chamber is in the neighborhood of 1,000.

With regard to the state legislatures, however, the problem is somewhat special. Outside New England, size is not too serious except, again, in particular instances. But in New England, where the size of the lower house is certainly a handicap, there is no remedy that can be applied because of the fact that representation is on the basis of towns. Given the independent spirit and attitude and the local autonomy of the towns, it is inconceivable that consent to a changed basis of representation would ever be secured.

With regard to the counties, Wayne County, Michigan—in which Detroit is located—enjoys the doubtful distinction of having the largest board of county commissioners in the country, with 152 members. But this is unusual. In general the typical county board consists of from 5 to 7 members. In this area, therefore, size is not generally a complication.

In the cities there is a great variety of practice. Chicago, with a single chamber, has a municipal council of 50 members, the highest of the larger cities. But Providence, Rhode Island, tops this figure with a bicameral council of 52 members. The average size of city councils, however, is considerably lower than this, so that size is a less complicating factor here, also, than at the state and national levels.

General Considerations Applicable to Large Memberships

The factors that make large representative assemblies seem undesirable from the standpoint of democratic effectiveness have been suggested here. A smaller group is likely to emphasize broad questions of legislation and overall policy to a greater extent than a larger assembly based on sectional or local interests. Each member of the smaller group carries a greater responsibility and has a better opportunity to make his influence felt. In consequence, the spotlight of public accountability falls more squarely on the individual and he is the more likely to do careful work.

But on the other side is the fact that a larger membership means wider representation, and wider representation means more democracy. On the surface, there is much to commend this argument, but we should not be content with a superficial view. About representation we need to ask this question: Does a larger membership necessarily represent a larger number of viewpoints, or merely a larger number of geographical units? Our district system emphasizes geography. If proportional representation were more widespread the situation would be different. Another point is even more important: a more accurate representation has no value unless the legislative process results in effective institutional procedures and the enactment of responsible programs in the public interest. A legislature that is too large is ineffectual. It is neither democratic nor internally efficient because the very numbers result in power concentrated in the hands of the few.

On balance, therefore, the arguments favor reduction in membership in the

House of Representatives, in some of our state legislatures, in a few of our county boards, and in several of our city councils. A better system of representation is the necessary concomitant to improved legislative effectiveness.

HOW MANY CHAMBERS IN A LEGISLATURE?

One of the most interesting questions of organization in the field of government is whether or not the legislative body shall have a single or a dual chamber. It is hard to imagine a question of this kind arising in business. No one would consider two boards of directors. One is enough—some business executives would say too much. Is government so different? Apparently it is.

Athens had a single assembly representing the entire body of citizens. But Rome had two chambers—a Senate that acted primarily as a consultative assembly to the executive (the two consuls), and a larger and more representative lower chamber with no real authority except to discuss matters of public interest and register approval or dissent. Thus unicameralism (one chamber) is older, having existed in Athens; but bicameralism (two chambers) is almost as old and has been operating over much longer continuous periods of time.

Bicameralism is the outgrowth of a variety of historical factors. During the Middle Ages and the Renaissance it was the estates that were represented in the lower house in France. In Sweden for many generations there were four estates and four branches of the national legislature. England had more than two classes but developed only two houses: the Lords for the aristocracy and higher ecclesiastics, and the House of Commons for burghers and other groups. Since the Parliament Act of 1911, assuring the superiority of the House of Commons over the House of Lords in financial and legislative matters, there has been no question as to the ascendancy of the lower house over its older and once more powerful rival.

In the United States our idea of bicameralism stemmed originally from British practice. Then, too, in the early period the upper house of the colonial legislatures was regarded as sympathetic to the governor, and the lower house to the colonists, which was another reason that bicameralism seemed like a natural development. But the practice was by no means unanimous. Two of the original thirteen states—Georgia and Pennsylvania—adopted unicameralism. Vermont, the fourteenth state, also incorporated unicameralism into her frame of government. But all three, imitating the federal example, eventually gave it up in favor of two houses.

House and Senate

Bicameralism was specified for Congress in the federal Constitution because of the demand of the smaller states that they receive equal representation. The provision which gives each state two senators, irrespective of its size, cannot be changed even by constitutional amendment without the state's consent. The states are equal in constitutional law if not in resources or population.

Moreover, there were some leaders in the early days of our republic who looked on the Senate as a check on what they feared might be the radical tendencies of the House of Representatives. The Senate was also to be an "administrative" chamber similar to that of Rome. Two important, distinctive powers therefore were given the Senate, both relating to the executive authority: the confirmation of presidential appointments, and approval of treaties negotiated by the United States. On the other hand, as a result of English experience, the House of Representatives was accorded a distinctive power of its own in the authority to initiate tax measures.

The functions of the Senate did not work out as originally intended. Our first President, George Washington, attempted to use the Senate as a consultative body in matters pertaining to the executive department, but soon decided it was not worth the attempt. After forty-eight states had been admitted to the Union the Senate became so large than it was ill equipped for such a purpose, being larger at this time than the House of Representatives as originally constituted.

In many ways the Senate has become the more influential of the two houses of Congress. Its members have six- instead of two-year terms. The actions of one of 96 senators are more likely to stand out than the actions of one of 435 representatives. The Senate's powers to approve treaties and appointments in the executive branch have enormous significance—especially the treaty power, which is the core of our relations as a world power. And as for the power of the House in the field of taxation, this has been whittled down in practice because the Senate may amend and hence must be satisfied before a money bill becomes law.

In important respects, therefore, the popular assembly has come to have more influence in Great Britain than the lower house has in the United States. Moreover, as Lindsay Rogers has pointed out in *The American Senate*, the nation's Solons have greater freedom of debate and hence the public is influenced more by what is said in the Senate than in the more strictly regulated lower chamber. Thus does practice confound the original expectations of social planners.

Bicameralism and the State Governments

Bicameralism is a much more live issue in the states than in Congress. The United States Senate is deeply entrenched in the Constitution and in people's affections. Even today, when fear that the larger states might abuse the rights of smaller states is more theoretical than real, it is hard to imagine any state giving up its equal representation in the Senate without a last-ditch struggle. If the House of Representatives is to gain more power and influence, therefore, the change must be brought about by constitutional amendment and by the adoption of internal improvements in the organization and procedures of the House itself designed to increase its institutional effectiveness.

In the states the situation is different. Every state except Nebraska has a

bicameral legislature, but in practice there might just as well be a unicameral body. Both houses are elective, both discharge substantially similar powers, both represent an identical electorate. The only differences are with regard to minor questions of qualification and length of term. It is held by some observers that two houses at least provide a check on each other. If so, this is the only argument that can be advanced in favor of bicameralism in the state legislatures.

Nebraska, which has had a unicameral legislature since 1937, also enjoys the distinction of being the smallest state legislature in the country. There is universal testimony that the move was in the right direction. One of America's leading statesmen of recent generations, the late Senator George W. Norris, who helped sponsor unicameralism for his home state, said that Nebraska's experience "demonstrated beyond the possibility of a doubt the great superiority of the one-house legislature . . ." and that its record was immediately "far superior to the record made by any previous legislature in the history of Nebraska."

It would be surprising if other states, particularly the smaller ones, did not follow Nebraska's unicameral example. The cities, which once also imitated the federal pattern of two chambers, have swung over heavily to the unicameral design. State legislatures are more nearly analogous to the councils of the large cities than to Congress, and in some cases their responsibilities are not nearly so great as those of the cities. The swing to unicameralism in the states, therefore, would be amply justified.

What stands in the way of a change to unicameralism? The principal factor is the city-country competition found in many states. In the state legislatures, the upper chamber is the stronghold of rural interests, the lower assembly that of the cities. Where this division is found, the farming areas show the same stubborn determination to hold onto their power that they exhibit at the appearance of the question of reapportionment in Congress. The resulting stalemate will take time to resolve. In some cases, as in Illinois, it might even result in the continuance of bicameralism long after a majority of the population seeks unicameralism. In addition, the members of the second chamber will doubtless resist the elimination of their house because to them it means office, influence, and prestige.

The final argument—that a second chamber is needed as a check on the hasty or ill-advised action of the first—takes us to the heart of democratic theory. Can the majority and their representatives be trusted, or must they be held in leash? The federal Constitution already checks the state legislatures. So do the courts. Public opinion is another restraining influence. A mistake made by a legislature can be corrected at the next session. It is doubtful, therefore, whether this argument possesses the efficacy once claimed for it. Indeed, there is probably more truth to the contention that bicameralism divides responsibility and hence dilutes and may even destroy it. When the two houses disagree and the matter goes to a conference committee, for example, what

happens there is usually beyond public scrutiny and control. Party responsibility is weakened, as is the accountability of the individual legislator to his constituents. Many deals and shady transactions, both of commission and omission, must be laid to the account of authority divided between two legislative chambers with powers not essentially different.

Bicameralism is largely a carry-over of an attitude that no longer exists. Government a hundred years ago was considered a necessary evil, and hence something to be checked and circumscribed. As complexity increases and positive action becomes more necessary, the accent has shifted from laissez faire to power combined with responsibility. Unicameralism meets the new requirement more nearly than the divided authority of bicameralism.

Unicameralism in the Cities

In city government, bicameralism has rapidly lost its popularity until today it is relatively rare, being found in only a fraction of the municipalities, where it is still losing ground. There seems to have been no real reason for the adoption of municipal bicameralism in the first place; it was almost entirely a matter of imitating federal and state tendencies. Beginning early in the nineteenth century, two-chambered municipal councils were almost universal, but toward the end of the same century the movement toward municipal reform included an insistence on a single, smaller council. Accountability to the public was the principal factor; expense was another. In addition, people preferred that the council work in the open. If efficient government was not forthcoming they wanted to know whom to hold responsible.

Today, municipal councils of three, five, and seven members are typical of the better-managed commission and city-manager cities. The analogy between municipal government and the business corporation not only has been recognized but has been acted on.

GENERAL SUMMARY

Questions of organization in government are bound to lead to a consideration of details, which occasionally seem trivial compared with the human beings and the issues they affect. This is a natural reaction. It is people and their interest which ultimately count and which should at all times be kept foremost in our attention.

Nevertheless, questions of organization are basic. No amount of good intention and high aspiration will suffice in human affairs—particularly when social complexity sets in—unless the ends and the means can be brought together in a smoothly working accord. When a legislature lacks sufficient power and suffers from unnecessary restrictions, this accord is lacking and the results are bound to be disappointing to citizens.

Similarly, disappointment is sure to follow unless the legislature concentrates on deliberation and the making of sound public policy, clearing its path of less important details. The size of the legislative assembly helps to determine

the nature of its organization and control. It also constitutes a chief factor in attracting outstanding leadership and active public interest.

Of equal import is the question of authority, concentrated in one place or divided between two equal houses of the legislature. This question, like so many, goes to the heart of the democratic principle. Principle and mechanism, objective and the means of attaining it—these relationships are inseparable. The present chapter has shown how some of these principles are at work today. The quest for the practical instrumentation of popular aspirations, channeled through the representative assembly, will be pursued in the next chapter.

SUPPLEMENTARY READING

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2. State legislatures: See A. E. Buck, *Modernizing Our State Legislatures,* American Academy of Political and Social Science, Pamphlet Series, No. 4 (Philadelphia, 1936), and T. H. Reed (ed.), *Legislatures and Legislative Problems* (Chicago, 1933). One of the best books on legislatures is Harvey Walker, *Law-Making in the United States* (New York, 1934), Chapters 7 and 8. See also the textbooks on state government mentioned in the bibliography, Chapter 21, above.

3. Municipal council: See the textbooks by Macdonald and Anderson mentioned in in the bibliography, Chapter 21, above.

4. Bicameralism vs. unicameralism: See Harold J. Laski, *A Grammar of Politics* (London, 1925), pp. 328–340; A. W. Johnson, *The Unicameral Legislature* (Minneapolis, 1938); John P. Senning, *The One-House Legislature* (New York, 1937); E. C. Buehler, *Unicameral Legislatures* (New York, 1937); O. D. Weeks, *Two Legislative Houses or One,* pamphlet (Dallas, Tex., 1938); and Frank E. Horack, Jr., "Bicameral Legislatures Are Effective," *State Government,* XIV (1941), 79. Generally, A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 14, "Legislative Organization and Procedure," especially pp. 368–377.

CHAPTER 23

The Legislature at Work

THE BEST WAY to understand legislatures and their work is to visit a legislature in session and watch it in action. Only by this means can one get the feel of the institutional forces, the influence of tradition, and the conflict of the partisan, personal, and economic interests that flow through Congress, a state legislature, or a municipal council. A meeting on a day when controversial issues are scheduled for debate will be an experience long remembered, for it is frequently attended by much color, excitement, rambunctiousness, and human drama. Other days may be routinely dull; the few members in the chamber are likely to be listless and inattentive. A legislative body may be compared to an ocean—occasionally it is as smooth as oil; at other times it is in turmoil.

But when studying legislative bodies at firsthand it must be remembered that little of the real work is done in the formal meetings. In American legislatures, more than in any other today or in the past, the preparatory work is accomplished and most of the important determinations are made in committee. It is this feature that led Woodrow Wilson to say that Congressional government is government by committees.

English government, by contrast, is government by an executive committee of the Parliament. The executive branch of the government is administered by a single, all-inclusive committee—the Cabinet—headed by the Prime Minister as leader of the majority party. The members of the Cabinet are also members of Parliament. In the House of Commons, five standing committees study and report on proposed legislation but may not initiate new measures. In the United States, on the other hand, there are eighty committees in Congress and a similar number in most of the state legislatures. Their duties, however, are strictly confined to legislation, and their powers are extensive. None of them has any executive responsibility in the sense that the Cabinet has in Great Britain.

If one attends a legislative session without first knowing something of its institutional peculiarities, there is much that is mystifying. One senses that what meets the eye is merely an outer façade, and that the undercurrents are what really count. The formality and traditional observances of a session in action are the most noticeable feature about it, and yet there is the feeling that underneath all this the most powerful forces in society converge and are dealt with.

The concern of this chapter is with the legislature in operation. It starts

with a consideration of certain characteristics of institutionalism as they apply to legislatures; it then studies various aspects of a legislative session, the question of the executive veto, and the various types of legislation, such as bills and resolutions; it concludes with a discussion of some of the facilitating devices of legislatures, such as the committee of the whole, the calendar, and the caucus.

THE CHARACTERISTICS OF INSTITUTIONALISM

The older and larger the legislative body, the greater becomes the influence of rules, traditions, set procedures, and formal observances. The House of Commons is far more dignified and conventional than the House of Representatives. Likewise, the state legislature of New York is more impressive than that of a smaller state. The same differences occur between the council of a large city such as New York or Chicago, and that of a smaller town. Legislative assemblies all go by similar names—national legislatures, state assemblies, municipal councils—and yet some are austere and encased in tradition, while the atmosphere of the smaller ones of each type more nearly resembles that of an informal, forthright board of directors' meeting of a business corporation.

The explanation is that legislatures are traditionally formal and are regulated throughout by rules and set procedures. As a result, they become highly institutionalized. The very flavor of institutionalism is in the air. Soon it gets into the bone marrow of the legislative members—even the new members—and makes them conformists to traditional attitudes and observances.

Let us look at this aspect of Congress through the eyes of a newly elected member of the House of Representatives. He has just won a campaign battle in which he may have spent a large portion of his savings. He has plans and programs—even reforms—that he wants to talk about and help to enact. But he is not in Washington very long before the flush of victory turns to growing disillusionment. He begins to feel like last year's high school senior who has donned a college freshman cap. He is one insignificant member of a total of 435 men and women. He cannot make speeches when he wants to—it is doubtful whether he will even deliver a major oration during his first term of office.

The real work, he discovers, is done in committee—and it dawns painfully on him that, as a freshman, even in this area he can expect only crumbs, because the important committee posts are reserved for the older members. The positions of real influence are the committee chairmanships, but since these plums are given out only on the basis of seniority he will have to mark time and hope to be re-elected. The chances are that he will learn to conform, and soon he will be very much like everyone else in his observance of tradition.

Institutionalism always has a conservatizing effect, whether in government or in business. Institutionalism is a regimenter, and nowhere in government does it operate more powerfully than in the larger legislative assemblies. Even

the procedure of the courts does not exceed the institutionalism of the legislature, because, although institutionalism is generally just as pronounced in them, the courts are smaller.

This analysis provides an interesting clue to the behavior of the legislators. The institutionalism of legislative assemblies creates a conservatism which resists change. Hence it is hard to improve legislative organization and procedure even when it can be demonstrated—as often it can—that the innovation would increase the prestige and effectiveness of the legislative body, an objective which it may safely be assumed the legislators themselves would welcome.

The Influence of Rules

A first symptom of institutionalism is a reverence for rules. In a legislature the association between the institution and its procedures is so close that the very word legislature should automatically suggest rules. *A rule is an authoritative regulation or standard to be followed.* Legislatures are regimented by the regulations they themselves make and hand down from one generation to the next for their own organization and procedure.

Originally adopted as a matter of convenience or in order to protect the rights of minorities to proper consideration and debate, rules come to be as fixed as the laws of the Medes and the Persians. Indeed, the rule often remains after the reason for its adoption has long been forgotten. There is, of course, an underlying rationale for the influence and immutability of rules. All legislative bodies, no matter how small, must provide for a regular order of business. This expedites the proceedings, makes sure that all factors are accorded their due place and weight, and eliminates the possibility of surprise and the use of unfair tactics by the majority leadership. It is similar to the operation of the Marquis of Queensbury Rules—it is assumed that everyone is a gentleman, but one wants to make sure.

Because of the common requirements of legislative organization and procedure, plus the standardizing effect of tradition, there are marked similarities in legislative methods at all levels of government, irrespective of size. This is a convenience to an understanding of the matter.

There are two principal ways to view the work of the legislature. Either the steps involved in an entire session may be traced, or its daily work may be analyzed. Both will be attempted here. After the procedure has been outlined, points that seem to require it will then receive further comment and explanation.

STEPS IN A LEGISLATIVE SESSION

The over-all picture of a legislative session involves the question of the date and duration of the session, and the organization of the new legislature. It includes the election of the presiding officer and his subordinates, the seating of new members, the appointment or selection of committee members, the reading of the executive message, and so on. Then come the presentation of bills and resolutions and action thereon. In this process, the legislative calendars

and the rules are in operation. If the two houses disagree on a particular bill, a conference committee must effect a compromise. After final approval comes the signature of the chief executive and the publication of the law.

So much for the bare outlines. The details of operation follow.

Date and Duration of Sessions

Each Congress lasts for two years, and is divided into two sessions. In time of emergency—as in the case of war—Congress may stay continuously in session with only short vacations of a few days at most. Generally, however, Congress recesses during the summer and early fall months of the year.

Since the addition of the so-called Lame Duck Amendment, the twentieth, to the Constitution in 1934, Congress now meets on January 3 of each year, and the terms of its new members begin on that day in odd-numbered years. Formerly the President did not take office until March following the election, at which time the existing session of Congress also came to an end. The new Congress did not begin until the following December, thirteen months after the election, unless convened in special session at an earlier date. This left a period of three months during which outgoing incumbents in both Congress and the White House were sometimes apt to forget their responsibility to the public interest. It was a period when private interests often came first.

The Twentieth Amendment to the Constitution is notable for three reasons. First, the two sessions of a single Congress are now nearly the same in length, whereas formerly one was short and the other long; second, an incumbent President or member of Congress no longer holds office for the months between November and the following March, as formerly, because his successor takes over in January; and finally, Congress and forty-five of the state legislatures now start their sessions at about the same time—an advantage, especially in the case of joint legislative programs. The remaining three states open their legislative sessions in April and May. Although most of the state legislatures meet only once in two years, since the federal Constitution requires that Congress must come together every year, Congress is always at work when the state legislatures are in session. Both Congress and the state legislatures may be called into special sessions.

There is no time limit on the sessions of Congress. Approximately half of the states—including all the larger ones—are likewise free from any time limit on the length of their regular terms. In the remainder of the states, however, there is a limit. These are chiefly the largely agricultural states where the public apparently feels the legislature might stay in session too long and do too much, and where most of the members are farmers who must get home for their spring work.

The outside time limits of state legislative sessions range from 40 to 150 days, the most common being 60 days. But of course this does not prevent the calling of a special session, nor does it seem to reduce materially the amount of legislation turned out. For the most part, the arbitrary limitation simply

means that more bills are shoved through at the last moment, although this is a tendency to which legislative bodies are generally prone even when their days are not automatically numbered. In an attempt to overcome this midnight railroading of legislation at the end of a session, California has provided for a split session. In odd-numbered years the legislature meets for 30 days, during which bills are introduced. Then it recesses for 30 days on the assumption that this interval will give the legislators and the people back home a chance to ponder. When the legislature reconvenes it may remain in session as long as needed.

This ingenious device adopted in 1911 has had ample trial, and the verdict is that although it may help in some degree, it is by no means a complete remedy. Furthermore, it may be circumvented in that the members of the legislature have found it possible to introduce titles of bills in the first half of the session and fill in the contents later. In addition, each member may introduce two bills during the second half.

At the municipal level, it has already been noted that in the larger cities the council meets once a week or every two weeks. In cities operating under the commission plan, the meetings are naturally more frequent, sometimes daily. It is important to remember that municipal councils are more or less continuously in session, merely adjourning from one meeting to the next.

Organizing the Legislature

A new session is starting. The members are arriving at their hotels. There is much palaver in coffee shops, hotel lobbies, members' rooms, and the corridors and cloakrooms of the legislature itself. The questions on everyone's mind are: Who will be presiding officer? Who will be majority and minority leaders? Who is in line for the top committee chairmanships? What assignments may I expect for myself?

The opening days of a new legislature are busy and important. The first step, the parceling out of power, is under the control of the majority party. The presiding officer of the upper house is generally automatically determined: in the United States Senate he is the Vice-President; in the state senate he is usually the lieutenant governor. But the presiding officer of the lower house must be chosen and committee allocations must be made in both houses. These are the most influential organizational decisions to be made at this point, because these two areas of leadership will control the timing of the proceedings, the precedence according to which proposed laws will be called up for consideration, and the selection of measures eventually to become law.

Since the importance of committees will be treated separately in the next chapter, and since the presiding officer of the upper house is usually predetermined, the discussion here will center around the selection, duties, and strategic powers of the presiding officer of the lower house of the legislature at the several levels of government.

The Presiding Officer of the Lower House

In Congress, the Speaker of the House of Representatives is chosen by the members of the House, and in practice he often succeeds himself for a number of years. He belongs to the majority party and may exercise some influence for that reason but, as will be seen, his powers have been curtailed. In a state legislature, on the other hand, the presiding officer in the lower house is the recognized leader of the majority party and the most influential member of it.

In both Congress and the state legislatures the speaker presides over the sessions of the lower house and may participate in debate by calling another member to the chair. He recognizes those who wish to speak, and assigns bills to the appropriate committees for preliminary study and consideration.

In the state legislatures the actual power of the speaker goes a good deal beyond this, however. Because he is the leader of his party in the lower house, he occupies a strategic position in the affairs of the state; in addition, he is responsible for appointments to committee posts. In Congress, on the other hand, the power of the Speaker of the House of Representatives has been sharply reduced. The reason for this was that, following two or three other autocratic speakers, Uncle Joe Cannon was elected to that office and held it for several years, becoming in fact, boss of the House of Representatives. He did not merely preside, recognize members, rule on motions, and perform the other usual functions of a presiding officer. Uncle Joe's power was far greater than that. He doled out the committee appointments and determined virtually single-handed what might become law and what might not.

In 1910 and 1911, however, the House revolted against Cannonism. The speaker was removed from the Rules Committee and the powers of his office were curtailed. Since then, committee appointments have been more democratically made by the parties themselves. The House also restored to itself the power to decide what measures should be buried in committee and which ones should be considered further. Thus, although Cannonism is not wholly dead in Congress today, the powers of the Speaker have been sharply reduced.

The tendency toward legislative oligarchy as represented by Uncle Joe Cannon is evident in many of the state legislatures today, particularly the larger ones.

City councils and local boards, being generally small, are not easily dominated by one man, although they may be dominated by party machines, which are more in evidence in the cities than in most state and national legislatures. In most mayor-council cities the council chooses its own presiding officer, usually called the president. Sometimes, however, the elected mayor presides and in that case he may cast a vote. In city-manager cities the council generally selects its own head, called mayor or chairman. And in cities operating under the commission plan, the presiding officer may be chosen by his colleagues or he may be the member having the largest number of popular votes or the longest service.

Although we hear a great deal about bureaucracy in administration, it may be surprising to find that bureaucracy is just as common and widespread in legislative bodies. Only the initiated know the ropes. The technicalities of rigid rules give the leaders a stock in trade which assures their dominance. The high degree of organization, the seniority of committee chairmanships, reward or punishment for following or failing to follow party leadership—these are all evidences of the bureaucratic (that is, hierarchical, institutionalized) conditions peculiar to legislative assemblies.

There are two sides to the question of strong legislative leadership. What is sometimes called dictatorship may be merely another word for effective party control. The larger legislative bodies, especially, are amorphous and so must be molded and held together. The speaker, the majority leader, the whips, and the caucus are all means of organizing the legislature so that the party's promises to the voters will have a chance of being carried out. The revolt against Cannonism, for example, was at best a mixed blessing for it weakened party leadership and responsibility, thus intensifying one of the greatest deficiencies in American government. It was "part of a belief then current that the correct answer to political questions will be evolved if power is widely enough dispersed," [1] an assumption which, as will be seen, remains far from proved. As so often in both public and private life, therefore, a balance of forces is the most satisfactory solution to the question of the type of leadership required in a legislative assembly. In this case, it is a balance between dictatorship on the one hand and a lack of control producing incoherence on the other. Responsible leadership is formed from elements of both dictatorship and freedom.

THE PRESIDING OFFICERS OF LEGISLATIVE BODIES

	Federal		State		City council
	House	Senate	Lower house	Upper house	
Title.....	Speaker	Vice-President	Speaker	Lt. Governor*	Chairman, mayor, or president
Selection..	Elected by House	National election	Elected by members	State election	Mayor elected by voters, others by council
Powers....	Presiding officer; numerous other powers	Presiding officer; Vice-Pres. of the United States	Presiding officer; appoints committees	Presiding officer	Presiding officer

* When the office of lieutenant governor does not exist the upper house elects its own presiding officer.

[1] Roland Young, *This Is Congress* (New York, 1943), p. 90.

The preceding summary shows the title, the method of selection, and an outline of the powers of the presiding officer in each house at each level of government.

Determining the Qualifications of Members of the Legislature

Another early step in the organization of the legislature is the seating of new members according to set rules with regard to qualifications.[2] "Each House," says the federal Constitution in Article I, section 5, "shall be the judge of the elections, returns, and qualifications of its own members, . . . and may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may provide." Provisions of this kind are also common in state constitutions and local charters.

The authority to determine membership qualifications carries with it a sweeping power. Contested election cases are decided by the legislature itself and not by the courts. Although theoretically the qualifications for membership mentioned in the Constitution are the only ones, Congress has, at times, imposed additional requirements, such as barring a polygamist or a candidate-elect who has spent on his campaign more than the sums allowed by the Corrupt Practices Act.[3] Standing committees on privileges and elections investigate contested cases and on these committees, as on others, the party in power has the majority of members.

Once the chamber has been organized, a member may be expelled for any cause by a two-thirds vote; not being civil officers within the meaning of that term, however, members of Congress are not subject to impeachment. Their privileges and immunities while in office are well protected by constitutional provision under Article I, section 6, which reads in part: "They [senators and representatives] 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."

A DAY IN THE LIFE OF A LEGISLATURE

The rules of legislative bodies establish in considerable detail the order of their procedure. No two sets of rules are exactly alike. Those of the House of Representatives are far more complex than those of the Senate, for example, and differences occur from state to state. The same comment is true of municipal councils. The general principle seems to be that the larger and more rule-regulated the assembly, the greater is the degree of detail governing the conduct of the daily session.

The daily procedure most generally observed in legislative assemblies runs

[2] This subject is discussed further in Chapter 27, "Politics as a Career."

[3] See Floyd M. Riddick, *Congressional Procedure* (Boston, 1941), p. 11. The leading court case on contested elections is *Newberry* v. *United States* (256 U. S. 232. 1921). See also C. H. Wooddy, *The Case of Frank L. Smith* (Chicago, 1931).

somewhat as follows: The day begins with a prayer by the chaplain, the roll call, and approval of the minutes of the previous meeting, usually called the journal. In Congress, the journal is supplemented by the *Congressional Record,* a daily publication that contains a transcript of debates and which sometimes makes very interesting reading. Next comes attention to petitions, memorials, and unfinished business. The reports of committees are also received.

Motions may then be made that the legislative body constitute itself as the committee of the whole to consider the orders of the day according to the calendar. This sequence of business is supplemented and interrupted, however, for special matters of importance, usually referred to as privileged questions. Among these are general appropriation and revenue bills, messages and vetoes from the chief executive, reports of conference committees, the introduction of bills, and questions of privilege raised by individual members.

In most state legislatures, regular times are provided for the first, second, and third readings of bills. Often, too, a specific place is provided in the daily agenda for the introduction of new bills.

Some of the cities have considerably revised and simplified the usual order of business. In Cincinnati, for example, the procedure has been reduced to first a roll call, at which time members may offer original motions, ordinances, and other business of that nature; reports and communications from the mayor, city manager, or other city officers and boards are followed by the third reading of ordinances and resolutions and finally, by the presentation of the reports of standing committees.

To the newly elected member of a legislature, a day of lawmaking is a confused succession of unrelated business, noise, inattention, and speech-making. But as he becomes familiar with the rules and the routine, he finds himself taking part in the proceedings, cautiously at first, and then with increasing assurance. Eventually his understanding of legislative routine becomes one of his qualifications as a lawmaker.

THE ENACTMENT OF A LAW

The laws enacted by legislative bodies control our lives to such an extent that we should know as much as possible about how these laws come into existence. The work of the administrative and judicial branches, as has been remarked, is largely determined by the bills which the legislature converts into public laws or acts. The part played in this process by lobbies and the executive branch of government will be dealt with later; the section which follows will set forth some of the principal rules governing the various steps in the enactment of a law.[4]

A bill is introduced in the legislature by a member of that body. When it is passed it becomes an act, or a law. *A bill is the draft of a proposed law from*

[4] The best authority on legislative procedure is Harvey Walker, *Law-Making in the United States* (New York, 1934).

the time of its introduction in a legislative body through the various stages required up to final passage.

Under the rules, a bill must be submitted in a required form. Usually it must be typewritten on several copies of a special form. If the bill is to amend an existing act, the section of the law affected must be set forth in full, with all proposed new wording underlined and everything to be deleted set in parentheses. A bill deals with but one subject, appropriately designated in the title.

The three parts of a bill are the title, the enacting clause, and the body. The purpose of the title, which is an essential part, is to describe the contents and prevent blind and unwitting action, since in most cases only the title is read at the first reading. The enacting clause is also an essential part of the legislation. In most states its inclusion in a specified form is required by constitutional provision, and in Congress by statute. Use of the prescribed wording is necessary to give legal effect.

The body of the bill consists of one or more sections containing the meat of the proposed law. Each section deals with a single matter and is consecutively numbered. Sometimes bills include preambles, setting forth the purpose and using language relating to constitutional provisions. These are not supposed to have legal effect in the courts but in a realistic sense they are often persuasive.

A bill must be introduced by a member of the legislative body, or by two or more members. No nonmember may have his name attached to it. This is a fiction, of course, because much legislation is drafted in the executive departments and by the lobbies.[5] It is a desirable fiction, however, because it is not hard to imagine the resulting confusion if outsiders were admitted as official sponsors of legislation.

After a member has introduced a bill, either by handing it to an officer of the assembly or rising in his place and announcing it in the legislative hall, it is given an identifying number. Next it is read (generally by title only) and referred to the appropriate committee by the presiding officer of the chamber. In this the presiding officer frequently has a good deal of discretionary influence because he knows which committee would be likely to report it favorably and which unfavorably, and within limits he may select between them. The committee to which the bill is referred decides whether or not a public hearing shall be held, at which interested individuals and groups may argue for or against the measure. Here the chairman's wishes are usually decisive. In either case, the bill is also considered by the committee in executive session.

The committee may take one of several courses: it may report the bill favorably, report it unfavorably, or pigeonhole it, thus letting it die in committee. Or it may substitute what is essentially a new bill, or amend the original, or report it out to the chamber with no recommendation at all. In any

[5] See Chapters 24, "Responsible Government in the United States," 25, "Lobbying," and 34, "Executive Leadership in Government."

case, the action of the committee is usually conclusive one way or the other. If the committee pigeonholes the bill, it is likely to be the end of the matter, at least for that session. To recall a bill from committee requires a motion by a member of the assembly and a favorable majority vote. In the House of Representatives the matter is made the more difficult by the requirement that 145 members of the House sign the motion.

If the bill is reported out of committee, it is printed and distributed to the members of the chamber and receives a second reading, again by title only. The debate that follows and the amendments offered are usually made before the committee of the whole, to be explained later in this chapter. When the committee of the whole has reached a decision it rises and the house in normal session takes its place. The bill then receives a third reading, which may or may not be at length, and the final vote is taken. There is some question as to whether three readings are necessary. They take time, but they also add to the deliberative nature of the proceedings and put members on notice.

If a member must be absent at the final vote, he may agree with someone on the opposite side of the measure to record the two votes as canceling each other; this is called pairing. In recording the vote, a system of mechanical voting, first used in Wisconsin, is a great timesaver and should be more widely employed. Under the present method a roll call in the House of Representatives for the purpose of recording a final vote takes approximately an hour to complete.

If the bill is passed, it is then sent to the second chamber with an appropriate message of transmittal, where the above procedure is repeated in most essential respects. If a significant amendment is added in the second chamber and the first disagrees, a conference committee is created out of members from each house in order to reach a compromise, sometimes a difficult matter. When agreement is finally concluded, the bill is resubmitted to both chambers simultaneously, where further amendment is not allowed. If either house fails to accept the revised measure, it must be placed before a new conference committee or it is abandoned altogether. Sometimes a number of conference committees are necessary.

After final approval in both houses, the bill is sent to the chief executive—the President, the governor, or the mayor—for his signature or veto. If he signs it, the bill becomes a law. If he vetoes it, this is still not the end of the matter.

THE EXECUTIVE VETO

The executive veto of legislation is so widespread in the United States that it may be called a distinctive feature of our governmental system. *The veto is the refusal of a chief executive to sign a bill where such approval is necessary to complete the enactment of a law, and the return of the bill to the legislative house in which it originated.* Thereafter a veto may be overridden by legislative action, the number of votes required ranging from a majority to three

fourths. Congress may override a presidential veto by repassing the measure by a two-thirds vote in each house on a roll call.

The Constitution requires that before becoming law, every bill must be submitted to the President for his signature. If, while Congress is in session, the President does not sign and return the bill within ten days, excluding Sundays, it becomes law without his signature. But if Congress adjourns before the ten-day period has elapsed and the President still has not signed the bill, the measure is automatically lost. This is called the pocket veto.

The use of the veto power in the federal government makes an interesting study. In the first place, it reveals the extent to which the President was meant to participate in legislation, showing how the doctrine of separation of powers was offset in some respects by the system of checks and balances. Why should the chief executive have the veto power at all? For two reasons, principally. First, because he is recognized as the leader of the party in power and is expected to take the initiative in legislative policy by the messages he writes and the concrete legislative proposals he makes. And second, because the veto was thought to be a check on hasty or ill-considered legislative action, thus constituting another means of keeping government within bounds.

Against the use of the veto is the argument that it is undemocratic. It allows one man to overrule, temporarily at least, the will of the majority. Furthermore, it is said to weaken a sense of responsibility on the part of Congress, which may pass undesirable legislation rather than fight it, in the expectation that it will be vetoed; or Congress may fail to pass controversial legislation because of the institutional humiliation of an anticipated veto. Then, too, the veto may be used by the President to play politics just before elections; in fact, certain vetoes have several times become vital campaign issues.

The Veto as a Presidential Weapon

Article I of the Constitution says of the veto, ". . . if he [the President] approve he shall sign it"; if not, he shall state his "objections" and return the bill to Congress.

Up to 1934 there had been nearly a thousand presidential vetos. There were over twice as many outright vetoes as pocket vetoes. But note the tendencies: in the first one hundred years, the average number of vetoes was less than 5 each year, and in the next fifty years it was over twice as high, standing at 11. In the first one hundred years the pocket veto was less than 4 per cent of the direct veto, but in the next fifty years the number of pocket vetoes was 24 per cent greater than the number of direct vetoes. Are Presidents increasingly taking the timid way out? Does the excessive use of the pocket veto necessitate reform? The fact that a good deal of important legislation is passed in the last days of a session makes the pocket veto a strong weapon.

Vetoes have been highest when the President and Congress were at odds. Does this suggest that if we could find some way of assuring legislative-

executive accord, the veto power could be dispensed with or greatly restricted? The first time the power was used extensively was during Jackson's administration, when the President and Congress engaged in almost constant warfare over such matters as the national bank, investigations of the executive, and other basic issues.

Following the Civil War, President Johnson also was at loggerheads with Congress, which passed fifteen bills over his presidential veto, the highest in any single administration. Cleveland, facing a hostile Congress, had trouble too. Vetoes have increased in volume since then, especially when the President is not sure of his majority or has lost control of one of the houses of Congress, as occurred during Wilson's second term.

In the first century and a half of our constitutional history, less then 5 per cent of the one thousand measures vetoed could muster the requisite two-thirds vote for repassage. These figures do not necessarily prove that the bills should not have been passed in the first place. They do indicate that a two-thirds vote is invariably more difficult to secure than a simple majority. Under our two-party system the minority party ordinarily has better than one third of the seats in one or both houses, and its voting is often more solid than that of the majority, because being "out" has a unifying influence while being "in" seems to have the opposite effect. If the vetoed measure is a minor one it does not matter so much, although cumulatively it adversely affects the relationship between the legislature and the executive. If the veto results in beneficial amendments and re-enactment, so much the better. But when major legislation is vetoed, its rejection is more serious. Recent years have seen many instances of this kind together with the growing tendency of Congress to override the presidential veto. A point to remember in this connection is that Congress represents geographical sections and interests of the country, while only the President represents the people as a whole. The degree to which he is conscious of this responsibility has a good deal to do with the use he makes of his veto power.

The Veto Power in State Government.

In all of the states except North Carolina, the governor has the veto power. In thirty-nine states he may veto separate items in appropriation bills; in some he may reduce items; and in two states he may veto sections of nonfinancial measures.

The number of votes required to override a gubernatorial veto ranges from a majority to two thirds. Sometimes this means a majority or two thirds of those elected, not merely of those present and voting. In some cases, also, the governor's veto power exceeds that of the President. Moreover, as in the federal government, many bills have been vetoed and only a relatively small percentage has been repassed.

The Mayor's Power of Veto

The mayor's power of veto over proposed ordinances is well-nigh universal. As in the state and federal governments, when a law has been passed it goes to the executive for his signature or veto. If the mayor disapproves, he sends it back to the council with a statement of his objections. Most cities require more than a simple majority for repassage, the most common provision being two thirds. But there is a wide variation. Indeed, the diversity found in American cities is well illustrated by the fact that the majorities required for the repassage of an ordinance over a veto in Baltimore is three fourths, while in Philadelphia it is three fifths. In Boston the mayor's veto is absolute.

In New York City, which has the strong-mayor type of government and where the mayor is ex officio chairman of the Board of Estimate, a three-fourths vote of the council is necessary to override a veto of an appropriation and loan measure. In recent years many cities, imitating the state governments, have extended the mayor's veto power to specific items in appropriation ordinances. But there is no such thing as a pocket veto in American municipalities because there are no lapses between the stated times at which the council meets.

The executive veto, therefore, is everywhere firmly entrenched in American governments and its use seems to be increasing rather than declining. If executive leadership continues to become stronger in this country, at the expense of the legislature, the wider use and acceptance of the veto is to be anticipated.

THE LEGISLATIVE RESOLUTION AS LAWMAKING

It has been pointed out that law, as enacted by legislative bodies, takes the form of either bills or resolutions. A word, then, in explanation of resolutions and their importance.

There are various gradations among resolutions, and each has a different legal effect. *A resolution is a measure proposed or passed by one or both houses of Congress, or of a state legislature, each house acting separately. A resolution may relate to legislative policy or opinion, censure, thanks, condolences, and the like; or it may provide for subsidiary or procedural matters.*

In formal dignity, a resolution ranks below a bill and is supposed to be used only for minor or transient matters. But in actual practice and especially in recent years, this principle has been frequently violated. There are three principal gradations among resolutions:

Relating to a single chamber of the legislature. Such resolutions bind the members of the house in which passed, but are not intended to operate on the general public. Examples are the election of officers, the appointment of committees, the provision of stationery or supplies, or an expression of condolence.

The joint resolution. This is a measure passed by both houses of a legislative body which, *when signed by the executive or passed over his veto, has the full force of law.* The joint resolution, therefore, is full-fledged law since it operates

on the general public. Theoretically, however, it has a lower formal status than a law. Joint resolutions are probably best known for their use in foreign policy. Questions of neutrality, the recognition of a state of war or spheres of influence, the granting of independence, and such matters are well suited to this method of action.[6]

About half of the states are forbidden to pass legislation in the form of a joint resolution. This is especially likely to be true if the resolution does not contain a formally provided enacting clause.

The concurrent resolution. Here the action is primarily by one chamber rather than both, but the second concurs in what the other has done. *A concurrent resolution is an action of Congress in the form of a resolution of one house, the other concurring, which expresses some purpose of common interest to both houses and with which the President has no legal or constitutional concern.*

The concurrent resolution is like the simple resolution and unlike the joint resolution in that it is not submitted to the President for his signature. It has a limited applicability and effect, since it is not a "law" applicable to the public, again expressing the differences just noted. Outstanding examples of the concurrent resolution in recent years are those delegating powers to the President but providing that the delegation may be terminated at any time on the passing of another concurrent resolution.

FACILITATING LEGISLATIVE DEVICES

There are several devices that have been adopted by legislatures, partly in order to facilitate their business and partly in order to keep a firm controlling hand on the proceedings. Among these devices are the committee of the whole, the calendar, the rules committee, and the legislative caucus.

The Committee of the Whole

The discussion of the steps involved in the enactment of a law referred to the committee of the whole. This is the status into which Congress and the state legislatures customarily convert themselves when they want to get down to business, simplify their procedure, and act definitely on money matters and general legislation.

The committee of the whole is the entire membership of a legislative house sitting under modified rules to consider a specific measure. Ordinarily this stage occurs after the reporting out of a bill by a committee of the legislature and before the third and final reading. It is most often used when measures of unusual importance are up for consideration.

There are several basic distinctions between the committee of the whole and a house of the legislature in ordinary session. In the first place, the committee of the whole sits under a temporary presiding officer, the regular presiding

[6] Discussed in Chapter 42, "The External Affairs of the United States."

officer designating whom he chooses. In addition, the number of members required to transact business in the committee of the whole is usually not so great as in ordinary session. Under the rules of the House of Representatives, for example, the number is 100 out of a total of 435. And finally, there is more informality in the committee of the whole. No record of votes is required. A member may speak longer and more often than when the regular rules are in effect. When decision has been reached, the committee of the whole rises and the house resumes formal session. To become effective, the decisions of the committee of the whole must afterward be approved by the house in formal session.

These are the main outlines of the procedure. An additional point relating to the House of Representatives is the fact that in that body all revenue and appropriation bills *must* be considered, when first brought up for debate, by the committee of the whole.

The Legislative Calendar

Every legislative body has an agenda, setting forth the business before it and the order in which it is to be taken up. This is the purpose of the calendar. *A legislative calendar (as contrasted with a court calendar) is a list of bills, resolutions, or other items, in the order of their presentation for action by a legislative chamber as a whole, serving as a convenient order of business.*

A function of the calendar is to present a list of bills for consideration by the committee of the whole or for final passage. The calendar is also used to set a time in advance for the consideration of an important measure coming up for debate and vote. This is sometimes called a special order, meaning that a particular bill must be taken up at a time agreed to in advance. Once the assembly has voted such a special order it is the duty of the presiding officer to take the measure up when the day and hour arrive, irrespective of what is being discussed at the time. Perhaps the best way to describe a legislative calendar is to call it a timetable. In general, it indicates the sequence in which business will be considered. As often as not, however, the indicated sequence is broken as a result of special rules permitting particular bills to be considered out of turn.

In some legislative chambers there are several calendars, each for a special class of bill. There are four in the House of Representatives, for example, and two in the Senate.

The Rules Committee

The calendar procedure is supplemented in a significant way in the House of Representatives by the Rules Committee, until 1910 dominated by the speaker. But when the House revolted against Uncle Joe Cannon in that year, one of the first reforms put through was to strip the speaker of his membership in, and his right to appoint, the Rules Committee. Nevertheless, the power and influence of this body have remained such that it deserves special mention.

The Rules Committee in the House of Representatives derives its importance from the fact that, because of the size of the House, rules must be imposed fixing the time and sequence for the consideration of measures, limiting debate, and restricting the number and scope of amendments which may be proposed. *These rules are controlled by the Rules Committee and, since it acts for the majority, its proposals are virtually orders to the House as a whole.* No measure reported out of committee will be placed on the calendar for debate without passing through the Rules Committee. Furthermore, the committee may introduce a resolution in the House at any time, interrupting and even terminating whatever debate is in process—a device sometimes used by the majority party leadership when matters are seen to be getting out of control on the House floor. The Rules Committee, therefore, is a real power.

There is also a rules committee in the Senate, but since debate in the Senate is not limited, the power of the rules committee is less. In the state legislatures the speaker usually exercises power similar to that of a rules committee, or it may rest in the hands of a steering committee. As at the national level, the function involved is especially necessary in the larger state legislatures.

The Legislative Caucus

Another organizing device of legislatures is the legislative caucus. *The legislative caucus is a closed meeting of all members of a political party in the legislature for the purpose of agreeing, either by majority or a two-thirds vote, on concerted action on pending legislation, the nomination of the speaker, designations to committees, and so on.* The caucus is a principal means of securing party regularity and of obtaining a degree of party responsibility on important measures.

It will be recalled from the discussion of party nominating procedures in an earlier chapter that the caucus has an old and impressive lineage, dating back to our early years as a nation. When employed in connection with legislation it has been less criticized by the public than when used as a means of nominating candidates for public office.

The legislative caucus rules of the Democratic party in Congress provide that a two-thirds decision shall bind individual members to a united vote on a particular measure or action. But even then a member is not necessarily bound if the matter involves constitutional construction, if it is contrary to his campaign pledges to his constituents, or if it diverges from the platform and resolutions of the party group nominating him. In this way the individual member has considerable latitude. If he decides to vote against the two-thirds majority of the caucus, however, he is expected to notify them to that effect before the meeting adjourns. The Republican party in Congress requires only a majority vote in its legislative caucus.

In recent years the legislative caucus in Congress has lost ground as a means of securing concerted party action. On the whole, the Republican caucus has met more often and has been more effective than the Democratic caucus. How-

ever, on important measures party fences have proved an ineffective barrier to nimble legislators.

Should caucus decisions become more binding? This development would increase party responsibility. But is it feasible when both major parties contain so many diverse elements and opposing viewpoints? It seems likely that the caucus will not become a true regulator of party responsibility until the structure of American political parties is fundamentally readjusted.

The mechanics of enacting legislation is activated by party leadership and strategy, compromise, and a great deal of maneuvering. It would not be far from fact to say that every important bill requires a different combination of stratagems—a result seemingly inevitable in a system where party responsibility is no stronger than in most American legislative bodies. The sponsor of a bill must know when it is best to push a bill, which house should consider it first, with whom he should talk, the strength of the opposition, the art of compromise, and the subtleties of procedure that hold the power of life and death over legislation. It will be seen, therefore, that a large part of the process of enacting legislation consists of work that lies beneath the surface—covert activity involving partisan, sectional, pressure group, and personal politics. "When I first came to Congress," Representative Wolcott once said in the House, "I was told that all major legislation was a matter of compromise. I did not know quite what that meant until I took part in some conferences with the Senate on legislation. I did not fully realize what it meant until the conference on this bill, when, after spending 11½ hours yesterday giving and taking, adding and subtracting, sparring for advantage back and forth, we finally succeeded in coming to an agreement on what I consider to be a better bill than that which the Senate passed or that which the House passed."[7] If we would be realistic about American legislative procedure we must grasp the truth of Roland Young's characterization: "There is no master key to unlock the mysteries of Congress," said this observer, "to ensure any bill a safe passage through the tortuous routes of Congressional procedure; rather, the successful practitioner must carry many keys."[8]

SUPPLEMENTARY READING

1. General: The best source is Harvey Walker, *Law-Making in the United States* (New York, 1934), Chapters 10, 11, 13, and 14; this study deals with legislative procedure in federal, state, and local governments. The following should also be consulted: Joseph P. Chamberlain, *Legislative Processes: National and State* (New York, 1936), Chapters 6–9 and 13; F. M. Riddick, *Congressional Procedure* (Boston, 1941), Chapters 8–15; W. F. Willoughby, *Principles of Legislative Organization and Administration* (Washington, 1934), Chapters 16–36; and Robert Luce, *Legislative Procedure* (Boston, 1922). Former members of Congress have also written interesting books. See George Wharton Pepper, *In the Senate* (Philadelphia,

[7] Representative Jesse P. Wolcott, *Congressional Record*, August 21, 1937, p. 9636.
[8] Roland Young, *This Is Congress* (New York, 1943), p. 133.

1930), and T. V. Smith, *The Legislative Way of Life* (Chicago, 1940). See also Franklin F. Burdette, *Filibustering in the Senate* (Princeton, 1940), and John A. Perkins, "Congressional Self-Improvement," *American Political Science Review,* XXXVIII (June, 1944), 499–511. Jay Franklin, Washington journalist, has written, "Congress Passes a Bill," reprinted in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), p. 396. Useful official sources are the legislative manuals of the House of Representatives and the Senate, and of the various state legislatures.

2. State legislative procedure: In addition to the textbooks on state government referred to in previous bibliographies, the following are recommended: C. I. Winslow, *State Legislative Committees: A Study in Procedure,* Johns Hopkins Studies in Historical and Political Science, Vol. 49 (Baltimore, 1931); Council of State Governments, *The Book of the States,* I (Chicago, 1935), 59–70; *ibid.,* II (Chicago, 1937), 219–293; C. C. Young, *The Legislature of California—Its Membership, Procedures, and Work* (San Francisco, 1943), Chapters 1–5; and A. E. Buck, *Modernizing Our State Legislatures,* pamphlet (Philadelphia, 1936).

3. Municipal councils: In addition to the texts on city government previously cited, see a series of three articles in the magazine *Public Management,* XVII (1935), 95, 130, and 199.

4. The veto power: E. C. Mason, *The Veto Power* (New York, 1891); H. C. Black, *The Relation of the Executive Power to Legislation* (Princeton, 1919), Chapters 3–5; W. E. Binkley, *The Powers of the President* (New York, 1937); G. F. Milton, *The Use of Presidential Power, 1789–1943* (Boston, 1944). In state governments, Leslie Lipson, *The American Governor: From Figurehead to Leader* (Chicago, 1939); John A. Fairlie, "The Executive Power in the State Constitution," *Annals* (Sept., 1935), p. 59; and N. H. Debel, *The Veto Power of the Governor in Illinois* (Urbana, 1917).

CHAPTER 24

Responsible Government in the United States

LEGISLATURES must be responsive so as faithfully to represent the people and their interests. Legislatures must also be efficient, organizing and operating so as to give important measures the right of way, but to neglect nothing. And finally, legislatures must be responsible for the programs they establish as well as for those they reject as contrary to the public interest. The first two of these principles have already been discussed. The problem of responsible government, therefore, is the subject of this chapter. But, as will be seen, responsiveness, efficiency, and responsibility overlap. They transect and supplement each other; hence the problem of responsibility cannot be separated from the elements of representativeness and effectiveness. A realistic view of government is the integrated view.

This chapter deals with legislative leadership, the committee system, and the methods by which the executive branch is held accountable to the legislature. This includes a discussion of the doctrine of the separation of powers as it stands today. The final pages of the chapter consider the points of similarity and difference, with regard to responsibility, in the presidential and cabinet forms of government.

LEGISLATIVE LEADERSHIP

Out of its own internal organization and procedure the legislature provides for leadership in several ways. Some of these have already been discussed: the power of the presiding officer, in many ways, to move measures and members about among the committees, as on a chess board, to the party's advantage; the establishment of legislative priorities by the use of calendar scheduling; the influence of the rules committee in giving important measures the right of way; and the solidarity of programming that results, or may result, from the use of the party caucus in the legislature. All of these constitute primary elements of leadership and party responsibility, but obviously additional provisions for leadership are needed. If the party caucus is comparable to the general staff—planning and deciding major issues—then there must be what corresponds to generals and other subordinates to see that the plans are carried out. This work is done by the steering committee, the floor leader, the party whips, all of whom are chosen by the party caucus.

The Steering Committee

The steering committee is found equally in Congress and in most of the state legislatures. *The steering committee is a small group, consisting of promi-*

nent members of the majority party, chosen by the party caucus and headed by the majority floor leader, whose business it is to expedite those measures which have been given preference and to apply pressure here and the brakes there so as to keep the tracks clear. In military language, the steering committee is the tactics board. It ranges in size from three to twenty members, depending on a number of factors, including the size of the legislature. In the House of Representatives the steering committee normally includes from ten to fifteen members, chosen on the basis of prominence due to length of service, major committee chairmanships, geographical factors, and public reputation. It is essential, too, to select party regulars, because the staunch independent cannot always be relied on to work with the chief executive, the party caucus, and the party organization as a whole.

The steering committee must be always on the job, for the opposition constantly attempts to catch it napping. Combinations of independents and opposition party members will slip things over if they can. Working with the rules committee and the presiding officer of the chamber in question, the steerers must navigate choppy seas amid dangerous reefs and shoals. It is a real test of a man's mettle, for he must be a clever manipulator and at the same time not lack in the qualities of the statesman.

The minority party, meanwhile, is also well organized. It has its own minority floor leader, party whips, and other recognized chiefs who often combine into what amounts to a steering committee for the minority, even if it does not have that official designation. It is a strategy board, a management committee of the minority caucus, whose purpose it is to defeat the measures of the majority party when possible and to push alternative programs which will help in winning the next election.

Floor Leaders and Party Whips

The floor leaders of the majority and minority parties rank next in importance to the presiding officer and sometimes, if he is supposedly neutral, they have even more power and influence. *The floor leader of each party is a prominent member of the legislature designated by his party caucus to take charge of the party interests during legislative sessions.* The influence of the floor leader, however, is not confined to the halls of the legislature. He may have as compelling a voice as any when it comes to tapping a prospective president or governor on the shoulder. During Franklin D. Roosevelt's administration, for example, the Republican floor leader in the House was Joe Martin of Massachusetts, and the public looked more hopefully to him than to any other man for an indication of who the party candidate might be in major elections. Ordinarily the minority floor leader is in line for the speakership if his party comes into power at a later election.

The successful floor leader must be a born politician in the best sense of the word. He must be personally popular, be a good judge of men, have his ear to the ground, and know what not to believe. He must be able to cooperate

with the party leadership and the chief executive and yet have a mind of his own. He must possess that keen sense of timing and the judgment and finesse which characterize the successful executive.

The floor leader takes the initiative in planning the course of debate on the floor of the chamber, determining the order in which members of his party may speak, and maintaining party regularity. Acting as go-between, he may smooth over the relations between party leadership in the legislative and executive departments. If, for example, the head of an executive department has an agreement with the chairman of a legislative committee that they will both support a particular bill, and if a misunderstanding or dispute arises, the meeting to patch up differences will almost surely be held in the floor leader's office. He is a referee and a peacemaker. He tries to keep everybody happy—except the opposition.

If the floor leader is the party general, the party whips are its colonels. *The party whip is a member of the legislative body designated by his party caucus to remind party members to be present when important votes are to be taken, to help maintain voting regularity, keep the party leaders informed, deal with dissatisfied members, and generally weld the party members into an effective combination.* The position of party whip is a steppingstone to those of floor leader and speaker. Geography and other factors affect their selection as in the case of floor leader.

The state legislatures also have their floor leaders and party whips, again depending on the size of the chamber. In a small body there is much less need for formal arrangements to assure party action and regularity.

LEGISLATIVE COMMITTEES

"About 90 percent of all the work of the Congress on legislative matters," said the joint committee on its reorganization, "is carried on in these committees. Most bills recommended by Congressional committees become laws of the land and the content of legislation finally passed is largely determined in the committees." [1] Every legislator aspires to an assignment to an important committee, particularly a chairmanship. In American legislative assemblies—state and national—this is the currency in which power is measured. It becomes an exceedingly important matter, therefore, how committee assignments are made and what considerations operate in their determination. If, for example, the policy of the administration is international cooperation and the member of the Senate Foreign Relations Committee in line for the chairmanship is an avowed isolationist, that is unfortunate—to put it conservatively. But, as will be seen, under the seniority system applicable to committee chairmanships, such an occurrence is not unlikely.

The original appointments to committees are significant for two reasons:

[1] Joint Committee on the Organization of Congress, report and recommendations, Senate Report No. 1,011, 79th Congress, 2d session (Washington, 1946), p. 2.

in the first place, they help to decide what measures will be passed; and second, they determine who will eventually become committee chairmen.

How Committees Are Chosen

How are these decisions made? In a small legislative body, such as a municipal council, the president of the council usually makes committee assignments. In state legislatures, committee members are generally appointed by the speaker, and in a few cases by a committee on committees. In the House of Representatives, as we have seen, the speaker formerly had powers of appointment similar to those of the speaker in state legislatures, but since 1911 this function has been vested in the majority and minority parties themselves. Acting through separate groups, the parties decide on the composition of standing committees and fill vacancies. The majority party controls the chairmanship and the majority on each committee. The size of all standing committees is set by the rules of the House itself, but the distribution of membership between the two parties is determined on the basis of a gentlemen's understanding, according to relative party strength. Thus, for example, when the Republicans were in control during 1929–1931, they took fourteen places on a committee of twenty-one, leaving the Democrats seven; but in 1933–1935, when Democratic preponderance was greater than that formerly possessed by the Republicans, there were sixteen Democrats and five Republicans on the same committee.

The two major parties are free to determine what method they will use to decide their committee selections. In the House of Representatives the Republicans have a committee on committees of their own to select Republican members of the House standing committees, subject to ratification by the Republican caucus and election by the House itself, both of which are largely a formality. The Democrats use the Democratic membership of the Committee on Ways and Means as their committee of selections, subject also to caucus and House ratification.

The standing committees of the House of Representatives are reconstituted with each new Congress, although in fact—because of the operation of seniority—there may be little change in membership. All standing committees in the Senate, however, hold over from one session to the next, with vacancies filled at the opening of the year's work. In the Senate, party committees on selection fill these vacancies, subject, as in the case of the House, to approval by the respective party caucuses and the vote of the Senate as a whole. As a rule, here also caucus and Senate approval are merely formal.

In the making of committee selections, previous service and seniority are respected equally in the House and in the Senate, and all chairmanships are given out on that basis irrespective of the qualifications of the individual in question. When, because of seniority, a member is in line for two committee chairmanships, it is a matter of legislative courtesy to allow him to choose between them. The most important function of the Republican and Demo-

cratic selection committees, therefore, is to determine from among the new members of the legislature who shall be given the breaks and started up the ladder to influence and power.

Government by Committees

It is a curious paradox of institutional life that legislatures are generally teeming with committees while in most other social organizations committees are definitely unpopular. Almost every book on business management castigates committees as a waste of time and as the evil device by which busy men are kept from their work. In business organizations, it is unusual to find more than two main committees—one dealing with policy and finance, the other with executive matters. The Army's opinion of a committee is expressed in the saying that the board (committee) is "long, hard, and wooden." The literature of public administration is equally hostile to committees, labeling them a device by which "minutes are kept and hours are lost." Everywhere, apparently, committees are unpopular except in legislative assemblies, women's clubs, and a few informal groups.

Congress in 1946 had 81 standing committees, with 48 in the House and 33 in the Senate. The average state legislature has almost as many—39 in the lower house and 32 in the senate. This means that the number of committees in the average state senate is almost as high as in the United States Senate. In municipalities, the larger the city, the more the council is likely to rely on committees. In New York, Chicago, St. Louis, and San Francisco, for example, the number ranges from 7 to 20. Even in the smaller municipalities there is an average of from 5 to 10 committees. What does this mean in terms of work load per legislator? Clearly, it is heavy. In the House of Representatives, for example, the average is 2 committee assignments for every member, counting standing committees only. In the Senate the average is 6 and it may run as high as 9. In the lower house of the state legislatures it is over 4, and in the state senate, 8. For municipal councils an exact figure cannot be given but it is probably around 2.

It should be pointed out here that there are certain distinctive features about municipal council committees. For example, they often consume more of a councilman's time than the actual sessions of the council. Moreover, in the weak-mayor type of city government, councilmanic committees usually transact a good deal of administrative business in addition to lawmaking. And finally, municipal council committees are generally required to report to the council on every matter entrusted to their care. In terms of time consumed, therefore, the municipal council committee is often more exacting than legislative committees at the state and national levels. They are also held more closely accountable to the legislative body than their counterparts at the higher levels.

With legislative committees so numerous there must be some rational arguments in their favor. The division of labor is the most cogent. Especially in

large assemblies, the chamber as a whole cannot study and recommend action on the flood of proposals that comes before it. Specialization of function, as in biology and all of modern social organization, becomes a necessity. Another factor is the accumulation of knowledge and experience which derives from serving in a special field over a period of years. If the chairman of an appropriations subcommittee on agriculture, for example, does not have the required knowledge to begin with, he must soon accumulate a wealth of theoretical and practical information on the problems of farmers and the programs operated by the Department of Agriculture. The legislature naturally comes to rely on him not only for information but also for his judgment and evaluations.

The committee system also makes it possible to hold public hearings at which the claimants of the governmental service in question may be heard. This accords with our ideas of democracy and representation, because it gives those most intimately affected by a proposed program an opportunity to express their support or opposition, to point out practical difficulties that may have been overlooked, and to supply the legislature with useful information. Another advantage of the public hearing is that it helps to secure consent and active cooperation from the affected interests in advance of the administrative execution of the program.

These are all impressive arguments on the side of the committee method. Committees should not be regarded merely as time wasters, because it is there that most of the real work of the legislature has to be done. They are so important that the legislative day is usually divided between them and the regular session—the morning being devoted to committee meetings and the afternoon and evening to full meetings of the legislature.

Drawbacks of the Committee System

It has come to be realized by political scientists, by members of the legislatures, and by the public as well, however, that American committee procedure has been carried to such lengths in our legislative bodies as to detract from the efficiency and responsibility of the legislative institution itself. The division of labor principle may be so exaggerated that the separate parts of the legislature cannot properly be welded together in an orderly and effective manner. There is too divisive an influence among them. For example, a committee on agriculture undertakes a program of marginal land utilization for farming purposes, but a committee on conservation goes in the opposite direction, favoring reforestation, wild life refuges, and replanting to hold soil and moisture. To proceed with both programs indiscriminately in the same area can lead only to confusion and a waste of public funds.

The legislature, therefore, must act as referee. But too often its internal dispersion into a multitude of committees, together with the lack of sufficient controlling authority to secure responsible and rational policy, makes it impossible for the legislature to be a competent referee. As a result, it loses face with the voters and pressing problems are delayed in their solution. At this point a guid-

ing principle suggests itself: *Just as a legislature must define its major objectives in order of importance before it can become truly effective, so also must it analyze its major areas of legislation and correspondingly reorganize its committee structure.*

Once the principal areas of legislation have been defined and the number of key committees reduced to workable compass, *there should be an articulation of the same committees in both houses and a correspondence between the committee structure of the legislature and the administrative departments of the executive branch—the whole welded together by a legislative council in the legislature responsible for the party program.* This proposal will be dealt with in detail a little later in this chapter. It is not assumed that any such rational system is imperative in order to prevent immediate disaster, or that it would solve all of our problems of representative government. But it would result in greater effectiveness and responsibility, and it would increase the prestige of the legislature and the respect and confidence of the public.

Once a legislative committee has been created it resists extinction or consolidation even when its social utility has long since expired. In his *Congressional Government* Woodrow Wilson pointed out more than sixty years ago that each of the eighty committees in Congress was a petty principality presided over by a jealous chieftain; that the multiplicity of committee leadership in Congress resulted in a loss of effectiveness and a divided responsibility; that the chambers deliberated and legislated in small sections, with little attempt at coordination; and that in consequence Congress neglected its most important functions of debate on capital issues, attacking them in a splintered rather than a unified fashion.

A group of political scientists commenced a study of Congress in 1941, and in 1945 published its report, *The Reorganization of Congress,* which assailed the committee system in terms that Woodrow Wilson might have used. This study showed that many committees now perform closely related or overlapping functions. During World War II, no less than twelve committees simultaneously investigated the conduct of the war, while half that number were dealing with postwar economic problems. Similar instances of duplication were cited from the peacetime committee structure.

Responsible leadership requires integration. But the leadership of Congress was found to be scattered among the chairmen of its many standing committees. The splitting up of the legislative function militates against the development of legislative leadership and the adoption of a consistent program. As in Wilson's day, the problem of articulated responsibility is unsolved.

And finally, too many committees mean that many senators, especially, find it impossible to attend important meetings because of conflicting schedules. Nine or even six committee assignments are too much for any man. Much voting must necessarily be by proxy. Committee members dash from one hearing to another, with no chance to become familiar with the business of any. Indeed, when a measure gets to the floor of the chamber, a committee member

may know little more about the issues involved than his colleague who is not a member.

"No person familiar with the situation in the Senate today," said Senator La Follette, "can deny that there is a pressing need for committee reorganization and for the streamlining of the legislative branch of the government if it is to survive in the struggle for power which is bound to continue." These are words that Woodrow Wilson might have written sixty years ago.

IMPROVING THE COMMITTEE SYSTEM

It was the unanimous conclusion in both of the reports on Congress cited—*The Reorganization of Congress* and *Strengthening the Congress*—that instead of from thirty-three to forty-eight committees, as at present in the Senate and the House of Representatives, there should be only a third as many. Eight major areas of legislative policy are suggested in the former of these documents, which recommended that the committees of each house of Congress be combined and renamed to correspond with each other. These major groupings are agriculture; the armed forces; finance and monetary affairs; foreign relations; interior, natural resources, and public works; interstate commerce; judiciary; and labor and public welfare. Under this arrangement, major problems would be dealt with broadly rather than piecemeal. Subcommittees would still work on particular aspects of general problems, but when it came time for legislative action, the parent policy committee would fit the parts together in the form of a bill.

A consolidation of this kind might make possible the joint consideration of major issues, greater internal efficiency, increased responsibility for legislative policy and results, greater economy of time and effort, improved articulation of the two chambers, and more cordial legislative-executive relationships. These are objectives worth working for.

Additional committees would deal with administrative matters as contrasted with policy—questions such as appropriations, claims, expenditures in the executive departments, the government of the District of Columbia (if that function is retained by Congress), and legislative rules and administration. The plan may not be the best that could be devised, but it is in the right direction. Moreover, such analyses made and put into effect by state legislatures as well might usher in a new day for representative government.

Joint Committees for a United Attack

Another possible instrument in the attack on the committee problem might be the use of joint, or unified committees as contrasted with the separate, duplicating committees existing at present. This is suggested by the fact that in addition to the present dispersion of effort and leadership in the national legislature and in all but one of the state legislatures, there is also the duplication of function resulting from bicameralism.

Both houses of the legislature have committees on the same subject. If they

pooled their efforts they could save much time and money as well as the energy of their members. It seems safe to assume that legislatures could work out solutions and put acceptable laws into effect much more quickly and assuredly if the two houses worked together in joint committee. And yet the traditional jealousy between the two branches makes this only rarely possible. The consequence is often a stalemate between opposing programs of the two groups.

Of the forty-eight state legislatures, only three or four make any extensive use of the joint committee procedure. Massachusetts is the outstanding example. Where the joint committee is used it has reduced the average number of committee assignments for each member to less than half the national average. The results of joint committee work bear out the belief that economies and greater legislative effectiveness may be expected from its use. This verdict is corroborated when, as too seldom happens, the House of Representatives and the Senate appoint a joint committee to deal with an important question. A case in point is the Joint Committee on the Organization of Congress, established in 1944, which has done outstanding work under the leadership of Senator La Follette and Representative Monroney.

It seems that if bicameralism is to continue, more extensive use should be made of the joint committee procedure in areas of major social policy. And yet, because of the natural resistances to such a scheme, he would be a rash prophet who would foresee its wide adoption. This is a strong argument for unicameralism at the state level.

Majority Party Responsibility through a Legislative Council

The consolidation of committees and the creation of joint committees should be followed by the establishment of a legislative council in Congress and the state legislatures on which the majority party leaders in both houses and the executive branch would be represented. This would constitute an over-all coordinating unit in the legislature itself. A dozen states have already set up such agencies, but the practice should be made universal and the emphasis should be shifted from research and bill-drafting—which might better be done elsewhere anyhow—to articulation of planning and policy decision-making by the party leadership.

In line with this procedure, the report on *The Reorganization of Congress* recommends that a legislative council be established "to be composed of the Vice-President, the Speaker of the House, the majority leaders in both chambers, and the chairmen of the reorganized standing committees (sitting separately in each house); and that it be the duty of this legislative council to plan and coordinate the legislative program of Congress and to promote more effective liaison and cooperation with the Executive."

In the federal government the nearest approach to such a system is found in the periodic meetings presidents have held in recent years with House and Senate leaders of their own party. During Franklin D. Roosevelt's administration these informal sessions were set for Monday mornings. Sometimes,

when the matter was sufficiently important, the President would also invite the leaders of the opposition party to be present. This was especially common during the course of World War II when partisanship was temporarily discarded.

Someone has said that the British Cabinet is the buckle that binds the legislative and executive branches together, giving the government efficiency as well as responsibility. A buckle may not be the best analogy, but it does suggest what is required. We do not necessarily need the cabinet form of government in this country because there are aspects of our presidential system that are superior for our needs. We do, however, need the equivalent of some of the best features of responsible cabinet government because they embody principles that may be disregarded only at the cost of lowered efficiency and responsibility.

The proposed legislative council, representing both houses of the legislature and the executive, is an example of how the substance of responsibility in government may be secured without imitating others. The separate identity of the legislative and executive branches, which is the core of the doctrine of separation of powers, would not be disturbed, but close cooperation would be superimposed on the existing structure. If Congressional leadership in the legislative council did not wish to do so, there would be no more reason for the legislature to follow the desires of the executive than at present. But there would be greater assurance of mutual understanding and cooperation in the interrelated processes of lawmaking and administrative execution. If Congress could secure greater coordination through the simplification and tightening up of its committee structure, if the executive branch could secure better coordination by using the Cabinet for that purpose to better effect, and if, finally, the legislative and executive branches could be brought together for legislative planning purposes, then the greatest single weakness of the American form of government would have been largely rectified. That weakness is lack of coordination in the top ranks of the government. Without it there can be no effective responsibility.

Improved Efficiency and Responsibility—Summary of 1946 Recommendations

The Joint Committee on the Organization of Congress, appointed in 1944 under the chairmanship of Senator La Follette and Congressman Monroney, undertook an extensive study of Congress and held a number of public hearings. In March of 1946 it was ready to report its findings, aimed at improving the efficiency and responsibility of that body. This report is a landmark in our governmental history, because even if all of the proposed reforms are not at once accepted, it shows clearly what must be done if Congress is to regain its lost influence and if responsible leadership is to be secured.[2]

In summary, the report recommended that Senate committees be reduced

[2] *Ibid.*, especially pp. 1–16.

from 33 to 16, and House committees from 48 to 18; that the authority of these committees be sharpened so as to give them complete jurisdiction over all legislation and agencies coming within their purview, thus abolishing the need for special investigating committees. It was also recommended that all committees hold regularly scheduled hearings, and that they be forced to report on all bills referred to them; that all members be provided with an understandable digest of the business at hand before a vote is taken; that the authority of conference committees be limited to revising instead of rewriting; and that expert staffs be provided for committees, together with additional assistance for individual members.

It was further recommended that both of the major political parties create policy committees and that the party in power establish a joint legislative-executive council to formulate and control national policy; that a Congressional personnel office and central administrative services be established; that fiscal control be strengthened so as to coordinate the revenue-raising and appropriations committees; and that a more efficient use of Congressional time be provided for by divesting Congress of responsibility for the government of the District of Columbia, by delegating responsibility for private claims, and the like. In addition, the committee recommended that regulations affecting lobbies be strengthened, that salaries and retirement allowances for members of Congress be increased, and that certain physical improvements be effected in the capitol building itself so as to make it more modern and more efficient.

Although the joint committee admits that even these reforms would be incomplete—it dodges, for example, the issue of seniority with regard to committee posts—nevertheless it would be a long step forward in the direction of greater efficiency and responsibility on the part of Congress.

The Politics of Institutional Improvement

What are the chances that any widespread structural changes will be adopted in line with what has been suggested? To ask this question calls attention to the forces opposing change. To begin with, however, it should be pointed out that the proposed innovations in the committee system of Congress were first suggested by prominent members of that body. This in itself may indicate some possibility of reform, if accompanied by sufficient public interest and pressure.

The reform seems simple and urgent, and yet there is a good deal of opposition to it. There are vested interests in two quarters: first, on the ground that their power, influence, and prestige would be reduced, the members and chairmen of the smaller committees might resist a move to put them into subcommittees instead of independent bodies; second, the organized interest groups—such as business or agriculture—feel that the existence of a separate committee gives them a greater assurance of getting what they want out of Congress. Consolidation, they reason, might make this more difficult. If the party in power and Congress as a whole were to keep a stronger grasp on public policy

and the nation's purse strings, pressure groups might find it more difficult to drive their programs through than they do when committees are independent and sympathetic to particular interests.

Here, then, is the basic issue. Responsible government involves a balancing of interests to find the middle way which is the larger public interest. Diffused or splintered authority, on the other hand, exposes government to the virtually unrestricted aggressions of militant pressure groups. Government is a struggle for power, but it is also a quest for a common denominator which will assure stable relationships.

EXECUTIVE ACCOUNTABILITY [3]

The enrollment of a law on the statute books does not end the responsibility of the legislature to the people. Far from it. What the law will mean in practice and the extent to which it will fulfill the purpose originally intended depend on the skill with which it is administered.[4] No law is self-interpreting. It must be interpreted, section by section, throughout its entire administrative and judicial course.

It is the duty of the legislature, therefore, to exercise surveillance over the executive, to follow closely the unfolding process of administration because there are bound to be additional legislative responsibilities in connection with it. Amendments to the original law, for example, will often be needed. Moreover, the administration must periodically return to the legislature for more funds with which to carry the program forward as authorized by the statute. Further, if questions arise as to original intent, the legislature should be in a position to advise the executive as to what that intent was.

There is yet another reason, however, why surveillance of administration is the second large function of the legislature, next only to lawmaking: power is universally subject to abuse. This is particularly true when, as today—because of the size and complexity of social problems—legislation is general and administrative discretion later shapes it by interpretation. The legislature, therefore, must be on the alert to detect such things as outright dishonesty, distortion of the purpose of the law, a virtual breakdown in enforcement effectiveness, financial extravagance, arrogance toward and disregard of Congress, and stupid, discourteous treatment of the public. This supervision, of course, is the initial responsibility of the chief executive. His is the primary role, but it is also the legislature's coordinate responsibility because of the continuing need for amendment, finance, interpretation, and censure.

A discussion of executive accountability—involving as it does the question of the means by which the legislature exercises surveillance over the executive—inevitably brings up the question of the separation of powers in American government. This doctrine is a distinctive feature of our system and a chief

[3] See also Chapter 38, "Holding Administration Accountable."

[4] Discussed in Part Eight, "Public Administration: The Law in Action."

point of difference between presidential and cabinet government—although, as will be seen, the differences are sometimes more theoretical than real.

The Doctrine of the Separation of Powers as It Stands Today

The doctrine of the separation of powers incorporated into the federal and state constitutions does not mean—and was never intended to mean—that the three departments of the government shall operate in separate areas of their own. They are not watertight compartments. They are insulated rather than isolated—the current from the central powerhouse, taking the form of law and the political process, runs equally through all of them.

The separation of powers means that the integrity of each of the three branches of government shall be respected; that no branch shall attempt to dominate or do the work of the other; that the principle of the division of labor shall operate in government as it does in industry; and that each branch shall have the necessary authority and perquisites to make its peculiar function—legislation, administration, or adjudication—effective within its own sphere.

The separation of powers does *not* mean exclusiveness, lack of cooperation, jealousy and friction, and failure to supplement and buttress the efforts of the other branches.

The formula which the founding fathers intended is the definition of separate functions accompanied by correlation of their working parts. As W. W. Willoughby has pointed out in his *Constitutional Law of the United States,* "A fundamental principle of American constitutional jurisprudence, accepted alike in the public law of the federal government and of the states, is that, *so far as the requirements of efficient administration will permit,* the exercise of the executive, legislative and judicial powers is to be vested in separate and independent organs of government." (Italics ours.) But, he continues, each of the three departments, by express constitutional provisions, exercises many powers which, judged by their essential nature, partake of the characteristics of the other two.[5]

When we think of the separation of powers we usually also think of checks and balances. The two are related, but they have different functions. One separates, the other draws together. The system of checks and balances means that each department, largely for its own protection and to maintain the governmental equilibrium, checks the other two by exercising powers having some of the inherent characteristics of the others. Indeed, it might almost be said that each department invades the sphere of the other. Thus, for example, the powers of Congress which have judicial characteristics are the authority to determine the qualifications of members and to decide contested elections, as well as the express power to present and try impeachments, discipline its own

[5] W. W. Willoughby, *Constitutional Law of the United States* (New York, 2nd ed., 3 vols., 1929), III, 1619.

members, or institute proceedings against members of the public adjudged in contempt of the legislature.[6]

Congressional power which partakes of executive characteristics is the power of participating in the appointment and treaty-making authority; and the administration of the Government Printing Office, the General Accounting Office, the District of Columbia, and the territories and dependencies. In addition, Congress has oversight of the numerous regulatory commissions such as the Interstate Commerce Commission, the Federal Communications Commission, and the Federal Trade Commission.

In the executive branch, as holder of the highest office in the gift of the voters and the party in power, the chief executive naturally has great influence in recommending and securing legislation in accordance with the party's platform. In the case of the President, many state governors, and strong mayors generally, the executive's influence on legislation may be more pronounced than that of any other individual. The executive, therefore, does not merely come in at the end of the lawmaking process to decide whether or not the veto power shall be exercised; he is often the chief initiator of legislation as well. This is another similarity between the presidential and cabinet systems of government.

The chief executive's authority to initiate policies that later become law is so common a development in American government that it will receive special attention here. The authority is frequently set forth in specific constitutional provisions. In the case of the President, for example, Article II of the federal Constitution provides, "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. . . ." Similar authority carried in many state constitutions permits the governor to initiate public policies.

That over a period of time the initiative in legislation has shifted from Congress to the chief executive is nowhere more graphically stated than in the report of the Joint Committee on the Organization of Congress, which points out that "most bills introduced by Members are merely conduits for the executive departments, private organizations, and individual constituents. More than half the bills dropped into the 'hopper' originate in the Federal departments and bureaus. . . . Although comparatively little legislation originates in Congress today, that body is still responsible for sifting, testing, and debating all legislative proposals wherever they come from and for determining the final shape of public policy." [7]

If the legislation of recent years, particularly at the federal level, is analyzed, it will be found that most of the basic measures have been so-called administration measures. That is, the chief executive and his cabinet have sponsored them with, of course, the active consent and cooperation of the majority lead-

[6] See *Anderson* v. *Dunn* (6 Wheaton 204. 1821).

[7] Report, *op. cit.*, p. 11.

ership in Congress. Indeed, the individual legislator today has little chance of getting a major bill through unless it is recognized as an administration measure—another respect in which our system and the British have tended over the years to converge. This does not mean, of course, that all administration measures are automatically passed by Congress. There are outstanding exceptions.

There has been widespread criticism of this growing tendency for the administration to initiate legislation, but, as an editorial in a metropolitan newspaper pointed out in March of 1945, "The realization appears to be spreading that our federal government has had to grapple with new and complicated problems, that a Congress organized for horse-and-buggy days has been ill equipped to do so, and that legislation has necessarily originated with the executive department to fill the vacuum." [8]

In the federal government, most amendments to existing legislation are actually drawn in the executive departments affected. The customary procedure is for the cabinet officer or bureau chief to speak to a Congressional committee chairman about the necessity of an amendment or supplementary legislation. If the committee chairman approves, the legislation is drafted in the executive department, often by a departmental committee on legislation. The chairman of the committee of Congress and his colleagues are then given an opportunity to change the draft if they wish. When the bill is introduced, a public hearing may be held, and further changes in language may be made. The bill is then referred to as an administration measure, whereupon the chances of getting a rule from the Rules Committee, of placing the bill on the agenda, and of having it passed are very good.

So extensive has the bill-drafting activity of the federal executive departments become that a special division on legislation has been created in the Bureau of the Budget. All draft bills emanating from the executive departments are supposed to be cleared there before they can be said to have the endorsement of the administration. Another function of this unit is to clear legislation affecting two or more interested administrative departments, whether the draft originates in a committee of Congress or in one of the executive agencies. When comments from the several executive agencies interested in a particular measure have been received in the Bureau of the Budget, a consolidated statement is prepared which becomes the official position of the chief executive. Or, if the President is not sufficiently interested, the several viewpoints are sent on to Congress without recommendation or comment.

In Article I the Constitution says, "*All* legislative powers herein granted shall be vested in a Congress of the United States." (Italics ours.) Is this admonition violated under the practice just described? Some members of Congress feel that we have come close to that point. When a large share of our national legislation originates in the executive branch, they say, and when there is more

[8] *The Chicago Sun*, March 19, 1945.

sublegislation in the form of orders, rules, and interpretations coming out of the enforcement agencies than the total of formally enacted legislative measures, then the doctrine of separation of powers is being subverted. And it must be conceded that the partial abdication of Congress of this policy-making function may be dangerous.

However, if Congress wants to keep the initiative in legislation, then Congress must equip itself with facilities comparable to those of the executive departments. For Congress, this means larger and better staffs for its committees and its research work—men who will do legwork as well as brainwork —and greater facilities for the study and drafting of bills. It is chiefly a matter of tipping the balance back toward legislative initiation, rather than disqualifying the executive departments in this field. Cooperation, therefore, is an essential part of the doctrine of separation of powers. The role of the executive in lawmaking will be large in the future, as it should be. But our democracy would be threatened if at the same time our legislatures failed to strengthen their own resources, initiative, and influence.

So much for the manner in which the legislative and executive branches partake of the characteristics of each other. The effect of the judiciary on both the legislative and the executive branches will be taken up in the next part of the book.

Methods of Checking Up on the Executive

The facilities available to Congress whereby surveillance of the executive may be secured are far from adequate. To be sure, Congress receives periodic reports from the executive agencies for which it provides funds. These are good in their way but from the standpoint of current control they are hardly effectual. In addition, once a year Congress has a chance to question the department heads when they appear at their appropriation hearings,[9] sessions which get down to fundamentals. The clerk of the appropriations committee is usually effective in suggesting the pertinent information that should be brought out. Agencies are put on the carpet for their sins of commission and omission, but the appropriations hearings have the same defect as the annual reports—they occur after the event.

Financial supervision is also exercised through the General Accounting Office, which Congress considers its "watchdog of the public treasury." This office is responsible for a pre-audit certifying that a proposed requisition on the treasury by any federal agency has been duly authorized by Congress. This, too, has been helpful, but, as will be seen, it is a cumbersome administrative procedure. Further opportunities to question responsible executives are found when Congressional hearings are held on new legislation, because every bill affecting a department involves an invitation to its executive to appear before the legislative committee to express his views. The surveillance possibilities of

[9] Dealt with in Chapter 37, "The Budget—Instrument of Planning and Control."

this device are limited, however, because attention is naturally centered on the proposed legislation and its future effect rather than on the experience of the past. Moreover, members of the legislature frequently write letters to administrative heads of departments, either at the instigation of a complaining constitutent or on their own initiative; the replies are a valuable source of information and a good means of checking. The press, with its nose for news, brings into the glare of publicity many an intolerable situation or rank injustice.

These methods are useful and essential. No one would think of dispensing with them, but they are hardly adequate.

Special Investigations of the Executive

A natural suspicion of the executive inevitably leads to fears and apprehensions on the part of congressmen, some of which turn out to be justified. This attitude is bound to remain and even to grow unless regular methods can be secured for satisfactory, periodic checkups by Congress.

The device which both Congress and the state legislatures have used most extensively in this field is the investigation of executive action by special committees appointed from the legislative body. In recent years Congress has had almost as many special committees as regular committees—they abound also in the state legislatures; these virtually double the committee assignment load of individual members.

How effective are these special committees? In terms of age and tradition it might seem that they had proved themselves beyond the shadow of a doubt. From the First Congress there have been scores of investigations, the largest number of which have dealt with complaints against or suspicions of the chief executive or one of his official family. President Jackson had a battle royal with Congress over investigations of his executive departments and programs. No one has been exempt—Abraham Lincoln, General Grant, Theodore Roosevelt, Woodrow Wilson, Franklin D. Roosevelt. Tons of documents have been issued by these special investigations, which have sometimes gathered much useful information and disclosed actual abuses, as in the famous Star Route and the Teapot Dome scandals. But such inquiries are too sporadic. Long before he became President, Woodrow Wilson correctly characterized them as political fishing expeditions. They have the same shortcoming as annual reports and appropriations hearings—they come too late.

Investigations of this kind were once common in Great Britain, where Parliament was determined to check up on what the executive was doing. With the introduction of responsible government in the eighteenth and nineteenth centuries, however, they gradually disappeared. Parliament has substituted a more useful device called the Royal Commission. These specially created commissions consist of experts and legislators who study major problems such as housing, unemployment, or the future of the coal industry, and report back to Parliament. In practice, this has proved to be an excellent method. In recent

years Congress and the state legislatures have occasionally adopted a similar procedure with beneficial results.

Special investigating committees, therefore, have their place in government but they should be supplemented by methods, such as the Royal Commission, that are not so sporadic.

Question Time

Another useful device of supervision by the legislature is a regular procedure by which the chief executive and any other executive officials whom the legislature wants to hear are asked to appear before it and answer questions on particular matters of interest. When the House of Commons began extensively to use the so-called question hour, sporadic investigations disappeared. A regular time is now set aside in many national parliaments, as in Great Britain, for the appearance of executive leaders whom the members wish to hear. Questions in writing must be presented in advance in order to give the executive a chance to make inquiries and to look up the answer if he does not have it at hand.

A recent proposal by Congressman Kefauver would make the question time a reality in this country.[10] Already we have tended in that direction, as indicated by the comparatively recent appearances of Presidents before Congress in joint session. Such appearances invariably have a favorable effect. False fears are dissipated. The legislature is made to feel that it is a partner and that the executive realizes the need of consulting it. Much useful information that should enter into legislative decisions is made available by the executive at such times.

The direct, forthright approach is supposedly an American characteristic. It will be surprising, therefore, if the question-time device is not widely adopted by legislative bodies in the United States as soon as they become aware of its advantages. If we do some straight thinking about the separation of powers, we shall see in the question period a desirable expedient in support of, rather than in conflict with, that theory.

PRESIDENTIAL AND CABINET GOVERNMENT

As has been noted, American governments now do so many things that were once thought a part of the cabinet system that the differences between the two tend to shrink. Executive initiative in legislation, appearances before the legislature, executive budgets, the growing prominence of administration measures, joint meetings on legislation, the use of outside experts for the investigation of basic problems—these are all evidence of the convergence noted. As a nation we have taken some of the best features of responsible government and incorporated them more or less informally into our own permanent institutional structure.

[10] See his article, "The Need for Better Executive-Legislative Teamwork in the National Government," *American Political Science Review*, April, 1944.

Our chief executive has a fixed term of office. He is elected by the voters and remains in power until the end of his term irrespective of whether he and the legislature work in unison. In cabinet government, on the other hand, the Cabinet is created out of the legislature; the Prime Minister and his colleagues must hold seats in Parliament; one and all go out of power whenever the majority in the legislature fails to support them on important issues. Thus when legislative-executive accord fails, a new Cabinet must be formed. It also means that all legislation and financial measures of public import must have the blessing of the Cabinet and be introduced by it.

Obviously, this is full-fledged responsibility in government. In the United States, we do not have that much responsibility or that much assurance of cooperation between the chief executive and the legislature. Is it possible to secure the substance of responsibility and cooperation within the framework of our system? Some of the methods by which it might be done have been suggested.

Legislative-executive relationships have been called the most crucial, and at the same time the most difficult, area of the American constitutional system. This strategic nexus becomes even more important as the United States moves into a period where the alert anticipation of future problems and the skillful blending of diverse interests seem to be requisite if the new adjustments necessary in the international field are to be made in such a way as to preserve our civilization.

SUPPLEMENTARY READING

1. The committeee system: Woodrow Wilson, *Congressional Government* (Boston, 1885), Chapters 1–4, is still unexcelled. See also *The Reorganization of Congress,* Public Affairs Press (Washington, 1945), Chapter 2, by a committee of the American Political Science Association. The earliest comprehensive study was L. G. McConachie, *Congressional Committees* (New York, 1898); see also A. C. McCown, *The Congressional Conference Committee* (New York, 1927).

2. Legislative leadership: See P. D. Hasbrouck, *Party Leadership in the House of Representatives* (New York, 1927); Pendleton Herring, *Presidential Leadership: The Political Relations of Congress and the Chief Executive* (New York, 1940), Chapters 1–4; and Roland Young, *This Is Congress* (New York, 1943). For state governments, see Leslie Lipson, *The American Governor: From Figurehead to Leader* (Chicago, 1939), Chapters 4 and 9; Austin F. Macdonald, *American State Government and Administration* (New York, 3rd ed., 1945), Chapters 8 and 9; and A. E. Buck, *Modernizing Our State Legislatures* (Philadelphia, 1936).

3. Investigations of the executive: *The Reorganization of Congress, op. cit.,* Chapter 3; Marshall E. Dimock, *Congressional Investigating Committees* (Baltimore, 1929); M. N. McGeary, *The Development of Congressional Investigative Power* (New York, 1940); Arthur W. Macmahon, "Congressional Oversight of Administration," *Political Science Quarterly,* LVIII (1943), 161–190, 380–414; and Harvey Walker, *Law-Making in the United States* (New York, 1934), pp. 228–238.

4. Presidential and cabinet government: Woodrow Wilson, *Congressional Government, op. cit.;* Pendleton Herring, *Presidential Leadership, op. cit.,* Chapters 6 and 7; Harold J. Laski, *The American Presidency* (New York, 1940), Chapter 3; Leslie Lipson, *The American Governor, op. cit.;* and James W. Garner, *Political Science and Government* (New York, 1928), pp. 423–438. On responsible government in Great Britain, see W. Ivor Jennings, *The British Constitution* (London, 1942); Harold J. Laski, *Parliamentary Government in England* (London, 1938); and W. Ivor Jennings, *Parliamentary Reform* (London, 1934).

CHAPTER 25

Lobbying

AN EARLIER CHAPTER has shown how interest groups today are so influential and powerful a force in society that they are taking over functions properly the responsibility of government, with the result that representative government is now said to be on trial. Can these interests operate through the regular channels of political parties, elections, and legislatures? Or will they eventually by-pass the formal processes entirely and parallel our governments with a rival system of their own? That chapter has also pointed out how the Big Three of agriculture, labor, and industry, with their numerous counterparts, are already competitors of—and in some ways are more influential than—our major political parties.[1] Can our system of representation—of which political parties are an essential element—absorb the functions that pressure groups now discharge? It must, if responsible government is to endure, because the effectiveness of any institution is ultimately measured by the extent to which it does the work set for it.

The representative character of legislative assemblies is challenged by pressure politics which distort the bases of representation by inordinately emphasizing groups which are organized. Loosely coordinated, multiple committees have placed the legislatures in an exposed position where, as Woodrow Wilson pointed out, they are subject to the power and manipulations of the lobbyists. "This accessibility of the committees by outsiders," said Wilson, "gives to illegitimate influences easy approach at all points of legislation." Indeed, so great has the impact of these forces become that we now speak in a matter-of-fact way of the Third House of the legislature—the lobbies.

This chapter will first define lobbies, and explain the reasons for their growth and power. Next it will consider the relation of lobbies to representative government, their financial resources, and the methods they use. This leads to an outline of certain principles relating to pressure politics. There follow a discussion of the attempts made to regulate lobbies, and in conclusion an indication of the chief alternative to regulation—which is the establishment of a third house of the legislature—and the possible consequences of such a development.

What Is Lobbying?

The original meaning of the word "lobby" is innocuous enough. Every legislative chamber has an anteroom or main corridor, known as the lobby. People

[1] Chapter 20, "Interest Groups in American Politics."

wait there as they do in a hotel lobby to see someone within. In common usage, however, the term has been extended: *lobbying is the influencing of individual members and the legislature as a whole, by direct contact or the use of propaganda, in order to accomplish or defeat the passage of particular bills.*

Lobbying assumes three principal aspects, all designed to further the interests of the group in question. The lobbies seek to elect acceptable candidates, and defeat those who are unfriendly. They draft legislation acceptable to their group, and support or combat legislation pending in the legislature according to whether it is favorable or unfavorable to their interests. And finally they propagandize for the viewpoints and programs of their group. The field of legislation is the activity most emphasized.

Political scientists used to speak of lobbies as "The Invisible Government." Lobbies were there; their influence could be seen; but they were not a part of the official framework of government. They are still unofficial, but they are hardly invisible. Sometimes in their arrogance they even boast that they are official. In *American Politics* Odegard and Helms cite the words of a spokesman for the United States Chamber of Commerce: "There has developed a recognized third house; not the third house of fraud and bribery, but the third house that states its desires openly and fairly. This third house is composed of organizations such as the United States Chamber of Commerce, the National Education Association . . . the labor groups, and the agricultural groups. These bodies openly and intelligently further the interests of those whom they represent. Declarations of policy by such groups are often of far greater significance than statements made by party leaders."

As early as 1924 William Allen White, the Emporia editor, said: "The existence of these new forces has changed our political life almost fundamentally. No constitutional amendment has done more to modify the importance of the Congress, and to a certain extent, the executive and through it the judiciary than have these organs of public opinion."

There are well over 500 lobbies in Washington alone, and each year their number grows. At least a quarter of these are permanent and full time. A classification by Professor Pendleton Herring in 1929, in *Group Representation before Congress,* revealed 13 trade associations, 10 agricultural, 8 labor, 10 professional, 9 women's, 8 reform, and 11 patriotic and nationalist organizations which might be called major groupings.

The lobbies are relatively more active at the state capitals than in Washington. In a supplement of the *Annals of the American Academy,* published in 1929, political scientist E. B. Logan reports that of the lobbies either formally registered or operative at a representative list of state capitals, Ohio had 170, California 127, Massachusetts 77, New York 40, New Hampshire 44, and Maine 45.

At the level of city government most lobbies are naturally local rather than of wider application, but they are nonetheless numerous and influential. The chamber of commerce, organized labor, welfare agencies, public-utility associa-

tions, church federations, gambling interests, professional groups, and firms seeking lucrative contracts lie in wait for the members of the council, the mayor, and other city officials.

Wherever there is a legislature, there also is a host of lobbies. When interest centers on national legislation, the pressure groups concentrate their attention at that point. When interest shifts to the state or municipal level, the lobbies adjust their emphasis accordingly. Generally speaking, however, their strategy is one of complete coverage. Lobbying has come to be as certain as death and taxes.

Why the Lobbies?

The United States is a continental expanse with a great diversity of interests. Their size and variety alone go far to explain the number of pressure groups found at state and national centers. But while these factors might account for the numbers, they alone do not explain the influence. In the last fifty years government has become increasingly important. The lobbies prove that organized groups have sensed that development.

According to the American tradition, government is something to be used, not served. We try to get all we can out of it. The railroads did. Infant industries have. Farmers and organized labor rely heavily on its power. But at the same time we have a tradition of keeping government in its place. Instead of attempting to improve the representative character of government when we want more from it, we try to work from without rather than from within. We emphasize lobby effectiveness instead of legislative efficiency, pressure group organization rather than governmental organization.

This noncivic attitude caused James M. Beck rather exasperatedly to say in 1920 that "our political system . . . is slowly disintegrating into groups . . . and transferring power to non-political groups. Men are filled with ambition to dominate groups rather than politics." [2] Does Abraham Lincoln's dictum apply here? Is it dangerous to divide a house against itself? When we by-pass representative government, do we unwittingly encourage minority rule?

LOBBIES AND REPRESENTATIVE GOVERNMENT

If the government were so organized as to give legitimate representation to all interests—economic as well as geographic—could the pressure groups and their lobbies have grown so strong? It seems likely that one explanation of the growing influence of the Third House may in fact be found in the shortcomings of our representative machinery and the nature of group organization. There are several points involved:

The representative character of pressure groups arises partially because of the inadequacy of our system of geographical representation, the formal basis of the American plan of government. If an area is predominantly agricultural,

[2] *The New York Times,* January 24, 1920.

the various minor interests are not likely to be recognized, and hence they turn to their respective pressure groups. The same thing may be found wherever there is specialization. Only where there is a more or less balanced diversity of interest is the geographical basis of representation likely to be satisfactory without some kind of supplementation, as from a pressure group. By necessary inference, therefore, a balanced culture is likely to keep special interest representation within reasonable bounds, while a highly specialized culture is not.

The compromise character of the major political parties may encourage pressure politics. Odegard and Helms have stressed the possible significance of this factor. "In the United States," they say, "we cling to the fiction of a two-party system which assumes that people may be divided into two camps. However valuable this may be as an electoral device, such a system cannot be said to be representative in any realistic sense."

Our two major political parties are internally diverse but essentially alike in their composition and support. Each is a cross section of the major economic, social, and political interests comprising society as a whole. In consequence, say these authors, "differences *within* the parties are greater than differences *between* them, and in the determination of policy, *pressure politics* are usually more important than *party politics*." [3] This is an arresting thought. Its bearing on the problem of party responsibility in legislative assemblies has already been noted. But may not the very diversity within the parties indicate that representation is already effective, and that what is needed is a better organization of party leadership and responsibility? After all, democracy is based on a blending of particular interests, all seeking the common interest.

The difficulty is that when the political party attempts to be all things to all people, each interest is likely to doubt just how much will be done directly for it. This causes the interest group to exhibit a guild tendency—a feeling of militant group consciousness which assumes that anything it gets will be the result of its own efforts and that no amount it gets is more than justified. The inevitable consequence of such an attitude is to emphasize selfish and narrow aims and to disqualify the leadership of the pressure group for an understanding of the general interest.

Like government, the pressure groups require internal organization and leadership. Men rarely know what constitutes their own best interest, nor do they generally have a coherent policy for obtaining it, as Walter Lippmann has pointed out in his *Public Opinion*. For telling the group what its interests are the leadership of the pressure group is paid as much as for representing it to outside agencies, including the government. As a result, the rank and file of the group come to depend more and more on their salaried officials. As this dependence grows, the paid officials tend increasingly to emphasize the group identity because their names and fortunes are blended with it. Thus there

[3] *American Politics, op. cit.*, p. 752.

develops an attitude of group exclusiveness and jealousy toward other institutions, government included.

Another factor explaining the growing power of pressure groups is that *government has become so large and strong that pressure groups need adequate reporting and surveillance devices if their interests are to be protected and their influence is to be registered.* This observation applies particularly to the federal government and the larger state governments, where the multiplicity of programs is sometimes confusing even to one familiar with the government information manual. Weekly or monthly reporting services, such as that of W. N. Kiplinger, and the referenda methods of interest groups, such as that of the United States Chamber of Commerce, are among the most valuable means whereby groups keep constantly informed and are enabled to swing into action through their paid lobbyists.

Because of the nature of his work, the lobbyist comes to have a cynical view of government. Government, he concludes, has no real public welfare functions—it is merely a matter of who can get to it first and control its decisions. Similarly, the public interest is just a sentimental delusion of idealists. The public interest, says the lobbyist, is the program that gets support and keeps it. Government is neutral, something to be used; it has no morals because it is merely a tool.

This is the widespread view of government as broker, summarized by Jay Gould of the Erie Railroad who once told a legislative committee: "In a Republican district I was a Republican; in a Democratic district I was a Democrat; in doubtful districts I was doubtful; but I was always Erie."[4]

Most lobbyists assume that their organization stands for principles while the soulless government has none. The prevailing opinion seems to be that we should use the government because we must, but that we should not become attached to it. Samuel Gompers, the Grand Old Man of the American Federation of Labor, once said: "We must be partisan for a principle and not for a party. Labor must learn to use parties to advance our principles, and not allow political parties to manipulate us for their advance."[5] This is the language of almost every interest seeking favors or noninterference from government.

The Election of Safe or Friendly Candidates

When powerful interests enter the political arena to back and elect their own candidates, they become a far more serious threat to good government than when they merely use political parties to purchase action and immunity. Either is serious enough, but the practice of "owning" legislators and executives is dangerous. Sometimes an interest group finances the campaign of one of its own officers or employees; if he wins he is sure to be more than cooperative. In this case, however, the connection with the interest is so obvious that

[4] Quoted in M. Ostrogorski, *Democracy and the Organization of Political Parties* (New York, 1908), II, 185.

[5] Samuel Gompers, *Labor and the Common Welfare* (New York, 1919), p. 138.

the successful candidate may not prove as valuable as another. More frequently, therefore, the interest supports someone who has been consistently re-elected over a period of years and relies on him to be "friendly."

In every legislative body there are always individuals who stand out as the avowed champions of this or that interest. They are constantly sponsoring or opposing something that affects their group. Touch their sensitive points and they immediately react. The testimony of a New Jersey legislator is applicable elsewhere: "A new member of the legislature," said he, "soon grows to learn from their actions that certain members speak for the banks, for the insurance companies, for the physicians, and so on."

Fortunately for democracy, this situation is not widespread. Whenever the number of those who can be definitely labeled as spokesmen for particular interests exceeds 5 or 10 per cent of the membership of the legislature, it is time to be seriously worried about the future of liberal democratic government.

The Lobby Writes Its Own Ticket

A large percentage of the bills introduced in the legislature emanates from lobbies. Sensing that legislation on a particular subject is inevitable, the interest group may draft its own measure, in the expectation that it would be more favorable than a bill coming from someone else. Or if the group seeks favors or immunities from government, a friendly legislator may suggest that the lobby write its own ticket and he will introduce it as his measure.

Oftener than not, however, the collaboration is between lobby and administrative department rather than between lobby and individual legislator. A department of agriculture in conjunction with the Grange, the Farm Bureau, or the National Farmers Union—perhaps all three—will collaborate in drafting a bill; or the American Federation of Labor and a department of labor; the United States Chamber of Commerce and the Department of Commerce; the American Legion and the Veterans Administration; the National Education Association and the Office of Education; or the Federal Council of Churches of Christ in America and the Federal Security Agency.

For each major grouping there is likely to be a corresponding executive agency of the government, and between them much legislation is drafted. Studies of the Ohio Senate made by Professor Harvey Walker at ten-year intervals, 1929 and 1939, indicated that nearly three fourths of the bills introduced were attributable to lobby sponsorship, executive draftsmanship, or a combination of the two. Only one fourth seemed to be the independent work of the senator sponsoring the legislation.

Some lobbies maintain research staffs that make those of the government appear insignificant by comparison. The difference is likely to be more pronounced when the comparison is with the legislature, however, than with the executive departments, because in general the legislature is understaffed in the field of research. Moreover, when it comes to drafting bills of its own or

pointing out the holes in those pending before a legislative committee, a well-financed pressure group can afford to purchase the best legal talent available.

FINANCIAL RESOURCES OF INTEREST GROUPS

In a chapter in *The American Political Scene,* edited by Edward B. Logan, Harwood Childs cites an example of the funds available to major pressure groups. Of the figures that follow, not all of the money was spent on political activities per se, but directly or indirectly a large percentage was accounted for in that way:

FINANCIAL RESOURCES, VARIOUS INTEREST GROUPS, PUBLIC RELATIONS, AND POLITICAL ACTIVITIES

American Federation of Labor (1934–1935)	$1,598,181
American Farm Bureau Federation (1932–1933)	109,950
U. S. Chamber of Commerce (1934–1935)	2,129,392
American Bankers' Association (1932–1933)	607,695
American Bar Association (1932–1933)	200,729
National Association of Manufacturers (1933, 11 mos.)	213,300

Source: Harwood Childs, "Pressure Groups and Propaganda," in Edward B. Logan (ed.), *The American Political Scene* (New York, 1936), p. 212 (note).

Odegard and Helms note in *American Politics* that in one four-year period—1913 to 1918 (not including 1916)—the United States Brewers' Association raised $4,457,941 and that "this money was used largely to promote legislation favorable to the liquor traffic and to defeat hostile legislation."

CROSS SECTION OF INTERESTS, MASSACHUSETTS LOBBY, 1925–1926

Interest groups	*Number of permanent organizations*	*Sums spent 1925–1926*
Transportation (public utilities)	12	$74,770
Public service corporations	16	50,800
Insurance	9	29,900
Manufacturing	6	17,090
Banking	5	15,287
General civic betterment*	4	9,090
Semiprofessional workers†	8	9,031
Skilled labor	8	7,046
Retail merchandise	5	6,184
Automotive	3	5,560
Private transportation‡	4	5,684
Professional§	6	5,088
Religious	5	2,600
Agricultural	4	409
Charitable	3	294

* Antisaloon League, Civil League, Civil Service Reform.

† American Legion, insurance agents, civil service employees, stationary engineers, retail credit men, and the like.

‡ Motor bus and motor truck associations.

§ Doctors, teachers, lawyers, engineers, funeral directors, and chiropractors.

Source: F. K. Beutel, "The Pressure of Organized Interests as a Factor Shaping Legislation," *Southern California Law Review,* III (1929), 31.

A good picture of expenditures before a state legislature is afforded in the preceding figures compiled by Beutel. It shows the major lobbies which operated, and the expenditures of each, during the 1925–1926 sessions of the Massachusetts legislature.

One reason the legislatures commonly spend so little on their research staffs is that the pressure groups would rather do the work for them. If the legislatures are to have more adequate staffs, therefore, for both research and bill drafting, the civic pride of the population as a whole must be relied on to bring it about. And, unfortunately, it is just these interests—civic and consumer—which are least organized and least influential.

METHODS USED BY LOBBIES TO INFLUENCE LEGISLATION

The techniques of lobbying have changed considerably in a generation. Bribery of officials or their outright control has been found a costly procedure. It is likely to boomerang. Many an executive has said, "When we spend money directly to control legislators, they usually end up by blackmailing us; the business cannot stand this kind of adverse publicity." Dinner parties of the kind made famous by Gary, the steel man, are more discreet. Even the buttonholing of legislators and threats of what the pressure group would do to them—made famous in the fight of the Antisaloon League—are today frowned on by the skillful and successful lobbyist. He has become more suave. He is more interested in the long pull, the underlying good will, and less disposed to use bludgeoning methods.

In the biography of *Uncle Joe Cannon,* written by L. W. Busbey, we are told that "the old-fashioned lobbyist no longer cuts any figure in Washington because for him we have substituted what may be called politics by propaganda. The way to secure legislation and escape all suspicion of ulterior motive, is to form an association and proclaim its object as moral."

The next step is to constitute a front committee of names—respected citizens whose motives will not be impugned. But the paid lobbyists do the real work, for it is they who have the finesse. They haunt the corridors of the legislature, keeping a finger on the pulse of Congress at all times. They offer to assist in drafting legislation and providing data. They make friends in the legislature they can rely on, and size up those who are doubtful or hostile. Meantime, the strategy is to manipulate propaganda in favor of or against particular measures. In this it must be made to appear that the people back home are expressing themselves spontaneously, without artificial stimulation from a central headquarters, although in fact such expressions are often spontaneous.

Some of the more common methods of present-day lobbyists are these:

To stand in well with the party leaders. During a Congressional investigation of the Sugar Trust in 1894, the president of that organization said, "Wherever there is a dominant party, wherever the majority is very large, that is the party that gets the contribution, because that is the party that controls the real

matters." But to play it safe, one should contribute to both parties as, in fact, many prominent people do.

To analyze the members of the legislature. To get a clear idea of how they may be expected to vote on issues affecting the interest group, many lobbyists now maintain a card catalogue, classifying the members of the legislature as friendly, doubtful, or hostile.

Some interest groups even go so far as to send out questionnaires to candidates in advance of the election, asking for personal data and their reactions to particular public issues as well as to specific problems in which the lobby is interested. If the group is thought to influence a large number of votes, the candidate will feel it unwise to refuse the invitation to fill out the questionnaire, however reluctant he may be. Once he is on record his commitments hang over his head, pledging him in advance to a certain course of action if he is elected. Lobbyists then use these statements to advantage when bills in which they are interested come before the legislature of which he is a member.

To influence the choice of presiding officers, committee chairmen, and appointees to committees affecting the group's interests. A Senate investigation brought to light a letter from the files of the Association of American Railroads, in which it was said: "We are making a very serious effort to get some friends on the next Rivers and Harbors Committee of the House. A great deal of important legislation will be referred to that committee dealing with waterways and particularly the operation of the Federal Barge Line." [6]

To draft legislation and provide information and friendly counsel. This area of activity has been covered in the preceding discussion.

To present testimony at committee hearings affecting the interest group and to attend others of related interest. This is the most open and aboveboard method the lobby can use. Sometimes the paid lobbyist attends and testifies in person, but more often prominent members of the group are brought in from distant points. Hearing from the folks back home usually has more effect on legislators than testimony by paid lobbyists.

To confer with legislators in their offices or in the lobby of the legislature. This also is an open method and much used. Some lobbyists have a regular beat similar to that of a professional newspaperman. Naturally they concentrate on members whom they regard as sure or as on the fence.

Usually each lobbyist has one or more key men on his string, legislators on whose confidence and sympathy he can rely. If he works for a farm lobby they will be from farm states; if for a labor lobby, from industrial centers in which organized labor is strong; if for a war veterans' organization, the legislator probably will turn out to be a veteran himself.

Letters and telegrams from constituents back home. The work of the lobbyist, like that of the successful executive, is largely a matter of skillful timing. He must know when to turn on the heat. As the bill in which he is interested

[6] Quoted by V. O. Key, *Politics, Parties and Pressure Groups, op. cit.*, p. 216.

moves through committee and proceeds to the floor and finally to a vote, the flood of letters and telegrams to legislators will increase until it reaches a peak just before zero hour. The most potent pressure group, says columnist Frank R.



Des Moines Register and New York *Herald Tribune* Syndicate.

Kent, is the one that "can produce the largest number of letters and telegrams." This is doubtless true. Telegrams are like votes—they measure power and influence, and to ignore constituents who send them is to court defeat at the next election. However, it is a method which must be used with care, for much depends on the manner in which it is employed. If all the telegrams in a particular campaign are identical they are less persuasive than if they reveal

some spontaneity. Moreover, many independent legislators are more annoyed by such demonstrations than influenced by them.

A recent development in the program of the United States Chamber of Commerce has been the organization of national affairs committees—the N.A.C.—for the purpose of making congressmen so aware of the local businessman that the political effect will be positive and sharp. "Certain minority groups with anti-business leanings are stronger and fiercer than ever before," says the handbook of the N.A.C. "Business can no longer sit back and merely hope that Congress will act wisely and well. Everybody must become interested in the issues and in what Congress does about them."

The program of the N.A.C. includes organizing active local units, sending congressmen letters of appreciation for their "good votes," sending them "fine large pictures of native scenery . . . for their offices," as well as "some local food product which they can have served to their colleagues in House and Senate restaurants." The handbook of the N.A.C. concludes with the admonition that "stereotyped form letters won't give a senator courage, or information, or insight—or even the willies. But 1,000 individual letters, written from information provided by the N.A.C., can head in, smoke out or buck up any man who votes on Capitol Hill!" [7]

A Washington representative of a large farm organization once boasted that "he could have delivered to Senators more than 150,000 telegrams in forty-eight hours, favoring or opposing any pending measure, whether it dealt with agriculture or not. He candidly admitted that most of the telegrams would be synthetic, inspired, directed and paid for by his own men, but none the less effective for that." [8]

Lobbying has become big business. To the telegraph companies it must be almost as lucrative a source of revenue as horseracing.

Friendship, social activities, dinner parties. Many lobbyists are chosen because they are good mixers. In recent years this factor has played an increasingly important role. In the vicinity of Washington, for example, certain lobbyists have established attractive country homes where on almost any week end while Congress is in session members of that body may be found mixing socially with the host and his carefully selected friends. Riding, fishing, mint juleps, and other diversions are on the list. Outwardly, these week-end dates are merely social. Usually no "business" is discussed at such times, but later the genial host may feel assured of an open door and a friendly welcome when he makes his legislative rounds.

Propaganda techniques. Propaganda methods, widely used by interest groups, may be immediate or long range. The former attempts to secure favorable action on a pending measure; the latter is designed to create a climate of opinion on the part of legislators and the public favorable to the "principles"

[7] Thomas L. Stokes' column in *The Chicago Sun*, May 24, 1945.

[8] Frank R. Kent, "Scaring the Senate with Synthetic Telegrams," *Des Moines* (Iowa) *Register*, February 20, 1935.

the lobby espouses. Every known medium of communication is used—newspapers, radio, books, magazines, lectures, and even endowments to educational institutions.

In the famous public-utility investigation of 1928–1929, which laid bare the most ambitious lobby this country has ever seen, "everything but skywriting" was employed, to quote Odegard and Helms. The attempt here was to influence the fundamental beliefs and preferences of the American people: "We are going to their [the legislators'] constituents which is our constitutional right," said the lobby. "We are going to depend upon the back fire." There was a back fire, but not the kind the lobby expected. In this case, with a budget of $28,000,000 a year, there was virtually no limit to what the "educational" campaign of the utility lobby might attempt. One advertising agency was paid $84,000 a year to supply "canned" editorials on utility matters and claimed to have secured over 65,000 pages of space in four years. Clubs were furnished with speaker's handbooks. Special public-utility research bureaus were financed in universities, and professors were paid high salaries for allowing their names to be used in connection with this activity. It was an advertising man's dream. But like so many public relations stunts, it was oversold When the federal government investigated the power lobby and publicized the results,[9] the public conscience was shocked. The people are in no danger of losing their sense of morality and fitness, even if some of the lobbyists are.

It takes legislators of integrity and stamina to stand up against the aggressions of modern lobbies. If one technique does not work, the lobbies will use another. Fortunately, there is less outright corruption of public officials and unabashed domination by powerful interests than there once was, and for this we can be thankful. Professor John D. Hicks, author of *The Populist Revolt,* in commenting on the domination of state governments in the West by lobbies, remarks: "It is not unfair to say that normally the railroads, sometimes a single road, dominated the political situation in every Western state. . . . For a long time . . . by fair means or foul, their wishes in most localities were closely akin to law." The late Senator Hiram Johnson of California, who in his early career was a Progressive supporting Theodore Roosevelt, got his early reputation as Governor of California by smashing the Southern Pacific Ring. When he established a regulatory commission for railroads, one of the railroad officials remarked, "So they are going to regulate the railroads, eh? Well, then, the railroads must regulate the regulators."

Today powerful pressure groups are not so openly arrogant, but in their determination to dominate the legislature and to write their own tickets at any cost, many still exhibit a noncivic attitude which may well give us pause. Stuart Chase does not exaggerate when, in *Democracy under Pressure,* he concludes that we Americans must become less selfish in our group activities

[9] *Investigation of Lobbying Activities,* 74th Congress, 1st session; cf. Odegard and Helms, *American Politics, op. cit.,* p. 774.

and more comprehending of what constitutes the larger interest, or we must expect anarchy and class strife.

The lot of the public-spirited legislator is not an easy one. Political scientist Charles E. Merriam—who was once a member of the Chicago city council and twice ran for mayor of that great city—says in his book, *Chicago: A More Intimate View of Urban Politics,* that the adverse influences working on the aldermen "are stronger than the positive influences. The press has a veto upon most ordinances; the opinion of experts has a veto; the mayor has a veto; business and labor have a veto; the nationalities have a veto; the religions have a veto in most cases; the party organizations have a veto; liquor has a veto; and this does not exhaust the list of the interests that may intervene to prevent the passage of a law."

Is it any wonder that Teddy Roosevelt believed the best fight for red-blooded men to be in the field of politics?

PRINCIPLES RELATING TO PRESSURE POLITICS

If popular government does not remain free and independent, it will ultimately be converted into something else. Interest domination and popular control mix no better than oil and water. At the same time, the right to argue for individual interests and to state the case publicly is equally essential. A free government should hesitate to impose prohibitions on pressure groups even when they attempt to importune legislators. Freedom of the interest group to petition the legislature is akin to freedom of the press and freedom of assembly. There can be no question, therefore, as to the right of interest groups to organize and to express themselves, but this does not mean that their methods should not be questioned. Certain principles of legitimate lobbying may be suggested:

Lobbying should be open and aboveboard, not *sub rosa* or undercover. Attempts to influence public opinion should be acknowledged by the group sponsoring the propaganda, and the public has a right to expect that dummy organizations will not be used.

The public also has a right to demand that the integrity of its legislators will be respected at all times. Hence bribery should be severely punished and bludgeoning methods made impossible by the force of public opinion and legislative disapprobation. If Congress and the state legislatures would crack down on arrogant lobbyists in the way in which they sometimes put cocky administrators in their place, the problem would be half solved.

Former legislators should not be permitted to take advantage of their privileged positions to become lobbyists and hence exercise undue influence. And finally, the ultimate solution is to improve our education of future public leaders so that they will have a higher sense of morality and a finer consciousness of what constitutes the public interest.

ATTEMPTS TO REGULATE LOBBYING

Congress and more than thirty of the states have attempted to regulate lobbying through legislation of one kind or another. Various means have been tried.

A principal method of regulation is *registration,* designed to satisfy the requirement of openly acknowledged sponsorship. This is a particularly vexatious problem, and if it could be solved, the question of lobbying also could be largely solved. For example, in the course of an investigation of railroad holding companies, Senator Wheeler said: "There are too many of these organizations going around the country claiming they represent, we will say farmers in one case, or security holders in another case, or somebody else in another case, when as a matter of fact they are being financed by somebody who is vitally interested in the pending legislation. Frequently it is a case of misrepresentation to the Members of the Congress of the United States . . ."

Legislation regulating lobbies was passed in 1928 and again in 1936, and because Congress annually seems more concerned with the problem, it is possible that these are but initial steps. Present provisions are aimed at specific difficulties, however, and are not general. Utility lobbyists, for example, are required to register, and representatives of shipping companies or foreign interests are required to file detailed statements.

In some of the states lobbies are required to register with the legislature or the governor. Massachusetts in 1890 and Wisconsin in 1899 pioneered in this field. To Wisconsin belongs the credit for enforcing its law more satisfactorily than any other state.

Registration regulations among the states customarily require all "legislative counsel and agents" to be registered by their employers with the legislature. After each session a statement of expenditure must be filed. Sometimes a statement must also be made as to the measures the lobby is interested in and the amounts paid in salaries. Lobbyists are forbidden to appear on the floor of the legislative chamber. In recent years there has been an extension of provisions of this kind but the greatest fault is lax enforcement.

Legislatures also attempt to control lobbying activity by the *publicity derived from special investigations.* Congress has often investigated the evils of lobbying. Especially notable were the inquiries of 1913 and 1935, but the probing of tariff lobbies runs back to the beginning of our history. Many times such investigations have had a salutary effect, especially when the abuse was serious. The investigation of the power lobby in Congress in 1928–1929 is a case in point. The present provisions of Congressional law grew out of special investigations of utility lobbying and shipping contracts.

At the state level a few of the states have gone much further than others in imposing penalties for improper lobbying activities. *Some state laws have forbidden lobbying or have provided a punishment in case of misrepresentation.*

Georgia has dealt with the matter in her constitution, in which lobbying is declared a crime when it consists in a misrepresentation of interest. Alabama makes lobbying for or against a measure a misdemeanor. Moreover, to attempt to influence legislation "corruptly" is a felony. In Louisiana, any attempt to influence legislation except through "an appeal to reason" is punishable by fine and imprisonment.

These are real teeth, but enforcement is a different matter. The interpretation of terms is not easy. What is meant, for example, by "an appeal to reason," "corruptly," and "misrepresentation of interest"? All of law and government, unfortunately, are filled with words which have many and confusing connotations. In the end the control of lobbies comes down largely to a matter of enforcement. When the law of Ohio specifically prohibits the appearance of lobbyists in the legislative chamber, but they are nevertheless allowed to appear in large numbers, it is not surprising that regulation has not been more effective.

An Official Third House of the Legislature?

Instead of attempting to regulate the aggressions of the pressure groups, why not recognize their inevitability and even their desirability? Why not create a third house of the legislature in which representation would be functional by interest rather than geographical by district? Such a plan has been seriously urged.

This would constitute a sort of national council of business, labor, agriculture, the professions, and all the other major groupings. Each would be free, it is argued, to advocate its own interests. An atmosphere of mutual criticism would encourage a fair give and take. After a thorough airing, the demands of particular interest groups might be more moderate than at first. At the conclusion of this process Congress could then legislate with more wisdom and assurance. It is held that this arrangement would take the heat off Congress and the state legislatures and permit a lot to go up in the air during the debates in the Third House.

There are plausible features in such a plan. If a force cannot be discouraged or redirected, the only recourse is to give it official status. In the past this has proved a sound rule of government. In their book outlining a plan for the socialist commonwealth of Great Britain, Sidney and Beatrice Webb advocated two national chambers—the present Parliament to deal with political and strictly governmental affairs; and a coordinate body, to be created, to deal with economic matters such as national planning and stability. But where would the dividing line come in such an arrangement? Is any realistic line of demarcation feasible? It would seem inevitable, furthermore, that eventually one or the other of two such legislative bodies—the political or the economic—would gain the upper hand. It would also seem certain that the inevitable overlappings and conflict would result in a dangerous situation leading to vacuity

and drift. Further, is it wise public policy for the government to formalize and encourage selfish interests, or should government concentrate on reconciling and blending conflicting interests for the sake of the public interest? Questions such as these provoke interesting speculation.

WHERE DO PRESSURE POLITICS LEAD US?

The underlying philosophy of pressure politics can become a philosophy of government, but not the philosophy of popular rule. If we assume that men and the groups they form are so selfish that civic interest cannot rise above special interest, that government is to be callously exploited rather than supported, and that economic groups should go their own way without reference to government or the public welfare, then we may expect an eventual change in the democratic form of government.

Pressure politics rely on the kind of philosophy which underlies guild socialism, fascism, and philosophical anarchy. Guild socialism, like other forms of socialism, advocates public ownership of the vital means of production. The distinctive feature here is emphasis on nonpolitical groups, the guilds or economic interests, with a resulting diminution of political organization and activity. Under guild socialism, there is provision for the type of functional representation of special interests in legislative bodies here described.

Italian fascism, as it was developed by Mussolini and his Black Shirts from 1923 to 1944, was also based on the idea of functional representation. Capital, labor, and agriculture, along with all other group interests, were organized into corporations, and representation in the legislature was by means of these groups. The corporative state did not permit representation by individuals or by geographic areas, so that the legislature became as dead as the dodo. The corporations were stage property and had no real power or influence. A single party, with a dictator as the head of the state, ruled unassisted.

And finally, under philosophical anarchy, the emphasis is on the absence of government and its restraints and interferences. It is largely a utopian idea. If people were all good and all men were cooperative—if life could be kept simple, groups kept small and close to the people—then large, artificial institutions such as government would not be necessary and men would be happier. This, at least, is the theory.

It is not suggested that an intensification of guild tendencies would lead us inevitably to one or another of these forms of society. New forms of government are constantly emerging from the peculiar circumstances of a people—witness Italian fascism, German nazism, and Russian communism in the recent past. They are difficult to classify under Aristotle's threefold design of monarchy, aristocracy, and democracy.[10] But since government is the product of all the forces and all the institutions of which a society is comprised, permutations and modifications of basic patterns are to be expected.

[10] See Chapter 53, "The Future of Popular Government in the United States."

William Allen White, as noted above, called attention to the changes which pressure politics have effected in the American form of government—changes more profound than those resulting from constitutional amendments. Unless we can substitute a more public-spirited attitude for the philosophy of selfishness and power—paying greater heed to the strengthening of leadership and responsibility in political parties and legislatures and moderately but effectively regulating the lobbies—we may expect these changes in our system of government to proceed at an accelerated pace.

SUPPLEMENTARY READING

1. Textbook material: Peter Odegard and A. E. Helms, *American Politics* (New York, 1938), Chapter 22, "Pressure Politics and Majority Rule"; V. O. Key, *Politics, Parties, and Pressure Groups* (New York, 1942), Chapter 8, "The Role and Techniques of Pressure Groups"; Harvey Walker, *Law-Making in the United States* (New York, 1934), Chapter 12, "The Lobby"; A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), pp. 412–431, "In Defense of Lobbying" and "The Regulation of Lobbying."

2. Lobbying at Washington: Pendleton Herring, *Group Representation before Congress* (Baltimore, 1929); E. B. Logan, "Lobbying," *The Annals,* Vol. 144, Supplement (July, 1929); Harwood W. Childs (ed.), "Pressure Groups and Propaganda," *The Annals,* 179 (May, 1935), 1–239; Kenneth C. Crawford, *The Pressure Boys: The Inside Story of Lobbying in America* (New York, 1939); Donald C. Blaisdell, "Government under Pressure," *Public Affairs Pamphlet,* No. 67 (New York, 1942); Stuart Chase, *Democracy under Pressure* (New York, 1945), Chapter 3; P. H. Odegard, *Pressure Politics* (New York, 1928); E. E. Schattschneider, *Politics, Pressures, and the Tariff* (New York, 1935), Parts 3–5; W. McCune, *The Farm Bloc* (Garden City, N. Y., 1943); Marcus Duffield, *King Legion* (New York, 1931); and Harwood L. Childs, *Labor and Capital in National Politics* (Columbus, O., 1930).

3. Lobbying at state capitals: Austin F. Macdonald, *American State Government and Administration* (New York, 3rd ed., 1945), pp. 194–197; Belle Zeller, *Pressure Politics in New York* (New York, 1937); D. D. McKean, *Pressures on the Legislature of New Jersey* (New York, 1938).

4. Attempted regulation: V. O. Key, *Politics, Parties, and Pressure Groups, op. cit.,* pp. 205–209; P. H. Odegard and A. E. Helms, *American Politics, op. cit.,* pp. 776–777; A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician, op. cit.,* pp. 426–431; Stuart Chase, *Democracy under Pressure, op. cit.,* pp. 119–121.

CHAPTER 26

Basic Areas of Public Policy

THE POLITICAL SCIENTIST must constantly be on the alert, lest, in his preoccupation with the machinery of government, he fail to give proper attention to the public policies and social objectives that it is the role of government to achieve. The content of public policy is at least as important as the manner in which it is determined. The ends of living are the first consideration—the machinery is only the means to their attainment. In practice, each is dependent on the other.

John Stuart Mill, Jeremy Bentham, and others referred to as the utilitarians were among the first to recognize the necessity of emphasizing policy equally with machinery, or process. We have tended to forget this guiding principle of statecraft. The study of government has come to be considered by many writers as a study merely of power, influence, and leadership. This is all right as far as it goes, but it does not go far enough. John Stuart Mill saw more deeply into the wisdom of statecraft when he said, "Power is a means to an end."

It is not enough to know how law is made and what the pressures and institutional difficulties are which attend that process. It is equally important to study the principal areas of decision making and to *think* deeply and consecutively about what the grand strategy of society should be. This is not the exclusive task of the economist, the sociologist, or the lawyer. It is equally —and perhaps even more peculiarly—the responsibility of the political scientist.

The founders of political science, Plato and Aristotle, conceived of statecraft as the integrating science of society, with branches dealing with ethics, law, family life, religion, wealth, and the contributions of the physical sciences to the general welfare. The utilitarians and the founding fathers of the American constitutional system had a similar view. We moderns cannot afford to think in lower and more segmented terms.

Legislation is the life of the modern community. What are its objectives and priorities—what Bentham called the agenda of the state? What are the areas of public policy which we, along with the nation's lawmakers, should be thinking about?

In this chapter a discussion of the bases of popular government precedes the study of the extension of governmental activities and the influence of technology. This is followed by a consideration of the priorities of the public business, and the role of government in the areas of economics, social welfare, and

international relations. The chapter concludes with a brief summary of the science of legislation.

THE BASES OF POPULAR GOVERNMENT

The bases of popular government which are to be emphasized especially here are the widely shared acceptance of public values, a cultivation of public morality, a proper balance between government and particular groups in the interest of the public good, and the reconciliation of freedom and restraint.

Widely Shared Public Values

For its stability and progress popular government relies on values and appreciations which are widely shared among the people. So do other forms of government such as aristocracy and monarchy, but not to the same degree nor for the same reasons. In minority governments, power is concentrated in the hands of a few. Having the power of the government and the media of propaganda at their command, the rulers are in a position to sharpen objectives and manipulate the people to their own ends. But where everyone in the state is allowed to participate in the determination of public policy, the agreements reached must grow up freely and be widely shared or society will be characterized by confusion bordering on anarchy.

The grand strategy of a democracy is to widen these areas of agreement by education, discussion, and mutual accommodation until at length both the values and the means to their attainment are clear. John Stuart Mill, in his essay on *Liberty,* stated this need in a passage which deserves attention. "As mankind improves," said Mill, "the number of doctrines which are no longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be measured by the number and gravity of the truths which have reached the point of being uncontested."

In this statement Mill did not counsel a fundamentalism excused from the necessity of further investigation, modification, and improvement. Rather, his point was that democracy depends on widely shared values and consents, for they alone are insurance against domination and enforced compliance. This is a truth which our cynical age could well relearn.

Public Morality

Popular government also depends on widespread civic morality. If all interests were narrowly selfish and all officials willing to sell their influence to the highest bidder, our shared participation in government would hardly last a lifetime.

Machiavelli was perhaps the first political scientist to teach that government is amoral. You must flatter the public to prevent it from overthrowing you, he told the Prince; but otherwise you must rely on power and manipulation to gain your ends. Machiavelli thought that morality was needed in private but not in public relationships. He argued that government is inherently power and

domination, and hence does not need to be moral. He did not attempt to explain this inconsistency; he merely assumed it.

The utilitarians were wiser. They realized that the state is simply the totality of its individuals and that if individuals are expected to be moral, the state also must be moral. Most people today would subscribe to this belief, as attractive as Machiavelli's argument is to many exploiters of the public. If a man enjoys living in a free society, it is good business for him to have ideals.

Public morality, like private morals, must often be acquired, as John Stuart Mill pointed out in a passage in his essay "Utilitarianism": "If . . . the moral feelings are not innate, but acquired," said Mill, "they are not for that reason the less natural. It is natural to man to speak, to reason, to build cities, to cultivate the ground, though these are acquired faculties. The moral feelings are not indeed a part of our nature, in the sense of being in any perceptible degree present in all of us . . . Like the other acquired capacities . . . [they are] capable, in a certain small degree, of springing up spontaneously; and susceptible of being brought by cultivation to a high degree of development."

With this preface to morals, we turn now to the concerns of the lawmaker, the chief architect of modern government.

Government in Relation to Groups

The preceding chapter on lobbying pointed out that the relation of political government to other governing groups—labor, agriculture, and business, for example—is a central problem of modern life. On its skillful adjustment depends, to a considerable extent, the future of popular government.

This has been graphically stated by Charles E. Merriam in *Recent Social Trends*. Summarizing the principal governmental problems that he foresees, Professor Merriam underscores "the wide ranging and paradoxical tendency to boycott government as a general instrument of social control, while utilizing it as an agency of personal or group profit."[1] The boycott of government? If a boycott implies nonutilization of services, then boycott is the wrong word. Not boycott, but an attitude of cynical disregard for government; an inadequate appreciation of the duties and opportunities of citizenship; a lack of proper appreciation and support for the services rendered.

What can be done about an attitude of this kind? Must it simply be concluded that it is part of the frontier tradition and that with time and maturity it will change? No, because it is possible to change it now by an argument which takes two main lines. The first is an appeal to the intelligence—to the intelligent self-interest of the citizen: government should be supported because interest groups find it to their advantage to support it. Interest groups have one function; the government has another. Interest groups cannot govern the country and deal with foreign powers; the government can. Interest groups prosper only so long as the nation prospers; if government is not free, they will not be free.

[1] *Recent Social Trends* (New York, McGraw-Hill Book Company, 1933), p. 1536.

The intellectual argument is strong but incomplete if not accompanied by an appeal to the sentiments. The loyalties of the average man and woman are broad, including within their scope the family, the church, economic attachments, and the nation. Both the group and the government, therefore, must be served and respected. This is our duty and our privilege as citizens. But more than that, it is also our interest, because so long as government serves human ends—and these are identical with the public welfare—men should support government cheerfully because its ends are their objectives.

John Stuart Mill's treatment of this subject is unexcelled. What are the guiding considerations that the moralist and the legislator (in this period the two were generally linked) should keep in mind?

The ultimate sanction of all morality, says Mill, is "the conscientious feelings of mankind." Selfishness is the chief foe of society; lack of mental cultivation is next. There is no necessary conflict between private and public interest. Ethics involves a sense of duty, but most of what we do is from other motives. We act on the basis of "utility," which is a combination of right thinking and right sentiments. It is a matter of education and environment. "Genuine private affection, and a sincere interest in the public good," says Mill, "are possible, though in unequal degrees, to every rightly brought up human being."

Reconciliation of Freedom and Restraint

In society, freedom and restraint are equally necessary. "The only freedom which deserves the name," says Mill, "is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it." And the necessity of restraint—the control of government over individuals and groups—is equally convincing. "All that makes existence valuable to anyone," says Mill, "depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law."

Note Mill's argument on these points: Everyone who receives the protection of society owes it a return for such benefits. There are certain indispensable rules which must be observed. The first of these is avoiding injury to the interests of one another—rights which may be either legally established or tacitly understood. The second is particularly interesting in the present context, as it consists in "each person's bearing his share (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation."

Society, says Mill, is justified in enforcing these conditions at all costs on those who do not willingly cooperate. The basic principle is that *as soon as any part of a person's conduct prejudicially affects the interest of others, society has jurisdiction over it; and the question whether the general welfare will or will not be promoted by interfering with it becomes open to discussion.*

It is beyond the scope of this chapter to go extensively into the practical

applications of the principles of legislation and morality brought out here. Later in the book that will be attempted.[2] Nor is it proposed to tell the reader what he should think about controversial issues. The sole purpose of this chapter is to survey what might be called the science of legislation. It is hoped thereby to raise questions so compelling that further investigation will be stimulated.

The questions of the relation of government to interest groups, and of public to private interests, form the nexus around which many problems of legislation revolve today. To mention but a few, there are tariffs, subsidies, crop loans, the limitation of monopoly profits, and the right of labor to organize. To quote again from *Recent Social Trends,* "How shall we blend the skills of government, industrial and financial management, agriculture, labor and science in a new synthesis of authority, uniting power and responsibility, with vivid appeal to the vital interest of the day, able to deal effectively with the revolutionary developments of our social, economic and scientific life, yet without stifling liberty, justice and progress?" [3]

EXTENSIONS OF GOVERNMENTAL ACTIVITY

Clashes between rival groups always add to the responsibilities of government. The farmers wanted the railroads regulated; the railroads called for the control of the trucking companies; the truckers insisted on better roads. This is typical of the cycle. *Government is a referee between competing groups; during times of intense activity, therefore, the expansion of governmental activities may be expected to proceed most rapidly.*

In a democratic government there are likely to be many social conflicts, because in a free society they are allowed, whereas under the rule of the dictator they are not. Social conflict leads to added public expense and effort, but it is justified on the ground of preserving freedom.[4]

Although government as general coordinator and referee is situated above other groups, most of its functions are determined by their pressures and needs. Government appears sometimes to be dominant, but actually it is always the servant, so far as at least one section of society is concerned. Government's functions ebb and flow with the motion of constituent groups. When dangerous tensions exist, government must step in. When private resources cannot take care of vital needs, the government must meet them or pave the way for others to do so. To the extent that other groups can provide for social wants, government's activities stand still or decline. But to the extent that other groups cannot make such provision, or in so doing create additional problems, then public responsibility expands.

There is a time lag, however, between the emergence of a social problem

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[2] Parts Nine through Twelve, dealing with our principal domestic and international problems as a nation and as individuals.

[3] *Loc. cit.,* pp. 1540–1541.

[4] See Walter Lippmann, *The Good Society* (New York, 1937).

and the move by government to deal with it. Hence we find that *much of the demand for legislation by interest groups is due to the effect of social lag.* It takes time for incipient problems to become so acute that someone starts a campaign seeking legislation. It takes more time to propagandize and organize public opinion, and to interest the appropriate committee of the legislature. At this stage, things have gone so far that there is usually some opposition, leading to further delays. And finally, the process of legislation, as we have seen, is beset with obstacles. By the time a bill is finally enacted, therefore, the opportunities for preventative action are gone and the cure is more difficult.

Technology and Social Change

Invention has had a greater effect on modern government than any other factor. Technology is invention leading to increased power and production, to laborsaving devices, to the need for large capital investments, to standardization and the division of labor, to large corporate organizations with rules and procedures not unlike those of a national government. The steam engine and electrical power produced modern industry, caused people to congregate in cities, and created new problems of ownership, distribution, investment, economic balance, labor relations, housing, health, and welfare. A change in any part of society affects every other part, and since government is so central in all of life, it receives the cumulative force of all these factors that stimulate social change.

The extent to which modern society is influenced by technology is illustrated in the number of corporations in the United States having assets of a billion dollars or more (see table on page 419).

Of the many implications for government in the development of technology some of the more important will be mentioned here.

Large-scale private enterprise concentrates economic power in the hands of a few, as shown in the following list of billion dollar corporations. If, as usually happens, concentration leads to new demands on government to act as regulator and referee, then corresponding concentrations are likely to occur in political power. Consequently, the problems of legislation and internal administration multiply.

Large-scale private enterprise usually results in the separation of ownership and control.[5] There are literally hundreds of thousands of small stockholders participating in the ownership of many of the corporations listed in the following schedule, but individually their control stands at zero. Who, then, is responsible? It is much like the problem of placing responsibility in government where control by the people is also diffused. The technicalities of legislation, administration, and adjudication multiply; government increasingly becomes a job for experts. So is the giant corporation.

Large size has the effect of depersonalizing relationships and stimulating

[5] See Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (New York, 1932), Books 1 and 4.

BILLION DOLLAR CORPORATIONS IN THE UNITED STATES, 1935

Corporation	*Assets (in billions)**
Industrials	
Standard Oil Company (New Jersey)	1.9
United States Steel Corporation	1.8
General Motors Corporation	1.5
Public utilities	
American Telephone and Telegraph Company	4.0
Consolidated Edison Company of New York	1.4
Commonwealth and Southern Corporation	1.1
Associated Gas & Electric Company	1.1
Cities Service Company	1.1
The North American Company	1.0
Railroads	
Pennsylvania Railroad	2.9
New York Central	2.3
Alleghany Corporation	1.7
Southern Pacific Company	1.7
Great Northern Railway	1.1
Northern Pacific Railway	1.1
Baltimore and Ohio	1.1
Atchison, Topeka and Santa Fe	1.0
Union Pacific	1.0
Banks	
Chase National	2.3
National City	1.9
Guaranty Trust	1.8
Bank of America	1.3
Continental Illinois	1.1
Bankers Trust	1.0
Other financials	
Metropolitan Life Insurance	4.2
Prudential Insurance	3.1
New York Life Insurance	2.2
Equitable Life Insurance	1.8
Mutual Life Insurance	1.2
Northwestern Mutual Life Insurance	1.0

* To nearest decimal.

Source: National Resources Committee, *Structure of the American Economy* (Washington, 1940), Part I, pp. 100–101.

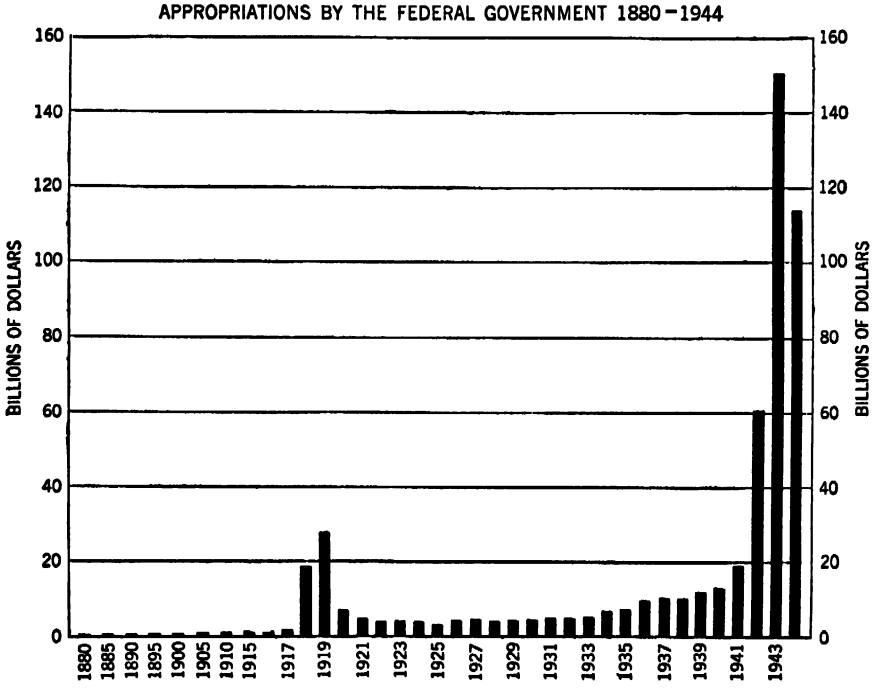
the need for bureaucratic rules. Society is remolded along increasingly artificial lines. There are more followers and fewer leaders. The temper of democracy is affected. Power politics among competing interests and between the government and the interests are intensified. Size also affects the balance of population, which is attracted to cities, away from rural areas. Farming becomes mechanized. The duties of urban government skyrocket—housing, slum clearance, transit, city planning, schooling, sanitation, all the communal services of a modern metropolis. People rely increasingly on government, but the problems multiply so fast that efficiency is hard to maintain. Constitutional grants of

power, furthermore, are not given up without a fight, with the result that while the population and the problems come to be concentrated in the cities, much of the power remains geographically located in the rural areas.

Is it any wonder that legislators, administrators, and judges are sometimes bewildered when they face such complexities?

WHAT ARE THE PRIORITIES OF THE PUBLIC BUSINESS?

The danger arises that government will be called on to do so much—often of an emergency rather than a preventative nature—that other essential pro-



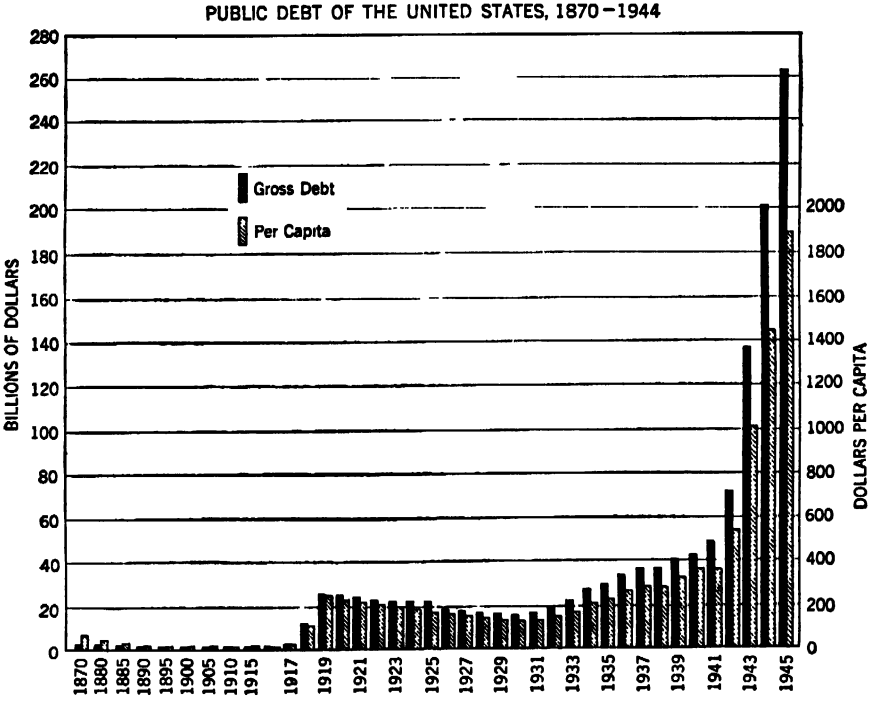
Source: U. S. Treasury Department Statements.

grams will suffer through lack of attention. A business can usually pick and concentrate on its own activity, taking its own time where it chooses. But in popular government, overburdened legislators and administrators may be forced, as a result of pressure, to take on additional work at the expense of neglecting that which is at least equally important. Domestic programs, for example, always suffer in time of war.

The legitimate public business comprises the agenda of the state. *The agenda of the state means the irreducible minimum of things the government must do to maintain a vital community.* Individuals have differing ideas as to just what the agenda of the state should comprise. In Bentham's opinion it was

very little. But as a result of increasing complexity, what is desirable and what is necessary on the part of government may not always coincide. There can be little doubt, however, as to what government actually does. The figures tell one side of the story. The accompanying charts show the increase in federal government appropriations and the increase in the public debt of the United States over a period of seventy-five years.

Other figures are equally illuminating. In 1944 the federal government spent $87 billion on war activities and $3.5 billion on nonmilitary activities, exclusive of interest on the public debt. Of these nonmilitary programs, the Agricultural



Source: U. S. Treasury Department Statements.

Conservation and Adjustment Administration, the Veterans Administration, and the Social Security Board were the major beneficiaries, in that order. Other major expenditures were for river and harbor works and flood control, public roads, reclamation projects, and the Farm Security Administration.

Out of a total expenditure of nearly $5 billion in 1943 by the forty-eight states, nearly $2 billion were spent on the operations of the government. Of this sum, the largest single item was more than $500 million for public welfare. Next came schools, highways, and hospitals and institutions for the handicapped—in that sequence. In addition, a total of more than $822 million was turned over to local subdivisions as state aid to schools, plus $372 million spent

on state aid for highways. With public welfare, schools, and highways heading the list of state expenditures, here is evidence of the welfare state.

And finally for the cities, the figures for 1943 show that of a total of nearly $2 billion spent for operation, $466 million went for public safety and only slightly less for schools. Following these came public welfare, health and hospitals, sanitation, and highways. Here also is evidence of the welfare state.

The top expenditures from the federal, state, and local analyses show that military costs, including payments to veterans, outrank all others. But in the nonmilitary category, public welfare and social security come first by a wide margin. Then follow such programs as aid to agriculture, flood control, schools, public safety, and highways. Are these, then, the priorities of the state? Figures alone, of course, do not tell the whole story. The dollar expenditure on foreign relations, for example, is extremely small, and provides no indication of the importance of this nation's world relationships. The protection of persons and property has long been considered an indispensable function of government, and yet judged by expenditure totals it scarcely deserves mention. Jeremy Bentham long ago expressed a view of its importance that has been re-emphasized. "The business of government," said Bentham, "is to promote the happiness of the society, by punishing and rewarding." According to the modern version of this statement, government should act as protector and in some cases as regulator, but beyond this it should not go.

GOVERNMENT'S ROLE IN MAINTAINING ECONOMIC EQUILIBRIUM

An increasing number of citizens, including some conservative businessmen, would say that the most important function of government has yet to be mentioned. It is the duty of the government, they believe, to keep the economy on an even keel.[6] Being the only agency sufficiently comprehensive and powerful for the job, according to this group, government should concentrate on maintaining economic and social equilibrium.

This view was discussed in the chapter on public finance. When individual profits are too high, the government may take the excess in the form of taxes. When new investments are needed, the government may encourage them by favorable tax and profit policies. When the stock market tends to get out of hand, the Federal Reserve System and the Securities and Exchange Commission possess the authority, in part at least, to step in and attempt to prevent a disastrous inflation. When labor and capital cannot work together harmoniously, labor relations laws and agencies must be improved. When foreign trade is desirable both domestically and internationally, it is the business of government to encourage reciprocal trade agreements and similar measures. When housing is insufficient and poor, the state should stimulate private building and, if necessary, supplement it with programs of its own. These are examples of what is meant by government as stabilizer. When balance in the economy

[6] See Chapters 45 and 49, "Financial Stabilization Programs of Government" and "Planning, Stabilization, and Economic Welfare."

tips too far in either direction, it is the job of government to restore it to an even keel.

According to this view, the government itself should directly administer only those things that are absolutely necessary. Since the first priority is maintenance of equilibrium, the people and their pressure groups should not encumber legislative halls and executive departments with demands for numerous and unrelated activities. If government allows this to happen, the central job of maintaining an equilibrium must suffer or fail. Of course, government acts as stabilizer today, but does it do so consciously enough and deliberately enough? Many people, including Beardsley Ruml and Henry Kaiser, apparently think not.

Business and Government

The main areas of legislative decision with regard to economic equilibria lie in the middle border between business and government. Can business leadership and government leadership work harmoniously together in the public interest? An antigovernmental policy on the part of business would make such collaboration impossible. Can our economic problems be solved through the instrumentality of representative government? The answer will depend largely on our ability to secure cooperation and consent from the parties of interest. Because representative government depends on voluntary collaboration, the failure of all such groups to work together spells the decline of popular government.

What are the alternatives to politico-economic collaboration? Laissez faire? It is hardly more than a name, although many people still believe in it. Socialism? How would it work? National planning? What is involved? Is there a promising intermediate region between laissez faire and socialism? These questions will be considered in later chapters.

The basic problem with regard to economic welfare has been well stated in *Recent Social Trends*. Comparing the relative shortcomings of government and business, Professor Merriam explains that "if business is closer to technical mechanical efficiency, it is farther from the sense of social responsibility equally important to mankind. Industry as well as government suffers from disorganization and lack of direction, from conspicuous waste and profitable fraud. In the application of modern science and technology to the enrichment of human life and values, the industrial order as well as the government has its tragic moments—poverty to match war, unemployment to set against extravagance."[7]

Businessmen have the technical skills of production but they are lacking in industrial and governmental statesmanship. It is for this reason, says W. N. Kiplinger in *Washington Is Like That,* that so few businessmen succeed in high governmental positions. A representative government depends for its success on statesmanship widely distributed among all groups that wield power,

[7] *Loc. cit.,* p. 1537.

pressure groups as well as those that are strictly political; hence it becomes increasingly clear that our country needs large amounts of statesmanship in business, labor, and agriculture—in all the main segments of the economy as well as in government itself.

The American Economic Association has formulated a list of questions illustrative of the difficult and important decisions that must be made in the area of political economy—the area of government's responsibility for economic welfare. The questions and their replies are found in the *Papers and Proceedings* of the American Economic Association for 1945.

The most comprehensive question was this: "In the postwar period, should the United States (as a matter of long-run policy) be a nation (1) of predominantly free private enterprise with relatively little public control; (2) of predominantly free private enterprise with substantial control; (3) in which public control is predominant; or (4) in which public ownership and operation predominate?"

A critical person might find this question difficult to answer when it is stated in this abstract form. What are we to assume? How much *need* is there for varying degrees of public regulation and control? That is the rational, the pragmatic approach. If you and I were to vote our preferences the decision would be easy, but if we were to decide on the basis of practical necessity, the result might be quite different.

This question was included in a questionnaire sent to professional economists; their replies are interesting. Seven times as many voted for the second choice—predominantly free private enterprise with substantial public control—as for the next highest choice. The number of those voting for the first and the third alternatives—little public control or predominantly public control—was almost exactly equal. Public ownership as the solution received little support.

Let us now consider some concrete problems. From your present knowledge and on the assumption that you are at least partially familiar with the problem in each case, how would you answer the question of appropriateness or inappropriateness for each of the functions listed below?

Functions of Government in the Postwar Economy: Appropriateness or Inappropriateness of Function

Provide military defense.
Maintain law and order.
Adjudicate private disputes.
Attempt to stabilize the general price level.
Assume responsibility for control of business cycle fluctuations.
Stabilize prices of particular commodities.
Limit corporate profits.
Limit size of large incomes.
Limit acquisition of property by inheritance.
Prevent sales below cost.
Guarantee cost of production.

Participate in international agreements to secure stabilized currencies.
Provide financial aid to foreign countries for relief and development.
Prevent operation of private monopolies and conspiracies in restraint of trade.
Permit such activities in case of labor.
Exempt such activities in American export trade.
Prevent differentials in prices or terms of sale quoted to competing customers except as justified by cost.
Permit agreements between producers and distributors.
Prevent unfair methods of competition in business.
Enforce general principles of fair competition.
Regulate security trading.
Require federal incorporation of business engaged in interstate and foreign commerce.
Require identification of commodities where feasible (by grade labeling, and so on).
Conduct technological research for manufacturing industries.
Grant patents as reward for invention.
Grant subsidies to industries of particular importance (merchant marine, aviation, and so on).
Develop TVA's in other regions.
Carry on the existing or proposed projects (government ownership).
Reduce tariff barriers.
Impose limits on immigration.
Take action favoring special groups.
Prevent labor abuses.
Fix minimum wages.
Fix maximum hours.
Provide employment for persons willing and able to work who cannot find employment in private industry.
Provide comprehensive systems of medical care.
Extend social security.
Provide social security on a compulsory contributory basis or noncontributory basis.
Provide social security on reserve or pay-as-you-go basis.
Determine upper limit of expenditure on social security benefits.
Require education of citizens (elementary, secondary, college).
Provide free tuition.
Contribute to maintenance of students (elementary, secondary, college).
Retain or change form of organization and relation to government of various major economic projects.
Raise or lower amount spent on government, federal, state, and local.

Source: Papers and Proceedings, 1945, American Economic Association, pp. 426–431.

Here again, many of these questions are difficult to answer in the abstract. Or perhaps it would be more accurate to say that most of us would want to know more about the conditions giving rise to these problems before we could favor a particular solution. In the field of public policy it is hazardous to vote

one's preference unless it has been tested by the particular state of affairs creating the issue to be settled.

Such a list does show several things, however. It shows the range of questions in this one area of legislation that must be decided—and the complexity of many of them, even for professional economists and political scientists. It shows the extent to which a decision in any one area is bound to affect several others, and it illustrates the need for choosing between alternatives to form a grand strategy of economic welfare.

GOVERNMENT AND WELFARE

The areas of public policy are as numerous and complex as all of modern life. When, as has been seen in an earlier chapter, government acts in five major capacities—protector, regulator, assister, operator, and diplomat—most of human activity is comprehended therein. There is the whole field of foreign policy as well as of domestic policy. Having considered the area of economics, we turn now to that comprehensive and expansible field, the welfare activity of government.

Government the world over has become positive instead of negative. It is no longer content merely to protect people, as important in every way as that function is. Governments, especially those controlled by the people, have taken on numerous welfare responsibilities—health, physical fitness, living conditions, unemployment relief, recreation, and so on.

The list of chapter titles in *Recent Social Trends*—that comprehensive survey of American life made for President Hoover by a group of distinguished social scientists—shows that all are related to government and that most have a bearing on the welfare activities of the state. Consider these subjects: Problems of physical heritage—land, minerals and power; problems of biological heritage—quantity and quality of population; the influence of invention and discovery; agencies of communication; shifting occupational patterns; education; changing social attitudes and interests; rural life; status of racial and ethnic groups; the vitality of the American people; the family and its functions; activities of women outside the home; childhood and youth; labor groups in the social structure; the people as consumers; recreation and leisure-time activities; the arts in social life; changes in religious organizations; health and medical practice; crime and punishment; privately supported social work; public welfare activities; law and legal institutions—these topics account for three fourths of the chapter headings in this study. In some fields, such as education, government already has a large financial and organizational stake. Others, especially the social security function, are expanding rapidly.

What are the main areas of social policy in which large issues and decisions await solution? Education is one. How much assistance, for example, should government provide for higher education and research? What part should the federal authorities play in promoting educational standards? Popular government depends in large measure on educational opportunities for its continued

vigor. Today's problems are so complex that only knowledge—as contrasted with tradition or preference—can guide the determination of major decisions. Our schools must go further than the three R's, and teach our children the meaning of democracy and the public interest.

In World War II as in World War I, we Americans discovered that our physical condition is shockingly low. What to do about it raises issues of public policy, in another major area of decision. Should minimum medical facilities be available to all? Do we need more health education? Should regulation prevent the destruction of vitamins in the processing of foods? Should preventive medicine be expanded, the number of hospitals increased, and free clinics established? How can medicine better serve the masses without losing the valued personal relationship between doctor and patient?

Housing is yet another field in which momentous decisions must be made. Housing is related to the most important concerns of society—family life, health, individual ownership and pride in home, stimulating pride as citizen. Our city slums are a disgrace. There are not homes enough to go around. The cost of new housing is high. What should we do about it? Some interests say we can trust unassisted private initiative. Others argue that the government must help finance, but should not become landlord. Still another group believes the public itself must do the job of providing decent housing or it will not be done at all.

All of the problems of welfare cannot be discussed here because they are too numerous. Many will be taken up at other points. The next part, for example, will deal with the whole question of court organization, which leads into a host of social problems.

For many generations in Western Europe and the United States, the prevailing thought in this field has been that welfare is a personal or religious matter. Spinoza in the seventeenth century and Thomas H. Green, an English political scientist of the nineteenth century, for example, contended that anything affecting the spirit of man—such as charity, religion, or social service—should be kept outside the proper realm of state activity. But with the growth of factory towns, mass unemployment, social disease, epidemics, and crime waves, these ideas have changed. We now emphasize the unity of life—the relation between the body and the spirit—the entire man. Today the field of welfare is a joint responsibility in the charge of both private and public agencies. How this balance will evolve in the future is one of the most intriguing questions in social science.

NATION-STATE AND WORLD ORGANIZATION

America's place in the international community will be the subject of several chapters later in the book.[8] This section, therefore, will merely raise some questions of capital importance in that area as a means of rounding out this survey of the agenda of the state.

[8] Part Ten, "Foreign Policy and International Relations."

To what extent, if at all, are we our brothers' keepers? If we were to solve our own difficulties and every other nation were to do likewise, it would seem that there could be no serious problems remaining. But in fact there would be, even without the question of the control of atomic energy.

How important, for example, is national sovereignty? Which is the best policy in the long run, national self-sufficiency or free trade and interdependence? What is to be done about the so-called backward peoples? About colonies? About the right of national self-determination? About financial assistance to areas and peoples of the world where such aid is desperately needed?

The United States is a melting pot of diverse cultures. Our national government is a union of once independent states. It has been seriously suggested that world organization and world security can learn more from the political experience of the American people and our underlying principles of government than from any other source. If so, a study of American government will serve a double purpose.

THE SCIENCE OF LEGISLATION

In a field as vast as all of public policy, we have, of necessity, confined ourselves to the high spots. If it has created some understanding of how difficult and diverse are the problems of the legislator, our main purpose has been accomplished. If the appetite has been whetted to know more about these subjects—the military and protective activities, the relations of business and government, the welfare state, or the nation in the international community—so much the better.

Underlying these concerns is the vital need of combining intellectual analysis with healthy sentiment if the state is to prosper. Our forebears understood that both morality and knowledge are the indispensable equipment of the wise lawgiver.

It seems only fitting to conclude this chapter with another observation from John Stuart Mill, who said in his essay on "Liberty": "To determine the point at which evils, so formidable to human freedom and advancement, begin, or rather at which they begin to predominate over the collective application of the force of society; . . . to secure as much of the advantages of centralized power and intelligence as can be had without turning into governmental channels too great a proportion of the general activity—is one of the most difficult and complicated questions in the art of government."

SUPPLEMENTARY READING

1. Principles of legislation: A valuable source is Jeremy Bentham's *Limits of Jurisprudence Defined*—recent edition by Charles W. Everett (New York, 1945), Chapters 3–8. On the utilitarians, the best one-volume collection is E. A. Burtt (ed.), *The English Philosophers from Bacon to Mill* (New York, 1939), especially pp. 789–852 (Bentham), and 893–948 (John Stuart Mill). See also W. J. Brown, *The*

Underlying Principles of Modern Legislation (New York, 1920); H. J. Ford, *Representative Government* (New York, 1924); J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), Book 2, Chapter 1; *The Federalist,* Nos. 62, 63; Robert Luce, *Legislative Principles* (Boston, 1930); and Henry Sidgwick, *The Elements of Politics* (London, 2nd ed., 1897), Chapter 20.

2. The province of government: James W. Garner, *Political Science and Government* (New York, 1928), Chapter 17, "The Province of Government"; Herman Finer, *The Theory and Practice of Modern Government* (New York, 1934), Chapter 4, "State Activity: Analytical"; John Stuart Mill, *Political Economy* (London, 1880), Vol. II, Book 5; D. G. Ritchie, *Principles of State Interference* (New York, 1902), Chapters 2–3; W. S. McKecknie, *The State and the Individual* (London, 1896), Chapters 3–4, 8, 12–13; James Bryce, *The American Commonwealth* (New York, 1908), Part 4; *Recent Social Trends* (New York, 1933), Chapter 29, "Government and Society"; Walter Lippmann, *The Good Society* (New York, 1937); and C. G. and B. M. Haines, *Principles and Problems of Government* (New York, 1926), Part 4, Chapter 5, "What Is the Function of Government?" For the challenges of city life, see Lewis Mumford, *The Culture of Cities* (New York, 1938).

3. Extension of areas of control: C. H. Wooddy, "The Growth of Governmental Functions," *Recent Social Trends, op. cit.,* Chapter 25; Paul H. Appleby, *Big Democracy* (New York, 1945), Chapter 2, "Size"; "The Function of Government in Postwar American Economy," *Papers and Proceedings,* 57th Annual Meeting of the American Economic Association, *American Economic Review,* XXXV (May, 1945), 422–447. On the forms of government growing out of diverse economic situations, see Ralph H. Blodgett, *Comparative Economic Systems* (New York, 1944). For the range of international problems confronting the United States, see James T. Shotwell, *The Great Decision* (New York, 1945).

CHAPTER 27

Politics as a Career

EVERY YEAR, hundreds of college-trained men and women go into the government service. Most of them are attracted to the administrative branch, where the demand is greatest, where almost every kind of vocational specialization is needed, and where security and tenure are, on the whole, well established. Another group of college graduates, next only in size to the administrators, studies the law and then fills the numerous positions available in the judicial branch: attorneys (considered officers of the court), judges, city, county, state, and district attorneys, police officials, sheriffs, bailiffs, marshals, clerks of the court, and special police officials such as those of the Federal Bureau of Investigation and the Immigration and Naturalization Service. The career opportunities in government administration and in the judiciary are dealt with in separate chapters in later parts of the book.[1] The third career area, comprising political and legislative leadership, does not afford so large a number of opportunities as administration or law, but the appeal in some ways is greater. This is the subject of the present chapter.

POLITICIANS AND LEGISLATORS

It has been seen that the legislature is the center of political gravity, that political parties supply the executive leadership in the legislature, that the jobs of the administrative and judicial branches are largely cut out by the decision-making powers of the legislature, and that the statesmanship that a complex society so badly needs is required in legislation more than in any other field of government.

The number of college-trained people in legislative assemblies at all levels—municipal, state, and federal—has shown a marked increase in recent years. Legislation is a complex business and those with special training in the basic fields of public policy—political science, economics, sociology, public finance, law, and public welfare—are best able to deal intelligently and penetratingly with the vital problems of the day.

But here a caution is necessary. Formal education alone does not suffice; two other requirements are essential. First, one's formal education must have developed a deepening of philosophical insight and intellectual penetration. The prospective legislator or political leader must not have merely memorized basic facts; he must also have learned the techniques of study and analysis. When college-trained men and women lack these qualifications, the self-educated per-

[1] Chapters 39, "Administration as a Career," and 32, "Judicial Office as a Career."

son may have more to contribute to leadership and the resolution of social problems than he who has merely acquired a university degree.

The second requirement is that one must also possess certain human and social characteristics in order to be prepared for the rough-and-tumble of political life, where leadership is not merely a matter of intelligence but also of appealing to and working with people. The political leader must have had practical experience. He must be prepared for hard knocks and disappointments. He must delight in struggle and in matching wits with opponents, whether they be from the pressure groups or from the other side of the political fence. If he seeks security above all else, the political arena is no place for him. He must love adventure and pioneering. He must know what it is to live by his wits, his ideals, and a rugged integrity.

The Prestige of Political Service in Other Countries

Great Britain, like the United States, is an industrial, capitalistic nation in which attention might be expected to center largely on business. And yet there the public service from time immemorial has drawn the best-qualified leaders from the universities. How is it possible to account for the attitude prevailing in that country compared with the general indifference toward politics that has become traditional in the United States?

For one thing, prior to the establishment of Parliamentary supremacy in England in 1688, the men whom the king thought were best qualified were customarily commanded to assist him. Like other monarchs of the time, the king depended on an aristocracy drawn from among the great landowners, churchmen, schoolmen, and the merchant adventurers.

With the advent of Parliamentary supremacy and the development of the cabinet system, electoral reform, the widening of the franchise, and more democratic educational opportunities—which began early in the nineteenth century and accelerated in the twentieth—the tradition of aristocracy in the public service continued. There was greater democracy in elections and education, but the best-trained future leaders still came from the privileged classes. Thus, "In spite of these numerous modifications of the electoral system," says Professor K. Smellie in the *Encyclopedia of the Social Sciences*, "the House of Commons remained predominantly aristocratic in character. Since the Revolution of 1688 it had been the social center of London, and as late as 1860 it was still the custom for a great peer to devote at least one of his sons to the service of his country and the defense of his order in the House of Commons. . . . In the House of Commons of 1880, 155 members were the sons or near relatives of peers." [2]

This was the situation despite extensive electoral reforms, including the abolition in 1838 of the property qualification for membership in Parliament. Nevertheless, continues Professor Smellie, "aristocratic control tended to persist by reason of the expense of elections and the importance of influence, cor-

[2] Vol. V, p. 370.

rupt or social." Bribery was not seriously restrained by legislation until 1854, and not effectively until 1883; the secret ballot was not adopted until 1872.

Is an aristocracy of education a necessity in any form of government? There seems to be some support for such a contention. Referring to the long-continued dominance of British politics by a social aristocracy, Professor Harold Laski has pointed out that if the British Labor party is to gain power and keep it, the number of leaders trained in constitutional law and practice must be notably increased. The leaders must know what needs to be done and how to do it, government being as intricate as it is. Otherwise, labor cannot satisfy even its own members, much less the general public.

American Politics Has Lacked Trained Intelligence

Compared with Great Britain, political and legislative leadership in the United States has not drawn as successfully on the trained intellects of the country as it should. In many countries, political leadership is considered the highest calling to which the ambitious and capable can aspire. Our record is good but not as good as it should or needs to be.

The crisis of the Revolutionary War called forth a group of leaders unexcelled in human history—Washington, Jefferson, Franklin, Madison, Hamilton, Henry, and Adams—to mention but a few. They came from all walks of life—agriculture, law, publishing, and business—but all had in common the fact that in the colonies they stood out because of their intellectual attainments, their moral fervor, and their devotion to the public welfare.

The following period, from the first Congress up to the Civil War, saw the rise of legislative giants such as Daniel Webster, Calhoun, Clay, and Sumner. We have produced our share of stalwarts since then, with James G. Blaine, William Jennings Bryan, Robert M. La Follette, Sr., George Norris, and others. The record has been admirable. But as we consider the staggering problems of the present and the future, we would be less than realistic if we failed to ask for more.

Theodore Roosevelt, who loved the rough-and-tumble of politics, used to complain that American youth must be timid or effeminate, else larger numbers of the best would venture into leadership on behalf of the people. This criticism has often been heard. The highest qualified among our citizens shy away from politics.

Why has a career in politics not been more popular in this country? It is certainly not for lack of training. In the United States, democratic educational opportunities have been superior to those in Great Britain; hence this cannot be the determining factor. On the other hand, it is true that we do not have as long established a public service tradition, nor has politics been held as high in public esteem by all classes as in Great Britain—although this difference has tended to diminish in recent years.

The divergence of attitude in Great Britain and the United States stems partly from the fact that ours has been a "businessman's civilization" in which

large fortunes awaited the able and the aggressive. Business was filled with adventure and the same kind of struggle found in political life. Since opportunities in this field appeared before a tradition of a career in public service had been established, the American people naturally turned to business, and politics was neglected.

In addition, until fairly recently, government has been considered a necessary evil. It was something to be endured rather than respected and ministered to by those best qualified for the job. It was the hope that if government was given a cold shoulder by the "best people," it would somehow shrivel and subside. These same people have now learned that quite the reverse is true. Government interferes as much or more when ignored as when it receives sympathetic attention. With a decline in effectiveness and responsibility, the danger of minority control increases along with the loss of basic freedoms. The way to keep government within proper bounds is to nurture and attend it. Neglect leads only to more government of the wrong kind.

Another factor is the problem of financing oneself in a political career if an assured income is lacking. Legislative salaries are not high, especially at the state level. Congressmen receive $10,000 a year. This is a fair-sized income, but it should be more. It does not begin to compare with salaries of from $50,000 to $1,500,000 which some businessmen, film producers, and financiers have earned. In this respect, however, a change has already set in. Taxes take so large a percentage of high incomes that they considerably narrow the disparity between public and private salaries. This economic factor, therefore, may make a marked difference in the financial aspect of the comparison. Furthermore, the indications are that the salaries of Congressmen will be increased in the near future.

But what happens when one is not re-elected? That is a real difficulty. Many a promising college senior has said, "I'd like nothing better than to go into politics, but I have to earn a living. If I'm a lawyer and am defeated, I can go back to private practice; if I'm a businessman I can return to business; or if I'm a farmer I can retreat to the land. But how can I start young in politics and stay in it? Won't I have to wait until I've made my pile?" Until the legislator is recognized for his true social worth and political parties have been able to afford careers to the promising, most individuals will have to assure themselves of other means of livelihood to fall back on. Nevertheless, as the United States has matured as a nation and the American people have come to place a more realistic evaluation on governing ability, politics as a lifetime career has become more common than formerly. But we still have a long way to go before political leadership is the first and immediate choice of the most able in all walks of life.

WHO ARE THE LEGISLATORS?

A commonly suggested reason for the decline in the prestige of legislatures in American life is that nowadays we do not have the forensic giants of the past—

the Daniel Websters or the Henry Clays, let us say. A partial answer to this criticism is that formal oratory is not as prized as formerly. As we have seen, the real work of legislatures is accomplished in committee. By present-day standards, therefore, the fair question is, "How much statesmanship does Congressman Smith demonstrate in his consideration of legislation?"

There is much reliable testimony to show that American legislators today are better than the public apparently thinks they are. The report on *The Reorganization of Congress,* for example, comments: "We have been most favorably impressed with the integrity and intelligence, the conscientiousness and courage, of the members of Congress with whom we have conferred in the course of our inquiry during the past four years. They compare very well indeed with any other organized group of men in the country. Any large legislative assembly, to be sure, has its quota of duds and dullards, of old gentlemen in their dotage, of windbags and time servers . . . ."

The conclusion was that "regardless of statistical comparisons between the composition of Congress and the electorate . . . our national legislature today is made up of substantial, conscientious, hard-working, well educated men and women who are better qualified for their great tasks than is sometimes supposed." [3] So much propaganda has been aimed at belittling government that the actual facts might well be more favorable than the public appreciates.

Additional light is thrown on this subject by Professor Lindsay Rogers in *The American Senate.* Professor Rogers has the reputation of being a caustic realist and hence his testimony is doubly significant. In his article on Congress in the *Encyclopedia of the Social Sciences,* he concludes that "in general, Congress adequately represents the country, that under strong Presidents who furnish real leadership it is complained of less frequently than under weak Presidents, and that on the average its collective intelligence is not measurably inferior to the intelligence of the average President." [4]

Formal Qualifications of Legislators

Only at the federal and state levels of government are constitutional requirements set forth concerning members of the legislature. And even in these cases they are not extensive. The American people have deliberately sought a representative cross section of the population, not paragons of intellect and culture. Indeed, we have always preferred to elect legislators having the characteristics of the "common man," rather than run the danger of encouraging class consciousness and snobbery.

Article I of the federal Constitution deals with the qualifications of congressmen and senators. Age, citizenship, and residence are the only formal requirements: "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

[3] P. 82.
[4] Vol. V, p. 365.

which he shall be chosen." In the case of senators, "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." In both the House and the Senate, therefore, the language and the requirements are similar, with differences only as to age and length of citizenship. In addition, however, the Constitution specifically states that "no person holding any office under the United States shall be a member of either house during his continuance in office." Moreover, the qualifications of members may be neither added to nor reduced save by constitutional amendment. Each house is the judge of contested election returns and the qualifications of its own members, and may expel members for cause on a two-thirds vote. Similar provisions are found in most of the states.

In the states, the rules regarding qualifications are very simple. In most of them it is provided that any person qualified to vote for members of the state legislature may become a candidate for membership himself. In several states a minimum age of twenty-one years is imposed, the top minimum being thirty years. As in the United States Senate, the members of some state senates must be older than candidates for the lower house. Early state constitutions often included religious or property qualifications, but as a result of the democratizing influence of the nineteenth century such requirements were dropped. The only other qualification commonly imposed today is an injunction against dual office holding, particularly the holding of federal in addition to state office.

In city and local governments generally the only requirement common to most of them is that of residence. All council members must be residents of the city in which they serve. Large cities which use the ward or district system may also stipulate that candidates shall reside in the district in which they run, a requirement that reflects the geographical and single-member district emphases characteristic of American politics.

The Upper Chamber—Age as a Conservatizing Factor

As previously noted, the upper house of the legislature has been traditionally regarded as the more conservative of the two. The senate is supposed to check the alleged radical proclivities of the more numerous and popular assembly. Historically, since the time of Rome, it has been the stronghold of men of property and station. This is traditional also in Great Britain, where from the outset the House of Lords was the bulwark of the peerage and the higher clergy, even after the House of Commons grew in power and influence. But with the rise of the Labor party in Great Britain prominent members of that group, such as Sidney Webb, have been elevated to the peerage and tend to dilute its conservative exclusiveness. Today, therefore—both in the United States and in Great Britain—wealth and social position are not the dominating characteristic of upper chambers that they once were.

Age, however, is still regarded as a conservatizing factor. It is assumed that

experience makes men cautious, while inexperience tends to make them radical. Analyzing this aspect of the French Parliament, for example, Professor Roger Soltau has remarked that "while the minimum age limit for the Deputy [Chamber of Deputies] is twenty-five and the Chamber has in fact a youthful complexion, the Senators must be at least forty years of age. This venerable body, composed of *gens arrivés*, stands out in marked contrast to the Chamber, which under the Third Republic has drawn its membership from a constantly widening range of social classes and includes many of the upper working class."[5] Yet, in Europe, as in Great Britain, the popular branch of the legislature is more powerful than the upper chamber.

In the United States, the average age of both representatives and senators has tended to increase since the Civil War. From 1869 to 1871, the average age of first-termers was 41 years, while in 1925 it was 47 and the upward trend has continued. In 1945 the average senator was 59 years old, compared with 43 years for the adult population of the country as a whole. This indicates that the adult population under 40 years is underrepresented in the Senate, while those over 40 years are overrepresented. This is also true in the House. At the time of the Civil War the average length of service in Congress was barely more than one term; today it is two and a half terms.

If a higher age is desirable for upper chambers, then why not raise the minimum age for the lower chamber as well? Or is age desirable? How much real correlation is there between age and experience, age and wisdom, age and statesmanship? It might be argued that the older a man grows, the more he is likely to be influenced by a particular pressure group, and that in consequence he is less able to emphasize the interest of all. What would be the effect, for example, of electing a large number of returning war veterans—between the ages of 25 and 30, let us say—to our legislatures? Would they be more radical than older men? Would they be more determined to discover what constitutes the public interest, or less so? It is an interesting question.

The Vocational Composition of Legislative Assemblies

"Occupationally," said the report on *The Reorganization of Congress,* "the American Congress . . . is in no sense a mirror of the nation." The so-called talking classes, especially lawyers, are overrepresented. Women are underrepresented, being one half of the population but having only 1.5 per cent of the membership of Congress in 1945.[6] Labor, numerically the largest group in the population, had only one member. Minority parties, such as Socialist and Communist, had none, in striking contrast to many other countries, especially those in Europe. Congress is, and long has been, predominantly middle class. Its level of formal education, however, is considerably above that of the population as a whole.

[5] *Encyclopedia of the Social Sciences,* V, 376.

[6] It is interesting to note that in 1945, when French women were allowed for the first time to run for office and to vote, 5 per cent of those elected to the parliament were women.

With regard to the skills represented by legislators, lawyers are the most numerous vocational group in Congress and always have been. This numerical superiority is partly because legal training and experience peculiarly fit a person to deal with legislation and to get himself elected to office. He has studied law, he has learned something about how the law should be made, he has argued his clients' cases before juries—all lessons which should teach him how to win votes.

There seems to have been something of a cyclical tendency in the influence of lawyers in Congress. At the outset, when Congress was smaller, it included only 26 lawyers. Then they increased, and for a long time almost two thirds of the members were lawyers. But in 1945 they had dropped to 58 per cent of the membership. The trend seems to point to a decline in the proportion of lawyers and to a relative gain for other skill groups. A possible explanation will be offered later in the chapter.

Other vocational groups in Congress in 1945 were represented in the following order: businessmen (including contractors and manufacturers) were second only to lawyers, with 56 members, constituting approximately 10 per cent of the total; newspapermen and publishers came third with 33 members or more than 6 per cent; educators came next with 23 members or over 4 per cent; the farming community followed with 16, or 3 per cent. These were the five largest groups. There were also 9 bankers, 7 medical men, 3 dentists, 3 social workers, an architect, an engineer, a clergyman, and a housewife.

In the state legislatures, although lawyers are in second place because farmers still constitute the largest single group, their influence is greater than even that of the farmers. Often they hold the top committee chairmanships. Because of their special training and aptitudes, they usually succeed in running things even when outnumbered. In other respects the vocational composition of state legislatures is similar to that of Congress, although these bodies are generally more representative of various economic segments of the population. Thus, for example, labor is fairly well represented in some state legislatures by its own members, whereas in Congress labor has had few spokesmen.

In terms of vocational groupings, local government is more representative than either state or federal legislatures. Organized labor, for example, has taken an active interest in city politics. The Labor party in Great Britain grew from local government beginnings and it is possible that we are witnessing the early stages of a similar evolution in this country. Milwaukee, Bridgeport, and a few other American cities have had Socialist mayors. From the strength shown by the American Labor party in New York City we may perhaps expect more from that group at the national level than is now evident.

The vocational complexion of the city council or county board depends on the dominant economic interest of the locality. In farming communities, farmers naturally run things pretty much their own way. In large cities the vocational groupings are more diverse—business and labor are prominent. But at the city and county level, as elsewhere, the legal fraternity enjoys much

power, in influence if not always in numbers. Nevertheless, the role of the lawyer is considerably less prominent in local government than in the state and national legislatures.

Lawyers and Lawmakers

Despite both its traditional and its present influence, however, the legal profession seems to be losing ground in American politics. Why is this? Lawyers have a natural edge over other groups when it comes to political office seeking. In addition to other advantages mentioned above, the ability to return to private legal practice after a term or two in the legislature is an advantage. Besides, public recognition through service in the legislature has been found a good way of attracting clients, so that such an experience is an asset in the legal profession.

Is it possible that this is the explanation for the somewhat lowered influence of lawyers today? To quote from the essay on the "Legal Profession and Legal Education" in the *Encyclopedia of the Social Sciences:* "In the early history of the United States there was a tradition that lawyers were fit material for politics or statesmanship. They occupied a dominant ethical position analogous to that of clergymen and received a social recognition not given to the business classes . . . . With the rise of the industrial system and the tremendous drive for economic development . . . leadership was shifted to the captains of industry and finance; and the influential leaders of the bar became adjunct of this group rather than an independent influence. Traditions of public service, such as are found in the medical profession, insensibly disappeared; the specialized learning of the lawyer was his private stock in trade to be exploited for his private benefit. This is roughly the position of the profession today. Intellectually the profession commanded and still commands respect, but it is the respect for an intellectual jobber and contractor rather than for a moral force." [7]

This analysis throws additional light on the questions of pressure politics, legislative independence, and the quest for the public interest. If the legal profession is to continue its traditional influence in American legislatures and politics, then legal training must be less narrowly vocational. Rather, it must prepare men and women to understand and to deal with the most difficult economic, social, and governmental problems of the day. The law schools largely fail in this at present. Moreover, the legal profession must resume its former role, as described in the above quotation, so as to constitute a moral force serving the public interest rather than a skilled adjunct of special interests.

It should also be noted that although a lawyer's training and practice fit him for political leadership in most respects, there are several ways in which he is handicapped. Lawyers as a group are generally conservative, and hence likely to resist change and experimentation. In addition, they are contentious. They are trained to argue the merits of their client's case irrespective of

[7] IX, 344.

whether they believe in it or not. In legal representation this is necessary, but is it a proper part of statesmanship, when that term is defined as the determination of policies benefiting the public as a whole? Here some doubt arises. Sound public policy requires a broad view—a blending of many diverse interests—not the special pleading of a particular group.

Furthermore, lawyers usually lack administrative experience. A sound law must be administratively feasible. This requires a practical knowledge on the part of legislators of how the executive branch of government operates, what difficulties are in the way of enforcement, how the human aspects of organization and personnel must be fused to make the program successful. Unfortunately, legal training is deficient in the field of administrative experience and understanding. Not only do law curriculums generally neglect problems of public administration, but few lawyers are able to secure administrative experience after they begin their professional careers.

This aspect of the matter, however, might be corrected—and politics made more attractive—if those entering it could look forward to administrative service at times when elective office is not open to them. The problem of having something to fall back on and the question of staying indefinitely in the government service would then be solved. Such an interchange has the further advantage that it would be beneficial to both the legislative and the administrative bodies themselves. The fact that the latter would acquire a better sense of public relations and responsiveness would lessen the evils of bureaucracy, while the legislators who secured administrative experience would become better lawmakers.

In many countries, careerists in government may look forward to both kinds of service so that it is possible to remain in government for a lifetime. In Great Britain, for example, rising political leaders customarily undertake tours of duty in administrative departments, followed by full-time membership in Parliament. Switzerland, as Professors Carl J. Friedrich and Taylor Cole have pointed out in *Responsible Bureaucracy,* is outstandingly successful in the use of this kind of interchangeability, and so also is Sweden.

When a promising man fails to be re-elected, why should not public administration be an alternative to private legal practice? It is a suggestion worth considering and will be discussed again in the study of public administration later in the book.[8] One thing seems clear: if the legal profession is to serve the government as brilliantly as it once did, the lawyers of the morrow must learn more of the problems of public administration than they have in the past.

THE SINGLE-MEMBER DISTRICT AS A DETERRENT TO LEGISLATIVE OFFICE

The single-member district system, combined with the requirement of local residence, has many drawbacks—not the least of which is the fact that it

[8] See Chapter 39, "Administration as a Career."

discourages those who wish to enter government as a lifework. A candidate must be elected from his residence or he cannot be elected at all. But if he were allowed to run for office wherever a majority of voters favor him, his prospects would not be so limited.

The House of Representatives and our state legislatures have suffered because of the essentially local basis of representation. It is hard to emphasize the general national interest when one is elected to reflect the parochial interest. The Constitution stipulates that a representative must be an inhabitant of the state from which he is chosen. It does *not* say that a resident in one Congressional district may not run for office in another, so long as it is in the same state. But rarely has local residence, as an additional requirement, been relaxed in practice. By long-continued custom the idea has grown up that the local residence requirement is as ironclad as that of citizenship.

In Great Britain the absence of such constitutional or customary requirements has strengthened party responsibility and leadership and has tended to safeguard the country against a too intense localism. The level of ability in the House of Commons has benefited in consequence. After consultation with his party leaders, a man running for the House of Commons may "stand" in any district he chooses. If there is a surplus of able candidates in one district and a dearth in another, the imbalance can be corrected. This freedom has contributed greatly to making politics in Great Britain the highest ambition of the ablest university graduates.

Drawbacks of the Single-Member Election System

The basic objections to the parochial system of electing legislators are important enough to be repeated. First, it limits career opportunities. In addition, it forces the legislator to lower his sights by keeping them on his own area—he must spend a large part of his time keeping his political fences in repair. "Living in the shadow of his constituency," says Lindsay Rogers, "he can never be unmindful of the repercussions which his Congressional activity may have in his district." If he does not go along when the farm lobby cracks down, for example, he may face political oblivion.

The single-member district system also creates unduly large legislative assemblies because rather than redistrict—entailing a possible reduction of membership—legislators demand new districts, which means a larger membership. At the state and local levels this practice often means election districts that are too small, thus restricting leadership potentialities.

Another result is flagrant inequalities in representation. If the United States Senate were recruited on the basis of population, for example, with no state having less than two senators, New York, in comparison to Nevada, would be entitled to 270. The single-member system also leads to gerrymandering and fails to do justice to centers of concentrated population, as in the cities. And finally, it militates against majority rule. Even if discouragement to legislative careers were the only consequence, localism would still be a serious matter. But

with so many important issues at stake, any system which impedes the recruitment of vigorous political talent becomes a major problem of American government.

A Summary of Possible Solutions

There must be solutions to the problems created by the use of the single-member district system. What are they and which ones could be combined to produce a happier situation?

General ticket system. An earlier chapter suggested combining the single-member and general ticket systems, making some legislative positions elective by districts and putting others on a city-wide or state-wide basis. There are three principal objections to such a plan. For one thing, the voters demand that a candidate be peculiarly their "own." In addition, candidates cannot easily cover wide areas, such as a whole state, although this is not a particularly valid objection because senators and congressmen at large find it possible to do so. And finally, populous centers such as the large cities are likely to have a disproportionately heavy influence compared with the rest of the state.

Limited voting. This is a system by which the voter may register his choice for only a certain number of candidates, a number that is less than the total number of seats to be filled. The voter may cast all of his votes for one candidate or for several candidates as desired, and party leaders usually advise their supporters how to concentrate their votes to the best advantage. The scheme is designed to encourage minority representation and to emphasize discrimination in voting.

Cumulative voting. In this case, the voter has as many votes as there are places to be filled, but he may cast all of them for one candidate (hence cumulative), or he may distribute them among two or more candidates as he pleases. This plan has been used particularly in Illinois, where members of the lower house of the state legislature are elected by this method. It is sometimes called the "plumping" system. It resembles limited voting, but more votes are available.

Proportional representation. PR is the system best designed to encourage an accurate representation of the electorate because it widens the area of choice, gives minority groups their share, and provides for transferable surpluses of votes to runners-up so that no votes are wasted.

These are the main alternatives to the single-member district system which exist in the United States today. Does any one of them eliminate parochialism? The general ticket system probably comes nearest to doing so. Other combinations are in use and in some cases have proved useful, but no system alone, apparently, meets all the necessary requirements.

This summary suggests another possibility: *to relax the local residence tradition* and permit outsiders to run for election. Nothing stands in the way of this reform so long as the candidate is a resident of the state in which the district

for which he runs is located, but tradition has so obscured this fact that such a reform would probably have to be effected by law.

TENURE AND SALARY

Most able people dislike to interrupt a busy life to run for public office, but many who now hold back would probably come forward if they could anticipate a longer term of service. The length of tenure in legislative assemblies and the possibilities of re-election, therefore, are elements to be considered by anyone adopting politics as a career. What are the facts?

The longest tenure provided for in the nation is the six-year term of the United States senator. One third of the members of the Senate come up for election every two years (staggered terms), in consequence of which there is a two-thirds turnover during a single presidential term. Members of the House of Representatives, on the other hand, are elected for only two years. The fact that senators serve three times as long as representatives doubtless helps to explain the relatively greater influence of the former. At present, salaries for congressmen are set at $10,000 a year, plus additional allowances for travel. The chances are that these will be increased, however, and that they may reach as high as $20,000 a year.

In the state legislatures the usual tenure for members of the lower house is two years, although in some it is four and in New Jersey it is one. In state senates the usual term is four years, although in some it is two, and in New Jersey three. In connection with state legislatures, however, it should be remembered that in most cases they convene only once in two years. The exceptions are New Jersey, New York, Rhode Island, and South Carolina, where the sessions are annual. In addition, most state legislatures meet for a short period only—averaging perhaps not more than three months. A career as state legislator, therefore, can more easily be combined with a private occupation than can a career in Congress. The salaries of state legislators average about $10 a day during the session, plus allowances for travel, postage, and the like. The members of city councils and county boards usually serve either two- or four-year terms, with a trend toward the longer period. In this field if a salary is attached to the office it is a nominal one.

For more than a century there has been a tendency to increase the length of legislative service. The original state constitutions usually provided for annual elections, but it was soon recognized that terms should be longer, and hence the system was made to correspond to the two-year period for congressmen. In local government the same trend has occurred. Has not the time now arrived when our whole electoral system should be revised, making the four-year term the rule instead of the exception?

The arguments in favor of longer terms are compelling. They would encourage legislative leadership as a career; they would lessen the expense incurred by candidates and the public, which must pay for elections; and a four-year term would make it financially feasible for men to run for office who now feel

they cannot afford the cost for so brief a reward. Another argument is that a term of one or two years is hardly long enough to learn the legislative ropes. Legislators do not become valuable nor can they really be tested in so short a time. We would not think of limiting our business or professional leadership to one- or two-year terms in office. An additional factor is that with longer terms of office, members might be more independent of local and interest group pressures, to the advantage of the larger public interest. They might spend less time mending fences back home and more on matters of broader import.

Of all the arguments for lengthening the terms of legislators, however, perhaps the most important is that legislative and executive terms could then be made to synchronize. Responsible government, as an earlier chapter noted, is an essential aspect of good government. When members of the legislature are elected in the middle of the four-year term of the executive (the off-year elections), a disastrous stalemate may occur if control of the legislature is captured by one party while control of the executive branch is retained by the other. Public affairs are so vital that government by obstruction cannot be tolerated. And yet this is just what occurred in the middle of the Taft and the Hoover administrations, and in the middle of the second Wilson term. In state governments, also, it has become a constantly perplexing problem. On the grounds of both efficiency and responsibility, therefore, the American people should take steps to prevent the occurrence of this stalemate. Synchronized terms for legislators and the chief executive provide the solution.

Against these arguments in favor of longer terms of office is the greater responsiveness to the public which comes from more frequent elections. Also, if the voters make a mistake in the choice of a particular lawmaker, they can more quickly rectify it under the short-term system. But are these two arguments sufficient to overcome the opposing points? If members of the legislatures were elected for longer terms, as voters we might be more attentive to our civic obligations and prove more discriminating in the use of the ballot.

Length of Service

That politics has increasingly become a career in the United States is evidenced by the average length of service of our legislators. This trend can be seen at all levels, but the following statistics relate chiefly to Congress. In 1941, Senator Norris, whose biography linked his name with the word "integrity," had served continuously for 29 years. Representative Sabath of Illinois, chairman of the powerful Rules Committee in the House, had been returned to office for a total of 35 consecutive years. From South Carolina, "Cotton Ed" Smith had seen 33 years of continual service in the Senate. In the House, 6 members in addition to Representative Sabath, had served 30 years or more.

Generally speaking, long service is more common in the House than in the Senate, despite the shorter term; the size of the body is larger and the area of the constituency smaller. In the Seventieth Congress, out of a total of 435

members in the House, only 53 were newcomers. A striking revelation, this! We are so close to the picture that we hardly realize how rapidly careerism in public office is catching hold in the United States. In the Sixty-ninth Congress, on the other hand, one half of the senators were serving their first term.

SHOULD LEGISLATORS BE MERELY JUDGES?

We come now to an important point. Can the prestige of legislators be restored to its former place in the people's esteem? This must be brought about if representative government is to endure, because if prestige is lacking it will be that much harder to attract the ablest citizens to a career in public office. It is they alone who can provide the leadership that we so badly need.

Have the preceding chapters on the lawmaking process assumed more for legislative influence and control than we can look for or even hope for? These chapters have said that the legislature is the center of political gravity, or ought to be. Is that statement wrong?

Some thoughtful people are convinced that the executive should formulate all legislative programs and that legislatures should then merely discuss, revise, and approve them. It is argued that legislatures should not attempt to initiate the grand legislative strategy of society. Others go even further and say that under modern conditions, where definite and prompt action is indispensable, legislatures should be little more than stage setting. "The legislator," says Harvey Walker in his *Law-Making in the United States,* "needs only to act in a judicial capacity." Professor Walker is not one of those who would have legislatures abdicate. On the contrary. But he apparently realizes, as many do, that legislatures today have lost the initiative to pressure groups and the executive branch. He argues that the power of pressure groups and lobbies—added to or working with the administrative departments of the government—accounts for the major part of bill drafting and policy initiation.

Professor Walker concludes, therefore, that the function of the legislator might as well fall in with this tendency. The legislator would weigh in the balance the arguments pro and con, as presented in briefs and evidence prepared by the research departments of lobbies and administrative departments. Then "if he deems that the public's interests have not been adequately represented," says he, "he may turn to a legislative reference bureau which will prepare for him a brief on the subject."

Without wishing to disparage the important function of the judge, we may well ask if this is all that may be expected of American legislative assemblies in the future. Woodrow Wilson was perhaps nearer to political wisdom when he said that legislative assemblies are of necessity, in a free government, the center of political gravity, and if they tend to lose this status it is the work of political science to see that they redeem it. It will be a good omen for America's future when promising men and women in our colleges say as confidently as they now do of business or professional careers, "I expect to go into politics."

THE CENTER OF POWER: PARTY LEADERS

Legislators have influence, but party leaders have even more. Party leadership, therefore, should increasingly become the ambition of those who have had the best educational opportunities. This, however, will take time. Party leaders do not enjoy great prestige in America today. Rather, they are linked in the public mind with boss rule, spoils, shady practices, graft, and corruption. This is particularly true of the local boss, but even state and national party chieftains lack the public prestige to which their power and influence should properly entitle them.

Here is where Theodore Roosevelt's counsel applies most strikingly: If a man has good red blood in his veins and is not afraid of dealing with sordid motives, party leadership should possess an irresistible appeal. The political party, as noted before, not only controls the election laws and the choice of candidates; it also directs or should direct the course of public policy.

Some men are "born politicians." They like people, they understand human motivation, and they like to lead. They can engage in intrigue and manipulation without losing their integrity and their ideals. These are the political leaders that America needs. The political type, at its best, represents an ideal that is hard to surpass. Read, for example, some of the biographies mentioned at the end of this chapter. The politician is tolerant and understanding. He loves people—the unwashed as well as the well scrubbed—or he could have no influence with them. Behind his seemingly calloused exterior there is often a warm heart filled with compassion for his fellows. The trouble with many such leaders is that politics to them is only a game, played for the interests that pay them and keep them in power. They fail to realize the over-all significance of the position they occupy in the structure and functioning of society. They are not "self-conscious." If the qualities of old-time politicians could be combined with a rugged idealism, and integrity—such as that of George Norris or Robert Wagner, let us say—the desired blend would be effected. Politics is and always has been among the highest arts which man may acquire. The question now is, will the challenge be heeded?

SUPPLEMENTARY READING

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2. Legislative and party leadership: Charles E. Merriam, *Four American Party Leaders* (New York, 1926), dealing with Lincoln, Bryan, Theodore Roosevelt, and Wilson; also A. D. Morse, *Parties and Party Leaders* (New York, 1923); and J. T.

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3. Biographies and autobiographies: There are a large number of these. A few, relating to outstanding legislative leaders, have been selected: Gerald W. Johnson, *America's Silver Age—The Statecraft of Clay, Webster, Calhoun* (New York, 1939); Henry Cabot Lodge, *Daniel Webster* (Boston, 9th ed., 1887); Carl Schurz, *Life of Henry Clay* (Boston, 1888); Bernard Mayo, *Henry Clay, Spokesman of the New West* (Boston, 1937); Charles M. Wiltse, *John C. Calhoun, Nationalist* (New York, 1944); David S. Muzzey, *James G. Blaine, A Political Idol of Other Days* (New York, 1934); L. W. Busbey, *Uncle Joe Cannon* (New York, 1927); *La Follette's Autobiography* (Madison, 1913); Allen F. Lovejoy, *La Follette and the Establishment of the Direct Primary* (New Haven, 1941); and Richard L. Newberger and Stephen B. Kahn, *Integrity: The Life of George W. Norris* (New York, 1937).

PART SEVEN LAW AND THE JUDICIAL ESTABLISHMENT

CHAPTER 28

Law and Legal Institutions

AFTER A LAW has been placed on the statute books, it must be administered; and in case of dispute, it must also be judicially interpreted. There is a question, therefore, of which field should be dealt with first, public administration, or the scope of judicial institutions and procedures. There are arguments for either sequence. In the governmental process, administration follows legislation; on the other hand, the influence of the courts is a major factor in the drafting of the law. Indeed, the control of the judiciary over the shaping of public policy is greater in the United States than in any other country in the world. This is another of the so-called distinctive features of the American system of government.

These are compelling reasons for dealing first with the judiciary, and this is the course which will be followed here. Following the present chapter on law and legal institutions, the discussion turns next to the judiciary as policy maker, to judicial administration, to the question of our civil liberties, and to the judicial office as a career.

Law is one of those words in the social science vocabulary which is susceptible of many definitions. In that respect it is like such terms as "state," "sovereignty," and "democracy." Indeed, it would not be hard to collect a hundred or more definitions of law. Aristotle, for example, defined law as "whatsoever the ruling part of the state shall enact." To Hobbes, law was the command of the sovereign. T. E. Holland, in *Elements of Jurisprudence,* held law to be "a general rule of external human action enforced by a sovereign political authority." J. C. Carter, in *Law: Its Origin, Growth, and Function,* says, "Law always has been, still is, and will forever continue to be custom." A. V. Dicey, on the other hand, holds law to be simply the aggregate of rules—including statute law, constitutional law, and custom—enforced by the courts or recognized and acted on by them.

Perhaps one of the best definitions of law is that of Woodrow Wilson, who believed law to be "the will of a state concerning the civic conduct of those under its authority. This will may be more or less formally expressed; it may speak either in custom or in specific enactment. . . . Law is that portion of the established thought and habit which has found a distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government." [1]

[1] Woodrow Wilson, *The State* (New York, rev. ed., 1898), p. 587. For discussion, see E. M. Sait, *Political Institutions* (New York, 1938), pp. 158 ff.

Generally speaking, definitions of law may be divided into two main groups. First there are those of the analytical school, which emphasizes authority and compulsion in accordance with the formal rules of society. Second, there are those of the historical school, which emphasizes rather the development of habit and custom. Any satisfactory definition must combine these two elements because law is both. It will not be far wrong, therefore, to say that *law consists of that body of written and unwritten rules of human conduct which are enforced in society by express or customary sanction.*

It is important to note, however, that while law covers all of society, it has a special relation to government. Thus law is that element found in all three branches of the government which sanctions and enforces the customs and formal rules of society as they apply to individuals and groups, including the government itself. We cannot think of government without thinking also of law. Law to government is like the circulatory system to the human body. The legislature makes it, the executive enforces it, the judiciary interprets it, the constitution contains some of its formal provisions, and society itself makes and changes it through custom, interpretation, public opinion, criticism, and advocacy.

Law, like politics, reflects the differences in economic systems in various parts of the world. Hence, like economic controls, law may be primitive or complicated, individualistic or collectivistic, democratic or autocratic. In all systems, however, there is always one thing in common—law is the means through which groups seek influence, governments secure control and compliance, and individuals look for protection. Law, therefore, becomes a central concern, because law and government are interchangeable. If government is to keep pace with the problems of society, it must be through law.

This chapter takes up the rise of legal institutions, the form of law, and the differences between the civil and the common law. It concludes with a discussion of the content of law, including public, private, and criminal law.

THE RISE OF LEGAL INSTITUTIONS

In his article on law in the *Encyclopedia of the Social Sciences,* Professor A. R. Radcliffe-Brown defines law as "social control through the systematic application of the force of politically organized society." But in connection with this he makes the rather surprising statement that "in this sense, some simple societies have no law, although they have customs which are supported by sanctions."

But is custom not law? In the broad sense in which law has been defined here, it is. No definition can change the fact that law, as an instrument of government, grew out of custom and depends in large measure on custom today. Legislation sometimes changes custom, but more often it merely reinforces the values and concepts which, through custom, predominate in society. Through the coercive power of the police and the courts, government sometimes has to exercise compulsion, but if any political organization attempted

to rely on compulsion alone—ignoring the aid of custom—that regime would not long endure.

Custom and compulsion go hand in hand. *The simpler the society, the more of customary sanction there is likely to be; the more complex the society, the more of formal governmental sanction we may expect.* In a complex society, written codes of law are likely to be more in evidence; legislation becomes an important factor; an elaborate court structure comes into being; specialized police and enforcement officials increase with specialization in other fields.

Custom arises, as Carter has pointed out, through the interplay of men and their environment. Men adjust themselves and respond to the stimuli of their surroundings. Survival, convenience, and other factors cause them to form habits. An implicitly acknowledged attitude grows up with regard to the rightness or wrongness, the fitness or inappropriateness of particular actions. In a simple community, public opinion is usually the only sanction needed to enforce conformity to basic understandings and taboos. Working with public opinion, however, pressures of other kinds come to be exerted. One of these is economic. Property rights, for example, were early emphasized in primitive societies and continue to be emphasized today. Sex and family life are central among the interests of the individual and are among the first to be protected. Together with other pressures that appear as the community matures, these are the materials out of which law is gradually compounded.

The manner in which law originated and grew should help us to understand it today. At first the organized community (government) had little or nothing to do with it. Government was not needed; the family and religious organization took care of the simple needs of the community and were the two principal institutions influencing custom, which at length became recognized as law in the formal sense. The settlement of disputes between individuals was a private matter. In both Rome and England various methods of self-help were used. If two men quarreled over the ownership of a horse, for example, they fought it out and the stronger took the horse. However, if it became noised about that he was not entitled to the animal, he might find it uncomfortable to remain in the community.

As family control in a simple society gives way to the rule of a recognized political chieftain whose influence is due largely to the need for common defense, the community begins to interfere increasingly in private disputes. The chieftain is consulted as to what the customary rule is on a given point. He is appealed to when the loser fails to carry out his agreement. The chieftain is also asked to act as referee. Eventually public opinion decides that it would be a good idea if the community made the rules and required individuals to follow set procedures in certain groups of cases. All of this takes time and develops gradually. There is no set pattern for all cultures, but there are a good many similarities.

Legislation comes relatively late in this process. At first it is rare and usually takes the form of edicts from the king or ruler, rather than laws emanating

from a legislature. Later, however, the legislature assumes control and thereafter becomes the chief source of law. In Athens, the influence of the citizen assembly was so great that legislation became prominent in the Greek city-state long before it did, relatively speaking, in Rome or England. In Rome the legislature never reached its full stature because the executive always remained the stronger of the two branches of the government. In England, on the other hand, the evolution was completed by 1688, when Parliamentary supremacy was established.

Adjudication Grows Out of Administration

The two principal systems of law in the world today are derived from either Roman or English origins. There are many resemblances between them, however, in their early development, due in part to Roman occupation of the British Isles, although the origins of English law antedate this occupation. In both instances, law evolved out of custom into a governmental responsibility. Both systems relied on self-help methods. Both made use of ritualistic formalities such as the "laying on of the hand" to denote ownership—the religious influence. Both developed fastest under social pressure from a dissatisfied class of citizens who insisted on formal agreements, on rights expressly written down, and on administrative machinery to hear controversies where the stronger attempted to impose on the weaker. Both evolved their courts and primitive judicial machinery from the administrative offices of the realm.

In Rome, the governor of a colony was called a praetor. He was an administrative official, the chief executive of a province. When a dispute arose it was his responsibility to determine what law applied. Should it be the civil law of Rome or the local law (*jus gentium*) of the conquered country? Rome wisely decided to recognize the latter wherever possible, realizing that local custom is stubborn and should not be interfered with unless clearly necessary. At length the praetor became so busy with his administrative duties that he could no longer hear all the disputes coming before him. He needed an assistant, a hearing officer. This official was called a "judex," the root of our word "judge." Over a period of time, as the volume of work increased, the praetor had increasingly less to do with judicial matters. The judex not only heard cases but used his own judgment in applying the law to them.

In general outline this is the manner in which the English judicial institutions also evolved. The Lord High Chancellor—member of the king's household and responsible for legal matters—became so overworked with the affairs of state that delegations of authority were necessary. The division of labor and specialization of function grew increasingly essential. The king's authority was finally taken to the people in their local communities through the sheriff, the justice of the peace, and eventually the county courts. At first, of course, there were no formal courts as we know them today. These evolved into their present form just as legislation, a rival of custom, developed over a period of time.

The fight for judicial independence in England and for the rule of law was part of the people's contest with the king for Parliamentary supremacy. It gathered force in the latter part of the sixteenth century and came to a head in the seventeenth. By 1688 the judiciary was secure from royal domination, just as Parliament was secure. There would be no more Star Chamber proceedings by means of which the king applied his own law in his own courts for his own purposes. The right of trial by jury and indictment by grand jury had been fought for and won. The "rule of law" had become an essential part of the English constitution. As Coke and Blackstone explained it, the rule of law meant, first, that no person, high or low, governmental or private, rich or poor, was above the law and immune from the courts; second, that there was only one body of law—the common law—for all classes and cases.

THE FORM OF LAW: CODIFICATION VS. PRECEDENT

The civil law, derived from Rome, is codified. It is written down in codes by main classes of subject matter, with principles applicable to every field of dispute or question. All that the public, the lawyers, and the judges have to do, therefore, is consult the code as they would a handbook. Anglo-American law, on the other hand, is not primarily codified, although steps in that direction have been taken in recent years. Rather, it is based on common law and on precedents made up from the so-called leading cases which the judges are supposed to follow when a similar controversy arises.

These are the main differences in form between the civil law as derived from Rome and the common law which grew from English origins. But here, as elsewhere, there are the dangers of overemphasis on the differences and of failure to recognize the similarities. The civil law, for example, also makes use of precedents, and this tendency has increased in recent years, just as gradual codification is taking place in Anglo-American law. Both systems of law rely heavily also on custom and legislation. Thus, although there is an important difference in form in each case, the sources evidence much in common.

Roman law got its impulse in the direction of codification as early as the Twelve Tables (451–449 B.C.). This writing down of the law on stone tablets was primarily due to the plebeians who, in their long struggle with the patricians, wanted to secure their property rights, the right of intermarriage with patricians, and the right to be admitted to the highest legislative and executive offices of the state. In the Twelve Tables they did not get everything they demanded but they got a start, and so did codification. The work of Roman law codification was not completed, however, until a thousand years later with the famous codification of the Emperor Justinian. By that time the barbarians had invaded from the north, Rome had fallen, and Justinian ruled over the Eastern Empire at Constantinople. But before Roman government faded out of the picture she left a Corpus Juris Civilis, in four parts, which formed the basis for the growth of the civil law in European and other countries. France became the chief transmitter of the influences of Roman law, which according

to Professor J. Declareuil, "was nowhere more completely naturalized than in France."

In England, a separate and less formal body of law, the common law, had grown up. It was never codified. But as the influence of Roman law was diffused, the common law became a notable beneficiary, especially in the fields of wills, estates, corporation law, admiralty, equity, and family relations. The common law was also supplemented by the canon law, developed by churchmen in the Middle Ages. At first the canon law applied only to the church, but as the power of the church spread in secular and temporal matters, the influence of the canon law also became diffused.

Influence of the Jurists

The student of law has played an outstanding part in the growth of both civil and common law, although his influence is greater in the Roman than in the English field. The codification of Justinian could not have been accomplished without the work of centuries of systematization and commentary by legal scholars. Cicero, one of the first of these, emphasized the Stoic idea of equality before the law, justice arising from natural law, and the law of peoples (*jus gentium*) which has been so influential in the development of the natural law tradition during the eighteenth century and the growth of international law in more recent times.

The English common law system was established as early as the thirteenth century, but a later period of growth was due to the work of commentators. Coke was one of these. Blackstone (1723–1780), who wrote his *Commentaries* around 1765, was the greatest, and his work influenced American law almost as much as English law. In this country, Kent (1763–1847) and Story (1779–1845) are the principal legal authorities deserving of notice.

THE CIVIL LAW AND THE COMMON LAW

Each people has had its own law because each has had its own customs. There is Egyptian, Jewish, Greek, Chinese, Islamic, Japanese, or Hindu law, to mention some of the older bodies of that discipline, but it is the Roman and the English bodies of law which have had the greatest influence in terms of the diffusion of their concepts in other countries. Most of the world is divided between them today.

The common law system which grew up in England is now found in England and Ireland; in the United States except Louisiana; in Puerto Rico; in the Philippines; in Canada except Quebec; in Australia; in New Zealand; in India with certain exceptions; and in the British colonies other than those settled originally by the French or the Dutch. For the most part, the English common law has taken hold in the English-speaking countries.

The civil law of Rome covers an even greater extent of the earth's surface than the English common law. Generally speaking, the ambit of the civil law includes the European countries which were once part of the ancient and

medieval Roman empires, along with their past and present colonies. The civil law also spread to Russia but has been greatly modified there since 1917. It claims Scotland, Louisiana, and Quebec; it forms the basis of the legal system of South Africa; it has even influenced the revised legal codes of Turkey and Japan. The civil law is also the legal system of South and Central America, including Mexico.

With the exception, therefore, of parts of Africa, the Mohammedan Near East, China, and Japan, the civil law of Rome and the common law of England have overrun most of the world. In those parts of Asia which have been mentioned, the peoples have their own systems, although Japan has borrowed much from the civil law.

The above characterization, however, speaks of two main legal systems, but actually they have been molded and remolded by every nation that has come in touch with them. In the diffusion of the Roman and the English bodies of law, the distinctive customs and formal rules of a people have combined with them to form a new blend in each case, consisting of both the indigenous and the borrowed. As a result, there are many differences of doctrine and procedure within both great legal systems. For example, the common law of the United States branched off from that of England in the first part of the seventeenth century; whereafter important modifications began to be made and are still in process. During the eighteenth and nineteenth centuries far-reaching changes also occurred in the law of England itself, as interpreted by English courts and established by Parliament. Thus today there are notable differences between the English and the American bodies of law, although we give the combined legal system the shorthand title of Anglo-American law.

The sources of our common law in the United States are listed by Dean Roscoe Pound as including, first, English court decisions and English books of authority prior to colonization and, second, English statutes prior to colonization and in the intervening period before the Revolution. He also mentions the law merchant, or the universal custom of the commercial world which was absorbed by both the common (English) and the civil (continental) law. Then there are the canon law developed by the church, and international law, the law of war and peace among civilized nations, which became a part of the common law. And finally, there are customs—to which might be added the basic documents of freedom such as Magna Carta, the Petition of Right, and the Bill of Rights.[2]

Some of the more important differences between the English common and the continental civil law may now be listed:

In the development of the common law, the influence of the judges has been greater than any other, because of the extent to which the common law relies on precedent. *In civil law, the influence of the jurist or commentator has been greatest,* because it is he who has made the codifications possible.

[2] See his article entitled "Common Law" in the *Encyclopedia of the Social Sciences,* II, 50–56.

Next to Justinian's codification, that of Napoleon, which appeared in 1804, has had the most influence in civil law countries because it constituted a finished product on which others could draw. The main parts of Napoleon's code deal with civil law,[3] procedure, commerce, criminal procedure, and forestry. Work is now in process on labor and rural codifications.

Codifications are brought into being by legislation; *hence legislation constitutes an important source of the civil law.* The common law, on the other hand, is primarily judge-made law, which today, however, must be combined with statutory law. Nevertheless, as Dean Pound and others have pointed out, because of their tradition, judges tend to prefer common law to statute law. Consequently in their interpretations they unconsciously think of statute law in terms of common law doctrines; this proclivity has had much to do with the problem of judicial supremacy in the United States.

Legislation is as important a source of law in Anglo-American countries as in civil law countries, but because of the precedent nature of our common law and its generally noncodified form, judges have a greater influence here in interpreting legislation.

Another difference between the civil and the common law is that *in civil law countries, the judge dominates the proceedings and often interrogates witnesses, whereas in Anglo-American countries, attorneys perform this function.* Our method of court procedure has been characterized as the method of the cockfight, the civil law method as the inquisition. In our procedure the attorneys fight it out, using legal technicalities, impassioned appeals, or other means designed to secure a favorable decision. In civil law countries the parties are represented by counsel, but the judge himself tries to bring out the pertinent issues and facts as expeditiously as possible, asking questions and restraining counsel when necessary. It is interesting to note that this same tendency on the part of judges has increased in the United States. Judges in both the trial courts and the appellate courts now frequently ask questions from the bench.

In civil law countries, cases are heard in collegium—that is, by three or more justices sitting on the same case; Anglo-American countries have the single-judge tradition. But here again, the difference tends to disappear, and it is increasingly customary in both the state and the federal courts of the United States to have several judges, rather than one, on the bench.

In civil law countries, a formal distinction is made in the codes between private and public law. But in common law countries no such formal division is made. In common law countries, therefore, the difference between public and private law is found only in classifications used for teaching and research purposes.

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[3] It will be seen that the term "civil law" is used in two senses. The first is a comprehensive sense to denote the law of Rome and the countries adopting her jurisprudence. The second distinguishes civil cases from others, notably criminal cases. This dual usage is so old and established that it cannot be avoided.

The two principal subdivisions of public law are constitutional and administrative law. As Frank J. Goodnow once said, constitutional law deals with the anatomy of government, administrative law with its physiology. Constitutional law relates to the general powers and organization of government, while administrative law deals with the powers and organizational procedures of those who administer. Administrative law is law in action.[4]

THE CONTENT OF LAW

The classification of law in the United States includes public, private, and criminal law. The government sanctions all three kinds.

Public law regulates the organization of government, the powers and duties of its departments and officers, and its relations with individuals. Public law depends almost entirely on the formal provisions of constitutions and legislative statutes.

Private law may be most simply defined as that body of rules and principles which regulates the relations of individuals with each other. Private law, in common law countries, is a combination of ruling case law and statutes.

Criminal law is that branch of jurisprudence which deals with offenses against the safety and order of the state. Criminal offenses, by a fiction, are committed against the community itself and hence the government itself prosecutes. A legal fiction is something assumed for legal purposes, whereas in fact it may be something quite different. The assumption that a corporation is a "person" is a legal fiction.

The public and criminal law sections of the civil law have been substantially modified by the form of government in each country. This is less apparent in the case of private law, but even here there is a tendency for the demarcation line between public and private law to fade. In an article on civil law, for example, Professor J. Declareuil tells us, "Indeed, the civil law is undergoing a marked transformation in the direction of socialization. Civil law in the sense of private law is in danger of disappearing. Private legal transactions, because of their socialization, are on the verge of being absorbed into public law."[5] This may be an overstatement, but there can be no question that such a tendency exists.

The same trend has been noted in the United States. A generation ago Dean Pound pointed out that business and labor relations had become the concern largely of administrative tribunals outside the regular court structure, with the result that the base of the common law was constantly narrowing. With the adoption of codes of fair competition, trade association agreements, collective bargaining agreements, and the like, the line separating private and public law tends more than ever to shrink.

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[4] Dealt with in Chapter 38, "Holding Administration Accountable."

[5] Article on "Civil Law," *Encyclopedia of the Social Sciences*, II, 508.

The Criminal Law

In the field of criminal law, crimes such as murder have apparently always been a matter of concern to the commonweal, even among preliterate peoples. There is a striking uniformity in all ages and countries in the offenses considered proper subjects of criminal law—with murder, robbery, and burglary among the first. Since the Industrial Revolution the number of criminal offenses has grown with the addition of petty crimes of the acquisitive type.[6]

In Rome, crimes were considered so grave a matter that special commissions were set up to investigate individual offenses. From Rome, in the later development of Roman law, came two basic principles that have been generally followed throughout the Western world: first, every crime must be defined in advance by legislation; and second, the enforcement and prosecution of the criminal law are the responsibility of the state itself.

In England, criminal law was based on the legal conception of the king's peace, by means of which both the private and the criminal law were extended. Main thoroughfares, for example, could be designated the king's road and any offense committed on them against the body or property of an individual was an offense against the king himself.

There are two main categories in criminal law. The first is felonies, usually involving a penitentiary sentence of a year or more; the second is misdemeanors, involving a shorter jail term or a fine. In order to protect society against harsh and undefined punishments—which were common as late as the early nineteenth century—the courts have developed the so-called rule of certainty, involving the predefinition of the crime and the establishment of proof. This is perhaps the major principle in criminal procedure. Due process of law and individualization of treatment are also primary principles of justice in this field.

Substantive Content of Law

If the body of law at any period of time or in any country is examined, it will be found that the largest part of it deals with property rights. This is natural. To the primitive person his canoe, bow and arrow, his coconut tree, and his shack were virtually all he owned. They meant prestige and influence in the community as well as security.

In the life of today, property is a much more complex conception, and the categories of law dealing with it have expanded accordingly. Most of the early law of Rome dealt with property. The patricians and plebeians were both concerned that it should—the patricians in order to insure their privileged position, the plebeians to safeguard what they had and to lay the foundation for securing more. Ownership was regarded as an absolute right. Land and chattels, by a fiction, were considered to inhere in their owner. The law of contract

[6] See Chapter 51, "The Community's Safety and Social Environment."

was early emphasized, as it is today. An *obligatio* (obligation or contract) was a binding agreement between two persons, but it was not long before it came to be viewed as a *res* (thing)—something with a separate identity and having an existence distinct from the parties to it. These two illustrations show how the law, largely by means of fictions, grows and develops over a period of time.

Another example of a fiction of law is the corporate organization. The corporation was first used by the Romans prior to the birth of Christ. It was a subsidiary private group chartered by the state for a particular purpose—almost any kind of purpose including business, education, religion, municipal government, the guild, and so on. Under the influence of the Roman ecclesiastical officials, the corporation came to be considered a fictitious person with a separate personality, identity, property, perpetuity, and similar characteristics apart from the individuals who actually formed and constituted it.

The significance of any such doctrine is obvious. The manner in which the Supreme Court of the United States, making use of this fiction, applied the due process of law clause of the Fourteenth Amendment to the business corporation has been described. How can something that is based on a fiction, something that is not real, be regulated and held to accountability? This is an example of the difficulties arising in the realms of law and administration.

The number of doctrinal differences in the common and civil law systems is not particularly great. In a few cases, however, the differences give rise to misunderstandings—even to international incidents. A notable case of this kind arose in the long-protracted dispute between United States and Mexican interests over the expropriation of American oil properties in Mexico by the Mexican government. It started in 1920 and lasted for more than a generation. The civil law of Mexico provides that the subsurface title to minerals, and other elements such as petroleum, shall vest in the government and cannot be alienated; persons and companies may merely be licensed to exploit them at a rental fee. But our common law, being more individualistic in this respect, provides that subsurface rights may be owned outright in perpetuity by the owner of the land above. In Mexico the two concepts came into conflict. The question of which is the better rule depends on one's view of basic economic and social policies. Fortunately the number of such areas of disagreement is not large.

IMPORTANCE OF LAW AND JUDICIAL MACHINERY

If the law can keep pace with human needs and desires, the role of government will be much easier. People will then be content and at ease, rather than dangerously tense in the face of obsolete restrictions. If equal justice can be done in every case, the people will respect their officials and will be more fair-minded themselves. The comparison of law to the human bloodstream was not a chance remark. The influence of law is universal. Its quality spells the difference between vigor and anemia in the nation and in the individual.

SUPPLEMENTARY READING

1. General: On the kinds of law in the United States see Robert K. Carr, *The Supreme Court and Judicial Review* (New York, 1942), pp. 1–5. See also A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 19, "The Courts and the Law." There are several good articles in the *Encyclopedia of the Social Sciences,* viz., "Common Law," "Civil Law," "Law," "Jurisprudence," "Jus Gentium," and "Rule of Law." A classic is Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven, 1921). Another classic, A. V. Dicey, *Law and Public Opinion in England* (New York, 1905). For the realistic approach see Jerome Frank, *Law and the Modern Mind* (New York, 1930).

2. The common law in England and the United States: The best historical treatment is T. F. N. Plucknett, *A Concise History of the Common Law* (Rochester, N. Y., 1929), Part 4, Chapters 3 and 4, "Legislation" and "The Principle of Precedent." See also Harvey Walker, *Law-Making in the United States* (New York, 1934), Chapters 1, "The Hierarchy of Law in the United States," and 17, "Law Making by the Judicial Branch." A good survey of recent developments is "Law and Legal Institutions" by Charles E. Clark and William O. Douglas in *Recent Social Trends* (New York, 1929), Chapter 28.

3. Influence of the Roman law: See the articles on "Common Law" and "Civil Law" referred to above in the *Encyclopedia of the Social Sciences.* See also E. A. Parker, *Rome, the Lawgiver* (London, 1927) and Association of American Law Schools, *General View of European Legal History* (Boston, 1912–1918), Vols. 1 and 2, and bibliographies set forth therein. One of the best brief accounts is E. M. Sait, *Political Institutions* (New York, 1938), Chapter 10, "Roman Law"; see also Chapters 9, 11, 12 on "Law" and "English Law."

4. Criminal law: The best single reference is that entitled "Criminal Law," *Encyclopedia of the Social Sciences,* II, 569.

CHAPTER 29

The Judiciary as Policy Maker

AN EARLIER CHAPTER has shown that, historically, the adjudicative function grew out of administration. James Mill, in his essay entitled "Government," observes that "the executive functions of government consist of two parts, the administrative and the judicial." Basically, therefore, government has but two aspects: the making of policy and the execution of policy. The doctrine of the separation of powers to the contrary, each of the three branches of government shares in both processes. Thus the legislature regards administrative surveillance and control as one of its primary duties. On the other side, the executive branch increasingly initiates legislation and, as will be noted later, even relieves the courts of substantial areas of quasi-judicial work. This is especially true in the numerous fields of public control represented by such agencies as the Interstate Commerce Commission or state workmen's compensation commissions. For their part, the courts assist in the administration of the law, deciding disputes as they arise in the course of enforcement. They also exercise a strong influence on the legislature through their powers of interpretation and judicial review.

There is a distinction between the judicial interpretation of the law and the judicial review of legislation. In the case of interpretation, the court clarifies the meaning of the law. But in the case of review, the court must decide whether there was any authority to pass the law in the first place. Between interpretation and review there is a practical relation which has been emphasized by Professor Charles G. Haines, the foremost authority in the United States on judicial review. In his *American Doctrine of Judicial Supremacy,* Haines points out that "the principles of law and political practice which place the guardianship of . . . constitutions primarily in courts . . . and the dominance of judge-made law in accordance with common law standards and principles, constitute the bases of what may appropriately be termed the American doctrine of judicial supremacy." [1]

Laws are set down in words. These words convey meanings that must be interpreted both by administrators and often by the courts. As between these two groups of public officials, the judges have the final determination. Moreover, when it is realized how, of necessity, the language of modern legislation is technical and involves the use of vague terms such as "fair and reasonable," "due consideration," and "public interest," it becomes clear how influential this final determination may actually be in shaping public policy. This is no new

[1] *Loc. cit.,* p. 27.

development. Over two centuries ago Bishop Hoadly remarked, "Nay, whoever hath an *absolute authority* to *interpret* any written or spoken laws, it is He who is truly the *Law-Giver* to all intents and purposes, and not the person who first wrote or spoke them." The good bishop was referring to the divine law rather than to statutory law, but his observation is equally pertinent. One of our great chief justices, Charles Evans Hughes, spoke of the problem of interpreting the law in his book, *The Supreme Court of the United States.* "The court," said Hughes, "is the final interpreter of the Acts of Congress. Statutes come to the judicial test . . . with respect to their true import, and *a federal statute finally means what the Court says it means.* . . . Congress voluntarily leaves much to the courts." [2] (Italics added.) This fact of interpretation by the courts is important of itself, but it becomes infinitely more important when combined with the power to review legislative and executive acts and to hold them null and void.

This chapter will start with a brief reminder of the different kinds of law in order to facilitate an understanding of the process of judicial review. It will then compare the practice of judicial review in the United States and in other countries, and discuss the extent to which it has been used here, the process involved, and the social and legal effects. Next comes a discussion of the wide use made of the power of judicial review in connection with cases dealing with the state police power, as well as with the federal police power. Finally it takes up the various proposals which have been advanced to limit the power of judicial review.

THE KINDS OF LAW

Common law is the great body of private law which judges have interpreted in the Anglo-American legal system and which today forms one of the bases upon which our jurisprudence rests. The common law is grounded on decided cases which become precedents. Obviously, therefore, when old rules must be applied to new situations, the power of interpretation becomes crucial. Even in their interpretations of constitutions, judges are greatly influenced by the lore of their profession, the common law.

Equity is a remedial branch of justice that grew up alongside the common law, broadening and liberalizing it until at length in most American jurisdictions equity and the common law have been merged. In large measure, equity is judge-made law because it involves the use of discretion and "the rule of reason" where the remedies of the common law are not adequate or where, if literally applied, such remedies would not result in substantial justice.

Statutory law consists of the laws enacted by legislative bodies. This type of law has become so extensive that today it applies to almost every realm of human conduct. It is written by the legislature, but in case of dispute it must be interpreted by the courts.

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[2] *Loc. cit.*, pp. 229–232.

Constitutional law is the written or unwritten law dealing with the powers and organization of the government, the relation of each part of the government to the whole, and the relation of government to the citizen. Even when written down in one place, as has been noted, constitutional law still gives rise to an infinite variety of decisions in interpretation. When judges have the last word—as they do—their influence on social policy is unexcelled.

Each of these four bodies of law is subject to judicial interpretation. As interpreted by the courts, they tend to blend with each other. Constitutional law is a reflection of common law. Statutory law is replete with both common law and constitutional law. Judges may pick and choose, within limits, as to which kind of law shall be used in deciding each case. No judge in American history exemplified this practice more strikingly than Chief Justice Marshall of the Supreme Court.

THE JUDICIAL REVIEW OF LEGISLATION

When the Supreme Court of the United States invalidates an act of Congress or of a state legislature on the ground that it is not in conformity with constitutional powers and provisions, it is exercising its power of judicial review. Chapter 9 showed how this power was enunciated by the Supreme Court, speaking through Chief Justice Marshall, in 1803 (*Marbury* v. *Madison,* 1 Cranch 137), how the power then lay dormant until after the Civil War except for the *Dred Scott* decision, and how it has been widely used since the adoption of the Fourteenth Amendment to the Constitution in 1868, with its due process of law clause.

Judicial review is the examination by the courts, in cases actually before them, of legislative statutes and executive or administrative acts to determine whether or not they are prohibited by a written constitution or are in excess of powers granted by it.

In the case of *Marbury* v. *Madison,* Chief Justice Marshall argued that a written constitution, which is declared to be the supreme law of the land and which the judges are bound by oath to uphold, makes the power to declare acts of legislatures unconstitutional an inevitable adjunct of judicial authority. Marshall's interpretation was widely disagreed with at the time and has been challenged by prominent writers and large sections of the public ever since,[3] but there is no question that today it is deeply entrenched in our governmental system. The number of people who would defend judicial review exceed those who would eliminate it.

This, however, does not keep the question of judicial review from remaining a live issue. The appointment of new judges to the Supreme Court may diminish the fervor with which it is debated, but sooner or later it is bound to rise again. Moreover, with a few exceptions which will be noted, the power

[3] See Edward S. Corwin, *Court over Constitution* (New Haven, 1934), Charles G. Haines, *The American Doctrine of Judicial Supremacy* (Berkeley, Calif., 2nd ed., 1932), Chapter 1, or Robert K. Carr, *The Supreme Court and Judicial Review* (New York, 1942), Chapter 11.

of state supreme courts to declare state legislation unconstitutional is also in full vigor today.

As students of government we may favor this power or wish to modify it, but in either case we should understand that the existence of a written constitution does not *necessarily* involve the power to declare laws unconstitutional. Judges may interpret constitutional provisions—just as they interpret the common law—without possessing any authority to invalidate the law they interpret. The practice of other countries illustrates this point. *It is only when one assumes that a "higher" law by necessary implication involves the power of judicial review that the practice of overturning legislation becomes a necessary logical consequence.*

In Great Britain no such assumption is made. Great Britain has a constitution—although in comparison with ours not so much of it is written down in one place—and there the courts do not have the power to declare acts of Parliament null and void. Parliament is supreme. France, like the United States, has a written constitution, but the power of the courts to pass on the constitutionality of legislation has never been recognized there except in a very limited way.

Why the difference? For one thing, it is because in Great Britain Parliament is supreme. Equally important is the fact that the British and the French courts cannot claim the power to uphold a "higher" law because none exists. Constitutional law, statutory law, and the common law (or in France the civil law) are all merged in a single body of law. Furthermore, if by interpretation the courts place a different construction on legislation from that intended by Parliament, the legislature's authority to clarify its intention in future cases will be respected by the courts.

On the other hand, the power of the courts to review administrative acts, as distinguished from legislative acts, is as widely recognized in all countries as it is in the United States. Consequently, without calling into question the legislature's authority to pass the law in the first place, administrative officials may be held to have acted in excess of their power or to have failed to give individuals their procedural rights. In short, in other countries there is judicial review of administration, but not of legislation.

In the United States, the Supreme Court is not the only tribunal possessing the power of judicial review. The other federal courts—ninety district courts, and ten circuit courts of appeal plus that of the District of Columbia—share in this power. But the Supreme Court makes the final decision in case of appeal. State courts also enjoy the power of judicial review in cases relating to state constitutions, but their decisions are likewise subject to review by the state appellate courts. Similarly, the state courts may interpret the federal Constitution and statutes, but when a "federal" question is involved, the federal courts on review will insist on conformity to the "higher law" of the federal Constitution. When a state law is in conflict with a federal statute or with

the federal Constitution, a state court decision may be reviewed by a federal court and a decision rendered there regarding constitutionality.

Extent of Legislation Declared Unconstitutional

In the century and a half since the Supreme Court of the United States began to function, approximately 80 acts of Congress, in whole or in part, have been declared unconstitutional. The issue has been increasing. In the first seventy years, for example, only 2 cases of unconstitutionality arose; but in the four years between 1933 and 1937, 13 federal and 53 state acts were declared null and void by the Supreme Court.

The Supreme Court's review and invalidation of state legislation has been far more extensive than its adverse action on Congressional legislation. This has been true since shortly after the adoption of the Fourteenth Amendment to the Constitution in 1868. The Court's interpretation of the "due process of law" clause in the Fourteenth Amendment, says Professor Corwin, "today confers upon the court a practically discretionary veto power upon every state legislature." [4] Between 1868 and 1889, a period of twenty-one years, 71 cases involving judicial review of state legislation under the Fourteenth Amendment went to the Supreme Court. But between 1890 and 1901, a period half as long, the total numbered 197. Thus did judicial review accelerate after a slow start.

In 1937 the "Court-packing" dispute arose between President Roosevelt and Congress. A substantial amount of New Deal legislation had been invalidated and there had been no occasion to alter the personnel of the Court. The President lost the battle in Congress but won the final victory. His proposal to add a new judge for each judge who failed to retire within six months after reaching the age of 70, was turned down by Congress in the course of a public controversy that rose to white heat. It was admitted that Congress had the authority to take such action, but the method was criticized on the ground that it jeopardized the independence and integrity of the judiciary. But, replied the champions of reform, are we to allow the Supreme Court to emasculate the New Deal program under the guise of judicial review of legislation?

It was not long before the issue was solved, although not in the way the President and his supporters had originally sought. Vacancies arising in the Supreme Court's membership were filled by justices known to be not opposed to New Deal legislation. Remaining members voted more often in favor of the constitutionality of Congressional measures and soon the decisions were typically 5–4 or 6–3 in favor of disputed acts instead of against them. Then followed a period during which more precedents were overturned than at any time in the history of the Supreme Court.

The Process of Judicial Review

There has been some misunderstanding on the part of the American public as to what constitutes the actual method and effect of judicial review. Accord-

[4] Edward S. Corwin, "Judicial Review," *Encyclopedia of the Social Sciences*, III, 1689.

ing to one mistaken view, every act of Congress and the forty-eight state legislatures must be reviewed by the Supreme Court of the United States before it becomes law. This is not so. American courts review only those cases which come before them in the course of a dispute with regard to enforcement. Nor will the courts render advisory opinions. They will decide concrete cases or controversies placed before them, but they will not tell the legislature in advance what it may or may not do.

The steps in judicial review are as follows: First, two parties to a dispute come before the Court. The decision turns on the provisions of a particular statute. The Court studies the provisions and if it finds them to be invalid, it is either because the legislature had no authority under the Constitution, or because the provisions conflict with a limitation contained in the Constitution, or because the procedural requirements are insufficient. Whatever the decision, the consequences reach far beyond the case involved, because it either confirms or invalidates that law in every similar case. It might be said, therefore, that unconstitutionality proceeds from the particular to the universal.[5]

Rules of Interpretation Followed by the Supreme Court

Nowhere in the Constitution is the Supreme Court expressly authorized to declare legislative and executive acts null and void. There does, however, seem to have been some precedent in the powers of state courts. Why, then, if it was intended that the Supreme Court should have this authority, was it not so stated?

The Supreme Court itself has assumed the power of judicial review and, if it chose, could divest itself of that function or partially circumscribe it. So many surprising reversals of precedent have occurred in recent years that action of this kind would not seem to be entirely out of the question. The Court, for example, could hold that the due process provisions of the Fifth and Fourteenth Amendments to the Constitution were never intended to apply to business corporations, that they were clearly limited to human beings. So self-denying an ordinance would be astonishing but it is not inconceivable.

The Court has already adopted several rules indicating a desire to avoid policy decisions as much as possible and to confine itself to strictly judicial matters. The most important of these rules of judicial construction are the following:

The presumption is in favor of the constitutionality of legislation, and the Court will so find wherever it can. This the Supreme Court has repeatedly stated.

The benefit of the doubt rule, according to which, if there is any doubt on the point, the decision will be in favor of upholding the legislation.

Cases are preferably disposed of on nonconstitutional grounds. If the issue of the constitutionality of a law can be avoided and justice secured, this will be done.

[5] Oliver P. Field, *The Effect of an Unconstitutional Statute* (Minneapolis, 1935).

A statute that is constitutional on its face will be upheld. Such a statute will not be invalidated by exploring the motives of the legislature in passing it.

The principle of separability. Where part of a statute is considered unconstitutional and the remainder is not, the valid section will be sustained if it stands by itself.

The court will not decide so-called political questions. In this context, a political question is one which, in the Court's opinion, should be determined by the political branches of the government—the legislative and the executive. An example of this is the question of what constitutes a republican form of government, guaranteed by the Constitution to every state. As a rule, the matter of whether a question is political or nonpolitical is something to be decided by the Supreme Court itself in each case.

These are the main self-limiting rules the Supreme Court has imposed on itself. The extent to which the Court observes or merely pays lip service to them in the leading cases is a fascinating study, because in a large measure the outcome has depended on the membership of the Court at the particular time the issue arose.

The Effects of Judicial Review

In some fields of law there is more certainty than in others. In some sections of the common law the rule is fairly clear, but in other areas of law the rules are more vague. Because of the complexity of modern society, furthermore, no two situations are exactly alike. The words themselves are ambiguous; the "necessary and proper" clause of the Constitution is a case in point, or the "due process of law" clause which judges say cannot even be defined. Accordingly, *the less certain the rule and the wider the discretion, the greater becomes the policy-making influence of the judge.*

Constitutional law more than any other is characterized by these broad areas of discretion. The flexible language of the federal Constitution combined with the power of the courts to declare laws null and void, says Professor Edouard Lambert—a distinguished French scholar—results in the United States in the judiciary's entry into the political arena where economic conflicts and passions run high. A decision adversely affecting one group is bound to be as bitterly criticized as another, favoring a different economic bloc, is roundly applauded. Hence, for better or for worse, the Supreme Court is in politics. Public criticism is as legitimate as it is inevitable. And, as Mr. Dooley once said, the Supreme Court follows the election returns.

This is not the customary situation of a judicial tribunal, to be sure. But is there any escape save the relinquishment of the power of judicial review of legislation? Pressure groups use one set of methods on the legislature, another on the administration, and still a third on the courts. The public is aware that in close cases involving social issues, it is policy and not law in the strict sense that the courts are deciding.

Mr. Justice Holmes, one of the fairest and most intelligent judges this coun-

try has ever produced, summarized this situation in his *Collected Legal Papers.* "I think it most important," said Holmes, "to remember whenever a doubtful case arises, with certain analogies on one side and other analogies on the other, that *what really is before us is a conflict between the two social desires,* each of which seeks to extend its dominion over the case, and which cannot both have their way. *The social question is which desire is stronger at the point of conflict.*" [6] (Italics added.)

The English legal historian, A. V. Dicey, once said in a Harvard Law School lecture that "the Courts or the judges, when acting as legislators, are of course influenced by the beliefs and feelings of their time, and are guided to a considerable extent by the dominant current of public opinion . . . ."

Of the influence of judges on policy, Dean Roscoe Pound of the Harvard Law School comments that "it is not what the legislature desires, but what the courts regard as juridically permissible that in the end becomes law. Statutes give way before the settled habits of legal thinking which we call the common law. Judges and jurists do not hesitate to assert that there are extraconstitutional limits to legislative power which put fundamental common law dogmas beyond the reach of statutes." [7]

The Legal Effect of Judicial Review

An act of the legislature that is brought to question before a court will be held either constitutional or unconstitutional. If it is upheld as being within the constitutional power of the legislature which passed it, the law does not possess any more legal effect than it had before, but people are more likely to respect it. This is particularly true where business, labor, and other interests are directly affected by such legislation. We Americans are so accustomed to the *x* factor of constitutionality that we often keep our fingers crossed until a test case has gone before the highest state or federal court and has been decided one way or the other.

If the Court holds that a particular law is inconsistent with the Constitution, that law has no further effect. It is as though the act had never been passed in the first place. It does not follow, however, that everything that was done between the passage of the act and its invalidation is retroactively null and void. Many complications may arise, but the general rule is that rights vested by an act later declared unconstitutional may, in some cases, be respected when otherwise they would affect adversely "innocent third parties"; but wherever the situation can be unscrambled without such damage, the court usually orders retroactive application.

Two contrasting hypothetical cases will illustrate this point. In the first, a state public-utility commission restricts the profits of a utility enterprise on the basis of a particular valuation theory, or method by which the value of the

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[6] *Loc. cit.,* p. 239.

[7] "Law in Books and Law in Action," *American Law Review,* XLIV (Jan.–Feb., 1910) 27.

utility is computed. The utility company starts a suit and in the meantime part of its earnings is impounded by court order awaiting the outcome of the suit. The court declares that the valuation basis used is unconstitutional. The impounded funds thereafter belong to the utility.

In another case a city condemns a farmer's land, pays him for it and floods it for a hydroelectric project. The legislation on which the city relies to uphold its authority is declared unconstitutional. But the court will protect the farmer by allowing him to keep the money paid him for his flooded land; otherwise an injustice would be done to an innocent third party.

There are two factors to remember when assessing the effect of judicial review. First, a judicial veto is like a stone dropped into a pool of water. The impact spreads out in circles. *An adverse decision may cause Congress and the state governments to give up attempts to enforce laws similar to the one declared unconstitutional, or it may effectively discourage them from passing new laws in the same field.*

Many examples of this could be cited. For one, Professor Walter F. Dodd has pointed out that when the Supreme Court held that the states lacked the power to regulate private employment offices (*Ribnik* v. *McBride,* 277 U. S. 350. 1928), the effect was not confined to New Jersey, where the case arose. At least twenty other states were deterred from undertaking similar programs. This adverse decision then provided the signal to nationalize the employment office business and transfer it from private to public hands.

The second point to remember is that not only is the enforcement of similar laws impeded, but *the federal and state governments, discouraged by judicial vetoes, may also be less willing to pass social legislation, regulatory measures, and other laws thought to be in the public interest.*

In the United States we probably pass too many laws, but not too many of the right kind. We sometimes fail to legislate when we should, or we take action too late to be of any use. It is here that the generally deterring effect of judicial review may work a real harm. But the importance of this factor is not always general. It sometimes happens that when all or part of a statute has been held null and void, the judicial veto excites the sponsor's determination to frame a modified measure that will pass judicial muster. An example of this is the modified Agricultural Adjustment Administration Act passed during the New Deal era after its predecessor had been declared unconstitutional.[8]

Mr. Justice Holmes once made the comment that the American political system consists of forty-eight insulated laboratories where each state is free to experiment with the social laws and policies it chooses. If a policy turns out to be successful, it is usually imitated by other states; and if it fails, the harm has been less than if all states had adopted it in the first place. This ability to experiment is the essence of popular government. So, also, is the power and

[8] Dealt with in Chapter 48, "The Problems of Agriculture"

responsibility of the people's elected representatives to carry through programs required by social change. The nullifying of an important piece of social legislation, therefore, is a serious matter.

Adverse decisions on constitutionality may cause a serious social lag, or they may even aggravate the original difficulty. *Pollock* v. *Farmers' Loan and Trust Company* (158 U. S. 601. 1895), it will be recalled, dealt with the power of the federal government to levy an income tax. The Supreme Court probably fluctuated more on this issue than on any in history, chiefly because of a change in membership. The effect of the adverse decision was to retard for a generation a tax policy that is now considered indispensable.

When the Supreme Court turns down a group of major enactments representing the policy and program of the party in power, the effect on party leadership may be serious. Uncertainty may cause a virtual legislative stalemate. In the period following World War I, says Professor Robert Carr in *The Supreme Court and Judicial Review,* "one can hardly deny that the invalidation of the child labor laws, an important portion of the Federal Corrupt Practices Act, the National Industrial Recovery Act, the Railway Workers' Pension Act, the Farm Mortgage Relief Act, the Bituminous Coal Act, and the Municipal Bankruptcy Act has definitely affected the program of the national government." [9] A deadlock between any two branches of the government is an invitation to social drift in which anarchy threatens if it is allowed to continue.

JUDICIAL REVIEW AND THE POLICE POWER

An earlier chapter noted that according to a provision of the Fourteenth Amendment to the Constitution, intended as a protection to Negroes released from slavery, no state shall "deprive any person of life, liberty, or property, without due process of law." It was not long, however, before the Supreme Court had interpreted this wording to include protection to an artificial person, the corporation. Thereupon cases of judicial review began to turn on the question of whether the exercise of the police power of the state deprived corporations of "life, liberty, or property, without due process of law." This marked the beginning of the period in which judicial review of legislation was to become a basic and perennial issue of American politics.

The police power—which is the reserved powers of the states to legislate concerning matters of public safety, welfare, health, and morals—deals almost exclusively with matters of social legislation. In a succession of cases the courts have had to decide whether social legislation or due process would prevail. And since, according to the judges themselves, due process of law cannot be defined, the role of statesmanship that the judges themselves have had to assume in the interpretation of the law has been a heavy one. In general, state power has been still further restricted while that of the federal government was expanded.

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[9] *Loc. cit.,* pp. 208–209.

Liberty and Property

One of the points raised by the due process of law clause of the Fourteenth Amendment to the Constitution concerns the definition of the words "liberty" and "property."

What is liberty? Liberty has been interpreted by the courts to mean many things. In one case it is the freedom of employers to fix the wages of their workers without interference by the state in the exercise of its police power, unless the Supreme Court considers such interference as reasonable. This issue appears in the case of *Lochner* v. *New York* (198 U. S. 45. 1905), where the state of New York attempted to limit the hours of bakers on the ground that their work affects the public health. The Supreme Court invalidated the state law, holding that it deprived the employer of his liberty of contract protected under the Fourteenth Amendment and that it was not, therefore, a regulation which could be sustained even on the grounds that it was an exercise of the police power of the state.

It is interesting to note that in this case Mr. Justice Holmes entered a vigorous dissent to the majority opinion of the Court, in the course of which he said, "It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or, if you like, as tyrannical as this, and which equally interfere with the liberty of contract. . . . *Every opinion tends to become a law.* I think that the word 'liberty' in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion . . . ." (Italics ours.)

What is property? The answer is one of the most difficult in the field of the social sciences. Among other things it means the use and benefit of property, not merely the property itself. Cases concerning the regulation of public utilities abound in this area. What, for example, is a fair valuation of public-utility properties to be used as the basis of determining the rates that may be charged? Is it the original cost of the enterprise including plant, wiring, rails, rights of way, and so on? Is it the cost of reproducing the property years later? Or is it the "prudent" investment, meaning the financial outlay that men of business acumen and good judgment would approve?

This is the kind of question with which the Supreme Court has had to deal. See, for example, the case of *Ohio Water Company* v. *Ben Avon Borough* (253 U. S. 287. 1919). What rate of return shall be allowed on the investment? Shall it be 3, 4, 5, 6, or 7 per cent? In the case of *United Railways and Electric Co. of Baltimore* v. *West* (280 U. S. 234. 1929), the Maryland regulatory commission thought it should be 6.26 per cent on a street railway, but the Supreme Court decided it should be 7.44 per cent and that anything less would be "confiscatory."

The Range of Social Questions

The range of questions which come within the area of the police power and which must be decided by the courts is of unequaled economic and social

import. May working hours for women be limited? If so, in what occupations and to what extent? May the working hours of children in industry be specifically limited, and if so, in what industries? How about floors under wages, adult male as well as female? How far may the government go in protecting the consumer against fraud and misrepresentation as related to advertising? What kinds of business may be regulated and which ones may not? Why should the milk business be subject to extensive control [10] but the ice business exempt? [11] And why should the resale price of theater tickets [12] and the charges of private employment exchanges [13] not be subject to public regulation? Who is to determine what is "public" and what is "private"? Should the highest court of the land exercise the final judgment on these questions of social policy? This field will be dealt with more extensively at a later point. The illustrations given here are only to show the breadth and complexity of the judicial decisions that must be made.

When two undefinable concepts clash, what happens? The police power is supposedly expansible and incapable of precise definition. It widens as the range of social problems grows. The concept of the due process of law is similarly lacking in precision. Of it, Professor (now Mr. Justice) Felix Frankfurter once remarked that the due process clauses as found in the Constitution are "in words so undefined, either by their intrinsic meaning, or by history, or by tradition, that they leave the individual Justice free, if indeed they do not actually compel him, to fill in the vacuum with his own controlling notions of economic, social, and industrial facts with reference to which they are invoked." [14]

Federal Police Power and Constitutionality

In the field of the federal police power, the problem of judicial interpretation is akin to that found in connection with the police power of the states. Making use of its commerce and taxing authority, Congress, as noted in another chapter, has assumed an influence in social legislation deserving of the term "police power."

But Congress is not always successful in asserting its alleged authority any more than the states are. Can the products of child labor, for example, be excluded from interstate commerce by Congressional legislation? Impure foods and drugs have been. Lotteries were. The transportation of women for immoral purposes has been made a penal offense. Oleomargarine colored to look like butter may be taxed at an excessively high rate and the Supreme Court will not look into any motive other than revenue. The products of prison industries

[10] *Nebbia* v. *New York* (291 U. S. 502. 1934).

[11] *New State Ice Company* v. *Liebmann* (285 U. S. 262. 1930); see particularly the Brandeis dissent.

[12] *Tyson* v. *Banton* (273 U. S. 418. 1927); this case is notable for the Holmes dissent.

[13] *Ribnik* v. *McBride* (277 U. S. 350. 1928).

[14] *Law and Politics*, ed. by Archibald MacLeish and E. F. Prichard, Jr. (New York, 1939), p. 13.

may be excluded from interstate commerce. Congress has regulated the liquor traffic.

Indeed, Congress has scored numerous and telling successes at the hands of the Supreme Court, but it has also met with difficulties. Twice within four years the Supreme Court ruled unfavorably on federal attempts to regulate child labor. In *Hammer* v. *Dagenhart* (247 U. S. 251. 1918), Congress relied on its power over interstate commerce to keep the products of child labor out of the stream of commerce, but the Supreme Court held the act unconstitutional. The link between child labor and interstate commerce, said the Court, was so slight as to be virtually nonexistent.

Four years later, in the case of *Bailey* v. *Drexel Furniture Company* (259 U. S. 20. 1922), the attempt by Congress to tax child labor out of existence was called into question, and again Congress was thwarted. The Court said that the levies appeared to be penalties rather than bona fide taxes. Parenthetically, how is it possible to square this with the attitude of the Court in refusing to look into the motives behind a tax on oleomargarine colored to look like butter? [15]

A generation went by during which, as Dean Edith Abbott has put it, "an army of children had come and gone from the mills and factories and lumber yards." Finally in 1941 the Supreme Court expressly overruled its former decision in *Hammer* v. *Dagenhart.* In the case of *United States* v. *Darby Lumber Company* (312 U. S. 100. 1941), the Court held that the authority of the commerce power was sufficient to deny the facilities of interstate commerce to producers who failed to abide by labor standards prescribed by Congress. The decision in *Hammer* v. *Dagenhart,* said the Court, was a "departure from principles" which "should be and now is overruled."

PROPOSALS TO LIMIT JUDICIAL REVIEW

When an important piece of social legislation is declared unconstitutional by the Supreme Court in a close decision—a 5-4 decision, let us say—then popular resentment sometimes lasts a long time. Moreover, when the issue of judicial review has been a constant problem for almost a century and a half, and has increased in intensity within the past fifty years, it seems clear that the matter is far from settled.

Several moves have been made to restrict judicial review. Some of the states have limited the power of their supreme courts to hold acts unconstitutional. Ohio has passed a constitutional amendment forbidding its highest court to hold an act null and void if two or more judges consider it valid. Except where the decision affirms that of the next lower court, this means that six of the seven judges must agree. Similar provisions are found in Nebraska and North Dakota. The states, therefore, have taken the lead in dealing with the difficult question of limiting judicial review.

Proposals to limit the power of the Supreme Court of the United States to

[15] *McCray* v. *U. S.* (195 U. S. 27. 1904).

declare legislation unconstitutional are numerous, some dating back to the early years of our history. The principal ones are these:

A two-thirds vote. A two-thirds vote of the Supreme Court would be required to declare an act of Congress or of a state legislature unconstitutional. This would rule out the 5–4 decisions—which unfortunately have been all too frequent—and would make the requirement 6–3. Other suggested ratios are 7–2 and even 8–1. This reform could be accomplished in one of three ways. The simplest, if the judges favored such a plan, would be by a rule of the Supreme Court itself. It could also be done by an act of Congress (which the Court might or might not uphold), or by constitutional amendment. Legislation to this effect was introduced in Congress as early as 1823, and in view of the continued currency of the idea this method may have the best chance of ultimate success.

The impeachment of judges. This was demanded following the decision in *Marbury* v. *Madison* in 1803, but it seems quite unlikely to be used.

Congressional abolition of courts. The Supreme Court is the only tribunal specifically provided for in the federal Constitution. Congress has created all of the other federal courts and presumably could abolish them if it chose. But this hardly seems an appropriate procedure for getting constructive action.

Limited jurisdiction over cases. Except with regard to the original jurisdiction of the Supreme Court, the Constitution has given Congress the power to determine what classes of cases the federal judiciary shall hear. The use of this power to limit the courts might be helpful, but there are objections to it if it interferes with the independence of the judiciary.

Congressional overriding of a judicial veto. It has been proposed that Congress be permitted by a two-thirds vote to repass measures invalidated by the Court. This plan, advanced by Senator Robert M. La Follette, Sr., in his 1924 presidential campaign and revived by Senator Burton Wheeler in 1937, would require a constitutional amendment; otherwise the Supreme Court would unquestionably declare such a law unconstitutional. At present a basic principle of the judiciary is that court decisions must be final, that they cannot be reviewed or overturned by another branch of the government.

Increase in the membership of the Court. This is the so-called Court-packing idea. It is the club that the House of Commons successfully brandished against the House of Lords in 1911. Congress has full power to alter the membership of the Court at any time; in fact, on several occasions the number of justices on the Supreme Court has been increased or decreased. Once as low as five and another time as high as ten, it has been nine since 1869. The purpose of the increase, of course, would be to appoint members to the Court who would look favorably on the particular legislative program of the administration in office.

Compulsory retirement of judges. The retirement age usually suggested is seventy. Compulsory retirement has become common in industry and the professions, but in the courts retirement is optional at a given age, usually seventy.

Recall of judges and referenda on decisions. Such a plan would require a popular vote—by placing the question on the ballot at election time—in cases where the Court's decision was objected to by the people. President Theodore Roosevelt once considered this idea.

Modernization and clarification of the federal Constitution at vital spots. According to this proposal, the Constitution would be overhauled to make it clear that the reserved powers of the states should not be judicially restricted, that the Fourteenth Amendment was never meant to apply to corporations, and that judicial review of legislation was or was not intended. Although there is much to commend the idea, once they were made the clarifications themselves would have to be judicially interpreted.

Constructive criticism by the public, the press, and other organs of opinion. So long as the Supreme Court remains sufficiently sensitive to public opinion so as to follow the election returns, it is argued, there is nothing fundamentally to be feared in the judicial review of legislation. It is true that the Court must sometimes make policy decisions that cause political explosions. There are discretionary matters in every area of the law, and it is the function of the courts to decide such questions. That constructive criticism is a good and normal thing is indicated by the fact that the Court has been the target of criticism since its origin and presumably it will continue to be. So runs the argument.[16]

But Someone Must Have the Final Determination

Most political scientists agree that in every governmental system the world has ever known, the final decision has resided in one of its three branches—legislative, executive, or judicial—or in the people themselves. All three branches of government have an opportunity to interpret the law and to help mold it, but the final determination must rest at a particular point, universally recognized.

According to the supporters of judicial review, in determining the meaning of constitutional provisions, legislative enactments, and executive actions, the Supreme Court has no more authority than one or another of the three branches has in the government of every other nation. Where parliamentary supremacy exists, the legislature has the final word. In a monarchy or a dictatorship, the executive is supreme. In a pure democracy such as that of Athens or the Swiss cantons at an early period, the people themselves are the ultimate authority. In our government that final power is exercised by the highest court of the land. By the training, temperament, and qualification of its personnel, it is argued, the nation's highest court is best equipped to make the final determinations in matters of statesmanship.

Furthermore, it is held that the Constitution is safer in the hands of judges than in those of either of the other two branches. And ultimately, if the people

[16] For a full development of these proposals, see Robert K. Carr, *The Supreme Court and Judicial Review* (New York, 1942), Chapter 11.

disapprove, they may exercise their power to change the Constitution by overriding the decisions of the Supreme Court as they did in the case of the income tax amendment. Courts are traditionally conservative, it is true. But according to this viewpoint, conservatism is the best policy in the long run. Respect for law is the basis of free institutions; judges presumably have more respect for law than any other group. And, as Mr. Justice Holmes frequently said, "the life of the law is not logic, but experience."

Yes, comes the rejoinder, but what if the questions are policy decisions and not of a legal nature in the strict sense? That raises the age-old question: What is law?

SUPPLEMENTARY READING

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2. Judicial review—state: Two excellent discussions are Arthur N. Holcombe, *State Government in the United States* (New York, 1931), pp. 477–518; and W. F. Dodd, *State Government* (New York, 1922), pp. 133–155.

3. Constitutional history: B. F. Wright, *The Growth of American Constitutional Law* (Boston, 1942), Chapters 7, 9, 11; Charles E. Hughes, *The Supreme Court of the United States* (New York, 1928); Andrew C. McLaughlin, *A Constitutional History of the United States* (New York, 1935); and Charles Warren, *The Supreme Court in United States History,* 3 vols. (Boston, 1922).

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CHAPTER 30

Judicial Administration

IN THE INTRODUCTION to his *Principles of Judicial Administration,* published in 1929 and immediately acclaimed as the first comprehensive work on this subject, Professor W. F. Willoughby observed that political scientists had devoted less attention to judicial administration than to any other major field; that while lawyers and judges also had neglected it, this was largely because they do not think in administrative terms, whereas political scientists have been trained in this discipline and might have been expected to show more interest; and that "of the many tasks confronting the modern government, none exceeds in importance that of the administration of justice." In fact, Professor Willoughby went so far as to claim that this is "the primary function of government." Many of us never become litigants, fortunately; but peace and order, accompanied by an even-handed justice, mean a great deal to us. The present unfavorable situation in the administration of justice in the United States is consequently a matter of concern to all.

This chapter, therefore, will give a brief comparative summary of judicial organization in other countries, which will be followed by separate discussions of the federal, state, and local courts in the United States. And finally it will consider some over-all principles of judicial administration and suggestions for improving the system at the several levels.

The Need for Constructive Reform

Our American courts—like every other part of government—have been overwhelmed with the flood of business arising from the complexities of our modern society. There is probably no function of government, says Professor Willoughby, performed with less efficiency and economy than the administration of justice. "Both our system of courts and their methods of procedure are almost universally recognized as unsatisfactory." And he quotes leaders of the bench and the bar in substantiation. "In their practical operations," continues Professor Willoughby, "our courts are expensive both to the government and to litigants. They perform their work with great dilatoriness, and miscarriages of justice are frequent." This is no theorist speaking from his ivory tower. Professor Willoughby was trained as a lawyer himself. He had minutely investigated his subject, and was quoting members of the profession.

William Howard Taft enjoyed the unusual distinction of being successively both President of the United States and Chief Justice of the Supreme Court. No man in American history has done more to improve the organization of

federal court structure and administration. "If one were asked," said Chief Justice Taft, "in which respect we had fallen furthest short of ideal conditions in our whole government, I think we would be justified in answering, in spite of the glaring defects of our system of municipal government, that it is in our failure to secure expedition and thoroughness in the enforcement of public and private rights in our courts."

Dean Roscoe Pound of Harvard, in an American Bar Association Report, said that "our system of courts is archaic and our procedure behind the times. Uncertainty, delay and expense and above all the injustice of deciding cases upon points of practice which are the mere etiquette of justice—direct results of the organization of our courts and the backwardness of our procedure—have created a deep-rooted desire to keep out of court, right or wrong, on the part of every sensible business man in the community."

There has been some improvement since these two leaders of the legal profession uttered these words and since Professor Willoughby wrote his book. But many of the basic problems—such as duplicating federal and state jurisdictions, overloaded calendars resulting in expense and delay, excessive technicalities and formalities, the multiplication of special courts at the municipal and other levels, lack of an integrated court structure, and the shortcomings of the justice of the peace courts—are still with us today. If the student can understand what some of the central problems are, his investigation of structure and functioning is likely to be more meaningful.

Judicial Administration in Other Nations

Have other countries experienced similar difficulties with court organization and the efficiency of judicial administration? Seventy-five years ago the problem in Great Britain was worse than our own. Dissatisfaction had been acute ever since the Napoleonic Wars but reforms were postponed on that account and others. The organization of the courts was so complicated that it did not make sense. The king's exchequer, for example, was exercising court functions in determining the validity of fiscal exemptions and in enforcing debts due the crown. Another difficulty arose from the fact that the king's courts were superimposed on manorial courts. Then special courts—such as those dealing with admiralty—were created. By the middle of the nineteenth century it was next to impossible to know in which court a case really belonged. Attorneys, as in the United States today, would seek the jurisdiction and the judge that seemed most likely to favor their side of the case. And there was nothing approaching uniformity of procedural requirements.

The Judicature Act of 1873, which went into effect two years later, attempted to solve this complicated problem by creating a supreme Court of Judicature in two divisions: the High Court of Justice and the Court of Appeal. A year later, in 1876, the appellate jurisdiction of the House of Lords was regularized and improved. Perhaps the most important part of this sweeping reform was the creation of a judicial council to survey problems of judicial administration

for the realm, to integrate the court structure, and to recommend the transfer of judges where the load was heaviest.

In France and on the Continent generally, the administration of justice became "a bureaucratic judicial system of higher and lower courts" much more quickly than in England. As early as the thirteenth century, for example, the so-called Parlements (judicial rather than legislative bodies and having no law-making function) successfully claimed the right to review many classes of cases originating in the manorial courts. By the fifteenth and sixteenth centuries the tendency toward integration at the national level became apparent, and the process was accelerated when the Revolution of 1789 swept away much of the old. Napoleon, famous for his judicial codes and administrative reforms, organized the court structure in a form it has retained ever since.

The present system includes courts of primary jurisdiction, a second layer of intermediate or appeal courts, and a supreme court (Court of Cassation) topping the pyramid. Alongside these civil courts is a separate hierarchy of administrative courts dealing with administrative matters such as claims, the excessive use of power, and so on. And at the pinnacle of both systems, settling conflicts of jurisdiction, is a special Court of Conflicts, created for that purpose. The diagram on page 620 illustrates this type of court system.

France, Germany, and most other European nations have long had more symmetry and integration in their judicial as well as in their legal systems than either the British or ourselves. The difference is due in part at least to the influence of the orderly codified Roman civil law that prevailed on the Continent, as against that of the less systematic common law which grew up in England, and from which we inherited our own system, the bad with the good.

On the Continent it was early recognized—as it was not in Anglo-American jurisdictions—that the courts are an integral part of governmental machinery. As Professor Max Radin has remarked,[1] the constitutional struggles of seventeenth- and eighteenth-century England "allowed the lawyers and judges to grow into something like a separate estate of the realm and to assume an unrivalled independence and power." The chief difference, therefore, is between the orderly growth of legal institutions on the Continent and their spontaneous, independent development in England.

FEDERAL COURT STRUCTURE IN THE UNITED STATES

In an effort to deal with the problems of judicial administration that we inherited and then aggravated, a movement has developed among lawyers and students of government to centralize and unify the court structure in the United States. This movement is most pronounced at the federal level, but it is also marked in approximately a third of the states. In the federal government there is a hierarchy of three kinds of courts: the district courts at the

[1] Max Radin, "Courts," *Encyclopedia of the Social Sciences*, II, 524.

bottom, the circuit courts of appeals above them, and the Supreme Court of the United States at the top. But it was not always as simple as that. The trend toward integration has been growing since 1891, when Congress abolished the old circuit courts and established in their place the circuit courts of appeals. The key word in the designation of these courts is *appeals,* for since that time they have dealt exclusively with appeal cases and have had no primary (original) jurisdiction.

The distinction between original and appellate jurisdiction is essential to an understanding of judicial reform. *Original jurisdiction is the power of a court to hear and determine cases in the first instance.* It is where a case is begun. If neither party takes an appeal, that is the end of the matter. *Appellate jurisdiction is the authority of a court to review and decide cases or controversies on appeal after they have been acted upon by inferior tribunals.*

In the federal court structure, district courts deal exclusively with original jurisdiction. The circuit courts of appeals are exclusively appeal courts. The Supreme Court is primarily an appeal court, but it has original jurisdiction as set forth in the Constitution in cases involving ambassadors, other public ministers and consuls, and those in which a state is a party.

HIERARCHY OF FEDERAL COURTS IN THE UNITED STATES

Name	*Number*	*Jurisdiction*
Supreme Court	1	(a) Appellate, primarily (b) Original, in cases affecting ambassadors, other public ministers and consuls, and those in which a state is a party
Circuit Courts of Appeals	10 circuits plus District of Columbia	Appellate exclusively
District Courts	90	Original exclusively

Landmarks in Federal Court Unification

We have taken four main steps in attempting to unify our federal court system.[2]

The first was the *Circuit Court of Appeals Act of 1891.* This important enactment, as has been noted, made the intermediate level of courts exclusively appeal tribunals. In so doing, Congress took much of the appeal load off the Supreme Court and moved the original jurisdiction down to the primary level. This simplified the whole federal court arrangement by placing particular functions at each level: original jurisdiction at the bottom (except for the special original jurisdiction of the Supreme Court), appeal at the intermediate level, and final settlement, where that was necessary, at the top.

[2] See Felix Frankfurter and James Landis, *The Business of the Supreme Court of the United States* (New York, 1927).

A second reform was the *creation of a coordinating administrative mechanism—the annual conference of senior court officials in 1922.*

This brought into being an administrative device similar to the judicial council that Great Britain adopted in 1873, and that a third of our states have also put into effect. Officially known as The Annual Conference of Senior Circuit Judges, it holds a meeting each year in Washington at which the Chief Justice of the Supreme Court presides. Each of the senior judges in the ten circuits reports on and discusses problems common to all—the need for more judges, the assignment of judges, problems in court procedure, in appeal cases, in administrative organization, and in the personnel of the courts.

Thus, in effect, the senior circuit judge now holds a supervisory relationship to the district judges in his circuit. The conference, which affords judges an opportunity to discuss and compare their problems, has been responsible for many concrete reforms. Needless to say, it has a standardizing effect on the whole federal court structure.

A third reform was the *Judge's Bill,* passed in 1925. William Howard Taft and Charles Evans Hughes did much to lay the groundwork for the passage of this important measure, which is the clearest indication we have of the responsibility assumed by judges for the administrative improvement of the courts. The matter is interestingly dealt with in a book by Frankfurter and Landis, *The Business of the Supreme Court of the United States.*

The Judge's Bill was drafted and passed in order to solve a serious problem arising from the fact that the Supreme Court was swamped with work. At the end of the judicial session each year many cases were still unheard. The Supreme Court was considering too many unimportant matters—common law instead of public law cases. Some means of confining the attention of the Supreme Court to questions of constitutional law had to be found because these were of the greatest moment to the country. It was concluded that there must be fewer cases and more significant ones. The solution was to limit the appellate jurisdiction of the Supreme Court. Appeals that were formerly matters of right became matters of discretion with the Court. In other words, since 1925 the Supreme Court will, in most instances, take a case on appeal only when it "reaches down for it"—the technical term is *certiorari.* The rules of appellate procedure will be further explained in the following section.

The latest and most significant move in the direction of greater unity and efficiency in our federal court structure was the creation by Congress in 1939 of the Administrative Office of the United States Courts, headed by a director. This logical implementation of the judicial conference created in 1922 gives the Chief Justice and the federal court officials the assistance of a full-time administrator. He is mainly concerned with the business administration of the courts, including finance, organization, and materiel, and with procedural studies and the compilation of statistics as a basis for policy decisions and the adoption of improved methods. The creation of this office marks an enormous stride forward. Indeed, since 1891 the federal judiciary has come a long way

in clarifying jurisdictions, tightening up organization, and keeping current in the decision of cases.

The Supreme Court at Work

The Supreme Court of the United States occupies a special place in our federal court system, as well as in that of the states. The Supreme Court sits annually from October to May and hears about a thousand cases each year. The majority of these cases result in memorandum decisions on which extensive opinions do not have to be prepared. Its decisions and opinions are published in the *United States Reports.*

Original jurisdiction. The original jurisdiction of the Supreme Court, as fixed by the federal Constitution, applies to "all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party." There has been a modification, however, with regard to the jurisdiction of the Supreme Court in cases in which a state is a party. Since the adoption of the Eleventh Amendment to the Constitution in 1798, no state may be sued, even in the Supreme Court of the United States, unless it consents to such a suit. The case of *Chisholm* v. *Georgia* (2 Dallas 419), decided in 1793, wherein the Supreme Court allowed a citizen of South Carolina to sue the state of Georgia, gave rise to this constitutional restriction. Suits against the dignity of a sovereign state were regarded at this time as totally objectionable and the resulting Eleventh Amendment (the first after the Bill of Rights amendments) was speedily pushed through. It excepts from the jurisdiction of the Supreme Court (and all federal courts) any case brought against one of the states by a citizen of another state or of a foreign state.

The original jurisdiction of the Supreme Court may not be enlarged by act of Congress because, as stated in *Marbury* v. *Madison,* that would be tantamount to amending the Constitution in an unauthorized manner.

Appellate jurisdiction. Most cases coming before the Supreme Court are appeal cases, either from the inferior federal courts or from the highest state courts. The Supreme Court has no trouble in controlling the matter of which cases shall be appealed from the federal district and circuit courts of appeals. The usual procedure is for most appeal cases to end in the court of appeals; but where there is a certificate of division (inability to agree) from the lower court, or if the Supreme Court wishes to grant the writ of *certiorari,* a particular case may be taken from the circuit court of appeals to the Supreme Court. Only rarely, as in the case of some of the federal regulatory commissions, does Congress provide for a direct appeal from the district court to the Supreme Court, thus eliminating the court of appeals stage.

With regard to appeals from the decisions of the highest state courts, the situation is different in important respects. In all instances in which a federal circuit court of appeals declares a state law unconstitutional, the case automatically goes to the Supreme Court. Again, as guardian of the Constitution and of national supremacy, the Supreme Court must hear cases involving these

interests. In controversies coming from the highest state courts, these "federal question" cases are of two principal kinds. First, there are those in which it is alleged that the decision of the highest state court has denied or ignored rights vested under the Constitution, the laws, or the treaties of the United States. Second, there are those in which a state constitution or statute is alleged to be in conflict with the Constitution, the laws, or the treaties of the United States. State courts may decide cases involving the federal Constitution and federal laws, and in some instances Congress has encouraged them to assume such jurisdiction as a means of relieving the federal courts, but the Supreme Court sees to it that all such interpretations are in conformity with its own interpretation of the Constitution, the laws, and the treaties of the United States. But even allowing for these "federal question" cases where appeals are mandatory, there remain a large number of miscellaneous cases—involving private disputes under the common law, criminal cases, many types of regulatory cases, and the like—and in all of these the Supreme Court uses its discretionary power to determine which are sufficiently important to be heard and decided by itself and which shall terminate at the next lower level.

Since the limitation of the right of appeal to the Supreme Court in 1925, it has been possible to allow a more extensive oral argument before that tribunal. Decisions by the Court are accompanied by written *opinions* (facts, issues, decisions, reasoning), some of which are of great length and constitute state papers of enormous value and influence. Justices who disagree may write a *dissenting opinion*. These minority opinions are significant because they often become the majority viewpoint at a later date. A few dissenting opinions, such as those of Holmes and Brandeis, contain some of the finest utterances in the English language.

Any statements not essentially related to the argument at hand are called *obiter dicta* (statements over and above). These do not have the force of law but, like minority opinions, they frequently assume great importance at a later date, and are frequently cited as indicating the Court's opinion on a particular subject.

THE ORGANIZATION OF STATE COURT SYSTEMS

As is to be expected, the forty-eight states exhibit a greater variety of court organization than the federal hierarchy. Possibly a third of the states have been as progressive as the federal government. It is the remaining two thirds that are largely responsible for the opprobrious designation, "dark continent of political science," which is often applied to judicial administration.

No state has yet established a completely unified court system, taking in the courts at all levels. But a third of the states have created judicial councils. *The judicial council is an advisory body of judges and practicing attorneys, or sometimes of judges alone, set up to study the organization and rules of procedure of the courts and to recommend improvements to the judiciary, the legislature, or both.*

Wisconsin pioneered in this direction when she created a Board of Circuit Judges in 1913, although she did not actually use the term "judicial council." Massachusetts created a judicial council in 1919–1924; among the other states which have followed are California, Connecticut, Kansas, North Carolina, Ohio, Oregon, Rhode Island, Virginia, and Washington. Thus all sections of the country have moved toward state judicial reform, although there remains a good deal of territory to be covered.

In about a dozen cases, including Louisiana, Michigan, and Wisconsin, the state constitution contains provisions laying the basis for extensive judicial self-improvement, but the use that has been made of the power varies considerably. In the states mentioned, for example, the state supreme court is given a "general superintending control" over all inferior courts. Such provisions, if greater use were made of them, would seem to justify a reasonable degree of coordination or even unification. Other states lack specific constitutional authorizations, but legislative initiative is open to them and may be used to accomplish piecemeal reform.

State and Federal Judicial Hierarchies Compared

In contrast to the federal judicial system with its three layers of courts, there are in the states typically four or five layers. The differences between the two systems may be shown as follows:

FEDERAL AND STATE COURT ORGANIZATION COMPARED

Rank	*Federal*	*State*
Supreme	Supreme Court	Supreme Court
Intermediate appellate	Circuit Courts of Appeals	Superior, or Appellate Courts
Original jurisdiction	District Courts	1. Courts of general, original jurisdiction: a. Courts of law b. Courts of equity c. Criminal courts d. Probate, or surrogates' courts 2. County, district, circuit, and municipal courts 3. Justice of the peace and police courts

No attempt will be made here to explain the organization and function of each of these courts. In the case of the state supreme and appellate courts, no detailed account is necessary. Some of the lower courts, however, will be singled out for special attention.

Equity

The equity courts, which occupy a special place in our legal system, are of English origin. In the United States they exist in both the federal and the state systems, although they are important only in the states. *In line with the tendency to simplify and combine jurisdictions, equity and law courts have*

been combined in the federal system and in all of the states save six. The exceptions are Alabama, Arkansas, Delaware, Mississippi, New Jersey, and Tennessee.

Equity was originally a rival of the common law and as such helped the latter to grow and become less rigid and formalized during an important stage of its development. Equity emphasizes justice as against technical rules, informality of procedure, the presentation of the whole case, and the use of remedies other than those found in the common law. Equity, therefore, has constituted a dynamic, living influence in the molding of the common law. Equity is especially valuable in complicated cases involving a multiplicity of suits and cross suits, and usually involves controversies for which remedies are not available in the common law. When equity and common law jurisdictions are combined, the same judge in the same court generally presides over both classes of cases.

Municipal Court Unification

With the rapid growth of American cities there has naturally been a concentration of judicial business in urban centers. Because the existing court structure was unprepared for such a diversion of emphasis, the result in most cases was a proliferation of municipal courts, overlapping the jurisdiction of county and state courts and without much rhyme or reason. There are police courts, night courts, traffic courts, juvenile courts, rent courts, domestic relations courts, and so on.

Among the large cities, Chicago pioneered in creating a unified municipal court system. Constitutional authority was secured in 1904. The Chicago municipal court created in 1906 has since been a model for other large cities. There is a chief justice and numerous associate justices. The total judicial business is divided into categories, all heading up to the chief justice. In addition, a judicial council with effective powers was created. According to the enabling act, "the Chief Justice [of the municipal court], in addition to the exercise of all the other powers of a judge of said court, shall have the general superintendence of the business of the court; he shall preside at all meetings of the judges, and he shall assign the associate judges to duty in the branch courts. . . ." Additional responsibilities of the chief justice include the preparation of calendars, the distribution of cases, and the duty of receiving monthly reports on business transacted.

This Chicago municipal court, established even before federal and state reform, is a model of judicial organization today. It has since been followed by several other leading cities including New York, Detroit, Cleveland, and Baltimore.

County Courts

A principal reason for strengthening county government is the position of the county court as the backbone of the state judicial system. Almost every

one of the 3,050 counties in the United States has a county court. Usually the key court in cases involving criminal action, frequently, and especially in the less populous states, it has unlimited jurisdiction. The county court has a great deal of original civil jurisdiction, and it also acts in an appellate capacity on civil cases coming up from justices of the peace and other petty courts.

The existence of these county courts is possibly one reason why county government has continued to play any kind of role at all in many parts of the country where the importance of county governmental functions has steadily declined. This is particularly true in the New England states, where, without the court function, the counties would become little more than geographical units.

Justices of the Peace

A perennial problem of state judicial administration is the justice of the peace. The office of the J.P., as he is often called, is older than the common law. In the United States there are thousands of these officers, who are usually laymen without legal training. As a rule, too, they are elective officials within a minor civil jurisdiction, although their powers may extend throughout a county. Perhaps they are best known for their authority and willingness to perform the civil marriage ceremony. But as a rule, they may also try petty civil and criminal cases. And in some states they conduct preliminary hearings in cases of crime and fix bail for appearance in court. J.P.'s are hard to dispense with because they make quick justice widely available.

Justices of the peace are criticized because, being laymen, they are not trained craftsmen of the law. They usually live on a fee basis instead of on a salary, which too frequently takes the blindfold off the eyes of justice. They are likely to be politicians first and to have slight regard for the reputation of the judiciary. And they contribute, possibly more than any other factor, to the difficulties of creating an integrated, consistent court structure in the states. Because of the J.P.'s usefulness in many directions, however, it would seem wiser to reform this institution than to abolish it.

SPECIAL TRIBUNALS TO RELIEVE THE COURT LOAD

Judges are not supermen, although sometimes we may wish they were. The products of a highly specialized training, they cannot expect to deal successfully with the wide range of problems confronting the modern community. When they do attempt it, society may be the loser because of unintentional shortsightedness or a too close regard for a socially obsolete rule. For these reasons, therefore, and because most judges are aware of their limitations in certain fields, there has been a tendency to create special courts for special purposes. Desirable as they may be, they nevertheless complicate the problem of judicial organization and administration. The principal examples of specialized courts are the following:

Juvenile courts and domestic relations courts. These courts deal with the

intricate problems of family life including orphanage, adoption, juvenile delinquency, divorce, and dependency, which are and always have been among society's most difficult problems. Often these problems cannot be solved by the application of strict legal formulas and procedures. They require a sympathy and understanding akin to that found in equity. Specially trained judges —including a large number of women—with a knowledge of welfare activities and social work, are recruited for these special courts. Many of them operate with marked success, but a great many more are needed.

Small claims courts. These courts deal with cases where small amounts of money are involved. Because recourse to them is not expensive, they make justice available where otherwise it would be denied.

Court of Claims. The most famous claims court is the United States Court of Claims, created in 1855 for the purpose of making recommendations on claims cases and empowered in 1866 to decide cases. It deals only with cases of claims against the federal government, but not with all of them. Through its unified and specialized process it has provided much-needed relief to heavily burdened courts and administrative agencies.

Administrative tribunals. The quasi-judicial agencies of the executive branch have already been mentioned; they will be discussed further in later chapters.[3] These agencies, which do an enormous amount of work that would otherwise fall on the courts, include state public utility commissions and workmen's compensation commissions, and federal agencies such as the Interstate Commerce Commission or the Federal Communications Commission.

Conciliation and arbitration. The business community makes wide use of special bodies of conciliators and arbitrators, usually set up for labor relations purposes in a particular trade or industry. The so-called czar of the suit and cloak industry receives a salary of $25,000 a year—more than the Chief Justice of the United States. Business finds conciliation and arbitration cheaper, faster, and more likely to safeguard good-will than battles in court.

The base of the common law, said Dean Pound, tends constantly to shrink as substitutes are found for formal courts of law. But perhaps this is a good thing. A specialized society requires specialized mechanisms. Until we have strengthened the organization of the still overburdened courts and have enabled them to hear and decide cases with greater dispatch, we should not think of adding to their work. If a court does not take sufficient time in the exercise of these functions, justice may be denied. Overloading the courts, therefore, defeats the ancient purpose for which they were created.

STRENGTHENING JUDICIAL ADMINISTRATION

The federal court scheme is fairly simple. But in the states, the lines between jurisdictions, especially at the local levels, are confused and certainly not uniform. Two remedies have been suggested. The first is a proposed model system

[3] Chapter 36, "Government Reorganization," and Chapter 46, "Business and Government."

of state courts. The other would combine the state and federal courts into a single system.

Proposed Model State System

The reform of our state court systems has been the subject of a good deal of study and debate. A plan suggested by the American Judicature Society, outlining a model court structure for the states, describes a system which would seem to be both simple and workable:

Court of Appeals
  Supreme Court Division
  Other divisions: three judges each
Superior Court
  Territorial divisions
County Court
  Territorial divisions
Metropolitan Courts
  (Combining superior and county courts in metropolitan areas.)

Under this plan, the entire framework would be called the General Court of Judicature and would be integrated in a fashion similar to the Municipal Court of Chicago or the British system created under the Judicature Act of 1873. There is much to recommend it in simplicity of organization, dispatch of procedure, and economy of operation.

Should the Dual System of Federal and State Courts Be Combined?

Another reform proposal that has been widely considered by leading authorities on judicial administration, including Professor W. F. Willoughby, would combine the state and federal courts into a single system. Under this plan, the federal courts would deal exclusively with appeal cases, with cases involving federal power, and with those entrusted to the original jurisdiction of the Supreme Court of the United States. All other cases of original jurisdiction would be left to the state courts.

It is true that at present there is much duplication of jurisdiction between federal and state courts. Frequently an attorney can decide whether to take his case to a state court or, by invoking the "diversity of citizenship" provision (where the parties are from different states), to place it before a federal district court. In some instances he may expect different law in the two jurisdictions; certainly there is a choice as between judges. The decision he makes, therefore, is an important one.

It is also true that our present dual system divides authority, complicates the administration of justice, and adds considerably to the expense of judicial administration.

If we were starting out afresh, would we favor a dual system of courts? It is not a necessary adjunct to a federal form of government. Germany prior

to World War II was a federal government in which the national courts confined themselves to appeal cases and those involving national power. Canadian courts operate under a similar system today. In the United States, a separate federal judiciary contributed greatly to the growth of national power, but this power has now been securely established.

If a single court organization for the United States were thought desirable, there are two main alternatives. Either we could extend the federal court system down into the states, thus virtually eliminating the state courts, or we could allow the states to deal with all preliminary cases—including those which now arise in the federal district courts—thus separating jurisdictions and dividing the work load.

As between the two, most people would probably prefer a division of the load. For one thing, this would lighten the burden on the federal judiciary which is now so busy with the flood of cases coming from the regulatory and administrative tribunals—such as the Interstate Commerce Commission and the Federal Communications Commission—that the assumption of more work without an extension of the court system would seem unthinkable.

Why not, therefore, turn over all common law cases and those involving federal power to the state judiciaries? This would confine the federal courts to the most important questions of constitutional law and administrative regulation. The proposal is worthy of serious thought, although it hardly seems likely that so drastic a measure could become a reality at any time in the near future.

Principles Applicable to Judicial Organization and Administration

This chapter has tried to indicate something of the great diversity in the state judicial establishments and their practices. In trying to discover some principles that will guide future reforms, it is important to avoid the application of formulas that may serve well in populous states but prove impractical in less populous ones.

In an excellent article entitled "The General Structure of Court Organization,"[4] Professor Charles Grove Haines has suggested the important factors which should be emphasized. He places first the need for flexible constitutional provisions governing court organization. In this respect the provisions of the federal Constitution at present are superior to those of most of the state constitutions.

Next, Professor Haines would like to see statutory and constitutional provisions making possible a certain degree of centralization and general administrative control in the distribution of jurisdiction, the assignment of judges, and the making of rules of procedure. This involves a wider use of masters (that is, specially qualified persons to collect evidence for the court), together

[4] Charles G. Haines, "The General Structure of Court Organization," *The Annals*, 167 (May, 1933), 1–11. Reprinted in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician*, pp. 606–618.

with the use of judicial assistants, in order to dispose of the preliminary business before the trial stage is reached. This is a system which has been used with great success in England.

Third, there should be flexible administrative arrangements to permit specialized treatment in cases where peculiar techniques and methods are indicated, as in municipal courts, family relations, and commercial arbitration. In our court system there is now a clear need for flexibility in organization and procedure to meet the demands of an urbanized and industrialized society where change affects the judicial establishment as surely as it does the legislative and administrative branches.

"These formulas," says Professor Haines, "can be carried out with a limited amount of central supervision and control, and with the placing of greater responsibilities on local communities for the conduct of judicial administration." In an understandable desire to correct the looseness and complexity of our present judicial methods, we must not swing too far toward what Professor Laski has characterized as "the inherent vice of centralized authority."

THE JUDICIAL ESTABLISHMENT BROADLY CONSIDERED

It would be a mistake to think of the judicial branch of government as consisting merely of judges and courts. It is much more than that. The administrative personnel in the judiciary far outnumbers the judges. There are police officials, sheriffs, coroners, clerks, and a host of others who will be discussed in a later chapter.[5] For the present, however, it will help to round out the picture if the principal instrumentalities of justice, other than the courts, as suggested by W. F. Willoughby, are listed here:

Adjuncts to the Court System

1. The chief executive, in the exercise of his constitutional duty to see that the laws are faithfully executed
2. The Department of Justice or Office of Attorney General
3. The Office of States Attorney or Prosecuting Attorney
4. The police or constabulary
5. The grand jury
6. The office of coroner
7. The penal institutions
8. Special agencies such as public defenders, public trustees, and so on.

Diversity of Law and Complexity of Organization

Within recent years the American Law Institute has commenced a codification of all the law in the country, and several titles are already complete. The reason for this project was the wide diversity in the law of the forty-eight states and the federal government. It is as though there were that many separate bodies of common law in the United States, in addition to the law of the

[5] Chapter 51, "The Community's Safety and Social Environment."

federal system. In the field of contracts, for example, there are two competing rules—the New York rule and the Massachusetts rule—both of which stemmed originally from the English. The Western states have adopted one rule or the other, depending on whether New York or Massachusetts settlers had the greater influence in the new community.

The conflict of laws is a subject which has become a leading course in many of our law schools. "In the economic order of today," says Dean Pound, "unity and harmony are necessary in law and administration, whereas a century ago they might well vary with each locality. Today state lines rarely coincide with economic lines." Dean Pound argues that a regime of local legal units, pulling in different directions, is "wasteful." A course on the Conflict of Laws attempts, therefore, to tell us what the rule is when a problem cuts across state lines.

So long as there are significant doctrinal differences in the law, the problem of administrative simplification must surely be complicated. In the law, as in many other fields, we run into the question of what we are willing to pay for greater efficiency. How high a price will we pay in return for the right to be different? The reconciliation of liberty and efficiency is common to all basic problems.

The Human Factor in Law

Law is much more than a matter of organization and rules, as essential as both of these are. Law deals with living things, with human beings. Therefore some pertinent questions arise in the administration of the law. For example, how much popular influence should be admitted? How important is the jury? On this, Dean Pound tells us that "as to trial by jury, it may be admitted that the civil jury seems to be slowly dying out in England while signs that it is moribund are not wanting in America." Are civil liberties growing weaker and is popular vigilance lagging? These questions will be the subject of the chapter to follow.

But there is another human problem which also ties in closely with the administrative problems we have been considering. "The use to which judicial machinery is directed," says Professor Max Radin, "will always depend on the persons who direct it." A chapter on law as a career, therefore, follows the one on civil liberties and concludes this section of the book.

SUPPLEMENTARY READING

1. Court structure: The best general reference is C. N. Callender, *American Courts: Their Organization and Procedure* (New York, 1927), Chapters 2–3. See also Roscoe Pound, *Organization of the Courts* (Boston, 1940); Simeon E. Baldwin, *The American Judiciary* (New York, 1905); and F. R. Aumann, *The Changing American Legal System.* In the *Encyclopedia of the Social Sciences* consult the articles entitled "Judiciary" and "Justice, Administration of."

2. Judicial administration: The best comprehensive work is W. F. Willoughby, *Principles of Judicial Administration* (Washington, 1929), Part 3, "Judicial Organ-

ization." Also valuable, A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 21, "Some Aspects of Judicial Organization."

3. Federal courts and judicial administration: The best reference is Felix Frankfurter and J. M. Landis, *The Business of the Supreme Court* (New York, 1927). See also *Reorganization of the Federal Judiciary,* 75th Congress, 1st sess., Hearings (Washington, 1937); H. S. Cummings and C. McFarland, *Federal Justice* (New York, 1936); and Carl B. Swisher, "Federal Organization of Legal Functions," *American Political Science Review,* XXXIII (Dec., 1939), 973–1000.

4. Judicial administration in the states: W. E. Hannan and M. B. Csontos, *State Court Systems* (Chicago, 1940); Arthur N. Holcombe, *State Government in the United States* (New York, 1931), Chapters 13–14; J. M. Mathews, *American State Government* (New York, 1934), Chapters 16–18; W. B. Graves, *American State Government* (New York, 1941), Chapters 15–17. See also Report of the *Commission on the Administration of Justice in New York* (Albany, 1934), and C. E. Clark and H. Shulman, *A Study of Law Administration in Connecticut* (New Haven, 1937).

5. Justice at the municipal level: W. F. Willoughby, *Principles of Judicial Administration* (Washington, 1929), Chapter 21 and Bibliography, p. 632. See also Albert Lepawsky, *The Judicial System of Metropolitan Chicago* (Chicago, 1932).

6. Criminal justice: Raymond Moley, *Our Criminal Courts* (New York, 1930); A. C. Millspaugh, *Local Democracy and Crime Control* (Washington, 1936); and S. B. Warner and H. B. Cabot, *Judges and Law Reform* (Cambridge, Mass., 1936), Vol. IV.

CHAPTER 31

Our Civil Liberties

THE LONG STRUGGLE of mankind to become more human depends for success on the central need of man to become more free. And freedom is by no means the result of a simple formula, for both the planning and the execution of the conditions to assure its continuance require the highest kind of social intelligence. All the principal factors in our common life, and nothing less than these, must be brought together to produce the desired result, the setting in which freedom may exist.

There is, first of all, a physical basis of security and contentment that is indispensable. Men at all periods of time have been more willing to work together peaceably when well-fed, and to drift into violence when their stomachs are pinched. Men are law-abiding and confident when they feel secure, and conspiratorial and rebellious when convinced of deep-seated injustices which could be rectified but are not. As a rule, men respect the liberties of others more highly, and are prepared to defend them more actively, if they have had to struggle to win or to hold the liberties they themselves possess. If the underlying sentiment of the community is one of equality and respect for human personality, and if it is reinforced by social, economic, political, and religious tradition, then the factors conducing to the security of our civil liberties appear in their proper relationships.

OUR CIVIL LIBERTIES

Our freedoms, like our law, are a composite of custom and formally prescribed guarantees. Our freedoms rest on community understandings, some of which are formally incorporated into constitutions or rest on legal decisions. But many of our freedoms also depend on a sense of fairness and equality evolving through custom. Ultimately, both kinds endure only when they are and remain a part of the mental and emotional fabric of a people. Although the temper of a people is controlling, the rights that are written down and the power of the courts to enforce them give our essential freedoms much of their staying quality. When liberty is threatened in concrete instances, it is the judges, relying on written statements of right, who must maintain society's balance and rebuff the forces of intolerance. This is why a leading authority on American government has said, "No one can understand clearly the status of individual liberty in this country without bearing in mind the place occupied by the judiciary under our constitutional system." [1]

[1] J. Allen Smith, *The Growth and Decadence of Constitutional Government* (New York, Holt, 1930), Chapter 14.

This chapter will attempt to define and classify civil liberties, and will discuss them as they appear in the provisions of the federal and state constitutions.

Civil Liberties Defined

Civil liberties are the basic rights of men and women in a free society. They are positive, as exemplified by freedom of speech, assembly, petition, and press. *They are protective,* limiting the threatened aggressions of public agencies or private individuals, as illustrated by the requirement that private property may not be taken for public use in eminent domain proceedings without indemnification. *They are protected by law and the courts.* In a real and comprehensive sense, *civil liberties are the natural rights to which public opinion agrees all men and women are entitled.*

This is not a simple definition. The difficulty is that if it emphasizes only a limited aspect of civil liberties, the resulting definition is incomplete and misleading. From a purely legal standpoint it would be correct to say that civil liberties are the "personal and property rights guaranteed by constitutions and laws against infractions by governments and individuals." But civil liberties are more than that. They are what tradition says they are; they are what public opinion succeeds in enforcing.

Civil Liberties Have Roots in the Past

The Greeks believed that no man should be condemned without trial. The Romans felt just as strongly that no man should be condemned to death for the murder of another without a trial by his peers. Men in all ages have recognized certain immunities of the individual and certain procedural and substantive rights to be thrown about him for his protection. Generally this was brought about by a sense of fairness but there was also the fear of encountering dangers oneself. At times—as in the case of the Twelve Tables in Rome or legislative enactments in both Greece and Rome—these rights were written down. In time of conflict between rival forces, they were almost sure to be.

The great documents of English constitutional history are examples of the writing down of basic rights. When King John was forced to assent to *Magna Carta* in 1215, that document referred to the *lex terrae* (law of the land)—rights which preceded the advent of kings and which the people now proposed to make express. Magna Carta pledged the king to refrain from certain clearly arbitrary acts. In addition it forbade the sale of justice, and stipulated that no man should be deprived of his property, or imprisoned, or banished without the legal judgment of his peers and in accordance with the law of the land.

Two other great documents of English liberty which became part of our common heritage also grew out of struggle. These were the *Petition of Right* and the *Bill of Rights.* Both were written during the seventeenth century, which saw the overthrow of royal authority by the Parliament. The Petition of Right was signed in 1628 by Charles I, very much against his will. It pro-

hibited the billeting of soldiers in people's homes, the trial of offenders by martial law, the collection of loans or taxes not sanctioned by Parliament, and the imprisonment of any person without specific charge and orderly trial. Here again, as in the case of Magna Carta, customary or inherent rights were relied on, rather than newly established ideals.

The third great charter of liberty was the Bill of Rights signed in 1689, when, it will be recalled, James II had been deposed and William and Mary were brought to the throne as figureheads. With the supremacy of Parliament finally established, another cataloguing of traditional rights seemed appropriate. Its most important provisions were the denial of royal authority to dispense with any law; the affirmation of the right to petition the crown with impunity; the denial of the right to maintain standing armies in peacetime without Parliamentary consent; the denunciation of excessive bail in criminal cases; and the requirements that elections to Parliament be free from royal control or influence, that they occur frequently, and that the members of Parliament have complete freedom of speech and debate in that body.

Added together, these civil rights make an imposing list. They became our inheritance. Many were written into our state and federal bills of rights. To these, notably in state constitutions, we have added special provisions of our own.

BILLS OF RIGHTS EMBODIED IN OUR CONSTITUTIONS

The American practice of embodying a section on civil liberties in the constitutional frame of our governments—where rights can be changed only by the difficult method of constitutional amendment—was one of our distinctive contributions to government. The French Declaration of the Rights of Man and our own Bill of Rights set an example which has been followed by most of the subsequent framers of constitutions.

The fact that a right is written down in a constitution, however, does not necessarily mean that it cannot be taken away at some later date. Constitutions themselves may be scrapped. The provisions of the bill of rights in the Weimar Constitution, for example, were extensive and enlightened, but when the liberal government succumbed to the Nazi dictatorship, the bill of rights became as meaningless as the rest of the document. *Constitutional provisions and judicial safeguards relating to bills of rights, therefore, are a bulwark but not an absolute guarantee of inviolability.* Ultimately if public opinion weakens and popular government fails, then no formal sanctions will suffice.

What are the rights guaranteed us by the Constitution of the United States? It will be recalled that a Bill of Rights was added to the Constitution by amendment after it had been framed. It is a simple statement, however, and nowhere near as extensive as in most of the state constitutions.

The first ten amendments to the Constitution comprise the Bill of Rights. The first eight amendments deal exclusively with the rights and immunities of persons. The Ninth makes it clear that no complete enumeration had been

attempted, for it reads, "the enumeration . . . of certain rights shall not be construed to deny or disparage others retained by the people." Which rights? It does not say. The Tenth deals with the powers reserved to the states and to the citizens.

In purely legal terms, the wording of the Ninth Amendment is confusing, but those who have studied the Bill of Rights through English history know well enough what the framers meant. They subscribed to the natural law theory that men have inalienable rights, as stated in the Declaration of Independence, and that since government does not create these rights, it can not take them away. It is sometimes said that the natural law theory has been discarded in modern times, but it is not discarded so long as the people believe in it.

Not all civil liberties are found in these first ten amendments to the Constitution. Others are interspersed throughout the Constitution itself, the most important coming at the end of Article I, which deals with the legislative branch of the government. We read, for example, that "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. . . . No bill of attainder or ex post facto law shall be passed." Then follows a list of proscribed activities on the part of the several states, among them being that "no State shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

The most important provisions of the federal Bill of Rights are duplicated in the constitutions of most of the states. Frequently the state bills of rights are long and deal with general principles of government. In that of Vermont, which is by no means one of the longest, we find that "all people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same. That all power being originally inherent in, and consequently derived from, the people; therefore, all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them."

The diversity in state constitutional provisions is so great that a general classification and discussion of bills of rights, combining the federal and state provisions, becomes next to impossible. Attention here, therefore, will be confined to those which the framers of state and federal constitutions thought so important that they were included in both. This list will be incomplete but, as a matter of fact, the Ninth Amendment to the Constitution makes it expressly clear that no exhaustive enumeration of private rights and immunities is possible.

The Supreme Court of the United States is also of this opinion. In the famous *Slaughterhouse* cases (16 Wallace 36. 1873), for example, the Court dealt comprehensively with the question of civil liberties and then concluded that no complete enumeration could be made. In referring to civil rights, the Court has repeatedly said that they must be determined by a "gradual process

of judicial inclusion and exclusion." The listing of civil liberties, therefore, is a dynamic process, and public opinion, as well as formal amendments and statutes, is always adding to them. Women, for example, are now entitled to vote. Labor refers to the Wagner Act of 1935 as its Magna Carta. The Four Freedoms of President Franklin D. Roosevelt were recognized in the Atlantic Charter. Freedoms expand and contract even as social problems and public opinion change.

The difficulty of enumeration and classification does not mean, however, that individual guarantees are any the less specific. The following discussion, therefore, will include the civil rights which are emphasized in both state and federal provisions. For example, both federal and state constitutions prohibit state legislatures from enacting bills of attainder or ex post facto laws. Both guarantee trial by jury and indictment by grand jury. Both prohibit unlawful search and seizure. Both guarantee freedom of speech, assembly, petition, press, and religion. There is a good hard core here and it relates to some of the most important areas of freedom.

Judicial Construction of the Bill of Rights

Our civil liberties, like the provisions of the federal Constitution relating to the machinery and powers of government, must be interpreted by the courts in case of question. A general view of how the courts have approached the problem, therefore, will be useful.

In the first definite statement by the Supreme Court it was held that the first ten amendments to the Constitution are limitations on the federal government only and do not apply to state governments. This was in connection with the case of *Barron* v. *Baltimore* (7 Peters 243. 1833), the last case in which Chief Justice Marshall participated. There was a clear question of doubt here because only the first of the ten amendments makes it clear that the federal power alone is envisaged. The wording is, "Congress shall make no law . . ." But in the case of the following nine amendments, the language is general and not confined to any particular government. Here was a major instance where interpretation was needed.

The facts were these: Barron owned a pier in Baltimore harbor. In paving some streets, the city of Baltimore had diverted streams from their natural course with the result that silt and mud filled in around Barron's pier, rendering it useless. He sued the city in the state courts and was awarded damages of $4,500. But the Maryland court of appeals reversed the judgment, and it was then taken to the Supreme Court on a writ of error.

The issue was whether the Fifth Amendment to the Constitution, prohibiting the taking of private property for public use without just compensation, applies to state and local governments or only to the federal government. The decision was that the Fifth Amendment, like the entire Bill of Rights, applies only to federal powers. The Supreme Court therefore dismissed the case for lack of jurisdiction. This meant that unless Barron could get redress under

state law, his only recourse was to petition the city council or the state legislature, making it a claim case. Had the controversy arisen after the adoption of the Fourteenth Amendment to the Constitution, with its due process of law clause, Barron would, of course, have sued under its provisions.

A Proposed Classification

A common method of classifying civil liberties is to divide the principal constitutional provisions into substantive and procedural categories. The substantive deals with the content of rights, such as freedom of religion, speech, press, assembly, and petition, release from slavery and involuntary servitude, the right to keep and bear arms, equal protection of the laws, and so on. Procedural rights, on the other hand, deal with the *how* instead of the *what* of rights: how the government shall carry on its business if it is to be legal. Examples are the prohibition against bills of attainder and ex post facto laws, the due process provisions of the Fifth and Fourteenth Amendments which apply to procedural as well as to substantive matters, and the requirements of judicial procedure, among which are indictment by grand jury, habeas corpus, jury trial, the avoidance of double jeopardy, the prohibition against unlawful searches and seizures, and the like.

The difficulty with this method of classification into substantive and procedural is that in some cases a particular provision seems to fall into one category about as well as into the other. This is because every right, of necessity, has both a substantive and a procedural aspect to it. Is treason substantive? It may result in loss of life, but it is also procedural. Is equal protection of the laws substantive or procedural? It might well be considered both.

For this reason a different grouping may be more useful. The largest number of provisions in our constitutions has to do with law and the judicial process. That is why the question of civil liberties is dealt with at this point instead of earlier. Another group of provisions deals with positive rights such as freedom of speech, press, assembly, petition, and religion. They are usually so linked in ordinary conversation or in newspaper discussions. This makes a convenient second category, and together these two dispose of the great bulk of the provisions.

THE PROVISIONS OF BILLS OF RIGHTS RELATING TO LAW AND THE JUDICIAL PROCESS

The principal provisions in bills of rights concerning law and the judicial process relate to bills of attainder, ex post facto laws, treason, equal protection of the laws, eminent domain, and contracts. A number of provisions relating to criminal cases include indictment by grand jury, trial by jury, confrontation with witnesses, the right to counsel, knowledge as to charges, protection against self-incrimination, protection against excessive bail, cruel and unusual punishments, and double jeopardy. Bills of rights also include provi-

sions relating to habeas corpus, unlawful searches and seizures, and jury trial in civil cases.

Bills of attainder. Both Congress and the state legislatures are forbidden by Article I, sections 9 and 10, of the federal Constitution to pass a bill of attainder. *A bill of attainder is a special act of a legislative body condemning a person for treason or felony, requiring him to forfeit all property and relinquish the right to transmit property to his descendants; further it deprives him of the right to appear in court or claim the protection of the law.*

So drastic a measure strips a man of most of his civil rights. It was used rather extensively during the sixteenth and seventeenth centuries in England in the course of the political struggles between king and Parliament. The ironclad language used in the federal and state constitutions has effectively removed this weapon even from the realm of temptation.

Ex post facto laws. These also have been forbidden to Congress and the state legislatures in Article I, sections 9 and 10, of the Constitution. *An ex post facto law, confined to criminal cases, makes an act a crime which was not so considered when committed; increases the punishment retroactively; or otherwise disadvantages the accused.*

This prohibition has other important implications which the courts will uphold. Thus a legislature may not, with retroactive effect, increase the severity of a crime or a penalty, alter the rules of evidence to the disadvantage of the accused, or in other ways decrease the protection which the law affords. This safeguard is in accord with the universal principle of criminal justice that criminal offenses must be clearly defined in advance. A corollary, however, is that a law which reduces a penalty, to the advantage of the accused, is entirely permissible.

Ex post facto laws apply only to criminal cases. Are retroactive laws likewise forbidden in civil cases? The rule is that, *generally speaking, retroactive civil legislation is not forbidden.* There are, however, two important exceptions: the legislature may not override, by retroactive legislation, a decision already made in a civil case; and it may not pass a retroactive law impairing the obligation of a contract. But there may be exceptions to this last rule because, where a franchise has been granted, for example, which attempts to alienate the inherent right of the state to grant it, the courts have interfered to amend it in the public interest.

Treason. In the heat of partisan rancor, there is danger that a legislature might brand a person as a traitor. For this reason, Article III, section 3, of the Constitution expressly defines treason and affords a protection similar to that found in the case of bills of attainder: "*Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.*" (Italics ours.) And the wording continues, "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."

To be considered treasonable, therefore, an act must be overt and clearly undertaken with the intention to overthrow the government. Neither a riotous

resistance to officers nor a mere conspiracy to commit treason is treason under the terms of the Constitution. But supplying an enemy with materials or information of military value does constitute treason. The penalty, as defined by Congress, is death.

The states may also punish treason against themselves under the provisions of their constitutions and laws. John Brown, it may be recalled, was executed for treason against Virginia in 1860.

Equal protection of the laws. This provision is found in the Fourteenth Amendment to the Constitution: *No state shall "deny to any person within its jurisdiction the equal protection of the laws."* (Italics ours.) Like the other safeguards in the Fourteenth Amendment, this clause was originally intended to secure the rights of the recently freed Negro slaves. Like the due process of law clause, however, judicially it has been considerably broadened in its application.

The important rules to remember are, first, that equal protection of the laws has come to be applicable to all persons including aliens, citizens, and corporations; and second, that equal protection has been merged by judicial interpretation with the due process of law provisions of the Fifth and Fourteenth Amendments and hence, in effect, *applies equally to federal as well as to state action.* In other words, equality before the law has become a requirement of due process of law in all cases. Finally, unreasonable and discriminatory classifications of persons and subject matter are judicially prohibited under the equal protection of the laws clause, whereas those considered by the courts as reasonable are not. For example, a leading Supreme Court decision held that fire regulations may be imposed on all laundry establishments, but not on Chinese laundries alone, because this is an unreasonable classification and a denial of equality before the law.[2]

The rule of classification requires that when statutory classifications are made, they must be reasonable with respect to the end sought, and all persons or things standing in substantially the same relation to the law must be treated alike.

This rule has come to have many applications in the economic realm. Taxation is one of these. May the states impose taxes on chain stores, graduating the amount of the tax in proportion to the number of units in the state? If so, this might be one way to discourage chain stores and strengthen individual ownership. In the case of *State Board of Tax Commissioners of Indiana v. Jackson* (283 U. S. 527. 1931), the Supreme Court held such classifications were reasonable so long as the owners of all chain stores were dealt with on the same basis.

The famous *Civil Rights* cases (109 U. S. 3. 1883) arose from the equal protection clause. In this historic decision and in others since then, the rule has

[2] The interesting case of *Yick Wo v. Hopkins* (118 U. S. 356. 1886).

been laid down that Negroes may be required, if the state legislature so provides, to use separate facilities so long as they are substantially equal to those afforded white people. This rule has been applied to railway trains, hotels, restaurants, motion-picture houses, public schools, and similar facilities. On the other hand, as we have seen, the Supreme Court has held that legislation may not prevent Negroes from voting in primary elections or from serving on juries.

The foregoing examples show how numerous are the practical and unanticipated implications of a phrase as general as "equal protection of the laws."

Eminent Domain. The final provision in the Fifth Amendment to the Constitution states that *"private property [shall not] be taken for public use, without just compensation."* (Italics ours.) Similar clauses are found in the state constitutions, and the rule of law applicable to eminent domain is universally binding on all governments in the United States.

In most other countries the same rule applies, either by express constitutional or statutory provision or by recognition in judicial decisions. Bouvier's *Law Dictionary* defines eminent domain as "the superior right of property subsisting in a sovereignty, by which private property may in certain cases be taken or its use controlled for the public benefit, without regard to the wishes of the owner."

As society becomes increasingly complex, more extensive use of this power is progressively necessary. A forest preserve, for example, is established; land is requisitioned for use in wartime; the Tennessee Valley Authority acquires hundreds of acres of private property, to be flooded when dams are built; street railways or electric power lines are constructed; playgrounds and schools must be built in settled communities; slum clearance is undertaken—indeed, the uses of eminent domain are legion.

If negotiation for the public use of private property fails, the compulsory process of eminent domain may be used, because otherwise society would be powerless. Eminent domain is a power which all governments and their subsidiaries—such as public utilities—may use. In the case of subsidiaries the arrangement is by means of a franchise granted by the government.

As a rule, eminent domain involves a transfer of title from a private owner to a public authority. An express purpose must be stated, however, before property may be acquired. The older cases emphasized "necessity," but some of the newer ones recognize "convenience." The decisions here are interesting. The courts are loath to interfere with public authority so long as just compensation is forthcoming. The final decision relative to just compensation rests with a court of competent jurisdiction, but the court is assisted by expert testimony from neighbors, businessmen, or real-estate appraisers. The use of lay advice, therefore, surrounds the proceeding with a desirable safeguard which tends to protect private owners against officiousness and unfairness.

Eminent domain is a powerful weapon because it means taking, condem-

nation, or expropriation. In the interest of personal security and respect for justice, therefore, it must be surrounded by appropriate judicial safeguards. It is likely to be used extensively during wartime, when its operation frequently arouses much criticism, primarily, perhaps, because of the speed and the broad extent of the "taking" that is found necessary.

The Contract Clause of the Constitution. A provision of Article I, section 10, of the Constitution—wherein restrictions are imposed on the states—stipulates that *no state may pass any law "impairing the obligation of contracts."* (Italics ours.) This is the famous "contract" clause of the Constitution.

Curiously enough, the Constitution places no express limitation on the powers of the federal government so far as the obligation of contracts is concerned. The courts, however, have surrounded that power with the same safeguards applicable to the states. Many difficult problems relating to the weighing of private and public rights have arisen under the contract clause. What, for example, is a contract? This is a complicated question of law. It is not enough to say that a contract is an agreement between two parties in which a consideration is present and an acceptance occurs. Is the charter of a college a contract? In the famous case of *Dartmouth College* v. *Woodward* (4 Wheaton 518. 1819), the Supreme Court held that it is.

Over a period of a century and a half, however, the courts have further defined and delimited the provision, giving rise to some very interesting and important interpretations. For one thing, the charters of cities and other incorporated subdivisions of the state are not contracts within the meaning of the contract clause, and hence the state legislature is free to alter or withdraw them, in whole or in part, at any time. In addition, the charters of general business corporations provide them with privileges which the state may later wish to modify.

Consider the social consequences if the courts had held that a privilege once given could never be modified! They have succeeded in getting around such difficulties by referring to charters as property rather than as inflexible contracts, by appealing to the concept of sovereignty and public interest, and by using the indemnity (compensation for loss) analogy in eminent domain.

Public utilities occupy a special position. They are granted charters and franchises, but at the same time they are subject to extensive regulation and control.[3] The courts therefore have generally had no great difficulty relaxing the "obligation of contracts" provision to meet their situation. Nevertheless after some unfortunate experiences, state and local governments have learned that it is wise to insert in new charters an express provision to the effect that they are revocable or alterable at will. Long charters with ironclad provisions have afforded an opportunity for municipal graft and bribery at various periods in American political history. Finally, the courts have held in several

[3] Dealt with in Chapter 46, "Business and Government."

leading cases that a sovereign government cannot divest itself of the sovereign right to grant or modify charter agreements, it being an inherent power and hence unalienable. Further, the courts have shown a willingness to allow later legislatures to alter certain provisions of franchise privileges when convinced that the grant of power is contrary to the higher claims of the public interest.[4]

Perhaps the situation can best be summarized by saying that in ordinary contractual agreements between individuals, the courts have hewed to the line. Where government is granting a contractual privilege or is exercising a sovereign power, however, the courts have looked with increasing liberality and concern on the modification of contractual arrangements so as to serve the larger public interest. A good example of this is the famous gold clause case of *Norman* v. *Baltimore and Ohio R.R.* (294 U. S. 240. 1935).

REQUIREMENTS IN CRIMINAL CASES

The majority of the provisions in the first ten amendments to the Constitution relate to procedural and substantive rights in court procedure. Why were these considered so important? Was there more distrust of the judiciary than of the other branches of government? We know this was not so. Was it because the framers of the Constitution relied so much on evenhanded justice as a means of protecting human rights and dignity? This may be a clue. Our ancestors had not forgotten the Star Chamber proceedings in England nor autocratic attempts to destroy the natural rights of freemen to a fair and open trial. Criminal law, as has been seen, is a special obligation of the organized political community. It is only natural, therefore, that special safeguards should have been thrown around this area of the judicial process. This protection has been customary since the time of Rome.

The Constitution specifically provides eight important safeguards in criminal proceedings: indictment by grand jury, trial by jury, confrontation with witnesses, the right to counsel, knowledge as to the charges, protection against self-incrimination, protection against excessive bail or cruel and unusual punishments, and immunity from double jeopardy. Add to these the safeguards concerning habeas corpus and freedom from unlawful searches and seizures—which apply to civil and criminal cases equally—and the total number of specific safeguards is brought up to ten—a very substantial part of the first ten amendments. Moreover, the state constitutions usually contain provisions similar to these. Since criminal justice involves the right to impose the death penalty or life imprisonment, criminal laws may be used for improper purposes. Thus it is only natural that the safeguards should be numerous and thorough.

Indictment by grand jury. The purpose of this protection is to establish certainty concerning the charges, to insure a fair and open process of inquiry, and to allow the public to participate in criminal accusations—a requirement

[4] See the leading case of *Charles River Bridge Co.* v. *Warren Bridge Co.* (11 Peters 420. 1837).

as old as Roman history. The two key terms are *indictment* and *grand jury*.

The Fifth Amendment to the Constitution states that "no person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury . . ." except in cases covered by military law. An *indictment* is a formal written accusation, drawn up by the prosecuting officer and returned as a "true bill" by a grand jury, charging one or more persons with having committed a crime. A *grand jury* is a body of from twelve to twenty-three persons summoned by government to hear witnesses on behalf of the state. After deliberating in secret and by a majority vote, this body returns indictments against all persons whom it finds just cause to hold for trial.

Two important rules apply here: first, *in federal courts* all capital or otherwise infamous crimes involving as much as one year in prison must be dealt with by a grand jury; and second, *in most of the states* a grand jury indictment is also required, but a substitute is sometimes allowed so long as it provides equivalent justice. This takes the form of an "information."

Indictment by an information is a charge filed by the prosecutor and approved by a judicial magistrate after a preliminary hearing. What it amounts to is that, on the prima-facie evidence, the judge substitutes the exercise of his own discretion for that of the grand jury. It is a movement toward greater professionalization of criminal justice.

The leading case on this issue is *Hurtado* v. *California* (110 U. S. 516. 1884). Here a man was indicted for murder on an information, tried, and sentenced to hang. He appealed to the Supreme Court on the ground that he had been deprived of due process of law because he was not indicted by a grand jury. This the Supreme Court denied, holding that the grand jury was the ancient and customary method but that newer methods might be used so long as they afford an equivalent justice.

About a quarter of the states now use the indictment by information, and almost a half waive the grand jury indictment except in cases of aggravated offenses. Is this a wise development? Which are better equipped for the matter at hand, lay juries or professional judges?

Grand juries are usually required to meet periodically at stated intervals as well as when individual cases require it. The grand jury is also used in cases involving nuisances, the prevalence of crime (crime waves and racketeering), and neglect of duty by public officials. Can able, civic-minded persons be relied on to keep this procedure effective? If vigilantly used, the grand jury can be made a powerful weapon in the cause of civic righteousness.

Trial by jury. The Sixth Amendment to the Constitution reads in part: "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. . . ." Trial by jury, one of the oldest and most bitterly fought-for rights in the development of the common law, is more essential in criminal

than in civil cases. Trial by jury has the advantages to the accused of being open and public, and conducted by his fellow citizens, but, as Dean Pound has pointed out, it has declined in both use and effectiveness in the United States and Great Britain.

In all federal courts and in most state jurisdictions the jury must consist of twelve persons in criminal cases, and the verdict must be unanimous. Otherwise no conviction is secured. These are called trial or petit juries to distinguish them from grand juries.

Confrontation with witnesses and the right to counsel. The Sixth Amendment to the Constitution also provides that in criminal cases the accused shall have the right "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." These are the basic necessities of a fair trial. Imagine the hopeless position of the defendant if, for example, witnesses in his behalf could not be secured by compulsory process! Consider how unjust it would be, too, if opposing witnesses could make statements against the accused without giving him and his attorney the right of cross-examination!

As a rule, the provision regarding counsel for the accused is the least effective of these safeguards because competent attorneys cannot always be secured. This is one of the functions of the legal aid societies which have multiplied in the United States and should be encouraged.[5]

Knowledge as to charges. This requirement is a necessary implication of the rule of certainty which constitutes the guiding principle in criminal jurisprudence. The Sixth Amendment to the Constitution says that the accused shall have the right to ". . . be informed of the nature and cause of the accusation; . . ." The rule of certainty was dealt with in the Supreme Court case of *Lanzetta* v. *New Jersey* (306 U. S. 451. 1931), which involved an antigangster law. "No one," said the Supreme Court in this decision, "may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids." The New Jersey antigangster law was void for reason of uncertainty because it used such vague phrases as "not engaged in any lawful occupation," "known to be a member of any gang of two or more persons," and the like. The penalty for being a gangster was fixed at $10,000 or twenty years in prison, or both.

In addition to the requirement that crimes must be clearly and precisely defined, counsel for the accused must be given a copy of the indictment well in advance of trial.

Protection against self-incrimination. The Fifth Amendment to the Constitution makes this stipulation: "No person . . . shall be compelled in any criminal case to be a witness against himself . . ." The rule here is that no person may be required to testify against himself in a criminal proceeding,

[5] See W. F. Willoughby, *Principles of Judicial Administration* (Washington, 1929), Chapters 41–42.

but he may do so voluntarily if he chooses, in which case he is subject to cross-examination. The immunity also extends to his private papers, which may not be seized and brought into court to be used as evidence against him.

This protection may be lost through the use of the so-called third degree, which is sometimes resorted to in order to secure confessions and to "soften up" an accused person before his trial. This evil is more difficult to control because it takes place outside the courtroom.[6] The courts are generally quick to discourage this abuse when it comes to their attention.

Excessive bail and cruel and unusual punishments. The Eighth Amendment to the Constitution states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This safeguard, like so many others, stems from the practices which once characterized early English and American courts.

The bail requirement is primarily a protection to the poor. An individual who has been arrested and put in jail will find it more difficult to arrange his defense than he would if he were out on bail. About a third of the states make bail virtually mandatory except in the most serious offenses. The Ohio constitution, for example, provides that "all persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great."

The provisions regarding excessive fines and cruel and unusual punishments are explained primarily by the practice, still common two hundred years ago, of throwing debtors into prison and imposing life imprisonment or the death penalty for robbery and misdemeanors.

Double jeopardy. "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb"—this is the way the Fifth Amendment to the Constitution states the double jeopardy prohibition. What does it mean? The answer is not exactly easy. The guiding principles are, first, that there can be only one trial. It may be postponed, continued to a later date, or interrupted if in the judge's opinion there is good and sufficient reason; but so long as it constitutes the same trial, the constitutional injunction is not violated. There may also be a retrial, because this is considered the same case. There may have been a mistrial, or the jury may not have agreed and no verdict of acquittal may have been rendered.

Once the prosecution has been closed and acquittal ordered, there can be no second trial for the same offense. However, an offense may be both federal and state, and hence violative of two sets of laws and triable in two separate jurisdictions. In this case a second prosecution may take place without constituting double jeopardy within the meaning of the Fifth Amendment.

OTHER PROTECTIONS, CIVIL AND CRIMINAL

The meaning of habeas corpus. Habeas corpus has been called "the great writ of liberty." And well it may, because it is the means of forcing a preliminary

[6] In this connection, see the Supreme Court case of *Chambers* v. *Florida* (309 U. S. 227. 1940).

hearing after arrest to prevent detention in jail incommunicado, without just cause. Thus habeas corpus became a weapon against incarceration for political and other shady reasons and for assuring the individual fair and equal treatment before the law.

Technically, habeas corpus is a writ directed to a sheriff, jailer, or other person holding an individual under detention, requiring him to bring the prisoner into court and state the time and cause of the arrest; whereupon a preliminary determination is made whether to remand him to jail or to release him on bail or on recognizance. If the cause is insufficient, the prisoner will be unconditionally released. By this means arbitrary imprisonment is prevented. Literally, the writ means "(that) you have the body."

The habeas corpus provision of the Constitution is found in Article I, section 9, and reads, "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." Habeas corpus does not apply under martial law or to persons subject to military law. *Military law* is law which applies to the troops only. *Martial law* is government by military commanders over the civilian population in designated areas, during which time military decrees may, as required, supersede ordinary laws. The privilege of the writ may be suspended only when the public safety requires it in time of rebellion or invasion. Furthermore, only Congress may take this action; the President may not.

Several times during the Civil War, however, President Lincoln, on his own authority, ordered the suspension of the writ of habeas corpus. His action, which he afterward admitted was illegal, gave rise to the famous case of *Ex parte Milligan* (4 Wallace 2. 1866). Milligan, a private citizen who lived some miles from the zone of military operations, was arrested by army officers, tried by a military tribunal, and sentenced to hang. The charge against him was that of inciting insurrection and acts of treason. Later the sentence was commuted to life imprisonment.

The case was taken to the Supreme Court on appeal, where some important principles were laid down. First, military law and tribunals cannot be set up in a noncombatant zone. Second, Congress must act to suspend the writ of habeas corpus—the President may not do so without Congressional authority. And finally, when the regular courts are in operation, they must be used instead of military courts. Milligan was released. If military supremacy rather than civil supremacy had been upheld under the circumstances, said the Court, "republican government is a failure, and there is an end of liberty regulated by law."

Looking back on such extensions of his executive prerogatives, President Lincoln remarked, "Often a limb must be amputated to save a life, but a life is never wisely given to save a limb. I felt that measures otherwise unconstitutional might become lawful by being indispensable to the preservation of the Constitution through the preservation of the nation."

Unlawful searches and seizures. All of the Fourth Amendment to the Constitution deals with the question of unlawful searches and seizures. "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." This guarantee of privacy is a reflection of the adage, "A man's home is his castle." It does not seem as necessary today as it once did, but that is largely because so sound a rule has been in effect. The prohibition is a restraint on the excessive zeal of the police and officers of the courts. A free citizen must be assured of protection against unauthorized prying and snooping.

There is, of course, some latitude in the words of the provision itself. What is meant, for example, by "probable cause"? Perhaps it is only hearsay, but it may be enough to secure a court order. There are the famous John Doe warrants—used when the name of the subject is not known. Although these warrants are frowned on by the courts, their use may be occasionally justified. The outright theft by public officials of incriminating evidence constitutes unlawful seizure, but it is hard to prevent because of the difficulty of proof and so in practice may be called a latitude. Yet another, and one of the most recent threats to privacy, is wire tapping which, generally speaking, is severely condemned by the courts but is nevertheless used in some instances.

Thus there have come to be many exceptions to the rule against unlawful searches and seizures, but public opinion may be relied on to sustain the necessity and desirability of the general prohibition.

Jury trial in civil cases. The Seventh Amendment to the Constitution deals wholly with jury trial in civil cases, stating, "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." This requirement applies only to proceedings in the federal courts. Similar provisions are found, however, in the state constitutions, some of which stipulate that the right of trial by jury must be held inviolate as of the time the state constitution was adopted, or in accordance with common law requirement.

Despite these protections, however, the jury trial in civil cases has steadily lost ground. In both federal and state cases the right may be waived by the parties. Some state jurisdictions hold that the jury shall be used only when one of the parties demands it. More often, the requirement has been relaxed as to both the size of the jury and the majority needed for a verdict. A few states make the jury the judge of both the law and the facts of a case. Thus the practice is quite uneven among the states, but the general tendency is to rely more on the judges and less on the jury.

THE POSITIVE RIGHTS: SPEECH, PRESS, ASSEMBLY, PETITION, AND RELIGION

The second group of rights distinguished in this classification concerns the influence and freedom of the individual in a representative government. For the preservation of these rights as much as for anything else, the United States has long been admired by the citizens of other countries.

America has traditionally been a refuge for the oppressed. Here we have freedom to worship God as conscience dictates. We may follow our own religious beliefs while respecting the right of others to follow theirs. Here freedom to express our opinions and differing viewpoints is considered the test of liberty. To criticize public officials and policies is not forbidden—rather, it is considered a healthy state of affairs. Here people may assemble, petition their governmental agents, and attempt to change the laws and the government if it is thought needful. Here the press is not muzzled, but may criticize within the bounds of libel and slander, whether the object be Congress, the Supreme Court, or the President.

Ours is a proud tradition, building the road to progress and public accountability. Ours is government by public opinion instead of by the mailed fist. But in times of rapid social change, when class tensions are bound to be acute, this freedom is a heritage which we must work to preserve. Civil liberties, like the population, must be periodically renewed.

The First Amendment to the Constitution contains the essential rights of free opinion which men and women have struggled for centuries to secure: "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."

Problems arising in this area of freedom. The freedoms listed here are threatened, however, by several forces which are becoming stronger in our modern society. Professor Robert Cushman has listed some of them.[7]

The first is war. The Civil War and two world wars have threatened—and in some ways have limited—our basic freedoms in the fields of speech, press, and other forms of opinion. Seemingly this is unavoidable, because war affects all aspects of our normal peacetime life. In peacetime, therefore, we must be especially vigilant to prevent the carry-over of wartime measures which will leave us with less freedom than we had before.

The second threatening factor is conflict between classes and rival economic groups, of which the most prominent is that between labor and capital. Tolerance, mutual understanding, and reciprocal accommodation are needed to preserve our freedoms in this area.

Finally, there is the danger area of minority groups, represented by the Negro population, the aliens in our midst, political and religious refugees, and

[7] See his article, "Civil Liberties," *Encyclopedia of the Social Sciences*, II, 509–513.

those of different culture and language from our own. Now that America has come of age we are more conscious of our common qualities; hence the hazard increases that we may become less tolerant toward that which is diverse. We must be careful to respect the rights of these minorities.

"What is meant by individual liberty," says J. Allen Smith, "is not the right to conform, which no one questions, but the right to act as one's own judgment dictates where his opinion is opposed to that generally held." [8] The real danger is not that false ideas and doctrines will supplant established truth, but that established error will seek to protect itself against the truth by suppressing all dissenters. Majority rule does not necessarily assure individual liberty; it does so only when it respects the right of other persuasions to argue their case without fear or favor in the open court of public opinion.

The greatest advantage of free opinion to organized government is that it permits tensions and disagreements to be openly expressed so that additional facts and wiser counsel may correct that which is false. If opinion is suppressed, it goes underground, where the damage is likely to be more disturbing to rights and social tranquillity than if it were allowed to compete openly with majority viewpoints. These truths our forefathers knew, and we lose sight of them only at real peril to that which we most cherish. Every time we refuse the right of another to freedom of speech, we run the danger of losing our own right to that privilege.

Liberty and propaganda. As used as we are to propaganda and as respectable as it tends to become, we must not lose sight of the dangers to freedom which stem from it. This may be the time for another critical examination of the question of propaganda. To quote once more from Professor J. Allen Smith, "Propaganda, in the sense of an organized effort either to popularize or to discredit some idea, viewpoint, institutional arrangement, or economic system, has a sinister significance when through a monopolistic control of news sources it is accompanied by the suppression of all competing propaganda. The power to establish a monopoly of this sort is one that society could not safely entrust to any agency, public or private. Monopoly in such a field is infinitely more dangerous than monopolistic control of industry. There can be nothing worthy of the name of intellectual freedom without free competition between ideas." [9]

"How free is the press?" asked William Allen White. How free is our radio? These are questions which an alert citizenry must increasingly ask. And do not think it will not take statesmanship and perseverance to retain our freedoms in this area. The danger comes not only from government but from organized interest groups. Fortunately the more discerning members of the newspaper and radio fraternities, as well as a large portion of the public, are already well aware of that fact.

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[8] J. Allen Smith, *The Growth and Decadence of Constitutional Government, op. cit.*, Chapter 14.
[9] *Ibid.*

PRINCIPLES RELATING TO CIVIL LIBERTIES

If we would keep our civic freedoms and even extend them, we must learn to view the problem in a broad context, both as to time and in relation to other peoples. We have been envied by other peoples because of our essential freedoms. Civil liberties have been more secure in the United States than in most European countries, where freedom has fluctuated upward and downward many times during the past three hundred years. But freedom is not something which is ordained. To be retained, it must constantly be renewed. Here are some of the principal considerations:

The temper and traditions of a people ultimately determine the degree of freedom that they shall have. Custom, fortifying tolerance and freedom of inquiry, underlies formal pronouncements.

Because they provide the machinery of government with the necessary mandates, express provisions in written constitutions and statutes help to reinforce common understandings with regard to freedom. An independent judiciary is a national asset because it has the last word on matters of interpretation. Conservatism with reference to human rights is a good thing, but formal guarantees, of themselves, are not positive assurance against invasions of freedom or the eventual collapse of our liberties.

Freedoms are safer where dangerous tensions can be kept in check. War and class conflict are the two principal hazards to be guarded against. To the extent that we can move toward a solution of our social, economic, and political problems, our freedoms are reinforced.

Basic freedoms are properly viewed as natural rights. We must support the government, it is true, but we have the right to demand that the government in turn shall respect our traditional and hard-won liberties.

Exceptions destroy the rule. A whittling away at our freedoms leaves us with a matchstick where once there was a staff.

Majorities have the right to rule, but no right to dictate conformity of viewpoint. Popular government is based on tolerance and criticism.

Since freedom is based on the spirit of a people, it must be nourished and frequently renewed or it will become sluggish and insipid. An intellectual and emotional appreciation of what it means to be free, and a determination to give to others what we would keep for ourselves, therefore, becomes the only ultimate hope of retaining what we now possess. What we have we must share.

SUPPLEMENTARY READING

1. General: In the *Encyclopedia of the Social Sciences* see the articles entitled "Bills of Rights," "Civil Liberties," and "Civil Rights." Robert E. Cushman has written *Our Constitutional Freedoms; Civil Liberties—An American Heritage* (New York, 1944); also "Safeguarding Our Civil Liberties," *Public Affairs Pamphlets* No. 43 (New York, 1943); and "Civil Liberty after the War," *American Political Science Review,* XXXVIII (Feb., 1944), 1–20. See also O. K. Fraenkel,

Our Civil Liberties (New York, 1944); F. J. Stimson, *The American Constitution as It Protects Private Property* (New York, 1923), Chapter 5; E. W. Puttkammer (ed.), *War and the Law* (Chicago, 1944), pp. 17–37; and Walter Lippmann, *American Inquisitors* (New York, 1928), and *The Method of Freedom* (New York, 1934).

2. Judicial aspects: W. W. Willoughby, *Constitutional Law of the United States* (New York, 2nd ed., 1929), Vol. III, Chapter 92, "Due Process of Law and Judicial Procedure"; Ernst Freund, *The Police Power; Public Policy and Constitutional Rights* (Chicago, 1904); Rodney L. Mott, *Due Process of Law* (Indianapolis, 1926); P. Nichols, *The Law of Eminent Domain,* 3 vols. (Albany, 1917). In the *Encyclopedia of the Social Sciences,* see article on "Due Process of Law."

3. Freedom of speech, religion, press, and assembly: The best reference is Zechariah Chafee, *Freedom of Speech* (New York, 1921) and *Free Speech in the United States* (Cambridge, Mass., 1941). See also H. Vreeland, *Twilight of Individual Liberty* (New York, 1945); F. Thayer, *Legal Control of the Press* (Chicago, 1944); J. R. Mock, *Censorship, 1917* (Princeton, 1941); V. Rotnem and F. G. Folsom, "Recent Restrictions upon Religious Liberty," *American Political Science Review,* XXXVI (Dec., 1942), 1053–1068. See also the *Bill of Rights Review* (New York), quarterly since 1940.

CHAPTER 32

Judicial Office as a Career

A MAJOR PROBLEM in any judicial system is the method by which judges are trained and selected. The faults of organization may be many and serious, but if judges are able, then their decisions are likely to be statesmanlike and social tensions will be eased and the public satisfied.

Law plays a vital role in directing and adjusting social forces. The judiciary is the bulwark of our civil liberties. The American practice of allowing the courts to pass on the constitutionality of legislation, and to uphold or invalidate it, requires the highest kind of integrity and breadth of human knowledge on the part of those who make the decisions. Indeed, so great is the influence of the judiciary in the United States that it must have at its disposal human timber of the best quality. A career in judicial office, therefore, offers appealing opportunities to the young men and women of our colleges and universities.

JUDICIAL PERSONNEL AS PART OF THE SOCIAL PATTERN

Although in the United States and Great Britain the judiciary has traditionally regarded itself as somewhat apart from the rest of the government, this aloof attitude has become less marked in recent decades. Most judges now are popularly elected, which makes them more directly accountable to the people. Judges exert an influence on the organization and powers of government unequaled by any other group. A realization of these facts has caused the bar and the bench to take a more active interest in the total governmental compound of which they are inevitably a part.

"The tone and demands of the average public sentiment in a given locality," says a leading authority on judicial administration, "rather than the particular system through which such sentiment asserts itself," [1] ultimately determine the quality of personnel—judges included—which the public secures. This realization is becoming increasingly clear to many professional groups. In education, for example, should politics be kept out of the schools in favor of more able teachers and administrators? Yes, but we should also do something to make politics more wholesome. Librarians, social workers, doctors, engineers, judges, all the leading professional groups whose programs impinge on government, are now somewhat belatedly learning that the segment they represent is bound to be affected and limited by the whole of the governmental situation. When that is none too good, an occasional leader of integrity and ability stands head and shoulders above the average. For this the public gives

[1] W. S. Carpenter, *Judicial Tenure in the United States* (New Haven, 1918), p. 212.

thanks. But chance outcroppings of this kind are wholly unsatisfactory in the long run. There is no substitute but to raise the average quality to the status that the social function requires. This is nowhere more important than in the field of the administration of justice.

The Qualities of the Judge

The principal qualities of the judge are personal integrity, adequate legal training, a grasp of the social sciences, a practical seasoning in human relations, and a judicial temperament. The importance of most of these characteristics is self-evident. It is their blending in the same person that is so rare and yet so vitally needed.

The late Oliver Wendell Holmes, whom few men have equaled in depth of knowledge and insight into human affairs, was the epitome of the qualifications required in a judge. He possessed all the other qualities mentioned, but he was chiefly remarkable for his judicial temperament. Judicial temperament is objectivity growing into wisdom. It is equanimity devoid of passion or self-seeking. It is open-mindedness manifesting itself in fixed human values but allowing for changing institutional arrangements. Judicial temperament is the quality of fairness that integrates the entire personality. Because of these factors, Mr. Justice Holmes was as successful as any Supreme Court justice in American history in "submerging his own conservative economic and social views in an adherence to a sort of general principle in constitutional cases." And because of his intellectual humility Holmes insisted on the principle of the benefit of the doubt in constitutional decisions involving judicial review, and favored the authority of the legislature. As one of his biographers has said, "Mr. Justice Holmes was a man of the world, who was also a philosopher, who was incidentally a lawyer. The result was that he was a very great judge." [2]

Max Radin, in his *The Law and Mr. Smith,* tells us in a realistic fashion what a court is. It is not, he says, a fancy building or an institution, although most courthouses are costly. A court is a man or a small group of men, rarely more than nine. The court is this man. Everything else is secondary. "And this judge," he continues, "is a human being and a citizen, extremely like the rest of us in character, feelings, manners and habits. He is in no sense inspired; he possesses no mysterious powers which the rest of us do not have and, to do him justice, he does not pretend to have such inspiration or such powers—at least the vast majority of courts do not."

For this reason, Professor Radin explains, most judges would prefer that we stop talking about them in figures of speech or in grand and high-sounding phrases. "They are not Priests of Justice, or Bulwarks of the State, or the Foundations of Society, or Lighthouses, or Rocks, or Anchors," or any of the

[2] Archibald MacLeish, Foreword to Felix Frankfurter's *Law and Politics* (New York, 1939), p. xvii.

other elaborate names that well-meaning people call them. They are merely persons who are selected from a specially trained group of people called lawyers.

HOW ARE JUDGES SELECTED?

In the United States there are three principal methods of selecting judges. They are either elected by the people, elected by the legislature, or appointed by the chief executive. Although it has not always been so, the method now most commonly in use is popular election. Before we get into this problem, however, let us see how judges are selected in other countries, because that will provide a perspective for judgment.

Appointment in England. In England all judges are appointed and serve during good behavior, which ordinarily means for life. There are two kinds: lay judges appointed by the Lord Chancellor, and professional judges appointed by the Prime Minister or a cabinet member designated by him. The appointing officer is under no obligation to consult with anyone else, including Parliament.

For lay judges, no qualification is necessary. But in the case of professional judges—who constitute the vast majority—a minimum period of seven years' service at the bar is required. A newly appointed judge may go to the highest court of the land. The head of the judicial establishment, the Lord Chancellor, has rarely had previous judicial experience prior to assuming his post in the Cabinet. Judges may be removed by the crown on the address of both Houses of Parliament.

Careerism on the Continent. In France and Germany, the judiciary has long been a distinct profession apart from the practice of the law. Men prepare themselves especially for the position of either judge or lawyer. Up to a certain point the basic legal training is the same for both branches, but after that there must be a choice. If a man decides to aspire to a judgeship, he is appointed to a minor post in the judiciary and may then look forward to a lifetime career in judicial work. Appointments to higher judgeships are made only from the members of the judicial branch. In an earlier context, the Continental judicial system was characterized as bureaucratic because it is a hierarchical career service providing for regular promotions according to length of tenure. Thus in effect it is a civil service within the judicial branch.

Some American authorities have seen advantages in this method of training and selecting judges. The principal one is said to be the development of the judicial temperament. The attorney is a partisan and an advocate, while the judge must avoid anything in the nature of taking sides. The argument is pertinent because in the United States we do not distinguish between advocates and judges in training and selection. Would it be to our advantage to separate the two, or may we expect to get the best possible judges by continuing to recruit them from among the ranks of lawyers?

The Impact of Democracy on the Selection of Judges

In the early history of the United States, judges were customarily appointed to hold office during good behavior. Usually they were appointed by the legislature, but sometimes by the executive with legislative concurrence. As has been noted, however, under the influence of Jacksonian democracy, popular election of all officials—legislative, executive, and judicial—marked the increasing popular participation in government during the nineteenth century. This development resulted in a reversal of practice so far as judicial appointments were concerned. Three quarters of the states now provide for the popular election of judges. At first there was some objection to this reform on the part of some of the electorate. It was feared that judicial independence might be jeopardized, but those who defended it argued that republican government could not be maintained unless judges also were held accountable to the public.

Professor W. F. Dodd, a lawyer and political scientist, explains the change-over by saying, "Perhaps the most important influence in bringing about a demand for a greater popular control of the courts is the increasingly important position which the courts have come to exercise as political organs of the government through their powers to declare laws unconstitutional. . . . These guarantees mean whatever the courts in any particular case may decide that they mean. . . . The courts have become practically legislative organs with an absolute power of veto over statutory legislation; . . . and this power has been used most frequently with respect to social and industrial legislation enacted to meet new social and economic conditions." [3]

Undoubtedly the growing influence of the judiciary has been a major reason for the change from appointment to election, but certainly not greater than the growing belief, in the nineteenth century, that the people themselves should control all branches of the government by the frequent use of the ballot box.

BRIEF HISTORY OF THE POPULAR ELECTION OF JUDGES

Mississippi adopted the popular election of judges for the state supreme court in 1832. Other states immediately showed interest, and in 1845 New York—the largest and most influential state in the Union—altered its constitution to allow the people to elect judges. New York's example was so great that the effect was instantaneous. During the next eleven years, 1845–1856, no less than 17 states changed over, and by the time of the Civil War, 19 of the 34 states had provided for the popular election of judges.

Repeated attempts to revert to the appointment of judges by the legislature or the executive have failed. In the New York constitutional convention of 1915, for example, the members of the bar favored a return to appointment,

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[3] W. F. Dodd, "Recall and the Political Responsibility of Judges," *Michigan Law Review*, X (1911), 85.

but the delegates who were not lawyers, especially those from the rural districts, would not sanction a change. As new states were admitted into the Union, they consistently provided for the popular election of their judges, so that three quarters of all the states now elect them by popular vote. The advocates of the appointment system agree that if there is ever a reversal to that method, it will be in the remote future.[4]

In the states there are still three methods of selecting judges. Popular election has been adopted in 38 states, or more than three fourths. Legislative selection occurs in 4 states, including Vermont, Rhode Island, Virginia, and South Carolina. Executive nomination subject to legislative concurrence is employed in 6 states. Here the governor may appoint judges with the concurrence of the legislature, the senate, or the executive council. Most of these states are in New England, and the largest is Massachusetts. At the city level, the judges of municipal courts are almost uniformly chosen by popular election.

The advancing trend toward the popular election of judges, however, has not included the judges of our federal courts. This situation is due to constitutional provisions according to which the appointive method—as found in Great Britain and the Dominions—must be used. The dominant state pattern and the federal pattern, therefore, are different.

Appointments to the federal judiciary are by the President, with the majority consent of the Senate. There have been instances—one or two fairly recently—in which a presidential recommendation was rejected in the Senate. "Politics" or lack of qualifications on the part of the candidate was given as the reason. Appointment to the federal judiciary is during good behavior, and the only method of removal is by impeachment, of which there have been but a few cases in American history.

The Pros and Cons of Popular Election

As previously indicated, there has been much controversy over the proper method of selecting judges. It has been a hotly contested issue at various times in almost every state. Bar associations are generally opposed to popular election, claiming that voters cannot evaluate the technical qualifications of candidates, that a popular judge is not always a good judge, and that the election method encourages politics and plays into the hands of the bosses. These groups also maintain that running for office is expensive and unnecessary, that it detracts from judicial independence, that it discourages those best qualified from embarking on judicial careers because a good man hesitates to put himself forward. In addition, the election method is criticized because it provides no assurance of tenure. And finally, it is believed that racial and religious considerations supersede technical qualifications in importance, and that judges anxious to continue in office will be careful to avoid offending powerful groups in their districts.

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[4] W. F. Willoughby, *Principles of Judicial Administration* (Washington, 1929), p. 373.

But the arguments in favor of popular election are not unimpressive, else that method could not have advanced to the position it occupies. The people, it is held, are as competent to choose judges as they are to choose lawmakers or executives. Voters admittedly make occasional mistakes, but so do appointing officials; and in addition, turning over the appointing power to professional politicians would increase the influence of the politician and cause the courts to become partisan as contrasted with political. Moreover, life tenure is a dangerous thing because lawyers are narrowly trained to begin with and they soon lose touch with public opinion. The best justice is that which public opinion favors and supports, and the need to be re-elected keeps judges responsive to it.

Those who favor election admit that the voters may not know the candidate before he runs for office, but they hold that the people have ways of learning about candidates and that if an unfit judge is selected he can be recalled or impeached, or the people can decide not to return him to office when he comes up for re-election. It is argued also that bar associations are likely to be dominated by influential members serving large corporations, and that if appointment were the method, only corporation lawyers would be chosen. Labor, farmers, and various other groups want to see the selection of judges close to them, too. If it comes to a choice between a highly specialized lawyer and one closer to the people, the people would prefer the latter. It is felt that the courts, which are the defenders of many of our liberties, are nonetheless often hostile to social change and that therefore they should be kept democratic.

POSSIBLE COMPROMISES AND IMPROVEMENTS

Despite strong arguments against the popular election of judges, authorities such as W. F. Willoughby generally agree that the procedure is now a more or less permanent one. If that is true, what can be done to improve the present situation? This is the attitude of many bar associations today. The conclusion of the most competent authorities seems to be that popular election results in the choice of some very good judges, together with some very poor ones. Some observers go further and say that it does not seem to make much difference which system is used. The basic question is, *"What is the state of public interest, vigilance, and intelligence as applied to the general problems of government?"* When these factors are favorable, any system selects good judges; when they are not, the type of judge selected reflects the influences that determined his choice.

Two needs suggest themselves. First, we should concentrate on the double problem of public interest and general governmental efficiency, because the judiciary is an integral part of government. And second, in nominating candidates we should draw on the professional advice of the state and local bar associations. Although many bar associations already do an effective job of guidance, they should—and could—do more. But if their internal organization

is such that they are controlled by a group that is not representative of their total membership, the voters will have little use for their recommendations.[5]

The California Compromise Plan

Believing that there are advantages in both the appointment and the popular election of judges, the voters of California in 1934 passed a constitutional amendment that has some novel features. Essentially it is a compromise. Since then, Missouri has adopted a similar method.

The California plan is only mandatory for the higher courts—the supreme court and the appellate courts—and optional for county courts. When the term of an elected judge nears its end, he may declare his candidacy to succeed himself. If he does not wish to continue in office, the governor designates someone else. In either case, at election time only one name goes on the ballot for the office in question. If the voters are dissatisfied with the record of the incumbent or dislike the governor's candidate, they may register a sort of popular veto and keep him out of office. If the candidate is thus rejected the governor makes a temporary appointment until the next election is held.

The nominations of the governor must be approved by a commission consisting of the chief justice of the state supreme court, the presiding justice of the local district court of appeals, and the attorney general. The plan is ingenious because it includes features of three systems—executive appointment, popular election, and approval by the chief judicial officials of the state. It has been criticized, however, because it does not present the voters with a real choice between alternative candidates.

Appointment by the Head of the Judicial Branch

Would there by any advantage in adopting the European system of appointing all judges? On the Continent, the ministry of justice in the national government is responsible for this function. If a similar procedure were adopted in the state governments in this country, the head of the judicial branch would make all appointments and promotions.

This is the most advanced or radical plan of all, and yet it has been sufficiently supported by the legal profession to be taken seriously. The development of judicial councils to be responsible for the administration of the state court systems is regarded by some writers as a move in the direction of appointment. The Lord Chancellor in Great Britain already exercises powers analogous to those of a minister of justice on the Continent. In the United States we have a federal Department of Justice which possesses much of the authority of a ministry of justice. There is no reason why the departments of justice in our states should not possess similar powers.

Perhaps the highest development of this plan is in France, where the Minis-

[5] For a discussion of methods that have been successfully used, see W. F. Willoughby, *Principles of Judicial Administration, op. cit.*, pp. 372–381.

try of Justice coordinates the entire national law-enforcement machinery. The police, the courts, the penal institutions—everything that has to do with law and its enforcement—are brought together in one place. It is a neat way of doing things. It is logical and precise. But is it desirable? Does it not concentrate too much power in one place? This is the objection to neat schemes that Americans seem to sense.

JUDICIAL TERMS AND SALARIES

There is a good deal of variation in the terms of elective judges. Generally speaking, they are longer in the Eastern states than in the West, where the preference seems to be for terms of from 4 to 6 years. But the variation is shown by the fact that in New York the term of superior court judges is 14 years, in Pennsylvania it is 21, in Ohio 6, and in Vermont 2.

As a rule, re-election is not difficult for most incumbent judges because the public prefers a tested man to one whose qualifications are unknown. This being the case, even under the elective system the security factor is favorable. So far as salaries are concerned, however, an outstanding lawyer whose primary interest is the amassing of a fortune does not think of becoming a judge. Although judges receive a compensation that is higher than most other governmental officials—either legislative or administrative—receive, it is not in keeping with that of highly paid business executives or lawyers in lucrative private practice.

The annual salary of the Chief Justice of the United States Supreme Court in 1945 was $20,500, and that of the associate justices was $20,000. This compares favorably with the $10,000 a year received by congressmen and senators, and $15,000 a year received by the members of the President's cabinet. Judges in some of the wealthier states, such as New York, are paid corresponding salaries. Thus, although judges' salaries are not large, they are adequate, and in general, their average is uniformly higher than the average of legislative or executive salaries.

Moreover, in the career of the judge, certain compensations offset in some degree an income lower than that of the exceptional lawyer in private practice. For example, there is relative security of tenure, and at retirement age there is usually a pension. But perhaps most important are the intangible rewards—the prestige, the satisfaction derived from the importance of the work, its essential appeal to professional pride, and the position of leadership in the community that frequently accompanies the office.

The Removal of Judges

We should probably not be quite so determined to retain the popular election of judges if there were greater assurance that an unsatisfactory judge—when appointed—could be removed before doing too much damage. Actually there are numerous ways by which this can be and has been done, but none of them are as sure as failure to re-elect. The office, for example, may be abolished,

a judge may be impeached, or removed by a joint address of the two houses of the legislature, or he may be recalled by popular vote.

The impeachment procedure is provided for in Article I, section 3, of the Constitution, and the state constitutions contain similar clauses. *Impeachment is a formal written accusation by the lower house of a legislature to the upper house for the purpose of removing a civil officer (other than a member of the legislature) for treason, bribery, or other high crimes and misdemeanors.*

The penalty is limited to removal from office and disqualification from holding any other civil office in the gift of the same government. A convicted person remains liable, however, to trial and punishment in a court of law and the pardoning power does not apply to impeachments.

Impeachment has not been widely used. In the federal government there have been only thirteen impeachment proceedings commenced since 1789 and no more than five of these led to conviction. Ten of the thirteen cases, however, and all of the convictions were with regard to judges.

In a majority of the states the only method of removing a judge before the expiration of his elective term is by the impeachment procedure, similar to that of the federal government. In other states, however, there are two additional methods. In a dozen states it is provided that removals may be made by the legislature; in nine the English method of a joint address is used, amounting to a concurrent resolution of both houses calling on the governor to take the necessary action. Of these three methods the fairest is clearly impeachment because it contains the safeguards of a quasi-judicial proceeding before the legislature. However, it is limited in its effectiveness because it applies only to acts which are analogous to criminal offenses. It does not touch such matters as physical or mental incapacity, neglect of duty, or arbitrariness and conduct unbecoming a judicial officer, although drunkenness was once included among the charges against a federal judge. In general, however, noncriminal grounds for removal are hard to establish under any of the methods now available.

A final means of removing a judge is the recall, but like impeachment, the recall is not too easily used. *The recall of public officers is a procedure wherein the official may be removed from office—but usually only after six months of his term have expired—by a vote of the people.* The recall may be invoked by petition of from 10 to 35 per cent of the qualified voters in the jurisdiction (usually 25 per cent); at the election the questions of removal and of the election of a successor both appear on the ballot.

The recall, which has been especially favored in the states of the Far West, may also be employed against executive and legislative officers in eleven states and against judges in eight. Many municipal charters also provide for it. The recall is a drastic remedy but it is an effective reserve of the people in case all others have failed. Actually it has been rarely used in the case of judges. Associated with it is the proposal, noted above, of providing for referenda on judicial opinions, a plan backed by the Progressive party in 1924. It is interesting to note that when Arizona and New Mexico were admitted as states to

the Union, President Taft threatened to veto the joint resolution on that subject if the objectionable clauses relating to referenda on judicial decisions were not omitted from the proposed constitutions.

A Difficult Problem of Statecraft: Judicial Independence vs. *Accountability to the Voters*

None of the methods by which an unfit judge may be removed from office are entirely satisfactory, and yet there are instances where removal is urgently necessary. Mistakes will occur under any system, whether it be popular election or the various means of appointment.

But how can an adequate removal procedure be squared with the equally important requirement of judicial independence? It is true that the judiciary is an element in the compound of government, and that many judicial decisions must take the will of the people into consideration. But on the other hand, justice has always been regarded as something which must be impartial to be just. And to be impartial, the judiciary must enjoy a certain minimum of independence, even in the complicated social and governmental structure of today.

The minimum requirements of judicial independence are three in particular. First, judges must be exempt from civil accountability. This is a universal requisite. The rule is that no person is liable civilly for what he may do as a judge while acting within the limits of his jurisdiction, nor is he liable for neglect or refusal to act. This is the same kind of protection accorded members of legislatures.

Second, judges must be guaranteed a compensation. The Constitution provides that "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." This proviso is universally respected at all levels of government.

Finally, there must be safeguards against arbitrary dismissal. Judges shall be removed for cause only. This requirement of independence is only rarely abused. On the contrary, it is more likely that a good cause for removal will not be taken up because of difficulties standing in the way.

There seems to be no ready-made answer, therefore, to the question of which removal procedure will best observe the requirements of judicial independence and yet provide the voters with the means of holding judges accountable. Popular election as a means by which an unsatisfactory judge may be kept from office is the method which the voters have most generally favored and perhaps there is none more adequate.

The Retirement of Judges

Most jurisdictions now have provisions making the retirement of judges either mandatory or permissive at a given age. In some the age is as low as 60 years, but the usual age is 70. In the federal courts a judge may now retire

at 70 after ten years of service, and may continue to draw his salary during his remaining years.

By and large, a compulsory retirement age would seem more satisfying to public opinion than an intensification of removal sanctions. In Great Britain, for example, judges do not often reach really important positions until they are 50 or over. Pensions are seldom afforded until they have served fifteen or twenty years, with the result—as Professor Laski has expressed it—that "judges are frequently old men who have lost touch with the ideas of a new generation."

Studies of the Supreme Court of the United States made by Professor Cortez Ewing show the average age of the justices by decades since 1789. The results are interesting. During the first decade, the average age was 53 years, whereas during the first seven years of the 1930's it was 69. The increase during the intervening period had been almost continuous. The same result is found by comparing the average age of justices at the time of appointment. During the first forty years of the Supreme Court, four justices were less than 40 years old and twelve were under 50 at the time they became members of the Court. None was over 60 and only seven were over 50. But during the forty years' period ending in 1937, no justice was under 45 and only one was under 50, while five were over 60 and ten were over 55 at the time of appointment.

Interpreting these figures, Professor Robert Carr has pointed out that "it is probably more than a coincidence that the Court, which during the 1930's struck down more important federal legislation than did any previous Court during a similar period, was on the average the most aged in our history." [6]

THE NEED FOR GREAT JURISTS IS INSATIABLE

Because of the power of our highest courts to determine public policy in a manner amounting almost to legislation, we should produce more judicial statesmen than any other country.

It is true that we have had some outstanding judges in the United States. In the case of the Supreme Court, Justices Holmes and Cardozo were judges most of their lives—career men in the best sense of the term. Justices Sutherland, Byrnes, and Black, on the other hand, had been members of Congress, and Justices Jackson and Reed had been officials of the executive branch. So far as the "practicing politicians" on the bench are concerned, Professor Carr has commented that no one should hastily conclude that "this last type of background has made the poorest judges. Far from it. Some judges with this background have at least been realists, aware of the significance of the tremendous forces and counter-forces that are constantly contending for position in our modern society." [7] Some appointees to the Supreme Court have been practicing attorneys who had achieved great financial success. In this group are Jus-

[6] *The Supreme Court and Judicial Review, op. cit.*, p. 251.
[7] *Ibid.*, p. 248.

tices Mathews, Fuller, Butler, and Roberts. Still others have been well-known professors of law, and here we think of Justices Stone, Douglas, and Frankfurter. But, as Henry Steele Commager has said, "for every Brandeis familiar with economics, for every Holmes versed in literature, for every Cardozo learned in philosophy, there are a dozen judges who regard such learning as esoteric if not irrelevant." [8] And yet if judges are to serve as statesmen, they must possess broad and deep knowledge, together with a practical experience of people and affairs.

In a real sense, the life of the law is determined by the influence of its greatest judges. Mr. Justice Frankfurter has said that "the work of the Supreme Court is the history of relatively few personalities. . . . The fact that they were *there* and the others were not, surely made decisive differences. To understand what manner of men they were is crucial to an understanding of the Court." [9] It is fortunate, therefore, that recent years have seen the publication of some excellent biographies of Supreme Court justices, including Beveridge's life of John Marshall, Carl Brent Swisher's studies of Roger B. Taney and Stephen J. Field, Charles Fairman's book on Samuel F. Miller, Henry Pringle's portrait of the life and times of William Howard Taft, A. T. Mason's life of Louis D. Brandeis, J. P. Pollard's life of Benjamin N. Cardozo and another by G. S. Hellman, and the life of Oliver Wendell Holmes by Francis Biddle and another by Silas Bent. These books are worth reading from the standpoint of both human interest and the shaping of the law.

Personality is a powerful factor in politics. Whether it be in party organization, legislative chambers, the courts, the administrative services of government, or the foreign service, the country needs the best blend of personality traits our homes and schools can produce.

SUPPLEMENTARY READING

1. General: The best comprehensive treatment is found in W. F. Willoughby, *Principles of Judicial Administration* (Washington, 1929), Part 4, "Judicial Personnel." In the *Encyclopedia of the Social Sciences,* see Adolf Berle's article, "Legal Profession," and Harold Laski's entitled "Judiciary." In Robert K. Carr's book, *The Supreme Court and Judicial Review* (New York, 1942), see Chapter 10, "Personality and Judicial Review."

2. Biographies of outstanding justices: In general, see Cortez A. M. Ewing, *The Judges of the Supreme Court, 1789–1937: A Study of Their Qualifications* (Minneapolis, 1938). Also, Albert J. Beveridge, *Life of John Marshall,* 4 vols. (Boston, 1916–1919); Carl B. Swisher, *Stephen G. Field, Craftsman of the Law* (Washington, 1930); B. R. Trimble, *Chief Justice Waite, Defender of the Public Interest* (Princeton, 1938); Charles Fairman, *Mr. Justice Miller and the Supreme Court, 1862–1890* (Cambridge, Mass., 1939); Henry F. Pringle, *The Life and Times of*

[8] "Constitutional History and the Higher Law," in *The Constitution Reconsidered,* ed. by Conyers Read (New York, 1938), p. 243.

[9] *Law and Politics, op. cit.,* p. 113.

William Howard Taft, 2 vols. (New York, 1939); Silas Bent, *Justice Oliver Wendell Holmes* (New York, 1932); Francis Biddle, *Mr. Justice Holmes* (New York, 1942); Alpheus T. Mason, *Brandeis: Lawyer and Judge in the Modern State* (Princeton, 1933); J. P. Pollard, *Mr. Justice Cardozo* (New York, 1935); and G. S. Hellman, *Benjamin N. Cardozo—American Lawyer* (New York, 1940).

3. Legal education: See Harold D. Lasswell and M. S. McDougal, "Legal Education and Public Policy: Professional Training in the Public Interest," *Yale Law Journal* (April, 1943). The *American Law School Review,* published by the American Association of Law Schools, abounds in articles on this subject.

PART PUBLIC ADMINISTRATION

CHAPTER 33

The Dynamics of Public Administration

THE RELATION between legislation and administration can best be explained by this simple analogy: it is one thing to know what you want to do and another to be able to do it. The statute passed by the legislature is the plan; the putting of the plan into operation is its administration. You have learned from personal experience that between the plan and its execution there is the closest kind of connection. If you plan to do something and it does not work, then you must modify your original scheme. The more experience you acquire, the more modifications in your plan may prove necessary. As you become a better administrator you become a better planner, and as you learn to plan more realistically you improve your administrative performance.

Having studied the legislative and the judicial branches of government, this part of the book takes up the executive, or public administration. In the present chapter the subject is introduced by a reminder of how all the parts of American government are interrelated, making of government a unified whole. This is followed by a discussion of what the study of public administration means, the reasons for its long neglect in this country, and the conditions which have caused it to be increasingly emphasized in recent years until today it is one of the most interesting disciplines in the field of political science and a most attractive career opportunity.

GOVERNMENT A UNIFIED PROCESS

The individual does not live his life in a series of separate compartments. By the same token, neither does government. Each aspect of government is closely tied in with all the others. In most political jurisdictions, for example, the chief executive, assisted by the administrative departments, has become the chief legislator as well. The legislature, in turn, enacts the law, but it also has the power to organize and finance the administrative machinery. And once the law is in operation, the legislature exercises numerous forms of surveillance and control over its operation. For their part, the courts help to mold law and policy, and they also provide indispensable sanctions in the carrying out of the law.

Thus, in order to analyze and examine their institutional functioning, one speaks of the processes of government. But in fact there runs throughout this plurality a common purpose and propulsion, because between social need and

public remedy there is a necessary connection. Aspiration remains in the realm of things hoped for until converted into practical programs.

Government plans its programs centrally, but it must then carry them to the people in their remote localities. The business of government is an interminable round of activity by several million persons representing every specialty and skill in our economic life. Every day, the scientists and technicians are at their work in the office, in the laboratory, or in the field; mail carriers make their rounds; and county agricultural agents tend to the business of their clients the farmers. Tax assessors count the number of head of cattle, evaluate the improvements in business property, and settle disputed assessments. Snow plows clear the roads in winter, work crews fill in the holes made by heavy traffic in the spring, new highways and streets are built, and old ones maintained. The state and city police, on shoe leather or on tires, pound their beats; thousands of teachers go to their classrooms; and hundreds of thousands of executives and clerical workers, in many skill and compensation categories, do the complicated work of keeping vast administrative machines running. On the administrative plane more than on any other, government has much in common with business because of the many similarities between public functioning and all institutional life.

It has been pointed out that there are three elements running through all three branches of government, tying them together into an institution that cannot function save as a whole. These elements are law, political parties, and the influence of pressure groups. The pressure groups are especially important because they work on public opinion, on political parties, and on the law as it is being formulated. And if they are unsuccessful in these areas, they may still attempt to influence the execution of the law. Indeed, interest groups may have more friends in the executive establishment and their own administrative departments of government than in the legislature itself. Moreover, they know from experience that whatever the formal theory of the separation of powers may hold, policy is made and changed by those who execute the particular laws which affect them. Therefore they keep pounding away in one encounter or another. If they have lost the legislative round but can modify or obstruct the law as it is spelled out from the central office to all the peripheral points of contact with the citizenry, then they may still achieve a partial victory or soften the blows which fall on their interests.

Even if the interest group wins the verdict in the legislature, it is faced with the necessity of following through, because statutes are effective only when given force and effect. Vigilance, therefore, becomes the price of complete success. If businessmen want protective tariffs to cushion their competition, if labor means to get the most from collective bargaining laws, if social workers want dependent children placed in good homes, if farmers want cheap fertilizer with government subsidies but without delays due to red tape and officiousness, if citizens are determined to keep their school systems nonpolitical, if peace groups are realistic about making world security organizations effective instru-

ments rather than paper plans—then each must everlastingly follow through every step in the administrative unfolding of statutory plans or it will almost certainly get less than the law contemplated.

If interest groups are omnipresent, if legal interpretation is a continuous flow from legislative source to individual application, if no law is self-executing and most are highly involved in their administrative requirements, then government is a unified process and not a bundle of separate authorities. And since administration is the final step in the political process, it constitutes a dynamic and vital aspect of our life.

THE STUDY OF PUBLIC ADMINISTRATION

The carrying out of governmental programs has been given the title "public administration." As a subject of intensive study in American government, it is a comparatively recent arrival. Nearly sixty years ago, Woodrow Wilson wrote a brilliant essay called "The Study of Administration,"[1] one of the first articles to recognize the importance and scope of public administration as a subject of interest to political scientists in the United States. Nevertheless, it was another twenty years before public administration received anywhere near the emphasis we now realize it deserves. From a background of European study, Professor Frank J. Goodnow acquired a knowledge of European scholarship in this field which found an outlet in three significant books, *Politics and Administration, Comparative Administrative Law,* and *Administrative Law of the United States.*

It was not until the first decade of the present century, therefore, that governmental administration came into its own. Municipal reform movements then called attention to the central role of the mayor and the administrative departments. A movement was started in Washington to introduce an adequate budget system and greater economy and efficiency throughout the federal administrative hierarchy. In 1923, Professor William Bennett Munro published his *Municipal Government and Administration.* In 1926 and 1927 comprehensive works appeared by Leonard D. White, *An Introduction to the Study of Public Administration,* and W. F. Willoughby, who wrote *Principles of Public Administration.* Since that time the interest has intensified until today public administration is one of the most popular subjects in the political science curriculum.

This chapter deals with the meaning and component parts of public administration, as a basis for what follows in the present section of the book. The following chapters take up the role of the chief executive, public administration in action, problems of government reorganization and efficiency, the budgetary and fiscal programs of government, the methods of holding officials accountable, and administration as a career. This will lay the groundwork for succeeding parts of the book that take up some of the principal functions and

[1] *Political Science Quarterly,* II, 197–222.

problems of government. There the action programs of government as they are carried out are studied, so as to test the principles of government that have been described.

The Meaning of Public Administration

Wherever there is an institution there is administration. It may be a church, a corporation, a university, a hospital, a charity organization, a research foundation, a small village, a great city, or a national government. In its most comprehensive sense, administration is the execution of a program, and the program may be as diverse as all the institutions in modern life. In one of its simplest but most necessary forms, administration is home management. In general, however, "public administration" is the term used to differentiate governmental from business or private management.

Any one of several definitions is adequate: *public administration is the fulfillment or enforcement of public policy as declared by the competent authorities.* Public administration deals with the problems and powers, the organization and techniques of management involved in carrying out the laws and policies formulated by the policy-making agencies of government. Public administration is law in action. It is what the coordinator does in getting a job done. It is the executive side of government.

The principal areas comprised within public administration are planning, organization, finance, personnel, direction, public relations, and control. "Public administration," said Woodrow Wilson, "is detailed and systematic application of public law. Every particular application of general law is an act of administration. The assessment and raising of taxes, for instance, the hanging of a criminal, the transportation and delivery of the mails, the equipment and recruiting of the army and navy, etc., are all obviously acts of administration."

WHY THE STUDY OF ADMINISTRATION WAS LONG NEGLECTED IN THE UNITED STATES

Why is it that until recently administration was not emphasized in the United States as much as in other countries? This is an important question with equally important explanations. An attempt must be made to answer it before dealing with some of the most significant problems confronting the American people in the future.

In the early part of American history, we are told, the people relied mainly on the legislature. But this was followed by a period in which the legislature was overshadowed by the judiciary, which then held the balance of power among the three branches of government. And today, in accordance with a trend which must be expected to continue in the future, the judiciary has been superseded by the primacy of the executive.

Our chief executives, both national and state, have, in effect, become our chief legislators. Their facilities for swaying public opinion are unequaled elsewhere in government. Certainly today there is far more popular interest in

what the President does and what he says than in Congress collectively. What does this portend? Must we, with Pendleton Herring, conclude that "we can symbolize our national unity in the presidency, our sectional interests in the Senate, and our localisms in the House"? However, the executive branch in the United States has received far less deference and power than in most other countries. In France, for example, the principal emphasis in courses in political science is on *le régime administratif*—the administrative regime. Is it merely the consequence of deep layers of tradition—the influence of monarchy? Or is there a rational justification for emphasizing administration which affects the peoples of all countries?

Early Suspicion of Executive Powers

The several reasons for the tardy development of interest in public administration in the United States, which go all the way back to our early history as a nation, include a suspicious attitude toward a powerful executive, the absence of a monarchical tradition, an emphasis on democratic control during the nineteenth century, and the effect of the doctrine of the separation of powers.

Perhaps the basis for our lack of concern for administration was our forebears' suspicion of executive power. Indeed, during the formative period of the American constitutional system, the deep-seated fear of executive power in the hands of a single individual was perhaps the most notable feature of popular sentiment toward government. Largely this stemmed from the people's dislike of royal governors. The governor was the personification of all the colonists' complaints. He had power to run the government and they did not. He levied taxes, conscripted men for the militia, and did the other obnoxious things complained of in the Declaration of Independence. And since he was so far from his royal masters and not responsible to the colonists, he wielded an uncontrolled power which the people would not soon forget.

When they set up their own governments, therefore, plural executives were the people's choice. The stubborn persistence of boards and commissions in American governments today is evidence of this concern. In some cases, because the people thought there was less danger in this system than in popular election, the executive was chosen from the legislative body for a limited term and with limited powers. Our weak-mayor form of municipal government is a direct descendant of this fixed determination.

Again, constitutional provisions, both federal and state, usually spell out the powers and organization of the legislative branch, but have little to say about the administrative departments. This is another indication of popular determination to keep the executive establishment under legislative control. The legislature rather than the executive was given power to create and implement the administrative branch.

The principal reason why other countries have emphasized administration more than we is the monarchical tradition that we have never had. The Amer-

ican colonists were not affected directly by the struggles between Parliament and the Tudor and Stuart kings, but their aversion to executive power stemmed in part from their distaste for royalty and aristocratic titles of all kinds. Monarchy and administration are inseparable. Until only about three hundred years ago the king ruled primarily with the assistance of his chiefs of state with little regard for his parliament or his courts. By the thirteenth century in England, the principal administrative departments of the national government had begun to evolve from the powers exercised by the officers of the king's household. By the fourteenth century their public character had become recognized. Officers such as the chancellor and the king's treasurer exercised clear-cut governmental powers. Meeting together in the king's council, they ruled the realm for him. In the sixteenth and seventeenth centuries, the national state had crystallized and the great departments of government ruled the country. The establishment of parliamentary supremacy merely meant that these officials of the king's household transferred their accountability to their new master, the Parliament. The solid groundwork of administration was there and remained.

These steps in the growth of administration in England were more or less duplicated in every country in Europe. Only in the United States, where monarchy was hated and the administrative tradition consequently disliked, did we fail to develop a professional administrative service at an early date. The bureaucracies of England and France had been in flower for at least two centuries before we began to think seriously of developing one of our own.

The Democratic Surge of the Nineteenth Century

When, as a result of experience, the American people were forced grudgingly to give more weight to executive influence, they attached their executives to themselves through popular election, instead of to the legislature as is done in responsible cabinet government. The direct action of the electorate, which characterized the nineteenth century in this country, retarded the growth of administrative power and competence. We have dealt with this in previous pages. Suffice it to say here that executives were everywhere popularly elected, their terms were short, their powers were circumscribed, and the newer administrative departments were not made directly accountable to them but to the legislature.

Generally speaking, the trend toward greater executive power was due to the influence of the propertied and conservative elements in the population. The outstanding exponent of a strong executive was Alexander Hamilton. In his time, Hamilton's advice was called antidemocratic, but today it sounds modern. "Energy in the executive," said Hamilton in *The Federalist,* "is a leading characteristic in the definition of good government. It is essential to the protection of the community against foreign attacks. It is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the

ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy."

Hamilton favored a long term of office and effective power in the executive branch. "The ingredients which constitute energy in the executive are: first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers." The element of duration, observed Hamilton, was necessary to secure "personal firmness of the executive magistrate in the employment of his constitutional powers and to insure the stability of the system of administration which may have been adopted under his auspices."

Are not these the necessary elements of business? Then they are equally necessary in government. Almost identical arguments are heard today—and with much more effect, because at that time Hamilton stood virtually alone on this issue.

The Separation of Powers Complicates Administration

In theory, there are three branches of American government: the legislative, the judicial, and the executive. But the executive includes the administrative, and here there is a twilight zone that has long had an indeterminate status in this threefold division. There is a portion of the work of the executive branch of the government which is responsible to the legislature rather than to the chief executive. In the federal government this twilight zone includes the regulatory commissions and certain other agencies such as the Government Printing Office and the General Accounting Office. In the state governments this twilight zone is far more extensive, sometimes taking in most of the administrative services. As a result of this borderline zone, the rival claims of the legislative and executive authority to the control of administrative departments and agencies constitute a perennial issue of American statecraft and account for no little loss of over-all effectiveness.

Most state constitutions, like the federal, merely set forth that the executive shall "see that the laws are faithfully executed." In this area the President and the governors have a clear authority. With their executive function the legislature has nothing to do. But what happens when the legislature, using its stipulated powers, creates special administrative departments and agencies to execute the laws which it enacts? Who is to run these agencies, the legislature or the chief executive? Or shall they be left to run themselves? All three answers have been attempted. From the standpoint of inherent power, the legislature has the better claim to the authority. But, as seen earlier, the legislature lacks the appropriate organization and competence to act as an administrative as well as a legislating body. If the chief executive is to be vested with a unified responsibility for administration, therefore, it must be the result of a self-denying ordinance on the part of the legislature.

George H. Dern, a former governor of Utah, has described what happens when a chief executive is not mindful of this fundamental distinction between his executive powers and the powers of the legislature over the administrative

establishment. Referring to his constitutional mandate, Governor Dern said, "On its face it looks like a fine cloak of authority, but upon examination it is a flimsy garment, because the actual enforcement of the laws is in the hands of various state and local officials." The governor is only one of a group of popularly elected officials and not the recognized administrative chief. He has little authority or supervision over the other elective officers of the government, each of whom is given his own constitutional duties. "It might almost be said," concluded Governor Dern, "that Utah . . . has six Governors instead of one." Other states have as many as from ten to fourteen constitutionally created elective offices. "Thus he becomes disillusioned about his great executive powers," concluded the Governor, "because he finds that instead of having law enforcement in his hands he is little more than a figurehead in this respect." [2]

This situation was once common throughout the nation, but with the changing times, executive power has grown. Many reorganizations have taken place. Fortunately, the tendency is now toward a unified executive supervision of administration. The question is: Has it gone far enough or should it be continued?

WHY ADMINISTRATION HAS BEEN INCREASINGLY EMPHASIZED

Although tradition is strong against executive power in American government, the push of forces favoring such power now seems even stronger. Chiefly this is because social complexity has given government vastly more to do than was formerly the case, and there are now more people demanding that its work be done well. But the work will not be done well unless administration is efficient. Hence the recognition that executive power is a necessary element of modern government.

Other factors have contributed to the same result. When taxes are high, people demand economy and efficiency in government. Many do not necessarily want government to do less for them, but they want what is done to be performed more efficiently and at less cost than before. Others would like to see government interfere less and administer fewer programs; hence under the guise of improving the efficiency and economy of government, they attempt to trim off some of its functions, but they also recognize the need for good management in whatever administrative services survive.

Our thinking in the realm of government is greatly influenced by our preoccupation with business enterprise. We are still a "businessman's civilization," despite the loss of prestige which businessmen suffered during the depression of the 1930's. In thinking of administration, therefore, we often draw analogies between business and government. Thus some writers on this question compare voters to stockholders, Congress to the board of directors, and the President to

[2] George H. Dern, "Governors and Legislatures," *State Government*, IV (Aug. 1931), 7–16; reprinted in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician*, *op. cit.*, pp. 445–457.

the general manager of a typical corporation.[3] Arguing from analogy, they contend that American governmental executives should be given the powers customarily vested in paid business executives, for if unity of management is a good thing in business, it is equally desirable in government. If the management is left virtually free to run the business and make profits for stockholders, then why not try the same system in government? Or does the analogy break down at a certain point? There are apparently some who think it applies all the way through. And what enough people think will ultimately be the controlling factor.

But it is not merely the business elements in society that seek efficiency in government. Those who would give government more to do would first make it a more effective instrument. The British Labor party, for example, would increase the economic functions of government, having it operate the country's credit facilities, nationalize the mines and other industries, and plan the processes of production and distribution. The Labor party leaders have had enough practical experience to know that the test of such plans is the ability to translate them into administrative programs that will work. The Union of Soviet Socialist Republics is another example: there the emphasis on efficiency in administration is as great as, if not greater than, that placed on it by our scientific management people in the United States.

Both the political right and the political left, therefore—although sometimes for different reasons—today emphasize efficiency in administration. But what kind of efficiency? Merely the kind that makes a comparison between the output of energy and the force produced? A mechanical, narrowly considered efficiency? Or by efficiency do we mean something more comprehensive, something that might be called social efficiency interpreted in human terms? [4] Some people contend that there is no necessary clash between these two concepts of efficiency. But when the matter is put to the test, it must sometimes be admitted that there is a world of difference.

The Influence of Size and Complexity

To these contributing forces and influences in the field of efficiency in government must be added the effects of large size and institutional complexity.

In business as in government it has been found that the larger the institution, the more important the administrative elements inevitably become. When hundreds of people work in one place, they must be carefully organized in hierarchical layers, each knowing his job and all jobs adding up to the desired results. In such an institution, rules and regulations are necessary because face-to-face relationships are few and difficult to bring about. The larger the institution, the greater is the need for superior leadership. The more complex the work, the more experts are required. The more impersonal the milieu, the

[3] See W. F. Willoughby, *Principles of Public Administration* (Washington, 1927).

[4] See John M. Gaus, *et al.*, *The Frontiers of Public Administration* (Chicago, 1936), Chapter 7, "The Criteria and Objectives of Public Administration."

more serious are the difficulties of morale and public relations. Thus large organizations, of whatever kind, are inherently bureaucratic. They are hierarchical, standardized, and professionalized. The problems of bureaucracy cannot be solved, in the interest of everyone concerned, without more attention being increasingly paid to administration. Our giant corporations—like our governmental Leviathans—lead us in the direction of the civil service state. We must make the best of it. Administration is the key.

Administration Is Large

A final factor must be mentioned. Most people in government and business today work in the field of administration. It is only natural, therefore, that administration should be important to them and to all of us. In terms of personnel, the administrative services are the largest part of government. The legislative branch is small—Congress, as previously noted, accounted for only one seventh of 1 per cent of the total federal expenditure in 1940. The judiciary also is small.

Government, on the other hand, is extremely large. Four and one half million persons were employed by federal, state, and local governments in 1940, and even more than that in the following years. During World War II, there were over 3,000,000 civil employees of the federal government alone. With 60,000,000 persons in the nation gainfully employed during the war, and with over 6,500,000 of these employed by governments (not including the 10,000,000 in the armed forces), the ratio of government employment to total employment was 1 out of 9. Before World War II, with a smaller total employment, the percentage was just about the same. Government, therefore, is big business. Indeed, it is the biggest business in the country, and administration accounts for most of it.

Administration spends most of the money, employs most of the personnel, and—far more than the legislative or judicial branches—comes in direct contact with the citizen. Our opinion of the courtesy and efficiency of government, therefore, is primarily our composite opinion of postmen, policemen, tax collectors, teachers, librarians, and others with whom we come in touch.

With a tradition antithetical to administration and an ever-growing need to do the work of the world—including that of government—as effectively as possible, can we reconcile these two opposing factors? The question is part of a larger one: Can we combine social effectiveness and individual liberty?

SUPPLEMENTARY READING

1. General: John M. Gaus, *et al., The Frontiers of Public Administration* (Chicago, 1936). See also Marshall E. Dimock, *Modern Politics and Administration: A Study of the Creative State* (New York, 1937), Chapter 9, "The Execution of Policy." On the influence of pressure groups see Pendleton Herring, *Public Administration and the Public Interest* (New York, 1936), Chapters 1–3.

2. Texts: The principal textbooks on public administration are Leonard D. White, *Introduction to the Study of Public Administration* (New York, rev. ed., 1939), Chapters 1–3; Harvey Walker, *Public Administration in the United States* (New York, 1937; and John M. Pfiffner, *Public Administration* (New York, 1935). One of the earliest attempts to deal with principles was W. F. Willoughby, *Principles of Public Administration* (Baltimore, 1927).

3. Historical and comparative: Lloyd M. Short, *The Development of National Administrative Organization in the United States* (Baltimore, 1923); Woodrow Wilson, "The Study of Administration," *Political Science Quarterly,* II (1887), 197–222; Henri Fayol, *Industrial and General Administration* (London, 1930); Luther Gulick and L. Urwick, *Papers on the Science of Administration* (New York, 1937); and James M. Landis, *The Administrative Process* (New Haven, 1938).

CHAPTER 34

Executive Leadership in Government

THERE ARE somewhere in the neighborhood of 17,000 chief executives in American governments—the President, the governors of the 48 states, and the heads of the cities, villages, and other incorporated municipal governments, which number well over 16,000. The counties, except for those that have adopted the county-manager plan, have no chief executive.

At the various levels of government wide differenees exist in the degree of power and influence that has been accorded these chief executives. Every school child knows that the President is the most powerful elective official of all. From the very beginning of our national history and continuously since then, the President's authority has been more clear cut and extensive than that of any governor.

At both the state and the local levels there is much variety in the power of governors and mayors over legislative and administrative matters. Some governors are little more than figureheads, while others possess a unified authority not unlike that of the President. In the field of city government, we have seen strong mayors, weak mayors, the plural-headed commission plan, and city managers. The very complexity of state and local government makes generalization difficult if not actually precarious.

Nevertheless, an attempt will be made here to show the factors common to the office of chief executive at all levels of government, and to compare the executive responsibilities and administrative duties in each case. The formal qualifications of the chief executive will be discussed, as well as the matter of salaries, tenure, and removal. Finally, the consideration of the power of chief executives with regard to the appointment and removal of subordinate personnel will be taken up separately because of the impact of this authority on the ability of the chief executive to weld his administration into a unified whole.

COMMON FACTORS IN THE OFFICE OF CHIEF EXECUTIVE

Despite the differences in power and responsibility in the office of chief executive at the various levels of American government, the mere fact of the existence of the office results in certain common requirements and features. These inhere in the situation itself. Thus common functions are there and they must be performed. On closer examination, therefore, the principal differences are seen to lie in the manner in which power at the level of the chief executive is distributed among a number of officials or brought together in one place. At one

extreme we have the federal government, where executive responsibilities head up to one person and are integrated in the office of the President. At the other extreme are the cities which operate under the weak-mayor or the commission plan of government, where responsibilities and power are widely dispersed.

The principal common features inhering in the position of chief executive are the ceremonial and "efficient" functions, the responsibilities which the chief executive must discharge with regard to the legislature, and finally, the susceptibility of the office to the influence of the personality of the incumbent.

The Ceremonial and Efficient Functions

In every government there is the need for the ceremonial and the so-called efficient executive functions, to use Walter Bagehot's distinction. Mayors no less than governors and the President himself must preside at community functions, entertain prominent visitors, and be the front men at ceremonial occasions. The efficient function is quite different from this. Under this heading the governmental chief executive must organize support for the programs he initiates, deal with legislative leaders in sponsoring legislation promised by his political party, and act, in varying degrees, as chief coordinator of administrative programs. To the extent that he is recognized as chief legislator and general manager, the chief executive's efficient functions occupy the major portion of his time.

Partly because we do not have a monarchical tradition, in American governments we generally combine the ceremonial and efficient functions in the same person. In Great Britain the king is the ceremonial head of the state and the Prime Minister is the efficient head. There is a similar division of responsibility in France, where an elective president is the ceremonial head and the Premier actually runs the government. But the American President performs both functions, as do the governors of the several states and the mayors of our strong-mayor cities.

The nearest analogy to the British system that we have in this country is found in the city-manager plan of municipal government. Here an elected mayor is the ceremonial head and the city manager is strictly an executive coordinator. The analogy must not be pushed too far, however, because the Prime Minister is chosen from the membership of Parliament and he represents a political party, whereas the city manager is appointed to his office regardless of his politics.

The principal advantage of dividing the ceremonial and the efficient functions between two persons is that it places less of a burden on a single executive. Another advantage sometimes claimed for it is that the king (in the case of Great Britain) constitutes a symbol of national unity. He is above politics. He is a figurehead, but he may nevertheless exercise great influence in holding the people of the empire together around a single patriotism and culture.

The main disadvantages of such a division of authority are those always

found in divided rule: overlapping authority, division of popular attention, and lack of unified leadership in time of crisis. For example, was it not the aged General von Hindenburg, nominal chief of the German state, who first allowed Hitler to subvert the republican constitution? A stronger, more unified executive in Germany might have helped to avoid this disaster. The system of a dual executive, it is believed, is a greater hazard to popular rule than one in which there is a single executive operating under effective constitutional restraints.

The Executive's Role in Legislation

The second common feature inhering in the position of the American chief executive is that the President, the governors, and to some extent the mayors customarily discharge legislative as well as administrative duties. The two major functions of American governmental executives, especially at the higher levels, relate to the initiation of legislation and the execution of the law. This was pointed out in the chapters on legislation.

As envisaged in the Constitution, influence on legislation was to be a minor role of the President. But "the President's minor role has become his major role," says Professor Lindsay Rogers in a survey of the President's powers and influence. Although the only specific constitutional references to his position as lawmaker are to his powers to summon Congress into extraordinary session and to deliver messages and veto bills, the President's influence as chief lawmaker, continues Professor Rogers, now bulks larger than his executive authority.[1]

The same thing is often true at the state level. As former Governor Dern of Utah once said, "The most conspicuous service rendered by the Governor is often in connection with his influence on legislation. Through his powers of recommendation and veto he has both a positive and a negative influence upon the enactment of new laws. Moreover, if he assumes the position of leadership which his people expect of him, he can make himself a strong force in behalf of new policies which he considers wise and salutary." [2]

The mayors, on the other hand, are less concerned in the initiation of legislation than chief executives at the state and national levels. This is partly because the municipal council is so continuously in session and so close to the executive end of city government. Nevertheless, mayors also exercise some influence on legislation, especially if they possess the qualities of strong leadership.

The following table sets forth the specific relationships between the chief executives at various levels and the legislature in their jurisdiction. It is a generalized picture, but will serve to show the situation which usually obtains:

[1] Lindsay Rogers, "Congressional Government," *Encyclopedia of the Social Sciences*, II, 201–203.
[2] George H. Dern, "Governors and Legislatures," *op. cit.*

THE RELATION OF CHIEF EXECUTIVES, AT ALL LEVELS, TO THEIR LEGISLATURES

	President	Governor	Strong Mayor	Weak Mayor	Commission	City Manager
Power to convene in special session	x	x	o	o	x	o
Prepares messages and initiates legislation	x	x	x	o	x	o*
Veto power	x	x	x	o	o	o
Attends legislative body regularly	o	o	o	x	x	x†

Meaning of symbols: x—has this power; o—lacks this power.

* Prepares information and ordinances when requested by the council.
† Attends as consultant, not as a member.

Personality as a Factor

A final common factor is the susceptibility of the office to the influence of the man who holds it. This feature is of a different kind from those mentioned above, but it is often more determinative of the character of the office. The executive office is not self-operating. No matter who holds it, the leadership qualities of the incumbent increase or diminish its relative influence. "The office is what you make it," is a truism of political life. Woodrow Wilson pointed out that the office of President "has been one thing at one time, another at another." The influence of the presidency has fluctuated throughout American history with the strength or weakness of the man in office.

Referring to the strong leadership of Franklin D. Roosevelt during his more than three terms as President—especially in relation to the legislature—Professor Rogers has said, "Not of his two immediate predecessors has Franklin Roosevelt thought when he considered his responsibilities and opportunities. He has looked to Lincoln and Woodrow Wilson and, in a lesser degree, to Jackson, Cleveland, and Theodore Roosevelt. They have been the last century's 'strong' Presidents." The American presidential system has been molded by what our great chief executives have chosen to do and were able to do because of the force of their personality.

At the state and local levels the influence of personal leadership has been less manifest but only because the scope of activity is less comprehensive. In recent political history, however, one immediately thinks of New York's last reform mayor, Fiorello LaGuardia; of former Governor Al Smith, a candidate for the presidency from the sidewalks of New York; or of Milwaukee's socialist mayor, Daniel Hoan, who was returned to office for a period of some twenty-five years. The office varies everywhere with the personality of the man who holds it.

TRENDS IN EXECUTIVE POWER

Despite the fluctuations of influence due to personal characteristics, certain broad trends may be traced in executive authority at all levels. In the following discussion of the office of chief executive we shall deal first with the question of executive power, following it with a discussion of administrative responsibilities as distinct from those which are executive.

The Office of President

The President's influence has always been great, but it has become steadily greater in the past generation. This is particularly true when it comes to his leading public opinion, influencing legislation, conducting the foreign relations of the United States, and acting as commander in chief of the armed forces. The President's influence is much less, as will be seen, in his role as administrative coordinator of the federal executive branch, although here also both authority and control have increased. The framers of the Constitution could scarcely have foreseen, says Lindsay Rogers, that they were "creating the most powerful elective office that one hundred and fifty years later the world was to know."

It would be a mistake to regard the President as merely an executive charged with seeing that the laws are faithfully executed. Reference to constitutional provisions will soon dispel any such notion. Some of his express powers, to be sure, relate to his administrative duties, but consider the number and importance of his duties which are other than administrative:

Military. "The President shall be the commander-in-chief of the United States, and of the militia of the several States when called into the actual service of the United States."

Diplomatic. "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present shall concur. . . ." "He shall receive ambassadors and other public ministers."

Legislative. "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." The President also has the power to convene Congress in extraordinary session, and may, if he chooses, exercise the presidential veto.

Not all of the President's duties are specifically enumerated in the Constitution. A more complete list not only will show the staggering load he is called upon to carry but will reveal why, as Lindsay Rogers has said, "with the presidential system as it is now organized, the President cannot be a highly successful administrator. Indeed, it is amazing that breakdown is avoided."

The President has six major duties. He is ceremonial head of the nation, party chieftain, legislative leader, chief executive in an administrative as well as in an over-all sense, commander in chief of the armed forces, and deeply concerned in the conduct of foreign relations.

The first two of these responsibilities are not specifically mentioned in the Constitution but inhere, rather, in the office. The ceremonial function has already been referred to. It includes the social obligations of the chief of state which—with his responsibilities to diplomatic representatives, his need to appear before the people in person or on the radio—necessarily consume much of his time and energy. So, likewise, does his relation to the political party which elected him. He may or may not be the most influential member of the party, but his duties to see old friends, dispense patronage, interfere judiciously in party nominations and elections must of necessity take much of his attention.

The President's legislative role has already been spoken of in an earlier chapter; his military and foreign relations functions will be dealt with in a later part.[3] Here the principal concern is with the President's executive responsibilities as distinguished from those of a purely administrative nature which will be discussed presently.

The Offices of Governor and Mayor

The influence of the governor—which has never been comparable to that of the President—grew steadily weaker until the middle of the nineteenth century. Thereafter, however, it began slowly to increase and since World War I the pace has accelerated. This comment is particularly true of those states—something like half the total number—which have reorganized their state administrations.[4]

The popular election of major state officials—a method of selection which became rapidly more popular during the first half of the nineteenth century—had three principal results: it released the governor from dependence on the legislature and made him more free; it increased his influence on legislation; at the same time it checked the growth of the governor's administrative authority by scattering power among a number of other popularly elected constitutional officers. In administration, therefore, the governor became chief executive in name only.

In local government, the trends have naturally followed those of the states of which such governments were a part. By and large, however, the movement toward real executive authority at the municipal level started earlier and has gained momentum more rapidly than has the similar development in the governor's office. Here the analogy to the business corporation was plainer. Municipal government, being almost entirely a matter of administration, requires a businesslike organization of departments under the executive head. The pace has been accelerated with the advent of the city-manager plan which closely follows the model of the business corporation.

[3] Considered in Chapters 41 and 42.

[4] See Leslie Lipson, *The American Governor: From Figurehead to Leader* (Chicago, 1939).

Comparison of Executive Responsibilities

A tabulated comparison of the President's executive burdens with those of other governmental chief executives at the state and local levels will show at a glance what these various offices hold in common. Since there is nothing approaching standardization in this field, the tabulation avoids minute detail and so is only a rough approximation of what governors, mayors, commission members, and city managers do.

POWERS OF THE PRESIDENT AND OTHER CHIEF EXECUTIVES

	President	Governor	Strong Mayor	Weak Mayor	Commission	City Manager
Ceremonial function	x	x	x	x	x	o
Politically elected or party leader	x	x	x	x	x	o
Legislative leadership	x	x	x	o	o*	o
Recognized administrative coordinator	x	m†	x	o	x‡	x
Commander in chief	x	m§	o	o	o	o
Foreign relations	x	o	o	o	o	o

Meaning of symbols: x—has this power; o—lacks this power; m—true in some cases but not in others.

* The legislative responsibility is divided among all the commissioners.
† In possibly one third to one half of the states.
‡ Each commissioner coordinates only his part of the work.
§ Where there is a state guard or state militia.

It must be remembered that this chart is not designed as a score card. For example, the almost unbroken row of zeros does not mean that the city manager is the least effective of all the executives compared. It merely indicates that his energies are concentrated at one point and that he runs the administrative end of the government thoroughly and completely. Indeed, his authority in this area is greater than that of any public executive including the President. The city manager is a real coordinator. Other functions, such as the ceremonial and the legislative, are taken care of by the elected mayor.

The President's military and foreign relations functions are listed because the Constitution vests a monopoly of these duties at the national level. The authority over the police organization exercised by governors, city managers, and others might be considered analogous to the President's military functions were it not that the President also supervises large and important police establishments such as the Federal Bureau of Investigation, the Secret Service, the Immigration and Naturalization Service, and so on.

ADMINISTRATIVE POWERS AND RESPONSIBILITIES

Administrative responsibilities are distinguished from executive responsibilities in that administration is merely a segment of the executive function. One of the President's six main functions is to act as chief executive of the national government, the others having to do with legislation, foreign policy, political parties, and the like. The President's administrative duties are part of his role as chief executive, but they are not the whole of it.

Nevertheless, the President's administrative functions constitute an enormous responsibility. Some are expressly set forth in the Constitution, including the appointment, with the concurrence of the Senate, of a host of civil, diplomatic, and judicial officers; the filling of vacancies during a recess of the Senate; the power of pardon, reprieve, and amnesty; the commissioning of all military and naval officers of the United States; and the general injunction to "take care that the laws be faithfully executed."

The President has ten great departments and many independent establishments reporting to him. In peacetime these independent establishments—several of which compare in size to a regular department—number around thirty-five, while during World War II an additional forty-five or so were created. The President must determine questions of conflicting policy. He must settle disputes among the heads of agencies, and even among the bureaus in cases of major disagreement. He must decide, subject to Congressional action or authorization, when new agencies should be established and old ones liquidated.

The President is also responsible for seeing that every law of Congress is enforced, for preparing and presenting a budget for the entire federal government, for coordinating his Cabinet so far as that is possible, and for promulgating the great mass of executive and administrative orders which go out over his signature or those of his department heads in the course of enforcing the law or operating a program.

And finally, outside the federal civil service the President exercises a wide power over the appointment and removal of public officials. This aspect of his work is so important that it will be dealt with separately at a later point in this chapter.[5]

In short, the President's administrative task is that of acting as general manager of a great, sprawling, uncoordinated organization consisting of scores of separate units and a personnel which totals more than a million in peacetime, and which in wartime passed the three million mark.

When these administrative responsibilities are added to the executive functions previously listed, it may well be asked whether any individual is capable of doing all the things demanded of the American President. It is not surprising, therefore, that the President's coordinating function over administration has not developed to the point where he deserves to be called a "general

[5] See also Chapter 39, "Administration as a Career."

manager." What solutions suggest themselves? Could the Vice-President assist the President in this function? Could the Cabinet be made a more effective instrument of planning and coordination? The discussion of these questions will be reserved for the chapter which follows.

Administrative Powers of the Governor

In those states which have reorganized their executive and administrative establishments, the tendency is to broaden the governor's administrative powers until they are comparable to those of the President. This development makes the governor the chief law-enforcement officer in fact as in theory. It gives him the power to recommend an executive budget, or financial program, to the legislature, and to supervise its execution. It also gives him real powers of appointment and removal, including most of the higher officers. However, this favorable situation obtains in only a fraction of the states. Something like half of them have been more or less reorganized, but some of these have not incorporated all of the features mentioned.

The situation which is traditional in the states was pointed out by former Governor Dern of Utah. "It seems anomalous," wrote Dern, "that in our National Constitution we should be willing to say that 'the executive power shall be vested in a President of the United States of America,' whilst in most of our State Governments the executive power is spread out wide and thin, and the Governor is the Chief Executive in name only." [6] Most state constitutions seem to vest executive authority in the governor, the usual words being, "the Governor shall see that the laws are faithfully executed." But in practice in all fields of state administration, there has been a wide difference between this mandate and the actual power and authority to unify executive and administrative leadership in the governor. One reason for this discrepancy is that most state constitutions enumerate a half dozen or more officials who shall be elected, of whom the governor is merely one, and then vest constitutional authority in these separate individuals.

Under this arrangement, unlike the President, the governor generally has no power to appoint or remove his department heads; he may appoint only minor, nonelective officials whose selection is not vested elsewhere. He may recommend legislation, but he lacks the power which the President has had since 1921 to prepare and submit an executive budget to the legislature. In his realm the governor has authority, but that realm is greatly circumscribed. In fact, as former Governor Dern once observed, there are, in effect, a half dozen governors in some states because few titular governors have a unified authority over the whole administrative program.

The road to adequate administrative authority is long and tortuous, therefore, and most governors are nowhere near so well situated in this respect as the President.

[6] George H. Dern, "Governors and Legislatures," *op. cit.*; reprinted in A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician, op. cit.*, p. 451.

Administrative Powers of Municipal Chief Executives

The mayor of one of our large cities of the strong-mayor type possesses administrative powers exceeding those of most governors and more comparable to those of the President. Actually, since the mayor's work is so largely administrative, his duties of administrative coordination exceed those of the President.

The strong mayor submits an executive budget. He makes appointments and removals, including those of department heads not popularly elected—and as a rule only two or three, including the controller, are elected officials. The mayor recommends programs of legislation and carries on extensive public relations activities. He is the ceremonial head of the city, presenting keys, for example, to distinguished visitors. In general, he is the father and potentate of the entire community.

The weak mayor, by comparison, is a shadowy counterpart. He has no real administrative powers. Under the general supervision of the city council, the departments run themselves as best they can. Indeed, the weak-mayor plan and the nineteenth-century unreorganized state governments have much in common.

The city manager, on the other hand, has no superior within his own realm, which is confined to administration. The manager's authority is more complete and the attention he can devote to administration is greater than that of any other American governmental executive.

The city manager appoints and removes all administrative officials, including department heads. He organizes and reorganizes the departmental setup, prepares an annual budget which he submits to the council, and draws up reports on the city's activities for the council and the voters. Usually he secures his own paid personnel from the civil service system, headed by a board of three. In short, the execution of all work programs is securely in the manager's hands. He usually attends council meetings and is frequently called on for information, explanations, and advice. But—like the model child—he speaks only when spoken to. Or, like *Punch's* description of the ideal public servant, he is on tap but not on top.

The commission plan of municipal government, as noted in an earlier chapter, differs from the city-manager type especially in the lack of any sharp line drawn between the making and the execution of the law. In addition, instead of being unified in one place as in the city-manager plan, the administrative tasks of the city are divided among the several commissioners, each heading a department. Thus in place of a single chief executive, there are five or more. Since the same men administer the law as make it, there is no difficulty about adequate administrative authority unless, of course, they quarrel among themselves. This is a danger to which the plan is exposed, but, generally speaking, it is not common.

There may be more serious trouble, however, in the matter of coordination.

One of the commissioners is usually designated as *primus inter pares* (first among equals), but each commissioner tends to take care of his own particular bailiwick with the result that the city is run in separate compartments. This makes coordination among the departments difficult.

Comparison of Administrative Powers

The following table compares the authority of the chief executive at each level to coordinate and direct the administrative agencies of the government. This is the most difficult of the comparisons thus far presented because there are so many degrees of authority at the various levels. Nevertheless, the general picture looks something like this:

COMPARISON OF ADMINISTRATIVE POWERS OF CHIEF EXECUTIVES AT ALL LEVELS

	President	Governor	Strong Mayor	Weak Mayor	Commission	City Manager
Law enforcement.	x	m	x	o	x	x
Appointments and removals. . .	x	m	x	o	x	x
Budget preparation.	x	m	x	o	x	x
Cabinet coordination (and executive council).	x	x	x	o	x	x
Sublegislation.	x	x	x	o	x	x
Power of reprieve and pardon .	x	x	m*	o	o	o

Meaning of symbols: x—has this power; o—lacks this power; m—true in some cases but not in others.

* Where this power exists, it relates only to municipal ordinances.

Summary: Administrative Authority of American Executives

The administrative authority of the chief executive is supposed to be his greatest authority, coming as it does under the heading of his executive function. It is his primary duty to see that the law is faithfully executed. It has been pointed out, however, that American governmental executives often have a variety of additional functions—many of which are nonadministrative—and that in some cases their administrative powers are conspicuous by their virtual absence.

In the case of the presidency, the total executive influence is unsurpassed. In terms of administrative supervision, however, it is far from adequate. The President has more to do than human shoulders can carry. Also, as noted, the line of authority between the President and Congress is blurred when it comes to determining which has the power of administrative supervision

and direction in some cases. Finally, the top organization of the federal government renders coordination difficult. How this is so will become apparent in the pages which follow.

The traditional weakness of our state governments in administration must be accounted one of the reasons why they have fared so poorly in resisting the growing power of the federal government. The dispersion of administrative authority in the state resembles that of the weak-mayor form of municipal government. The over-all tendency of the past fifty years, however, has been in the direction of enhanced gubernatorial authority over the administrative services. For the most part this has come about through the reorganizations which have occurred in about half of the states.

Municipal government is almost entirely a matter of administration—of street maintenance and repair, sewage disposal, market inspection, police duties, and so on. The greatest concentration of administrative authority, therefore, is found in the cities. This is especially true of the city-manager and strong-mayor types of city government, and only slightly less so in the commission plan where the commissioners exercise both executive and law-making functions. The only glaring exception is the weak-mayor type of municipal government.

We come now to some of the basic questions concerning executive office: qualification, salary, tenure, succession, and removal.

THE FORMAL QUALIFICATIONS OF THE CHIEF EXECUTIVE

Constitutional provisions regulate the qualifications of the presidency and the governorship. Municipal charters or ordinances of the council fix those of local executives.

With regard to the presidency, the Constitution lays down three formal requirements. The President must be at least thirty-five years of age, he must have resided in the United States for at least fourteen years—although such residence need not be consecutive—and he must be a native-born citizen. Thus naturalized persons are excluded from the highest office in the land. It is interesting to speculate whether—if this requirement were not present—anyone in American life might have risen from immigrant origins to the presidency.

In the case of the governor, three principal provisions are also found in state constitutions. The governor must be at least thirty years of age, he must be a citizen of the United States, and he must have resided in the state for at least five years.

At the municipal level the only common stipulation is that mayors and other municipal chief executives must be citizens of the United States. Age and residence requirements are sometimes provided, but generally the right to vote for the members of the more numerous branch of the state legislature is all that is necessary. In cities of the city-manager type, however, local residence is definitely not required so far as the manager is concerned. On the contrary, emphasis here is on the professional qualifications of the candidate.

This has now become a traditional procedure and is proving effective in the securing of able managers.

EXECUTIVE COMPENSATION, TENURE, AND REMOVAL

The matter of compensation is important, especially from the standpoint of its ability to attract competent men and women to public office.

The salary of the President—$75,000 a year—is low compared with that of motion-picture magnates and it is probably too low for the heavy personal expenditures required of him today. Originally set at $25,000 annually, it was raised to $50,000 in 1873 and to $75,000 in 1909. In addition, however, the President receives free rent (the White House), an extensive secretariat, and special allowances for automobiles, furniture, repairs, entertainment, and travel. These items now amount to around $450,000 a year.

The salary of the governor ranges from $3,000 a year in North Dakota to $25,000 in New York. The average is around $8,000. In some states the governor's salary is fixed by constitutional provision, while in others it is determined by the legislature. Most states provide an executive mansion, but a few make an allowance for rent instead. In addition, as in the case of the presidency, there are allowances of various kinds, although in many states—especially the smaller ones—these are minor. No man gets rich on the salary of a state chief executive; he is lucky if he can meet his expenses out of his salary.

Among the cities, the salary range for mayors is very wide. In smaller towns and villages the salary is little or nothing—often the position is purely honorary. The peak salary is $25,000 a year in New York City. The top for mayors and governors, therefore, is the same. In some cities such as New York, Chicago, and Boston, the mayor's salary is equal to or greater than that of the governor in the same state. The provision of housing accommodation for the mayor is unusual, but in larger cities there are allowances for necessary expenses.

The division of administrative authority in the commission plan of municipal government results in a lower relative salary scale than in cities of corresponding size which have strong mayors or city managers. Salaries of from $5,000 to $10,000 a year, however, are not uncommon.

The average level of compensation for city managers is higher than that for the chief executive in other municipalities. There are several reasons for this, chief among them being the full-time concentration of the manager on administration and the need for high professional qualifications. The highest compensation in this field—$25,000 a year in Cincinnati—equals that of the mayor of New York or the highest salary paid a governor. Several managers receive from $10,000 to $15,000 annually.

Tenure of American Governmental Executives

Experience is a chief factor producing administrative capacity. The term of office and the possibility of succeeding terms, therefore, become interesting questions from the standpoint of administrative leadership.

When the Constitution was drawn, several delegates to the convention favored presidential tenure during good behavior. Alexander Hamilton even counseled life tenure, but most of the members favored a fixed term. Serious consideration was given to a seven-year term, but a period of four years was finally decided on. The two-term tradition was established by President Washington—or at least people thought it had been until 1940, when Franklin D. Roosevelt was elected for a third term. Then four years later, as we all know, tradition was shattered again when he was elected for a fourth term. Is there still a two-term tradition? Or is there now a new tradition?

Two major proposals have developed from the controversy caused by the breaking of the two-term tradition: that we amend the Constitution to permit the President to serve for a six-year term, whereafter he could not immediately succeed himself; second, that we should limit the President to two consecutive terms of four years each, whereafter he would not be eligible for a third term. Either of these proposals would require a constitutional amendment. Congress has several times considered schemes of one kind or another to limit the incumbent's tenure to a definite number of years but thus far, at least, no constitutional amendment has emerged.

The arguments in favor of limited tenure are well known, chief among them being that it is a bulwark against the threat of dictatorship. Other arguments hold that frequent changes are good for the country; that when a man stays in power too long he builds up a machine, through patronage appointments, which is difficult to dislodge; that since others are qualified to hold the highest office in the land the incumbent should step aside to give them a chance; and that the longer a man stays in office the more likely he is to become domineering and to quarrel with Congress. This is the gist of most of the indictments of a tenure longer than the customary two terms.

The opposition to limited tenure says that experience should not be wasted, that crises such as war alter circumstances, and that individuals differ greatly as to whether they become overbearing and personally ambitious. It is also held that the people should decide whether they want a man to serve more than twice, rather than close off this possibility by enacting a constitutional injunction. Mayors and governors often serve for long terms, being re-elected over and over again. So do members of Congress and the state legislatures. Why, therefore, should the presidency be singled out as the only office for which two terms are considered a mandatory limit?

In the states the traditional gubernatorial term is two years, but in line with the move to increase the administrative influence and general effectiveness of the state executive, the tendency is toward a four-year term. It is argued that since it takes most men at least two years to learn the ropes they should be given two more years in which to try to accomplish their program. Experience should not be thrown away. A succession of political amateurs, it is said, makes state government less effective than it might be; and if state authority and effectiveness are to stand any chance of being restored to a plane equal

to federal power, everything possible must be done to improve state government.

In twenty-five states the governor's term is now fixed at four years, in twenty-two it is still two years, and in New Jersey it is three. In state governments the two-term limit is not strong. There have been outstanding examples, especially in New York, where governors have seemed to become fixtures for a period of years.

Among the cities, the usual tenure of mayors is from one to five years. Formerly the most common period of service, as in the state governments, was a term of two years, but the four-year tendency is spreading. This is especially true in the larger cities. A four-year term is now stipulated, for example, in New York, Chicago, Philadelphia, Detroit, and Los Angeles.

The re-election of mayors is so common that it might almost be called a tradition. A good man who is a good executive, the citizens seem to feel, had better be kept in office. Or if a mayor heads a powerful political machine he is also likely to stay in power a long time, but for a different reason.

How May Executives Be Removed?

The President may be removed from office only by impeachment proceedings. President Johnson was impeached in 1867 but was not convicted. The impeachment power, as previously noted, has not been much used, but it does constitute a reserve weapon in the hands of the people.

Impeachment is also the principal method of removing governors. An alternative, found in twelve states, is the popular recall,[7] but this has been employed against a governor in only one instance.

In several states the recall may be used against the mayor. In several also—following the Continental example—the governor may prefer charges against the mayor, for cause; after the public hearing which follows, the governor makes his own decision. Actually, however, this power has been invoked in but few cases and the recall of mayors has also been sparingly employed. The same general procedure is found in commission-plan cities. The city manager, on the other hand, may be removed at any time by a vote of the city council. Being employed for an indefinite period and without a fixed term of office, the city manager—like the Prime Minister—must go whenever the majority of the council is dissatisfied.

Here is another analogy to business, where hire and fire is the rule. Over a period of some thirty years, several managers have been removed for a variety of reasons. Some of the most common have been invasion of the manager's province by unsympathetic elements, and overaggressiveness and lack of diplomacy on the part of the manager himself. As the professional standing of the city manager has been more solidly established, however, removals other than for cause have declined in number.

[7] On the scope and influence of this device, see F. L. Bird and F. M. Ryan, *The Recall of Public Officers* (New York, 1930).

THE EXECUTIVE POWER TO APPOINT

It is a known fact of human psychology that a man indebted to another for his job is likely to be more grateful and more cooperative than if he got the job without aid. This simple truth, which we have all observed, plays an important role in strengthening or weakening the effectiveness of the governmental executive.

The power to appoint most non-civil service officials—including a majority if not all of the department heads—creates a team spirit and a feeling of loyalty to the boss, whether he be mayor, city manager, county manager, governor, or President. But any other method of getting into office—whether by popular election, civil service appointment, or holdover—does little to engender a spirit of loyalty and cooperation. In the case of popular election it may even make a man uncooperative and competitive toward the chief executive, as often happens in state governments.

The President's Appointing Power

The President has a great advantage over the governors in his appointing power. Except for the members of Congress, the only two officers in the federal government for which the people vote are the President and the Vice-President. All of the others are appointive.

The President is free to choose the members of his official family, the Cabinet. In the executive departments, in the regulatory tribunals, in the judiciary, and in the higher ranks of the armed forces, he has the power of appointment, with senatorial concurrence, except in those positions which are blanketed into the executive civil service. This enormous power is of unrivaled value in securing cooperation, loyalty to the administration, and teamwork. Without these unifying elements one hates to think what a limping vehicle our federal administration might be.

Congress may if it wishes, however, vest the appointment of inferior officers in other hands. Article II of the Constitution states that "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." What is meant by an inferior officer has never been definitely determined. It may be assumed, however, that it does not include members of the Cabinet, Supreme Court justices, or ambassadors. Between these top officials and the ranks of the civil service, there are hundreds of positions.

An idea of the extent of the President's appointing power is found in the record. During the 1940 session of Congress, for example, the President transmitted to it no less than 17,732 appointments. The military services claimed the bulk of this total with more than 10,000. The postal service followed a close second with over 6,000. This left something like 1,700 who were recommended for civil positions other than the post office. In 1941 the civil service system was considerably extended and many of these positions, especially in

the postal service, were blanketed into it. But even so, the number of offices which the President has the power to fill by appointment still runs into the thousands.

The necessity of securing the concurrence of the Senate in presidential appointments sometimes results in celebrated cases, especially when the post is important and the appointee has been in the public eye because of his political activity or his pronounced conservative or radical tendencies. Almost every presidential administration has produced at least one such instance. How often such cases arise largely depends on the temper of the relations between Congress and the President.

By a long-standing tradition which now amounts to a rule, the senator or senators from the state in which the nominee originates have the right, if they belong to the same political party as the President, to be consulted and to approve or disapprove the proposed appointment before the President sends it on to the Senate as a whole. This is called "senatorial courtesy." It is an informal procedure, usually arranged by having the candidate call on his senator—or senators, if both are of the political party in power—or communicate with them in some other fashion. Since failure to arrange this advance clearance is almost sure to raise a rumpus, the experienced executive takes care to see that it is secured beforehand.

Once obtained, however, advance clearance means that the committee which considers the appointment and the body of the Senate as a whole will almost certainly respect the wishes of their fellow member. If he is opposed to the candidate, they also are likely to be opposed. If the President's nominee is turned down, then he must have another in reserve. If Congress is not in session, the President may make a recess appointment, but this individual may serve only to the end of the next Senate session, or until a successor has been chosen. If the Senate then fails to confirm him, another appointment must be made.

The Governor's Appointing Power

Compared with the President, the governor has a much more restricted power of appointment, just as his administrative authority is usually more narrowly circumscribed. As noted, many if not most of the governor's department heads are popularly elected and so are on an equal footing with him. His appointing power, therefore, is confined to those positions provided in the state constitution or in statutory law. Even here, however, he must run the gauntlet of concurrence either by the state senate—the usual procedure—or by his executive council. On balance, therefore, the governor's principal appointment opportunities are usually found among the administrative boards and commissions—such as public welfare boards or public-utility commissions—with which most state governments abound. In those states where the administration has been reorganized, of course, the governor's powers of appointment are considerably more substantial.

Appointments at the Municipal Level

The strong mayor has a virtually complete authority in making appointments and removals. Often, however, in the case of his more important appointments, confirmation by the municipal council is required. The weak mayor has little or no appointing power. The commission type of local government permits each department head to make his own selections. The city manager is free to hire and fire whom he pleases.

THE POWER OF REMOVAL

Executive authority to appoint cannot be wholly effective if it does not carry with it the power to remove unsatisfactory officials who detract from the efficiency, reputation, and harmony of the administration. To what extent is this necessary executive freedom found in our governmental system? The question of removals in the civil service creates a singular problem which will be dealt with elsewhere.[8] At this point attention is confined to the power, or lack of power, to remove those officials whom the executive has the authority to appoint in the first place.

The President's Removal Power

The Constitution is silent on the question of the President's removal power. Almost from the start, however, Presidents have found it desirable or necessary to make use of it. Cabinet members, for example, were not always in sympathy with the President's program. This created no particular difficulty because their relationship to the President is so personal that a failure to relinquish their office would constitute a breach of gentlemanly conduct which no self-respecting person would contemplate. But how about those who are determined to remain in the administration to embarrass and thwart the President? How about those who are not openly insubordinate but whose lack of efficiency makes a change imperative? The only remedy that the Constitution contains in a case of this kind is impeachment, and so drastic a weapon is not appropriate here.

Strong Presidents—and others considered not quite so strong—got rid of those whom they thought unsatisfactory because of hostile attitude, policy difference, inefficiency, or indifference. President Andrew Jackson, for example, fired scores. In 1867 Congress passed the Tenure of Office Act providing that the President could not remove, without senatorial consent, any officer who had been jointly appointed, even cabinet members. President Johnson, contending the act was unconstitutional, chose to disregard it and precipitated impeachment proceedings against himself. The President was acquitted and in 1887 the act was repealed.

It has been only in recent years that this issue has been really tested. The Supreme Court was finally forced to make a rule where the Constitution failed

[8] See Chapter 39, "Administration as a Career."

to provide one. The leading case of *Myers* v. *United States* (272 U. S. 52. 1926) concerned a position of a postmaster. The decision was favorable to the administration and constituted a great victory for the presidency. The rule laid down was that even when senatorial concurrence is required in an appointment, the President may remove "executive officers" appointed by him without securing the Senate's consent. The reasoning was based on the theory of implied powers —that is, the power to appoint carries with it the implied power to remove.

A few years later, however, in the case of *Humphrey's Executor* v. *United States* (295 U. S. 602. 1935), the presidency got a setback. Humphrey had been a member of the Federal Trade Commission and was appointed for a seven-year term, that being the customary tenure of office. He had taken office during the previous administration and was allegedly out of sympathy with the policies of the new one, and the President sought to get rid of him. However, the statute creating the Federal Trade Commission stipulates that members may be removed only for inefficiency, neglect of duty, or malfeasance in office, and President Roosevelt did not contend that any of these grounds existed. The Supreme Court unanimously held that the President lacked authority to remove.

The reasons given are significant. The commission's duties, said the Court, "are neither political nor executive, but predominantly quasi-judicial and quasi-legislative." In fact, it was argued, the commission is "wholly disconnected from the executive department" and "exercises no part of the executive power vested by the Constitution in the President."

The far-reaching significance of this decision will immediately be seen. The so-called fourth department—the administrative and regulatory tribunals—is put beyond the President's effective control. The Court here affords a formal recognition to "quasi-judicial and quasi-legislative" powers which are nowhere provided for in the Constitution. This was a blow to the President's administrative jurisdiction. It created new twilight zones over which Congress and the President have long contended, and contributed still further to the modification of the separation of powers theory. The President's removal power, therefore, is not complete. He may remove civil officers without the Senate's approval but he may not remove the members of regulatory commissions whose terms are fixed by law and the grounds for whose removal are expressly stated.

The Removal Power in State and Local Governments

The situation in state and local governments may be more simply explained. The governor has far less power, in general, than the President to remove officials. The usual rule is that popularly elected officials cannot be removed except by impeachment—or recall, where it is provided—and that appointed officials may be removed only when the power is stipulated either in the state constitution or in the statutes. This lack of removal authority is a real weakness in the governor's armor. An erring official has numerous dodges by which he

can usually save his official neck. In some states, however, such as Virginia, at the time that the state administration was reorganized the governor's removal power was increased to give him more over-all influence.

In mayor-council cities the traditional method of removal was to require councilmanic approval. But with the growth of the strong-mayor plan there has been a tendency to permit removals by the mayor without such sanction. It is, in fact, a necessary element of the strong-mayor type of municipal government. In the commission plan the power of removal creates no special difficulty, and under the city-manager plan it is unrestricted.

IS THE AMERICAN GOVERNMENTAL EXECUTIVE TOO RESTRICTED?

A law of institutional functioning—in government as in business—is that no executive can do a respectable job unless all of the necessary elements of his administrative program are at hand. Otherwise he is in the same position as a mason without mortar, a cook without utensils, an architect without pencils and calipers.

In our modern governments we enact thousands of complicated laws and create administrative problems challenging the best executive talent found anywhere within our borders. Considering the numerous restrictions under which many governmental chief executives operate, therefore, are we not inconsistent and unreasonable in what we expect them to accomplish?

The city manager has a clear enough mandate. Our strong mayors are now well situated for effective municipal housekeeping. The President has most of the power he needs but he is limited in the attention he can give to the administrative side of his job—which is only one of six related functions. The governor has a much more difficult time. He still struggles along under concepts and with machinery which the federal government and many city governments have outgrown and discarded. The governor's plight, as a rule, is second only to that of the weak mayor.

What can be done? Constitutional amendment? No doubt some of that will be needed. Administrative reorganization? That sometimes helps. More executive assistance and a greater use of the potentialities of the President's Cabinet? The following chapter will show what the possibilities are in this field. The solutions, like the analyses that must precede them, do not seem to be simple, but it is hoped that the lines of a constructive over-all program will emerge from the discussions which follow.

SUPPLEMENTARY READING

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2. Presidential leadership: A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 16, "The Executive in American Government." See also Pendleton Herring, *Presidential Leadership* (New York, 1940), Chapters 3, 7; Harold J. Laski, *The American Presidency* (New York, 1940), Chapters 1, 4; W. H. Taft, *Our Chief Magistrate and His Powers* (New York, 1916), Chapters 3–5; and Norman J. Small, *Some Presidential Interpretations of the Presidency* (Baltimore, 1932).

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5. The removal power: Edward S. Corwin, *The President's Removal Power under the Constitution* (New York, 1927); also *The Presidency, Office and Powers* (New York, 1940); and James Hart, *Tenure of Office under the Constitution* (Baltimore, 1930), and *The Ordinance-Making Powers of the President* (Baltimore, 1925).

CHAPTER 35

Public Administration at Work

UNLESS the chief executive of an organization is free to devote as much attention to administrative leadership and coordination as he should, there is no alternative save to let each program run itself. As the preceding chapter has shown, in large areas of American government—particularly at the state and national levels—this has been the unhappy situation through most of our political history, and it largely obtains today. The President and many of our state governors are handicapped so far as their administrative duties are concerned.

Nevertheless, if programs are fortunate enough to be guided by a succession of able and conscientious directors at the subordinate levels of government—as many have—the system does not work as badly as might be expected, because it is in the bureaus and departments that the work is actually done. If the standard of performance there is high, then the principal problems which remain are the coordination of planning and the integration of timing and finance at the next level above. Confucius said that if the people are good, the community will be good. When this statement is applied to government it might be said that if the operating programs are good, the administrative results will be acceptable to the public and will give the executive less of an administrative job to do.

This is not to underestimate the importance of top level responsibilities. Under our system of government, the chief executive must be held accountable for the attainment of broad objectives. But it should be recognized that the success of government depends on the operating programs it conducts. It is the bureau chiefs who score most of the triumphs. Public administration at work, therefore, is primarily management at the bureau and departmental planes of activity.

This chapter starts with a discussion of the anatomy of governmental administration, describing the hierarchy which usually obtains and the characteristics of each group within it, such as departments, bureaus, commissions, and corporations. Next it is shown how a public program is put into operation, and the administrative problems, decisions, and interrelationships involved. The discussion here centers at the bureau level. Administration at the departmental level is then taken up, together with the questions of executive orders having the force of law, administrative legislation and adjudication, and finally the special dilemma of the President as an administrative official.

THE ANATOMY OF GOVERNMENTAL ADMINISTRATION

It is virtually impossible to refer to government without thinking in terms of layers of authority and coordination. Usually when we speak of a pyramid we think of mathematics. But the pyramid is equally involved in administration. In government, the following levels are characteristic:

At the apex of the pyramid is the *chief executive.* Usually attached to his office are personal assistants of one kind or another. Next is the *cabinet* level, consisting of the principal department heads who report to the chief executive. The cabinet may constitute a useful means of over-all coordination, but in American governments it is rarely so employed.

Next come the *departments* and the *independent establishments.* There is no difficulty in understanding what a department is. We have only to think of the Department of Commerce or the Department of the Interior in the federal government, or a state highway department or a city police department. A large department may be composed of a great many bureaus and even government corporations and other agencies that are virtually independent.

An independent establishment, on the other hand, is *any separate administrative agency which is not a part of one of the formally constituted departments of the government.* Among the many independent establishments in Washington are the United States Maritime Commission and the National Labor Relations Board. In the states and cities there are the boards of public welfare, public-utility commissions, and school boards. Indeed, because of the unintegrated nature of federal and state administration generally, independent establishments exceed the number of formal departments. This relationship is so typical that it may be called a distinctive feature of the American governmental system.

Below the departmental level comes the operating stage. Most of the work is done by the *bureaus* within the departments and independent establishments. A bureau is headed by a chief, usually called a director, whose primary business is program execution. He concentrates on administration as does a city manager or a foreman in a business corporation.

The bureau, in turn, is horizontally subdivided into a *central* or home office, and *field* offices, the number of field offices depending on the scope and nature of the program. Some bureaus do not have field offices but at the federal level their omission is rare. The bureau is also divided vertically into divisions, which in turn are subdivided into *sections.* The titles often vary even within a single department but the anatomy is typical.

Finally, the employees throughout the administrative hierarchy are divided into *services,* and again into *grades.* In the federal civil service—and this is similar to most—there are five services: professional, subprofessional, CAF (clerical, administrative, fiscal), custodial, and clerical-mechanical.

Departments, Commissions, and Corporations

There are three principal types of organization at the operating level of government: the department, the board or commission, and the corporation. The department has a single head. The board or commission has a plural head. The government corporation, like the private corporation, has a board of directors and a general manager.

Departments are usually referred to as belonging to the "regular" departmental setup. The boards, commissions, and corporations, however, are a part of the so-called fourth branch of government because the legislature has a more or less direct authority over them and the supervisory powers of the executive branch are shared with the legislature. This is one of the twilight zones in government.

Departments. Some of the departments in the federal, state, and local governments go all the way back to the beginnings of our American government.[1] At the federal level, for example, this is true of the State and War Departments, Navy not having been created until 1798. Although there were no provisions in the Constitution mentioning these agencies by name—and although Congress has been free to organize and reorganize the departmental structure as it thought fit—it was obvious from the wording of the Constitution that certain departments would appear. This is true of the three we have mentioned, among others. But no one could have foreseen the development of an air arm of the military establishment which has been largely responsible for a proposal that the Army, Navy, and Air Forces be brought together in one department.

Finance is so central to the operations of government that a Treasury Department was indicated from the start. In the case of the Department of Justice, however, Congress did not create a separate agency until 1870, although the Attorney General as legal adviser to the President had been a member of the Cabinet since 1789. The establishment of other departments in the federal government reflects the time at which particular questions became important. The Postmaster General has been a member of the Cabinet since 1829, but the Post Office Department was not formally created by act of Congress until 1872. The Department of the Interior was set up in 1849 under an act "to establish a Home Department." The Department of Agriculture joined the federal family in 1862, the first of the departments serving a particular interest group. Commerce, as much as it was emphasized by Alexander Hamilton and as often as the Constitution refers to economic matters, was not established until 1903. At first labor was a part of the Department of Commerce, but in 1913 it became a separate agency, paralleling the rising influence of the labor unions.

State, War, Navy, Treasury, Post Office, Justice, Interior, Agriculture,

[1] On the historical development, see Lloyd M. Short, *The Development of National Administrative Organization in the United States* (Baltimore, 1923).

Commerce, and Labor—this brought the total up to ten, where it stands today. In addition, however, three other groups of agencies—reflecting the social pressures of the times—have been brought together to form what are virtually departments, although they do not go by that name. These are the Federal Security Agency, the Federal Works Agency, and the Federal Loan Agency, all of which were created in 1939 out of existing units.

In the states, the list of departments—subject to individual variations—includes finance, highways, public welfare, education, agriculture, labor, conservation, purchasing and printing, police, and public health. In the cities, depending on the size and complexity of the community, functions such as highways, health, police, fire, and public works—to mention but a few—may be organized on a departmental basis.

Boards and commissions. In the federal government, the movement toward boards and commissions started rather late, but it has proceeded rapidly since the creation of the Interstate Commerce Commission in 1887. The "fourth department" of government is almost wholly a reflection of government's increasing concern with business, labor, and social problems brought about by technology and business expansion.

In 1945 there were more than fifty commissions listed in the *United States Government Manual.* Many of these were temporary war agencies, but at least a score were permanent establishments dealing with major segments of the economy. In terms of expenditure, personnel, and functions, they compared in some cases with the regular departments themselves. The Interstate Commerce Commission, for example, regulates all forms of transportation in the United States. The Federal Communications Commission has jurisdiction over all forms of wire and radio communication that extend beyond the confines of a single state. The Securities and Exchange Commission is concerned with matters relating to investments. The National War Labor Board and the National Labor Relations Board face the problem of industrial relations. These are prominent examples. Some of them will be dealt with in later chapters.

In the state governments, administrative organization has been characterized by former Governor Dern of Utah as "a bewildering array of disconnected offices, boards, and commissions, whose numbers have been found by recent investigators to run as high as sixty or eighty in the average state." From the outset, state and local governments have been dominated by plural-headed boards and commissions that have retarded the development of major, integrated departments.

In state governments that have been administratively reorganized, the departments are generally more numerous and cover a wider range of functions than in those which have not been improved. In the latter, boards and commissions typically administer such fields as libraries, planning, and the regulation of public utilities and such business corporations as the insurance companies.

In the cities, boards and commissions are especially numerous in the weak-

mayor type of government, but they are common under most of the other plans as well. Generally speaking, the better organized and integrated the plan of government, the fewer commissions and boards there are, because these functions have been absorbed by departments operating under a single rather than a plural head.

Common characteristics of boards and commissions. Government boards and commissions at each of the levels of administration have several characteristics in common. For one thing, they often combine executive, legislative, and judicial functions in one set of offices—playing hob, as has been seen, with the formal theory of the separation of powers. They range in size from three to eleven members.

The salaries of board and commission members are somewhat higher than those of ordinary administrators in government, being $10,000 per annum at the federal level. Terms are usually fixed—ranging from five to seven years—although tenure is for an indefinite period in some instances.

Regulatory boards and commissions create standards and issue rules and regulations (sublegislation) having the force of law. They hear and decide cases, using a procedure resembling that of a court of law, and their decisions are binding on the parties unless overturned by a higher court. On appeal, however, decisions as to fact are supposedly conclusive, if supported by the evidence, and the court will merely inquire into the question of jurisdiction and conformity to law.[2]

As a general thing, these regulatory bodies are weak as administrative and planning agencies because of their preoccupation with the deciding of particular cases. For example, would an Office of Defense Transportation have been necessary during World War II if the Interstate Commerce Commission had done more in the way of planning the transportation facilities of the nation in the years prior to the war?

To the proliferation of agencies in this fourth department of government attaches much of the blame or credit for the currency of the term "bureaucracy." In their effect on the theory of the separation of powers and in their broad impact on the economy, the major regulatory commissions have virtually revolutionized American government from that which was envisaged by the framers of the Constitution.

Government corporations. The corporate organizations owned and operated by the government at all levels also belong to this so-called fourth department. Like the federal boards and commissions, they are a fairly recent development. Since the turn of the century—and in some cases earlier than that—they have been used in almost every country in the world. *A government corporation is a publicly owned enterprise that has been chartered under federal, state, or local law for a particular business or financial purpose.*

The government corporation is modeled after the private business corpora-

[2] See John Dickinson, *Administrative Justice and the Supremacy of the Law* (Cambridge, Mass., 1927).

tion; while there are many variations, it usually has a board of directors, the power to borrow money, retain profits, and operate free from ordinary governmental fiscal and personnel controls. An example is the Reconstruction Finance Corporation, created in 1932. In less than fifteen years this one agency had loaned $30 billion, making it the country's largest banker.

Government corporations have usually been created as a result of wars or depressions. Like the regulatory commissions, such corporations reflect the government's increasing concern with the nation's economy. The federal government owned approximately a hundred corporations in 1945. Most of the states and many of the cities have also made use of this device. It assumes many forms, such as that of the Port of New York Authority, or the Tennessee Valley Authority, which have been referred to in an earlier chapter. More will be said about this significant development in political economy at a later point; [3] here the primary concern is with the administrative organization of the corporation, and its effect on the over-all problem of management.

How Much Integration in Government Administration?

To what degree are the various agencies of government integrated from the standpoint of administration? It must be admitted that there is very little integration. Departments are more easily tied together than either commissions or government corporations. If the President or a governor were to try to hold tightly in his own two fists all of management under his jurisdiction, the independence of commissions and government corporations would make his job the harder.

But is this necessary? There are so many programs that to force them into a formal mold might well decrease their social effectiveness. It may be argued that for every problem there is a particular remedy. Some functions may be departmentalized and clearly should be. This is a common need in unreorganized state and municipal governments. But other functions, especially those relating to the economic realm, might better be organized separately as commissions or government corporations. It is a difficult issue and a live one.

THE GOVERNMENT PROGRAM IN OPERATION

Some of the finest public servants at all levels of government are found among the bureau chiefs. Many interesting examples are cited by Professors Arthur W. Macmahon and John D. Millett in their book, *Federal Administrators*. The bureau chief may not be as conspicuous as the department head or the chief executive, but he gets a solid satisfaction out of a workmanlike job. Frequently it is interesting and exciting work. The bureau chief builds things, sees them grow, deals with live forces and human materials, and experiences a sense of struggle without the ups and downs of political uncertainty. The operating official is essentially a builder.

[3] Chapter 49, "Planning, Stabilization, and Economic Welfare."

At all levels and in many programs of government—which include every kind of vocational competence—the problems of the operating official are essentially the same. You may be building conservation dams in the West, organizing a conference on children in a democracy, protecting a city from an influenza epidemic, attracting foreign trade as a State Department commercial expert, regulating livestock prices in the Chicago area, registering all adult aliens in the country, running a demonstration farm in the Tennessee Valley, inspecting factories for the Wage and Hour Division, managing a credit bank for farmers, or directing the Examining Division of the National Labor Relations Board. You may be doing any one of hundreds of jobs, but if you must organize an office, supervise personnel, plan programs and see that they are carried out, you must expect to take a particular series of steps.

The Program in Action

Let us assume that you are an operating official—a bureau chief, for example. Like all operating officials, you must ask yourself a series of questions. The first is: What is my authority?

Every operating program must derive its specific authority from a particular statute or statutes. You cannot arbitrarily set out to do what you want to do, or what you think ought to be done. As head of the Wage and Hour Division of the Department of Labor, for example, you must consult the Fair Labor Standards Act passed by Congress. That will be your bible. As director of an older agency such as the Office of Education, you may have to consult a dozen or more statutes, some of which will contain overlapping provisions. If you are a state official your authority will come from the state constitution or the legislature. And if you are in city administration your power will come from the charter or from the ordinances of the municipal council.

In addition to legislative authorizations, if you are in the federal service you may also have to rely on an executive order signed by the President and setting out the terms of your mandate in more detail. Once your authority and your problem are clear, then you can decide whether that authority is equal to the task. If it is not, then you may have to move immediately to get your authority extended. This is one of the reasons why administrators in government soon get into the habit of pushing legislation.

Spelling Out the Law

Having clarified your authority, you can now begin to spell out your plans. The next question, therefore, is: How should my authority be implemented?

Here you must be clear as to objectives and policy, and you must have a tentative work plan in mind. The next step is the business of formulating sub-legislation. A general order must be drafted, setting forth your statutory authority and outlining its practical implications. If your position is in the Wage and Hour Division, this general order will explain who is affected, the procedures that will be used in making field investigations and conducting hearings, where

the regional and local offices will be located, and what the principal divisions and functions of the organization will be.

When this order has been signed by an official so authorized by Congress, it has the force of law. This is what is meant by spelling out the law; actually, the law is extended when it is given practical application. In the federal service, this general order must be printed in the *Federal Register,* where all orders filling in the details of legislative policy are required to be published. Your public is now on notice as to what you expect to do and how you plan to do it. The skeleton law passed by Congress will now have a musculature.

At this point one or more *administrative orders* must be prepared, explaining the policy and procedure still further. An administrative order may and frequently does have the force of law, but it is designed primarily for the people in your own organization. This is their bible just as the statute is yours. These orders, in turn, may need to be supplemented with *instructions,* making their terms more specific.

Organization Problems

At this point you ask: Is my own office organized in such a way as to carry the load smoothly and efficiently?

An office manager may be needed, if you do not already have one. The flow of correspondence must be arranged. Your administrative orders, instructions, and information bulletins must be issued and kept up to date. Files must be set up and maintained, and clerical and stenographic personnel must be supervised. If your own office is not efficient the field offices will soon be in a corresponding state of confusion. This raises the question of field organization, and you ask: Is the headquarters-field relationship satisfactory?

Instructions from the central office to the field must be clear or the work will be handicapped at the operating level. You want your field officers to use their initiative and judgment but not to run wild. You want the regional offices—located between the central office and the field—to help supervise and standardize operations at the lower level, but not to detract from your own authority and the unity of operations. You want good employees appointed in the field, but not every personnel recommendation should be cleared at headquarters. There are many decisions to be made in working out the most effective and satisfactory relationships.

Personnel and Finance

With good personnel there is every likelihood that the program will succeed. And so the questions are: Where shall I get my personnel? How much shall they be paid? How can teamwork be secured? This opens up the whole field of personnel recruitment and management. You will need assistance from your personnel officer, but final decisions regarding appointments, promotions, and the building of morale will be entrusted to the operating officials.

A *staff official,* such as a personnel officer, should assist his chief, who is the

line or *operating official.* Personnel experts, like planners, public relations people, lawyers, and other advisers, should learn to follow this sound rule. Their job is to study, advise, and plan, but not to step into the stream of operations and issue commands to the line officers.

Equally important is the question of funds. How much money must be spent and where is it coming from? This is the problem of budgeting, which will be discussed in detail in the following chapter. You must spell out your financial program just as you spell out your legal authority, starting with the general and proceeding to minute application. Your budget is a two-edged instrument: it is the basis for your work planning, as well as the means by which you check up on results.

Delegation and Direction

The larger your program, the more you will need to delegate responsibility to others. And so you ask: How much must I delegate and how can I do so without losing my own control?

Organization is sometimes described as the multiplication of the individual. To paraphrase Plato, one person cannot do everything himself; he needs the help of many. This is delegation and it comes near to being the secret of administrative success. If you fail to delegate, or if you delegate unwisely, you will fail in your job. To know how to delegate wisely is to know how to administer.

The larger the organization and the more drive it must have, the greater will be the amount of executive direction and leadership required. You must ask this question: How can I get the best out of my organization by personal direction? Many things can be delegated, but not the power of example and leadership. You must see that the orchestra plays together and in harmony. Usually this requires a musician. You must also be sensitive, alert, expert, and hard-working in the field of leadership.

Supervision, Coordination, and Control

After delegating the work load along the organization structure you have created—and which you keep changing as activities wax and wane—you must supervise what is done. And hence you ask, is it possible to supervise, coordinate, and control operations so as to keep a finger on everything but a heavy hand on none?

You will directly supervise the work of only a limited number of officials: branch chiefs and personal assistants. Every supervisor under you must know his own area of supervision. Just as delegation goes down the ladder of authority, so supervision and reporting climb up it.

But it is not enough merely to supervise. If the components of an organization are not welded together, the program will limp along no matter how efficient most of the separate parts may be. It takes a certain number of ingredients to make bread; omit one or two and see what happens. Sometimes

the result is as unfortunate as it is when coordination is poor. To change the figure of speech, such an organization is like an automobile whose front wheels are going forward but whose rear wheels are going sideways. It is your business, therefore, to see that each part of the organization takes its place in a unified whole.

You must also set up control mechanisms so as to be able to compare the plans you have made with the state of accomplishment at any given time. This is what we have set out to do, you say in effect; now what have we accomplished? There is no escaping the need for a regular checkup. It is analogous to an examination in a course of study, but perhaps even more necessary in administration.

Public Relations in Administration

In a democratic government, what you are able to do depends on how much public support you can command. The question to ask yourself, therefore, is this: How can unfair and unwarranted criticisms be dealt with and my organization made more responsive and serviceable to the community? This is the field of public relations.

Congressman Robert Ramspeck once observed that no one should be appointed to an important administrative post in the government unless he is capable of getting along with Congress and the public. There is much justification for such a requirement if it could be imposed. If a person's lack of a sense of public relations makes it impossible for him to get along with the legislature—be it Congress, a state legislature, or a city council—and the public, then it is to be doubted whether he has the necessary qualifications of leadership for the job at hand.

Government sometimes suffers from officiousness and surliness, and a good public relations program helps to offset the evil results of this attitude. Public relations is a prime requisite of successful administration and is an attractive and growing field for the college graduate. The public expects service and courtesy from those it employs to run its programs. If you are an official of the government, it is your responsibility to see that both are forthcoming.

The Field Program

The best way to judge the success of any program is to watch it at work at the local level. It is here that the citizen forms his opinion of the efficiency and courtesy of governmental administration. This is not to suggest that only the field operation is important. On the contrary, the effectiveness of headquarters will pretty well control the potential efficiency of the field units. And so you ask: How can I get the best use out of my field organization?

If you as bureau chief were to change the policy and direction of the organization every month or two; if correspondence went unanswered and your field units were buried in red tape—if your administrative orders and instructions constituted a five-foot book shelf, let us say, as has actually happened in

at least one instance—then you would not have outstanding field offices for very long because in the resulting confusion your better people would leave.

Some phases of the relation between headquarters and the field are desirable and some are not. The head office should decide policy, establish standards of performance, standardize procedures, issue instructions, provide supervision, and check field performance to see that it measures up to the standard set for it. The field officers, knowing the policy, should then be given complete managerial freedom, and allowed to work out their own local problems and differences without interference from the central office. Another reason for this is that a major function of the local manager is to deal with complaints and public relations, and local communities object to outside domination in such matters.

The Social Significance of Decentralization

The decentralization of administration is a principal means of increasing institutional efficiency. There is a limit to how much can be done from Washington or the state capitals. Decentralization of operations is held a key to managerial success in some of the nation's largest corporations, including the American Telephone and Telegraph Company, General Motors, and the United States Steel Corporation. It is equally true in government.

There is vastly more that both the federal government and the larger state governments could do in the way of decentralization. For example, when federal functions can be turned back to the states without loss of social effectiveness, so much the better. It will contribute to the efficiency of the remaining federal services. When this is not possible, then federal programs should consider decentralization through the use of regions. Most of the larger federal programs—Army, Post Office, Agriculture, Social Security, to list but a few—have already done this. The National Resources Board report, *Regional Factors in National Planning,* points out that there are already from 12 to 20 principal cities in the United States which are recognized as regional capitals for federal programs. In a recent survey, San Francisco was found to be the regional headquarters for 73 federal programs, New York for 69, Chicago for 66, and Boston for 48. In fact, nine tenths of the executive civil service of the federal government is located outside Washington.

If the tendency toward bigness in government is to continue, the decentralization of administration, accompanied by central planning of programs, is the only way to secure institutional efficiency and social effectiveness. There is a maximum size in every program beyond which the effect of the law of diminishing returns rapidly accelerates.

DEPARTMENTAL MANAGEMENT

We have been imagining that you were a bureau chief. Now let us assume that you are the Secretary of one of Washington's ten administrative departments and a member of the President's Cabinet.

Like the President, you have two chief responsibilities. You are concerned with the policy and legislation in your field, and you are responsible for the administration of your department. You might even be a member of a cabinet committee dealing with emerging social problems such as housing, social security, or labor relations.

There will almost certainly be a committee on legislation in your department, presided over by an assistant secretary and consisting of all your bureau chiefs. Any proposals originating from that group are scrutinized by you, whereafter you probably linger after a cabinet meeting and take up with the President those that you approve.

The Influence of Department Heads

The force of personal leadership plays a decisive role at the cabinet level. The importance of the work of the department and the inheritance of an efficient going concern are determining factors, but outstanding leadership produces notable accomplishments in any department or independent establishment. Similarly, the lack of it may be a serious handicap to the department.

The Secretary usually presides over a biweekly departmental staff meeting. He attends cabinet meetings once a week, generally on Friday afternoons. He appoints and removes the officials of his department. He has large powers to issue rules and regulations having the force of law. He acts on important appeal matters coming up through the bureaus. And he serves on one or more interdepartmental committees used for coordinating over-all policy and administration at the cabinet level. The post of Secretary, therefore, is one of influence. In the hands of a dynamic and efficient executive the department can be made to hum. And when it does, the bureaus and employees throughout the whole organization, including the field offices, feel the effect of competent leadership.

The Undersecretary and Assistant Secretaries

The greatest handicap under which departmental secretaries in Washington have operated in the past was an insufficiency of executive assistance of a higher order. There have been some extremely competent undersecretaries and assistant secretaries of departments, but not enough. Until fairly recently, each department usually had only two assistant secretaries and few had an undersecretary, who ranks next to the Secretary and acts in his absence. Consequently, most departments were weak in leadership. Secretaries remained only a short time in office and their days were taken up with policy and political and social duties, with the result that, like the President, they generally had too little time remaining for their administrative functions. Civil service employees, being nonpolitical, require strong leadership and they were not getting it. Thus between the level of the bureau chief and the Secretary of the department there was a great need for additional assistant secretaries.

Congress has moved decisively to meet the need. Almost every department now has an undersecretary, and most of them have been given additional assist-

ant secretaries. The Post Office Department has long been singular in having four assistant secretaries. The State Department now has six, although ten years ago it had only half that many. The beneficial results of strengthening executive leadership at the subcabinet level were immediately observable in increased efficiency and effectiveness in the department as a whole.

Assistant secretaries usually coordinate a number of related bureaus in the department. They help with planning, public relations, legislation and other Congressional matters; they supervise executive coordination and broad matters of governmental policy. In most cases, their appointment must be confirmed by the Senate. An assistant secretaryship is frequently a steppingstone to a cabinet position and it offers, of course, unexcelled opportunities for training in the duties of a Secretary. Like the members of the Cabinet, assistant secretaries go out of office with the President.

In recent years, bureau chiefs have sometimes been elevated to the position of assistant secretary, although more often these posts are filled from outside the government. Salaries range from $9,000 to $12,000 a year.

Interdepartmental Committees

A useful means of coordinating policy and administration is through the interdepartmental committee. These groups are particularly numerous in Washington but they are also widely employed in state and local government. *A theory of organization holds that all units relating to a particular function be brought together in a single agency such as a department.* More often than not, however, this is neither possible nor feasible. There are always points of overlap, and it is the manner in which these overlapping jurisdictions are coordinated that determines how much efficiency is gained. It is in this area that the departmental committee may perform a useful role.

The State Department carries on joint programs with almost every other department in the federal government. The work of its commercial attachés touches that of the Department of Commerce. Its relief and agricultural programs abroad tie in with the Department of Agriculture. Questions of international finance are important to the Treasury Department. The issuance of visas is of interest to the Immigration and Naturalization Service of the Department of Justice. Other examples may be cited. Between the conservation program of the Department of the Interior and the land-use policy of the Department of Agriculture there is an obvious connection as there is between grazing and forestry. The Coast Guard and the Maritime Commission supplement each other, as do the Social Security Board and the Children's Bureau. Indeed, almost every department has at least one program which impinges in some way on several others.

The interdepartmental committee, therefore, is an obvious expedient in dealing with all such programs which overlap. Its membership may consist of cabinet officers, assistant secretaries, bureau chiefs, or experts from among the bureau personnel of the field in question. Such a committee may carry on

research and study, draft legislation, settle disputes over jurisdiction, or decide which elements of a common program each member shall emphasize.

Against the use of the interdepartmental committee is the fact that it consumes a great deal of time on the part of Secretaries, assistant secretaries, or bureau chiefs. But it is hard to imagine dispensing with it even if the Cabinet becomes a more effective instrument of coordination than it now is.

EXECUTIVE ORDERS HAVING THE FORCE OF LAW

Few developments in government in recent decades are more significant than the growth of the ordinance-making power of chief executives and their department heads. Both in the United States and in Great Britain, the number of executive ordinances annually far exceeds the total of legislative enactments. This is because modern skeleton legislation must be spelled out so as to make it clear to subordinate officials and the public just what is expected of them.

The President's ordinance-making power derives from several sources. Congress has been compelled by the size and complexity of the problem to draft more and more legislation in a general, permissory form, in the expectation that the President will supplement it by his executive orders. Congress gives the President express statutory authority to issue orders rounding off the general law. The War Powers Acts passed early in World War II are outstanding examples of this procedure.

As chief executive, the President may also issue orders to his department heads and subordinates, covering matters such as civil service regulations, budgetary instructions, and so on. And he may issue ordinances as commander in chief of the armed forces, whether in peace or in war. The Army and Navy Regulations are examples of the use of this power.

Responsibility for foreign affairs gives the President another peg on which to hang his authority, an example being the Consular Regulations of the United States. Then there is a broad, undefined, and expansible area which derives from constitutional provisions and the tenor of the wording of the laws of Congress. This is the sector which Congress watches over most jealously, but which, despite such vigilance, has expanded most rapidly in the past few years.

Numerous as they are, however, the executive orders of the President naturally do not approach the number of orders issued by the heads of departments and independent establishments. Theirs is the direct responsibility for the detailed administration of the law, but they are ultimately responsible to the President and to Congress for any such ordinance-making authority they may employ.

The heads of the departments and independent establishments must find an express authority for this aspect of their work. Here there is no twilight zone of power on which to rely, as the President has. Congressional legislation usually vests a cabinet officer—such as the Secretary of Agriculture—with an express permission. But even here the President is ultimately accountable for any action taken by the members of his official family.

In the governments of the states, the situation with regard to the ordinance-making power is parallel in all important respects to that in the federal government. Legislation is often permissory and general, and the details of ensuing programs must be rounded out by means of executive orders. A difference here, however, is that the governor may not always be held ultimately accountable for the actions of subordinate state officials, because so often these report directly to the legislature rather than to the governor.

ADMINISTRATIVE LEGISLATION AND ADJUDICATION

This study of the theory of the separation of powers in American government up to this point should have made it clear that there is no such thing as administration per se. Administration is no more "pure" than legislation or adjudication is "pure." There are elements of policy making and decision making in administration, just as there are elements of administration and adjudication in the work of the legislature, and of policy making and administration in court decisions.[4] When administrative officials implement the law by rounding out its implications through their administrative orders, we call this administrative legislation. Because most modern legislation is passed in skeleton form, it merely lays down broad policies and provides a mandate. But it wisely avoids as much detail as possible, and, as a result, administrative legislation becomes inevitable.

Similarly, skeleton legislation means that administrators must decide many rival claims arising between parties of interest. A hearing must be held, as a result of which one party gets substantially what he claims while the other does not. This we call administrative adjudication. Administrative adjudication has become a notable feature of modern government, largely because of the work of the governmental regulatory commissions and agencies dealing with situations involving social conflict, such as the relations between capital and labor or the regulation of an industry such as the railroads.

It would be a mistake, however, to regard the functions of administrative legislation and administrative adjudication as something new in government. Administrators have always spelled out the law and decided disputes arising in the course of its administration. What we have, therefore, is an intensification of an old function. Nevertheless, the degree to which these powers are customarily used today represents a most significant development in modern government. The Interstate Commerce Commission and the state public-utility commissions, for example, determine how much the businesses coming under their jurisdiction may earn, how much service they must provide, and what constitutes fair and unfair competition. A single decision may involve thousands or even millions of dollars.

Similarly, the National Labor Relations Board determines what the relation shall be between employer and union members, involving large sums of

[4] See "The Role of Discretion in Modern Administration," in John M. Gaus, *et al.*, *The Frontiers of Public Administration* (Chicago, 1936).

money and working relationships whose long-run social effects can scarcely be overemphasized. The Wage and Hour Division determines whether forty cents an hour is enough for pecan pickers in Texas and whether there is an economic justification for different rates in different states. Divisions of the Department of Agriculture decide how much the packing companies may earn or how many months a year sheep raisers may use public lands for grazing purposes. A city health department may find that great quantities of food are contaminated and must be destroyed. Almost every program has problems of this kind, but it is especially true of those dealing with the larger areas of our economy.

Attempts to Limit Administrative Adjudication

In recent years a controversy raging over the question of limiting administrative adjudication crystallized in the attempted passage of the Logan-Walter bill in 1940, which was backed by the American Bar Association and large business interests, but which was resoundingly vetoed by President Roosevelt.

The Logan-Walter bill provided that in cases coming before regulatory tribunals exercising quasi-judicial powers, the decisions must be tentative rather than final, and that if one of the parties wished to appeal, it must be through the regular courts, which would have the final word. Further, the bill added to the customary power of courts the power to decide whether the commission's findings were supported by the findings of fact, and whether the case was *ultra vires* (beyond the power of the commission) in the first place.

Opponents of the measure claimed that its purpose was to weaken the quasi-judicial powers of the regulatory bodies and to substitute a formal judicial process in all except the preliminary determinations, thus rendering regulation and control largely ineffectual. The legislation, they said, was apparently particularly aimed at the National Labor Relations Board and the Securities and Exchange Commission, which had been widely objected to by many businessmen as "government intervention."

As a countermove, the President appointed a group of lawyers, called The Attorney General's Committee on Administrative Procedure, to examine the problem and recommend a program. After a two-year study the committee published a final report and a series of monographs relating to the major areas of sublegislation and administrative adjudication. These monographs are a storehouse of valuable information.

In its report, the committee scored the policy incorporated in the Logan-Walter bill on the ground that it would deprive the regulatory programs of much of their effectiveness. The committee made several concrete substitute recommendations, one of which was to strengthen the use of the *Federal Register,* already referred to. This recommendation has been accepted, so that now all current proclamations, orders, rules, and regulations of the executive branch of the government having general applicability and legal effect must be filed with the Division of the Federal Register of the National Archives in

order to be valid; they are published in the *Federal Register,* which appears five times a week.

The most important recommendation, however, was to develop a coordinated system of hearing officers in agencies where quasi-judicial work is most prominent, heading up to a chief hearing officer in an Office of Federal Administrative Procedure. The full plan has not been put into effect, but many of its details have. It is possible that some modifications will be necessary before the scheme is entirely satisfactory from a practical standpoint.

The power to decide between the rival claims of individuals and groups through administrative tribunals rather than through the courts is a basic issue of American government. Like so many matters that seem to relate only to formal machinery and processes, there is a deep underlying social question at stake: To what extent shall government intervene in the regulation of social and economic activities? The study of administration, like all of government, should reveal these basic social conflicts.

This problem of administrative adjudication will be encountered again in later chapters.[5]

THE PRESIDENT AND THE VICE-PRESIDENT

If the President is too busy with his many other duties to act as his own general manager of administrative programs, why should he not delegate this responsibility to the Vice-President? This is the system used by most business corporations. Almost invariably there is an operating vice-president who runs the details of the administration for the president of the company. The need for such assistance in the federal government is reflected in the creation of the office of assistant president—as the press and the public customarily referred to it—during World War II. This position, it will be recalled, was ably filled by James Byrnes, formerly Senator and Associate Justice of the Supreme Court and later Secretary of State.

Or why not attempt some scheme analogous to the city-manager plan, but at the federal level? Let the President do all the other things he must, but get a good general manager to help him with administration. There is much to be said for the proposal. It is hard to think of many objections to it, save the possibility that the President and his assistant might not get along together. But in that case, the President has merely to substitute someone else.

Unless the Constitution is amended, the Vice-President is disqualified for the post of general manager because he must preside over the Senate. The Constitution specifically says so. His other constitutional function is to succeed the President in case of the President's death during term of office. But why should the President's potential successor preside over the Senate when no one speaking for the President presides over the House of Representatives? It would seem that the Vice-President could perform a more vital role as general manager, under the President's supervision, than as a presiding dignitary in

[5] See especially, in Part Eleven, "Government and Economic Welfare."

Congress. If the proposal of a constitutional amendment is thought unwise or impossible of accomplishment, then some other solution must be found for the President's administrative dilemma.

A similar problem exists in the states. The governor is elected, together with a lieutenant governor, who becomes his successor in case of death in office. But, like the Vice-President, the lieutenant governor is primarily a legislative officer in a majority of the states. As a rule, he is of virtually no assistance in running the state administration. In the federal government, until the administration of Franklin D. Roosevelt, it was not even customary for the Vice-President regularly to attend the President's cabinet meetings. This indicates the extent to which the Vice-President was dissociated from and unconcerned with the executive function of government. The same thing is largely true of lieutenant governors.

If we could solve the problem of providing our chief executives with the equivalent of a city manager, we might expect great improvements in coordination at the top levels of both federal and state administration. Lack of adequate coordination at the top level is a chief weakness of American government today. This was universally testified to by prominent leaders who visited Great Britain, Soviet Russia, and other countries among our allies during World War II. We certainly have the personnel and the ability in government; more than many others, however, we lack coordination.

Alternatives: Executive Assistants

Effective substitutes for an administrative manager—similar to a city-manager—at the top levels of government are few in number and not too promising. Every executive needs personal assistants, but the limit of those he can usefully employ is soon reached. Indeed, the White House may already have exceeded that limit.

Woodrow Wilson had a staff of forty, but in 1945 the White House administrative personnel numbered more than two hundred. Among them were the six assistants to the President provided for in the reorganization scheme of 1939. These six men, at salaries of $10,000 a year and with "a passion for anonymity," were to help the President with various parts of his duties, such as finance, personnel, public relations, and so on. Is six too many? Business executives would not seriously contemplate that number, but of course their burdens are not so great. The difficulty is that the larger the chief executive's immediate staff, the more of his time they take and the less he has for his department heads, upon whom he must primarily rely. There seem to be distinct limits, therefore, to the expansion of the chief executive's personal staff as a means of solving his administrative dilemma.

Alternatives: The Cabinet as a Coordinating Device

In Great Britain, a substantial amount of coordination is secured through the Prime Minister's Cabinet. It meets frequently, takes up general questions of

concern to the government as a whole, and has a first-class staff which arranges the agenda and helps with the follow-through. In other words, the Prime Minister uses his Cabinet as a businessman uses his weekly gathering of department heads or a bureau chief uses his staff meeting.

In this country we have never developed a tradition of this kind so far as the Cabinet is concerned, but there is no inherent reason why we should not if we choose. Our cabinet meetings are usually rather perfunctory affairs unless the country is on the verge of war, the banks are about to close, or some other emergency threatens. The cabinet members are grouped around a table in order of precedence, those representing the older departments sitting nearest the President. He may have a few things to say. Then he goes around the table, again in order of precedence, asking a specific question or merely inquiring whether the cabinet member has anything to say. It is the universal testimony that rarely is there any discussion of important matters of state of equal concern to all who are present and in which all participate.

The disappointing character of the Cabinet as a coordinating device is due largely to the fact that it lacks an executive secretary to prepare the agenda and generally act as go-between among the members and between them and the President. This officer is invariably found where cabinet or board meetings have been successful from the standpoint of coordination. There would seem, therefore, to be good possibilities of improved coordination in the use of the Cabinet. The need is so great that any constructive remedy is worth trying.

In conclusion, however, we must be realistic as to how much we have a right to expect from our state and federal chief executives as administrators. The problem goes very deep. Before we can hope for much to be done about it, we must first *want* them to be more effective in the field of administration. No single solution, furthermore, will solve the whole difficulty. There are many aspects, as we have seen. In the meantime, chief executives in government must rely principally on picking the right men to run the departments and bureaus. If they can succeed in this basic task, the job will continue to be creditable even if the experts see how it might be improved.

If we seek a thoroughgoing administrative reform it will be because we want greater effectiveness in the social programs which have been brought into being. When this time comes, a knowledge of administration will be indispensable. But no government was ever improved just because administrative principles, of their own force and influence, compel it.

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CHAPTER 36

Government Reorganization

If the American governmental system is to function without veering in the direction of social ineffectiveness and anarchy on the one hand, or concentration of power and loss of popular control on the other, as citizens we must do some clear thinking on several important issues. One of these issues is the movement to reorganize government administration, which we have heard so much about, especially in the past few years.

Popular disillusionment with unsuccessful experiments should not be allowed to impair the zeal for reform that the people of a free government must keep undiminished. Since panaceas, nostrums, and various fads are inevitably disappointing in their results, periodic reorganizations should not be lightly undertaken: *changes in the anatomy of government are not an end in themselves; they must be tested and justified by their over-all social effect.* At times we seem to forget this sound rule.

Groups of public-spirited citizens, intent on improving the efficiency of government and eliminating some of its wastes, have tried one remedy after another in the past sixty years or so. First it was personnel, then budgeting, and finally structural organization. Beginning in the last quarter of the nineteenth century, the "fight the spoilsman" crusade led to civil service reform. Its more zealous supporters argued that if government could only secure nonpolitical employees selected on the basis of merit, most of our problems would be solved. But important as personnel is, we have learned that it is only one element; moreover, the very nature of this reform brings new and difficult problems in its wake: bureaucracy, "civil service mentality," inadequate leadership potentialities, and the void existing between civil servants and policy officials, to mention but a few.

The succeeding emphasis on a sound budget plan, as will be seen in the next chapter, was an important step toward increased governmental effectiveness. But it was not, as some advocates apparently thought, a panacea for all the ills of government. A financial work plan is essential as a means of controlling expenditures, but it, too, is only one element.

Exaggerated hopes and expectations, which are now recognized as naïve, were also entertained concerning the revolutionary effect of structural reorganization in municipal, state, and federal governments. Some writers went so far as to claim that there is an ideal number of departments in government and that this limit should be rigidly observed. By what occult process they arrived at this determination was never explained. The underlying viewpoint

was that if complicated governmental structure could be consolidated into a few departmental bundles and unified under a strong executive, the work would flow along automatically and the millennium would be in sight. No American government has ever reached this sublime state and we can now see that structural organization alone is not the answer.

The present danger is that we shall become disillusioned with regard to reorganization and conclude that there is no virtue in what we once thought was a cure-all. In religion this is called backsliding, and its manifestations in both religion and government have much in common. It does not contribute to the clarification of the problem or to the eventual modification of oversanguine expectations to call the reorganizers "political medicine men" or to predict that their theories will soon "be buried in the potter's field of political panaceas." This is not the place for political rhetoric; but neither is it the place for a new form of uncritical fundamentalism.

This chapter will discuss, first, the need for administrative reorganization, including the reasons why it seems necessary, the resistances encountered, and a possible alternative to sudden and sweeping innovations. Next it will take up the experience of the state governments in this field, and the federal reorganization of 1939. It concludes with a summary of the results of administrative reorganization, and makes a few suggestions which might be useful in this area.

THE NEED OF ADMINISTRATIVE REORGANIZATION

To have a comprehensive view of the potentialities and shortcomings of administrative reorganization, it is necessary to discover how the need for it occurs.

Of all the reasons which stir the average citizen to demand administrative simplification, none is more compelling than the number of separate administrative units he discovers in his local, state, or federal government. At a Rotary Club luncheon, for example, a speaker will say, "Do you know that there are 135 separate departments and establishments of all kinds in Washington?" "Well," says a listener to himself, "there are only 6 departments in my business—why should there be more in government?"

About the same time his wife may attend a meeting of the League of Women Voters where a lecturer remarks that in unreorganized state governments there have been as many as 75 separate administrative agencies and in some cases well over 100. What do they all do? How can anyone keep track of so many? It seems obvious, she concludes, that these could just as well be reduced to 10 or 12. If they were consolidated and placed squarely under the governor there might be a saving in taxes and there would almost certainly be an improvement in accountability to the chief executive. Do not conclude that this reaction on the part of Mr. and Mrs. America is entirely senseless and naïve, because it is not.

What must be realized first, however, is that each of these separate agencies

was created as the result of pressure from a particular interest group or combination of pressure groups in the community. Once an agency has been set up, furthermore, the interest group responsible for it assumes the role of a watchdog. This soon becomes apparent when the reorganization movement gets under way. It is a good thing to consolidate other agencies, but not this particular one! Strip it of its independence? Put it under a political governor? Run the chance of having it abolished later? Put it in a big department where it will get snarled up in red tape and a hierarchy of officials will stand between the pressure group and the bureau chief who does the work? It is at this point that the citizen interest and the group interest usually part company.

Since the federal government has expanded more rapidly than state governments in the past fifty years, it is not surprising that the number and scope of its administrative agencies have boomed. Between 1901 and 1929 Congress created no less than 471 new boards, commissions, committees, and departments. Many were temporary, but a large number have continued in existence perhaps because in government, more than other institutions, units once established appear to become indestructible. During the period mentioned, an average of 17 agencies were created each year. During the first few years of the New Deal, the so-called alphabetical agencies (NRA, AAA, NEC, FERA, CCC, and CWA, for example) set an all-time high. In the eighteen months from the middle of 1933 to the end of 1934, 60 new administrative units were created, some by Congress and others by executive order in pursuance of general legislation. None of these took the departmental form.

Institutional Resistance to Change

Another factor helps to explain the stubbornness of proliferated agencies to the consolidation movement: *when a new program is launched, it seems to get organized and under way faster if it is set up separately than if it is created as a unit of an existing department of the government.* When a new program is separately established there are not so many clearances to be secured and not so much institutional red tape to be complied with. Thus the new agency has more freedom to drive ahead than if it were a part of a larger department where the attention of the top officials is necessarily divided among numerous and sometimes diverse programs.

After a few years, two powerful forces operate to keep the agency separate. The first is the support of interest groups, already mentioned. The second is simply a matter of institutional lethargy, the strength of which should not be minimized. *The reason a complete overhauling of administrative machinery is usually thought necessary is that, through lethargy and drift, a whole series of problems grows up and the only way it seems possible to touch any is to make a frontal attack on all.*

Because these factors have to do with morale and human nature, they put a somewhat different light on the revivalistic fervor of structural reorganizers. In addition, if reorganization promises to be sweeping, the pressure groups

may say to each other, in effect, "If you will allow your pet bureau to be consolidated we will support you in a common program." Of course, many never agree to make such concessions, and when it comes to actually going along, many that had promised to surrender their bureaus refuse to do so. And often they have sufficient influence in the legislature to prevent their bureau or agency from being interfered with. As a result, when administrative consolidation finally does take place, the tally invariably indicates that few if any agencies have actually been abolished. They have merely been reshuffled and combined into different groupings. Experience indicates, therefore, that *the principal effect to be secured from reorganization is increased effectiveness, brought about by better coordination and planning, because in few cases have services actually been eliminated and economies realized.*

Most authorities have concluded that the dollar savings resulting from state reorganizations cannot be accurately measured. Apparently there are too many variables.

Reorganization a Continuous Process

A plan which permits adjustments in structure as changes occur in the work load is preferable to periodic and drastic reorganizations. In every enterprise, some parts of the program expand, new activities are added, and old ones atrophy. Such changes are due to the dynamic effect of social forces, and it is these areas which should be given the greatest attention in any attempted reorganization. Since these social forces are more or less continuous, the internal adjustments of structure and functioning should likewise be continuous rather than explosive.

Within a single program, the administrator usually has adequate authority to effect such changes; as between all programs, however, no action of consequence can be taken, as a rule, without the authorization and action of the legislature. The legislature is constitutionally authorized to organize and empower the administrative unit in the first place. By necessary implication, therefore, only the legislature has the power to modify and consolidate existing agencies. This difference constitutes a principal one between business and government. The business executive, for example, may reorganize his internal administration without securing the consent of his board of directors, although he may advise and consult with them. The city manager has the same freedom. But in most American governments, including state and federal, the chief executive has no such power. Presidents and governors have often attempted to secure such authority, but usually with little or no success. The legislature—wisely perhaps—guards its power in this respect as in others.

The experience of the federal government illustrates the situation both at that level and in the states. Every President since Taft in 1911, for example, has attempted to secure authority to reorganize the administrative branch of the government. In 1921 the Bureau of the Budget was created and empowered to make studies of administrative efficiency, but no immediate use was made

of the power. In 1923 the Bureau of Efficiency, created originally in 1913, was expanded and for several years, until abolished by Congress, made studies of organization. But it had no comprehensive authority to put its plans into effect.

In 1939 Congress approved a reorganization plan worked out by a committee of experts reporting to President Roosevelt. The committee had made a comprehensive study but it was considerably circumscribed in what it could recommend. A unit on Administrative Management was then set up in the Bureau of the Budget with large investigative power but little authority to reorganize. At the end of World War II, in 1945, Congress passed legislation giving President Truman a considerable degree of authority to reorganize the administrative branch of government and to reconvert it to a peacetime basis. The authority granted in 1945 surpassed that accorded in 1939.

On balance, however, except for limited, temporary grants of power to Presidents Wilson, Hoover, and Roosevelt, Congress has been willing only twice since 1911—in 1939 and again in 1945—to allow the President anything resembling discretionary authority to reorganize. But since these instances are of recent origin, it is possible that the tradition may be changing.

STATE ADMINISTRATIVE REORGANIZATIONS

Since 1916, more than half the states have undertaken administrative consolidations and reorganizations of one kind or another. Some of the preliminary studies were made by professional institutions such as the Institute of Public Administration in New York, the Brookings Institution in Washington, or the Public Administration Service in Chicago. In other cases, officials and citizens of the state concerned made the studies and put through the reorganization.

These reorganizations are usually inspired by a popular interest in economy and efficiency, caused by the growing number of separate governmental units. A commission or outside agency is then generally authorized to make an investigation, supported by funds from the legislature. After a final report is rendered by the group to the legislature and the governor, legislation endorsing all or part of the plan may be put through and the governor is authorized to make the changes.

Between 1911 and 1916, stimulated by President Taft's appointment of a commission of experts to study economy and efficiency in the federal government, New York and Wisconsin were among the first of several states to take similar action. It was Illinois, however, that in 1917 provided a model for the state reorganizations which followed. The Massachusetts reorganization of 1919 also had much influence, as did that of New York in 1927. The Virginia reorganization of the same year was also watched with interest, especially in the South.

States in every part of the country, including Ohio and Washington in 1921, Pennsylvania and Tennessee in 1923, California in 1927, and Minnesota

in 1938, have reorganized their administrative machinery. Indeed, there was a continuous stream of state reorganizations beginning in 1917 and lasting twenty years. A few of these were thoroughgoing plans, but some were only slight improvements over the original pattern. Since 1938, partly because of disappointment over the results, the interest has not been so great.

Assumptions Underlying State Reorganizations

It would be a mistake to create the impression that all state reorganizations—or even the prevailing ideas of the experts—fall into a neat pattern. It is possible, however, to convey the general purposes and assumptions underlying state reorganizations without going into fine detail.

First, there was substantial agreement that the power of the governor should be increased by giving him a longer term of office and adding to his powers as administrator. Second, the short ballot reform was favored—that is, it was held that the number of popularly elected state officials should be reduced, and the governor's appointing power increased. Third, the number of separate administrative units should be reduced, duplications of jurisdiction eliminated, and the whole consolidated by principal functions into major departments and boards. It was generally contended by the experts—but often without success—that single-headed departments should replace plural-headed boards and commissions. And fourth, the establishment of the executive budget was generally favored. This means, as will be seen in the chapter which follows, that the governor, rather than committees of the legislature or a special commission, draws up the budget and submits it to the legislature.

The over-all purpose and intent of state reorganization was to increase the power, responsibility, and effectiveness of the governor as administrative leader. The longer term, short ballot, executive budget, functional departmentation, and general tightening up and integration were all designed toward that end. But then age-old issues began to appear. Does every increase in executive authority subtract, by that amount, from the authority of the legislature? Shall we forsake the American tradition of suspicion toward strong executives? The answer is that the legislature and the executive must both be effective, each in its own department. The legislature must not attempt to administer. Instead, the executive must be accorded ample authority in this field, for strengthening his position will not disturb the balance of power between the legislature and the executive. On the contrary, a stronger executive will restore it by making the executive better able to carry his end.

THE FEDERAL REORGANIZATION OF 1939

When President Roosevelt came into office in 1933, he inherited from his predecessor a two-year grant of authority from Congress to carry out a limited reorganization. When this authority expired in 1936 the President appointed three political scientists as a Committee on Administrative Management—the Brownlow committee—to make a comprehensive study and report. A year

later the Government Printing Office published their report entitled *Administrative Management in the Government of the United States,* with a series of accompanying monographs. Meantime, Congress had ordered a study of the same problem by the Brookings Institution. When the time came for action, therefore, two reports were at hand. The authorities did not entirely agree. Neither did Congress and the President. The result, as in all such cases, was a compromise. However, the President received increased staff assistance, notably the six assistants who have been mentioned. In addition, an Executive Office of the President was created, combining such units as the Bureau of the Budget, and the National Resources Planning Board later abolished by Congress. In this arrangement, the influence of the Bureau of the Budget as an executive aid was augmented, partly by the creation of a new Administrative Management unit.

Three new coordinating agencies, similar to departments, were set up: the Federal Security Agency, the Federal Works Agency, and the Federal Loan Agency. Several bureaus were shifted from one department to another and some independent establishments were brought under departmental roofs. And finally, some of the government corporations were tied in more closely with department heads. In this scheme, however, Congress attached numerous restrictions to what the President might do in the way of reorganization. Fifteen separate agencies—among them the Interstate Commerce Commission, the Federal Trade Commission, and the Federal Communications Commission—were listed by name and the President was enjoined not to touch them. Similarly, no change was to be made in the name or number of the ten departments, although the bureaus in them could be moved or abolished. The proposal to have a single executive head of the Civil Service Commission, instead of the board of three, was rejected.

Nevertheless, following closely as it did on President Roosevelt's historic controversy with Congress over the so-called Court-packing plan, even this limited power to reorganize constituted a partial victory for the administration.

THE RESULTS OF ADMINISTRATIVE REORGANIZATION

Whether state and federal reorganizations are adjudged a success or a failure depends on how much was expected of them at the outset. In many states, governors still have far less than a unified authority. Moreover, the average number of separate agencies is still nowhere near the mark of from twenty to twenty-five as some had hoped, and boards and commissions are still numerous. With a few prominent exceptions, little progress has been made toward short ballot reform, and governors are still far from general managers in the business sense of the term. Much the same characterization applies to the federal government. Here the short ballot, of course, is no problem and never was. The President's managerial powers and facilities have been increased, but for other reasons earlier mentioned his administrative effectiveness is considerably circumscribed in practice. Many agencies have been reshuffled and

combined, but the total is still high. The mushrooming of war agencies and its aftermath have made the problem infinitely more complex that it ever was before.

The most clear-cut gain has been in the field of budgeting. Newer functions, such as public welfare and social security, have been grouped together at the federal level in several of the states, notably Indiana and New York. At both levels there has been a needed expansion of facilitating staff services, such as planning, personnel, finance, legal, and public relations. And finally, reorganizations have strengthened the operating programs at the bureau and staff levels more than at any other point. These are not insignificant gains.

Lessons Learned from Reorganizations

Thirty years of attempts to reorganize our state and federal governments may have deepened our appreciation of the problem. We now understand, for example, the role of pressure groups in the politics of reorganization, and our horizons have been widened. Congress has made it clear that the American people do not want administrative efficiency merely for the sake of efficiency. We want to be convinced that administrative reorganization is essential and directly related to social effectiveness.

A number of larger considerations suggest themselves with regard to the requirements of governmental reorganization. First of all, administrative reorganization—to be effective—must be viewed in a larger context. The experts must raise their sights. In one of the best books on state reorganization—*The American Governor*—Professor Leslie Lipson, sagely remarks that "the major premise of the whole movement was: strengthen the governor, put your trust in the governor. It is not unfair to say that some have betrayed the trust. Where reorganization and legislative leadership have failed, it has been largely due to the governor's incompetence. . . . Results have shown that tinkering with the machinery is not enough. . . . The ultimate solution lies beyond the scope of mere institutional reforms."

Another lesson that has been learned is that only the legislature has the authority to reorganize administration. The obvious place to begin the programs, therefore, is with the legislature. Legislatures have always jealously guarded this power, and the executive cannot expect to "steal" it.

Reorganization should not be undertaken unless the malfunctionings of the existing system provide good grounds for doing so. This sounds like a simple rule, but it is surprising how often it has been breached. To let well enough alone if things are going well is sometimes a difficult lesson for even the experts to learn. For example, if an agency is functioning efficiently it should be disturbed for only a very good reason. Related duties may be added, but it is usually a mistake to combine the agency with other units simply because of purely theoretical considerations and a desire for logical symmetry. If, however, the authority of the agency is incomplete and divided, if vast

amounts of energy are wasted on jurisdictional disputes instead of being used to get the work done, then there is an obvious case for structural change.

No sharp line divides policy and administration. Administration is as much a part of government as the legislature. No attempt, therefore, should be made to shut administration off in a watertight compartment by itself. Politics and pressure groups operate throughout government. Law, too, is a common element. Public administration, therefore, must guard against a parochial tendency. The first step in bringing about administrative improvement is to win the confidence of the legislature and to recognize the central position it holds as the voice of the people.

Emphasis must be on the success of operating programs and the influence of their executives, while top management is accentuated only as it facilitates the work done at the top level. If more coordination can be secured there, the work load will be eased where the chief executive is already overburdened. Indeed, much program effectiveness is lost at the point of overlap; and coordination, rather than structural reorganization, is often the key to improved over-all effectiveness.

Functional organization is necessary because it brings together all the elements of a program needed for success. This is the rational, the social justification for consolidation. However, the approach must be pragmatic and based on actual experience—not deduced from abstract, a priori reasoning.

Decisions as to the degree of power to be accorded the chief executive should be arrived at on pragmatic grounds. Among the more important questions are these: How much can he do? How much does he need to do? What would be the effect of his power on the balance of power in the government, and its effect on popular control?

Staff assistance, needed in the planning and facilitating of programs, should be adequately emphasized. But staff officials must not be given undue influence. Only the operating executives, with clear-cut authority, can secure social results. There has been great improvement in the fields of personnel and budgeting, and these gains should be extended.

And finally, many problems of administrative reorganization could be solved—or at least greatly improved—if more attention were given to administrative decentralization. This is not an exhaustive list of the factors which should guide future attempts to reorganize the machinery of administration. It attempts merely to emphasize the broad view that must be maintained.

Today we are so close to our governmental institutions that it is often difficult to retain our ability to see past events in their proper historical perspective and to recognize the improvements that have been made in important areas over a surprisingly short period of time. Municipal administration, for example, has changed so much for the better that it is scarcely recognizable compared with what it was fifty years ago. The executive efficiency—so eagerly sought by state and federal governments—has grown much more rapidly at the municipal level. Nevertheless the records of efficiency of our state and

federal bureaus and departments compare as favorably, on the average, as those of other countries, including Great Britain or Canada.

We are infinitely richer in trained administrative leadership today than at any time in our history, and the pace tends to accelerate. This is because for the first time in our history we now comprehend the central role which government plays in our individual as well as our collective fortunes. Great strides, for example, have been made in budgetary planning and control. It would seem, therefore, that the issues of institutional relationship at the top were capable of progressive solution.

Administrative problems are not the easiest to explain in a popular way to the citizen. The steps needed in a reorganization must be reduced to principles which are easily understood. An example of this is found in a report of the New York Reconstruction Commission of 1919: "Democracy," says the commission, "does not merely mean periodical elections. It means a government held accountable to the people between elections. In order that the people may hold their government to account, they must have a government that they can understand."

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CHAPTER 37

The Budget—Instrument of Planning and Control

FINANCE IS a central element in administration. The administrator's statutory authority tells him what he must do; his appropriation gives him the wherewithal to do it. His budgetary allotment makes it possible for him to employ his personnel, purchase his supplies, set up his central and field offices, and finance the work of his organization at all stages. Being forced to operate on an annual budget, he must plan each step in the year's program as accurately as possible. This requirement is of special value to the administrator because the more carefully he plans, the more skillfully he is likely to administer.

The budget also serves another central purpose. In addition to being the means by which the administrator establishes and carries on his program, it is also a principal method by which he controls the flow of operations. He must keep accounts, stay within his quarterly allotment of funds, measure the stage of completion by the amount that has been spent to that point, gauge the efficiency of various operations by the sums allocated for separate purposes, and be sure at all times that he is not spending his appropriation too fast, because when his money is gone he cannot secure additional funds without a special authorization from the legislature which supplied his original appropriation.

The second large purpose of budgeting, therefore, is to serve as a control instrument in the hands of the administrator and as a means of securing economy for and accountability to the taxpayer.

THE BROAD ASPECTS OF FISCAL MANAGEMENT

Financial administration has wide implications over and above the operation and control of public programs—implications which run to the foundations of representative government. The power of the purse is the power to control the government. Parliament, for example, successfully used this weapon during the seventeenth century when it forced the king to appeal to it for the funds he needed. The king could not secure money unassisted; Parliament could, through taxation. As a consequence, the king became a figurehead, the right of the people's elected representatives to rule was recognized, and legislative supremacy was established.

The tradition of controlling through the public purse was inherited by American legislative assemblies. Chief executives and the administrators who serve under them can get funds for their programs only by going to the legis-

lature. After a hearing is held the legislature passes an appropriation act specifically setting forth the purpose for which particular public funds are to be spent. They may or may not be in the amount requested. So long as this power of the legislature is secure, it will go a long way to help keep the balance of power in government in the legislative assembly where it belongs.

The budget is the work plan of the government administrator. A consolidated budget is a picture of everything that the government plans to do. It specifies the functions of government, its organization, the number of employees engaged in each program, and the manner in which the various sums are going to be spent. If a budget is skillfully prepared and interpreted, it constitutes a composite picture of government in all its manifestations, from the care of an abandoned child to the construction of Boulder Dam.

Social purposes and objectives are controlled by the budget, because not even the most essential public programs can be commenced without funds. Viewed in this light, budgets and finance assume a human signification that their association with mathematical symbols does not suggest. If law is thought of as the circulatory system of the human body, finance might be called the fuel that supplies its energy.

There are three principal aspects of public finance: taxes and other forms of revenue; public expenditures; and the problem of financial administration. The first two were discussed in Chapters 12 and 13—what government does, how much it costs, where the money comes from, what it is spent on, and the effect of fiscal policy on the political economy and on the citizen. The treatment of financial administration has been reserved for this chapter because it is central to the whole functioning of administration in government.

The Central Place of Budgeting and Financial Administration in Government

The two main aspects of financial administration—the making of the budget and the execution of the budget—are an interesting analogy to the making of the law and the execution of the law. There are three types of budgetary plans in use among American governments:

The legislative budget is a procedure under which the various committees of the legislature decide on appropriations in their respective fields; the total is called the consolidated budget. This older, traditional method of supplying funds is now in disfavor and hardly deserves to be called budgeting in the modern governmental or business sense.

The commission budget found in some of the state and local governments makes use of a board or commission, sometimes composed of administrative officers and sometimes including legislative officers as well. It is this group which determines what the budget shall be.

The executive budget, the newest and most widely used method today, will receive the major emphasis in this chapter. The executive budget is found in the federal government and in many of the states and cities. The tendency

is toward this type of budgeting and away from the legislative and commission plans.

Three principal aspects are involved in both the formulation and the execution of budgets of the modern executive type. In the formulation of the budget there are the departmental phase, the chief executive or budget bureau phase, and the legislative phase. The execution of the budget involves administrative control in the department, administrative control from a central agency such as a budget bureau, and finally audit control by a special officer reporting to the legislature and considered its servant. This rule applies in government and in business corporations and institutions generally.

This analysis shows the central position of the budget in financial administration. The budget is jointly formulated by the executive and legislative branches of the government, which share the responsibility for seeing that it is executed efficiently and in accord with the authorization. This dual responsibility illustrates the importance of the relationship between the legislative and executive branches, which contributes as much as any other factor to efficiency, smooth operation, and public control.

THE DEVELOPMENT OF GOVERNMENTAL BUDGETARY METHODS

In the past fifty years, financial management has become one of the most progressive aspects of public administration. The financial methods in American government had changed but little during the preceding century and today would be totally unsatisfactory. Their relative adequacy during the nineteenth century is due to a number of factors, including the limited extent of governmental operations judged by modern standards.

Under the old method, the legislature was divided into a number of major appropriations committees, each dealing with a particular subject or group of subjects. In the federal government, for example, one dealt with War Department expenditures, another with Navy authorizations, another with river and harbor improvements, and so on. The department or agency in need of funds, after calculating its requirements for the ensuing year, would then appear before its Congressional committee. If the committee approved the request, that sum was simply added to the amounts recommended for other agencies and reported out.

When each separate appropriations committee had completed its hearings, the totals were computed and the resulting figure constituted the appropriation which the legislature was to consider. If an agency failed to get all it wanted from its committee, it merely continued the pressure while the appropriation bill was on the floor of the chamber—with the active support of friends and allies in its interest group—and often won its case there.

The defects of such a system are obvious. Each agency naturally wanted to get as much as possible from the legislature and hence usually padded its needs to secure a safe margin. How much the total cost of running the government

would be, or whether prospective revenues from all sources would be enough to cover the need, could not be ascertained in advance. The system put a premium on pressure and made it difficult to discover the real needs of the agencies. In addition, some appropriations committees were notoriously tough and others were much too generous. The staffs and facilities of the separate committees were too small to permit independent investigation of agency claims. The resulting loose methods meant that some agencies got more than they needed, while others received too little. Those who got too much felt they had to spend it all because any balance reverted to the general treasury, and the following year their requests might be reduced by that amount.

The looseness and complexity of the system was an invitation to increase items, sometimes by considerable amounts, once the appropriation bill got to the floor of the assembly. Furthermore, the fact that the requests of each agency for funds were considered by its own committee—instead of by a single committee—led to logrolling among the interests seeking money. Support my post office building, said one group, and I will support your river and harbor bill. The end result was that no one knew exactly what the cost of government might be in the ensuing year, or whether revenues were adequate. And neither the legislature nor the chief executive was in a position to make campaign promises concerning the cost of government with the assurance of being able to carry them out. Of course some of these abuses, such as logrolling, could not be entirely eliminated by any revised system of budgeting. It is obvious, however, that what was needed was a more adequate preliminary investigation of departmental claims, together with a unified responsibility for the total expenditure submitted to the final vote of the legislature. The executive budget comes nearest to meeting both tests.

The cities were the first to adopt a more modern system of financial administration, but the states followed soon after. The federal government was a generation late, adopting a modern system only in 1921. The cities realized that if they could not control finances they could not hope to put an end to graft. Interest in improved financial measures, therefore, accompanied the municipal reform movement that started in the 1880's and became a real force by the turn of the century. Prominently associated with it were political scientists Frank J. Goodnow, Albert Shaw, Charles A. Beard, Frederick A. Cleveland, and W. F. Willoughby.

Among the states, the credit for early budgetary reform belongs to Wisconsin and California, acting in 1911. Both at that time were headed by Progressive governors. Some impetus, however, as noted above, came from the example of the Commission on Efficiency and Economy appointed by President Taft in 1911. Other states followed the lead of California and Wisconsin, and by 1926 all of them had adopted a formal budget system of one kind or another, with the executive type predominating. It was a remarkable and highly creditable performance over a fifteen-year period.

The Federal Budget Act of 1921

The first substantial achievement of President **Taft's** 1911 Commission on Efficiency and Economy was the Budget and Accounting Act of 1921. This law gave the President a clear-cut authority to study and recommend a financial program for the national government as part of his annual budget message. The Bureau of the Budget headed by a director and the General Accounting Office headed by the Comptroller General were brought into existence. The first is watchdog for the President; the second is watchdog for Congress.

The Bureau of the Budget is primarily responsible for formulating the financial programs of the federal government, and secondarily for seeing that they are carried out in accordance with the President's policy. The Comptroller General, who is concerned exclusively with expenditures, must certify that the funds requisitioned by administrative agencies were actually provided by Congress, and makes an annual audit report, containing criticisms and suggestions, to Congress and the President.

Since the Reorganization Act of 1939, the Bureau of the Budget—as mentioned earlier—has been a part of the Executive Office of the President. The bureau's functions have expanded until, in addition to budget matters, it is now responsible for the central statistical services of the government, the reconciliation of legislative programs proposed in the administrative departments, and for organization questions referred to its administrative management unit.

PREPARATION OF THE BUDGET

Budget planning begins in the operating departments. No central agency—whether called a bureau of the budget or a department of finance—can turn out a workmanlike job of budgeting unless responsibility rests on the operating bureaus in the first place. In the federal government the Bureau of the Budget determines how financial estimates shall be presented and what information they shall include. It also provides standardized forms for the use of the operating agencies in planning their own needs.

Financial management includes a hierarchy of budgetary officials, each reporting to the head of the agency to which he is attached. Every major department and independent establishment has a man in charge of finance, who may be called assistant to the Secretary, budget director, or administrative assistant. Often he has a good deal of authority and influence in the departmental setup. He is concerned not only with budgets but also with organization and efficiency, and sometimes even with personnel management. An outstanding example of this combination of functions in the federal government occurs in the Department of Agriculture.

Budget Procedure in the Operating Bureau

The hierarchy of finance officials in a department frequently extends to the bureau level. In that case, the bureau chief will have an assistant who deals

with budgetary matters. If the work load is heavy, he in turn will have accountants, statisticians, and others to help him. Budgetary planning begins, therefore, in the operations of the bureau.

In the larger governmental units, budget preparation has become a full-time concern. No sooner is one budget out of the way—with the hearings before the Bureau of the Budget and Congress over and the appropriation act passed—than work begins on the following year's estimates. It is a big job. If put off until the last minute it will not satisfy either the Bureau of the Budget or Congress. *Budget preparation involves careful, detailed planning and hence constitutes not only an appropriation device but also an essential tool of the operating official.*

The preparation of the budget starts in the operating bureau when the bureau chief asks his division heads to submit to him or to his budget officer by a certain date detailed estimates of their needs. It is then the responsibility of the division heads to set forth what new positions and other items of expenditure they will require. In most agencies the personnel costs will be higher than any other administrative expenditures, such as those for rents, travel, printing, or supplies.

Each item must be entered in separate sections on the forms provided by the Bureau of the Budget. Administrative expenses must be differentiated from operating expenses such as subsidy payments to farmers, or social security payments to the states. When all the estimates have been determined by the operating officials in the bureau, they must then be reviewed by its budget officer. At this point the operating official may explain and justify his requests for additional funds. When all the divison heads have been heard, the matter is laid before the bureau chief, who then decides what items to allow and what to disallow. His is the initial authority to determine what the plan shall be—whether the expenditure is necessary, whether it fits into his over-all plans, and whether he can support a request for the additional funds.

Departmental Action

The next step is the combination of the several bureau estimates into a departmental total. Here the procedure is substantially similar to that which takes place in the bureaus of the department. The bureau chief—who acted as judge in hearing his assistants—now acts as attorney for his own case and theirs. He must justify his requests to the departmental budget officer and the head of the department.

The second decision in the total process is made when the department head decides what items to allow and what to reject in the requests of the bureaus which come under his jurisdiction. He applies a series of tests similar to those the bureau chief has already used, but at the next higher level. One of these is his knowledge of the financial policy of the chief executive—the President or the governor—whether it is an economy regime, or one that is willing to expand services where expansion is needed. At the federal level there is also the

question of how the Bureau of the Budget and the appropriations committees of Congress are likely to react to requests for more money. All of these men have professional reputations at stake. They want to guess right. They want to plan their programs in such a way as to inspire confidence and even praise. Professional considerations such as these are an important factor in successful budgetary programs.

APPROVAL BY THE BUREAU OF THE BUDGET

The day finally comes when the department is to appear before officials of the Bureau of the Budget. There is an overtone of quiet excitement everywhere. All the plans and ambitions of the bureau staffs for the coming year are involved. The department head has been thoroughly coached by his budget officer and yet he cannot help feeling a slight nervousness. The budget officer knows so much more about it than he does—if only the budget officer could make all the statements and answer all the questions! But of course that would not do. Policy questions will come up for which the department head alone is responsible. However, if there are too many detailed questions, he tells himself, he will see that his budget officer answers them.

For his part, despite the fact that he started work on the budget a year ago, the budget officer has been working incessantly over the inevitable last-minute charts and statistics and the many clearances with the budget men in the operating bureaus and the Bureau of the Budget itself so that everything will be in proper form.

Sometimes the hearing before officials of the Bureau of the Budget will last the better part of a day; sometimes as much as two or three days. It depends on how complicated the departmental budget is, how well prepared it is, and how much the estimates committee of the Bureau of the Budget knows in advance about the department in question and its needs. The hearings tend to become shorter because the staff of the Bureau of the Budget—like the finance officers of the department—has learned to do more work in advance. The budget hearings for the entire federal government are packed into a three- or four-month period. During the rest of the year, officials of the Bureau of the Budget make firsthand investigations in close cooperation with the executive heads of the departments and bureaus and with the active cooperation of the departmental budget officers.

Some of the primary principles of a budget hearing follow. First, well in advance of the budget hearing, the most reliable information possible must be secured by officials of the Bureau of the Budget through personal study in the central office and in the field establishments of each department.

Second, the most telling case possible must be made out by each department, with its data reduced to graphs and tables where the picture can be seen at a glance. Especially where vital information as to costs and expenditures is presented, everything that can be so treated should be translated into unit costs according to cost accounting methods.

Third, the budget hearing should be confined to general statements as to program objectives, the ability of the organization to absorb proposed expansions, and a limited number of questions to which the staff of the Bureau of the Budget has been unable to find the answers in advance.

In other words, if the preliminary work is well done, and the data are presented in graphic form, there is no reason why the budget hearing should extend over a protracted period.

Organization of Estimates Hearings

Each estimates committee in the Bureau of the Budget in the federal government consists of from four to six hearing officers, one of whom acts as chairman. He must have a knowledge of finance, government procedures, and administrative organization and management. Usually he is primarily concerned with the efficiency of organization, personnel, and procedures in the agencies coming under his jurisdiction. His staff is made up of experts in various fields who supplement his knowledge and experience. One of these is invariably a finance man familiar with costs, accounting methods, statistics, and the like. Two or three will be juniors who do much of the actual investigating both in the field and at headquarters.

In the federal Bureau of the Budget there are a half dozen of these estimates committees. Each has a group of departments and independent establishments for which it is responsible. For example, all of the military establishments fall conveniently into one category, the regulatory commissions make another, the Labor Department and the Federal Security Agency are naturally combined, and so on.

Before the hearing is over, the departmental officers usually know fairly well what items the estimates committee is going to challenge and what are considered satisfactory. Sometimes the committee will even suggest the addition of certain sums, particularly for administrative officials, if in its judgment these would increase the efficiency of the program. Hearing committees try to be sympathetic and constructive. Indeed, contrary to the general assumption, the hearing is more like a case before an equity court than a cockfight.

The hearing committees of the Bureau of the Budget, however, do not have final authority. Above them a review committee consisting of the senior officers of the Bureau of the Budget decides all controversial questions before the estimates, as revised by the hearing committees, are finally submitted to the Director of the Bureau of the Budget. When the various departmental estimates finally reach the Director, he tries to keep in mind the policies of the President —with which he is familiar because of having talked with the President in advance regarding governmental emphases. In making final decisions, therefore, the Director is governed by the President's over-all objectives, preferences, and policies in determining what to allow and what to reject.

When all hearings in the administrative branch are finally over the consolidated budget for the entire federal government is put together and sub-

mitted to the President for his scrutiny and approval. The document is then printed in a volume entitled *The Budget of the United States Government for the Fiscal Year Ending June 20, 19—*, a large volume about the size of a metropolitan telephone directory, containing many hundreds of pages of fine print on fine paper. The President submits it together with his budget message to Congress, and in this manner the budget is made public. The appropriations committees of the House and Senate now learn what the chief executive has recommended for their consideration, and at the same time each department and independent establishment learns how well or how badly it has fared at the hands of the Bureau of the Budget.

But the work of the departments is not over. The next hurdle is the hearing before the appropriations subcommittees of the House.

The Bureau of the Budget Cuts Estimates

The degree to which hearings before the Bureau of the Budget have resulted in savings to the taxpayers is seen in the following table covering the years 1924 through 1930:

REDUCTIONS EFFECTED BY THE BUREAU OF THE BUDGET IN ORIGINAL ESTIMATES, 1924–1930

Budget for year ending June 30	Reductions (*000 omitted*)	Percentage of budget
1924	$307,404	10.0
1925	318,208	10.5
1926	324,324	10.5
1927	150,286	4.8
1928	112,735	3.5
1929	189,881	5.4
1930	280,778	7 6

Source: Leonard D. White, *Introduction to the Study of Public Administration* (New York, 1939), p. 216. By permission of The Macmillan Company, publishers.

THE LEGISLATIVE STAGE

Two or three months usually elapse between the action of the Bureau of the Budget and the time that officers of the departments are heard by a subcommittee of the House Appropriations Committee. These Congressional hearings are usually scheduled during the winter months, commencing soon after the convening of Congress in January. The procedure at this stage resembles that in the Bureau of the Budget. Subcommittees, consisting of from eight to twelve members of the House Appropriations Committee, act on estimates submitted by particular groups of agencies. The categories are similar to those set up by the Bureau of the Budget.

The chairman of each subcommittee is assisted by the clerk of the appropriations committee or one of his subordinates, on whom great reliance is

placed. Of all the employees of the legislature, few exceed in ability the clerks of the appropriations committees. These men must be familiar with the government from every angle. They must know intimately the agencies and their executive personnel. They must have a grasp of organization methods and management principles. And they must know the soft spots in the estimates coming before the committees. Like the officials of the Bureau of the Budget, these clerks acquire much of their knowledge through trips to the field and by firsthand investigations in Washington.

Sometimes members of the appropriations committees will accompany the clerk, and in the course of such visits all manner of situations are investigated. Does the immigration station at Ellis Island need the extensive repairs claimed, and should the ferry be replaced? Are more immigration inspectors needed at El Paso, Texas, because of the heavy flow of traffic across the bridge and the increase in illegal entries? Are the shipyards using more personnel than they need? Is it true that men are being "hoarded" by the shipping companies? Members of the subcommittee, accompanied by the clerk, will attempt to find out.

Some members of the appropriations committees, harder working than others, make it their business periodically to look into the agencies coming under their jurisdiction, and to talk with their chief officials. Alert committee members want to be sure that manpower is not being wasted, that the public is getting its money's worth, that laborsaving machinery and new automobiles are actually needed as claimed. They come to be experts on the executive programs. Such conscientious members of Congress, public servants in the highest tradition, do a lot of work their constituents rarely hear about. Fortunately their number has increased in recent years.

Arguing the Case before Congress

The budget hearing before the appropriations subcommittee of the House of Representatives is as thorough as that in the Bureau of the Budget. The procedure is substantially the same in both cases. It includes an opening statement by the department head, questions by the members of the subcommittee concerning objectives and policies, and then a detailed consideration of all subdivisions of the estimates. The smallest items are the subject of inquiry. Congress is particularly sensitive to requests for new automobiles, to the need for new positions, especially in the higher salary brackets, and to figures on the cost of feeding and lodging persons in public institutions such as hospitals.

The demeanor of the members of the subcommittee is formal and courteous. Their questions are usually intelligent and to the point. When the agency being questioned deserves credit for its record, the subcommittee is unstinting in its praise. But woe to the department caught trying to evade embarrassing issues, whose testimony is not open and straightforward, or whose witnesses are disrespectful. Such an offender will have little doubt, on leaving the hear-

ing, that the estimate allowed by the Bureau of the Budget will be pared by the committee.

A witness makes a fatal mistake who suggests that the Bureau of the Budget has already considered and allowed some item. Comes the booming reply, "Sir, the Constitution of the United States gives the power of appropriating money to the Congress. The Bureau of the Budget has no such authority. Just forget that you ever appeared before that agency." Yes, Congress is jealous of its financial powers. It is also jealous of the executive. The Bureau of the Budget, in the eyes of Congress, is part of the executive establishment. Congress insists, therefore, on hearing *de novo* each agency that appears before it for funds.

This is a necessary double check. Congress makes the policy. Congress sets the limits to what the executive agencies may do. Congress holds the purse strings. Congress knows its business when agencies appear, seeking funds. The Bureau of the Budget naturally tries to do a job that Congress will not change but, try as it will, never fully succeeds. Congress has its own ideas on this subject and is prepared to enforce compliance with them.

The power to initiate money bills which the Constitution gives the House of Representatives is its only distinctive power similar to the powers of the Senate to approve appointments and concur in the making of treaties. But the Senate Appropriations Committee must also be satisfied before the departments can get their money. This means a second Congressional hearing for the department head, usually coming a month or so after the hearing in the House. The Senate hearing is not as detailed or as skilled as that in the lower house, which prizes its distinctive power and shows by its assiduity that it means to make the most of that power.

At last, however, all the hearings are over and the final pruning in committee has taken place. The hearings will be printed, and the appropriations bills are also printed and reported out of committee. It should be noted that appropriations bills are separate for each agency or department, rather than consolidated into a single estimate for the entire government, as is the practice in Great Britain.

The bills now appear on the floor of the chamber for consideration and debate. Amendments may be made. Congress at this stage may still decrease or increase the amounts recommended by the appropriations committees, and to reconcile differences a conference committee representing both chambers may be called. After final approval by both houses, the appropriation bill is sent to the White House, where the President may, if he wishes, exercise his veto power, as in the case of ordinary legislation. But a veto is rarely used because of its disrupting effect. Unlike the chief executive in some state and city governments, as has been noted, the President does not have the power to veto separate items.

Congress characteristically changes the amounts previously approved by the

Bureau of the Budget. The record of such action for a six-year period is found in the following table:

VARIATION BETWEEN CONGRESSIONAL APPROPRIATIONS AND PRESIDENTIAL BUDGETS, 1925–1930

Year	Amount of decrease (*000 omitted*)	Per cent of total budget
1925	$10,599	.35
1926	10,053	.34
1927	4,945	.35
1928	5,350	.16
1929	6,555	.18
1930	4,613*	.11

* Increase.

Source: Leonard D. White, *Introduction to the Study of Public Administration, op. cit.*, p. 220. By permission of The Macmillan Company, publishers.

Here is another striking difference between our system of Congressional government and British parliamentary government. By its own rules Parliament may reduce or eliminate items, but it cannot increase them because this would be considered a vote of lack of confidence in the cabinet leadership. In this respect, Congress has a wider freedom.

STATE AND LOCAL BUDGETARY SYSTEMS

Although the illustrations used here have been drawn chiefly from the operations of the federal government, the general outline applies equally to executive budget systems in both state and local governments. An interesting variation in the procedure of some states, however, may be noted. Thus instead of the governor's transmitting to the legislature only the estimates approved by the budget bureau, some states provide that both the original departmental estimates and the revised estimates shall be submitted for consideration. This permits the appropriations committee of the legislature to see what disagreement exists and—after going into the merits of the case *de novo*—to make its own decision. This is quite different from the rule in the federal government where tradition forbids a departmental officer from mentioning to the appropriations committee any cuts or disagreements between him and the Bureau of the Budget.

How the legislature acts on the governor's budget estimates depends largely on how friendly the two branches are. If party harmony is strong, the changes are likely to be few. But if the governor belongs to one party and the legislature is controlled by another—as has happened several times in New York and other states—almost anything can happen. Generally speaking, however, like Congress, the state legislatures do a conscientious job of budget consid-

eration. Legislatures prize the power and are eager to make their financial work a success.

In municipal government the executive budget is found in most of the large cities, where the strong-mayor plan predominates. City managers are also authorized to prepare estimates. And something akin to the executive budget is found in commission-plan cities. Some municipalities, such as Los Angeles, have created separate budget bureaus, and here the procedure is much like that in the federal government. As a matter of fact, as noted above, budgeting is an area in which the cities have always pioneered.

THE EXECUTION OF THE BUDGET

Even after the bureau chief has breathed a sigh of relief when the last hearing is over and he has not been cut too badly, he finds that the matter does not end there. He encounters many subsequent procedures which check, authorize, and audit his expenditures. He cannot simply go to a pay window, draw a check, and deposit it in a bank. On the contrary, his agency merely receives an account number in the Treasury Department where—if his requisitions are made out in the proper form and have the necessary endorsements—checks will be drawn by the Treasury officials on the credit of the United States. Operating officials have no funds under their own direct control.

Nor does the Bureau of the Budget step out of the picture. It requires that the bureau chief divide his appropriation into four quarterly amounts and that he not overdraw any quarter's allotment without its permission. The Bureau of the Budget also insists on setting aside a reserve fund from each departmental appropriation in case unforeseen contingencies arise. These departmental cuts are distributed among the several bureaus, giving each a percentage less than Congress authorized. If the bureaus can live on these reduced amounts, so much the better—the Bureau of the Budget can claim credit for securing economies, and in many cases it has actually done so. Thus the Bureau of the Budget stands at the side of the operating official even after he gets the use of his money.

The Budget as an Operating Control Device

The central administrative controls exercised by the Bureau of the Budget, however, are not the only ones in government finance. There is also a self-imposed control. The department head or bureau chief regards his budget as a yardstick, as has been explained. When one quarter of the money is used up, one quarter of the job must be completed or the funds may be exhausted before the job is done. Agencies have actually been unable to meet pay rolls several weeks before the end of the fiscal year. The Bureau of the Budget tries to be of help by imposing the requirements referred to, but these are not enough. The immediate responsibility lies with the operating official who, by his own foresight and executive control of operations, must see that expenditures on his program stay within bounds. He knows that both the

Bureau of the Budget and Congress frown on supplementary appropriations —more money before the year is out because the original appropriation was insufficient or was spent too quickly. *If budgeting is done well, supplemental appropriations should never be allowed; emergencies such as war or depression and other crises that cannot be foreseen are the only valid justification for the premature exhaustion of funds.* The administrator who needs a supplemental appropriation reveals an inability to plan skillfully. And if he is deficient in this respect there is reason to doubt his ability as an administrator.

It often happens, however, that more money is needed on one account and less on another than was originally planned, and hence there should be freedom to make these adjustments. On a particular project, the administrator may need more for travel but less for personnel, or more for rent and less for new construction. Not every contingency can be seen in advance. *To secure the greatest efficiency, therefore, the operating budget must be flexible rather than rigid.* When amounts of any importance are involved, it is usually necessary to secure the permission of the Bureau of the Budget before transfers from one account to another can be made. Sometimes only an informal clearance is required, but at other times it must be formal. Occasionally the Congressional appropriations committee must be consulted as well. In case of doubt, it is better to consult.

The General Accounting Office

In most business enterprises the executive is free to determine how the budget shall be spent. His only accountability is to an auditor who checks up afterward to certify that the records are true and complete. In this respect business executives have more freedom than government executives, who are confronted not only by a post-audit but in a substantial number of cases by a pre-audit as well. The pre-audit is a certification by a special agency—such as the General Accounting Office, which reports directly to Congress—that the voucher asking for funds is in conformity with the provisions of the appropriation. If the Comptroller General who heads the General Accounting Office says it is, the operating official can get his funds. Otherwise he cannot.

This double check—and especially the Comptroller General's practice of disallowance in the settlement of disbursing officers' accounts—has led to a good deal of dispute within the federal government.[1] The Attorney General, as legal adviser to the President and his Cabinet, has sometimes been appealed to in cases of disagreement and has ruled that the funds requested were duly authorized, but the Comptroller General has been adamant in his refusal to yield. As guardian of the Treasury for Congress, he has held that he is not bound by the opinions of the Attorney General on matters pertaining to expenditures. The President's Committee on Administrative Management, taking cognizance of this difficulty in 1937, concluded that the pre-audit is an

[1] See Harvey Mansfield, *The Comptroller-General* (New Haven, 1939).

unnecessary infringement on the executive power of operating officials; that post-audits are necessary but pre-audits are not. But to no avail. Congress apparently favors the present system and certainly leaves no doubt that it favors the Comptroller General.

A historic clash occurred between the Comptroller General and an operating agency when the Tennessee Valley Authority and other federal corporations sought custody of their own funds and permission to keep their own accounts according to business procedures instead of standard governmental methods. They also asked the right to choose their own outside accountant firms—as business corporations do—instead of having to rely on the General Accounting Office.[2] The Tennessee Valley Authority has won most of its quarrels with the Comptroller General so far, but several other government corporations have not been so successful. The General Accounting Office simply says in effect: You are a part of the government; it matters not to us that you are organized as a corporation; we have been given authority to audit all government accounts; we insist on uniformity.

SPECIAL ISSUES IN FINANCIAL ADMINISTRATION

There are several areas in government in which power over the purse is in dispute. The first of these concerns the authority of the General Accounting Office.[3]

As suggested above, no one doubts the necessity of post-audits carried out by a special agency reporting to the legislature. But must this agency always be the General Accounting Office? Might not some other agency serve as well in special types of cases?

The accounting methods of business and government do not always coincide, and government corporations would prefer to use the methods of their counterparts in private enterprise, especially with regard to systems of cost accounting and similar procedures. Furthermore, it is argued, funds should be readily available to corporations, not locked up in the Treasury and subject to the red tape of a pre-audit. In addition, a business enterprise, whether privately or publicly owned, must be free to borrow money and retain its net earnings to finance expansions. This is an issue that will be watched with great interest.

Another area of controversy is equally important. Is the legislature to continue to exercise the final power in financial matters, or will the executive increasingly encroach on its authority and influence? The best solution, obviously, is the present cooperative scheme by which each contributes its due part to the total budgetary process.

But if executive power grows relative to that of the legislature—which is the current tendency—then it will doubtless affect the fine balance existing in

[2] C. Herman Pritchett, *The Tennessee Valley Authority* (Chapel Hill, N. C., 1943), pp. 249–263.

[3] See John McDiarmid, "Reorganization of the General Accounting Office," *American Political Science Review*, XXXI (1937), 508-516.

financial matters. This goes to the roots of representative government and thus constitutes another area that will bear watching.

Finally, there is the question of relationships between the power and influence of operating officials and that of central financial control agencies such as the Bureau of the Budget and the General Accounting Office. If their programs are to have drive and vigor, operating officials must be free from unnecessary and obnoxious central interferences. But at the same time, central controls are necessary to secure uniformity of procedure, conformity to the statutes, and accountability to the public.

Where is the desirable balance between these two considerations? The question comes down to this: How much uniformity may be demanded without sapping the life of effective administration? Prominent businessmen who have served the government in times of war and depression universally complain that uniformity is already carried too far. Are these insoluble problems in representative government, or are the workable balances there, merely awaiting careful analysis and application before the desirable results that are inherent can be obtained?

SUPPLEMENTARY READING

1. General: A. E. Buck, the outstanding authority on budgets, has written *Public Budgeting* (New York, 1929), *Municipal Finance* (New York, 1926), and *The Budget in Governments of Today* (New York, 1934). See also W. F. Willoughby, *Principles of Public Administration* (Washington, 1927), Chapters 28–43. For the budgetary process at the operating level, see Marshall E. Dimock, *The Executive in Action* (New York, 1945), Chapter 11, "Financial Planning."

2. Federal budgeting: W. F. Willoughby, *The National Budget System* (Baltimore, 1927), and *The Legal Status and Functions of the General Accounting Office* (Baltimore, 1927); The President's Committee on Administrative Management, *Report with Special Studies* (Washington, 1937), pp. 135–168, also "Financial Control and Accountability," by A. E. Buck, and "The General Accounting Office," by Harvey Mansfield. See also Daniel T. Selko, *The Federal Financial System* (Washington, 1940), Chapters 23–29; E. E. Naylor, *The Federal Budget System in Operation* (Washington, 1941); Harvey C. Mansfield, *The Comptroller-General* (New Haven, 1939); E. F. Bartelt, *Accounting Procedure of the United States Government* (Chicago, 1940); and Arthur N. Holcombe, "Over-all Financial Planning through the Bureau of the Budget," *Public Administration Review,* I (Spring, 1941), 225–230.

3. State budgeting: Austin F. Macdonald, *American State Government and Administration* (New York, 3rd ed., 1945), pp. 348–360; Leslie Lipson, *The American Governor* (Chicago, 1939), pp. 37–39, 243–255; A. E. Buck, *The Budget in Governments of Today, op. cit.;* Kirk H. Porter, *State Administration* (New York, 1938), Chapter 6; and J. W. Sundelsen, *Budgetary Methods in National and State Governments* (Albany, 1938).

4. Municipal budgeting: A. E. Buck, *Municipal Budgets and Budget-Making* (New York, 1925), and *Budgeting for Small Cities* (New York, 1931); William Anderson, *American City Government* (New York, 1925), Chapter 20; Austin F. Macdonald, *American City Government and Administration* (New York, 3rd ed., 1941); Thomas H. Reed, *Municipal Management* (New York, 1941); Lent D. Upson, *The Practice of Municipal Administration* (New York, 1926); and Russell Forbes, *Governmental Purchasing* (New York, 1929).

CHAPTER 38

Holding Administration Accountable

THE MORE POWER we citizens vest in our governmental officials, the more protection we must have against the possible abuse of power. This balance is one of the most difficult to achieve in the entire range of government. If the power accorded officials is not adequate to the work they must do, they will be frustrated and we will be dissatisfied with them and with the government. But if their power is unrestricted, its benevolent use, so it seems, eventually becomes perverted to malevolent ends.

Our revolutionary forefathers had reason to understand the universal nature of this law. "Eternal vigilance is the price of liberty" was no empty aphorism to them: it reflected centuries of experience with strong governments resistant to popular control. Thus the framers of our Constitution developed the doctrines of constitutional limitations, checks and balances, and circumscribed powers.

A PROBLEM OF STATECRAFT: POWER AND CONTROL

In twentieth-century America the question of official power versus public control assumes even greater significance than it did 150 years ago. Government has been given more to do than ever before in history, and the tendency has not stopped. Social and economic problems are comprehensive and not always easily defined. Major statutory enactments, of necessity, merely state general objectives, leaving the instrumentation of the law to be worked out by the administration and the courts. In government as in any other human endeavor, power must be equal to the responsibility vested. Seemingly, therefore, the granting of large amounts of collective power must inevitably accompany the complexities which have evolved in the modern community. If we do not feel like relying solely on the benevolence of human nature and the morality and self-restraint of our wielders of power, the formal safeguards must be intensified as power is increased.

This is a formula easy to state but difficult to apply. If the restraints are numerous and burdensome they may thwart the social purpose of the law. They may discourage good men from entering the public service and staying with it. They may make governmental administration dull and unimaginative and the stated obectives of legislation impossible of attainment. Problems will then remain unsolved, additional difficulties will accumulate, social tensions will increase, and eventually the citizen will find himself in a state of mind

where he prefers strong rule to the protective restrictions which originally gave rise to impractical restraints.

How to combine effective power and effective safeguards, therefore, becomes fundamental to good government. It is a problem which arises in all forms of government but in none so much as in representative government.

The Multiplication of Individual Abuses

These are the large aspects of the problem. But we have not yet focused our attention on the point where most of the difficulties actually arise.

Seizures of power by a *coup de force* are fortunately rare. The political alacrity of the people, supported by the courts and the armed forces, can usually be relied on to prevent them. What is infinitely more difficult to guard against is the multiplication of annoyances and invasions of individual rights by the government, causing injury to persons in the enforcement of particular laws.

Revolutions grow out of the accumulation of individual grievances. It was the arbitrary and excessive power wielded by taxgatherers, local magistrates, and the minor bureaucracy of the French rulers which infuriated the peasants of France and the proletariat of Paris. Similarly, the malenforcement of the law had quite as much to do with the outbreak of the American Revolution as the colonial policies enunciated at Whitehall. A glaring injustice quickly becomes the knowledge of entire communities. Every citizen wonders if the same thing might not happen to him. Soon the potential danger is magnified and the government is condemned because of instances which have been generalized. A widespread loss of confidence paves the way for violent upheaval. An evenhanded administration of the law, therefore, which guards against the accumulation of individual injustices, becomes an essential factor in stable representative government because what seem to be large abuses of power are more often simply an accumulation of individual instances.

Types of Situations Arising Today

Rudeness is an offense easily committed in all institutions, government included. A citizen calls at the office of an enforcement agency to get help in filling out a required form and is forced to wait for ten or fifteen minutes because no one is available to help him. Then he is rudely told, "Why, it's perfectly plain." The fault? It may be any one of a number of things, including poor organization, an overworked staff, a low state of morale, inadequate supervision, or an employee who lacks common courtesy. This kind of difficulty can be solved by administrative action on the part of the offending person's superior.

Then there is the sort of case where summary action is required. A farmer's horse, for example, is condemned and killed by a public health official on the ground that it is diseased. The farmer has reason to doubt the accuracy of the diagnosis and asks the right to be heard and to receive indemnification for his

loss. Or a milk inspector pours cans of milk into the gutter, alleging it is unfit for human consumption. Or a building inspector orders a house torn down because, according to him, it creates a public hazard. Will the government permit the individual's property in each case to be taken without further recourse?

Sometimes the objectivity of the administrator or inspector is in question. An official in public office finds that buildings owned by him have been assessed at amounts which seem unreasonably high, both in the light of past assessments and compared with valuations on similar property in that neighborhood. The tax assessor belongs to the rival political party and is a sworn political enemy of the public official owning the buildings. What recourse, if any, does the owner have?

The exercise of administrative discretion gives rise to many problems. An individual wants to erect a filling station on a given intersection and is told that zoning regulations will not permit it. Yet he finds that a filling station has been built a block away under the same ordinance. Arbitrary or reasonable? A state public-utility commission looks into the valuation of a property and finds that a large sum—let us say $100,000—was paid a firm of engineering consultants for a month's services. The commission decides that this is plainly exorbitant and refuses to allow more than half of it. What will happen?

The question of intent must frequently be determined by administrators as well as by judges. For example, a wealthy individual fails to file an income tax return on stock sold for more than double the price he paid for it ten years earlier. If he omitted the declaration with intent to defraud the government, penalties will be added to the usual ones. Can the decision safely be left to the appeal officers of the income tax administration, or should the offender be accorded a judicial hearing? Can one agency get at the facts more successfully than another?

In the course of its work government causes bodily and property injuries to countless individuals. This is inevitable because of the extent of the properties it owns and the facilities it operates. Should the government offer the injured person the same degree of financial indemnity that a private offender would be required to pay? A man falls on a defective stair in a public building and breaks a leg. A child is playing on a swing at a public school; the rope was worn and breaks. A fire engine out on a practice run turns a corner too fast and strikes a car parked in a lawful place on the street. A policeman fires at an escaping thief and wounds an innocent bystander. How much liability should the government be required to assume in such cases, which occur by the hundreds every year?

This chapter will deal with the various means by which government may be held accountable to the citizen for abuses due to the excessive use of power, lack of jurisdiction, or malfeasance. It will discuss administrative law, including administrative due process, the controls of administration which may be exercised by the government itself, the controls offered by the legislature,

the part which the people themselves may play, and finally the role of the courts.

ADMINISTRATIVE LAW

The government's liability to its citizens for injuries done them—accidentally or by use of an excess of power—is a part of administrative law, already defined as that body of law which relates to the administrative organization and personnel of government, the powers exercised by administration, and the remedies by which the individual may obtain redress against the invasion of his rights. Between administrative law and public administration is the closest kind of connection.

Administrative law is the law in action. It relates to one of the fundamental philosophical problems of all times: How can public and private rights be correlated with the greatest benefit to both? A study of a group of legal and constitutional concepts is essential to an understanding of the problem as it exists today. Some of these concepts originated long ago in the common law and the constitutional law of England, and others have been developed in the United States. The most important of these concepts are the rule of law, sovereign immunity from suit, and due process of law as applied to administrative action.

The rule of law. There have been several classic statements by judges and commentators as to what the rule of law means in English jurisprudence. From Professor A. V. Dicey we learn that the rule of law means, among other things, that "every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals . . . . every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen . . . ." In a word, *the rule of law means that no citizen or official is above the law, and the law and the courts shall be the same for all.* This has an important bearing on the field of administrative law.

Sovereign immunity from suit. The principle of the rule of law, however—involving a common liability—must be squared with another which runs counter to it: the king can do no wrong. Here again is the effect of the monarchical tradition. The king could not be sued without his consent because otherwise his primacy and power might be weakened. Common law judges, therefore, were confronted with a dilemma. Granting, they said, that the king in person cannot be sued, what is to prevent the officials who serve under him from being sued? Even before the king's primacy had been overthrown in the seventeenth century, this line of reasoning had begun to make some progress.

When the king's sovereignty was transferred to Parliament in consequence of the revolution of 1688, the doctrine of nonsuability was transferred with it from the king's person to the organized political state. The ancient rule, the

king can do no wrong, was converted into the modern rule, the government can do no wrong. This is the starting point and the present general assumption regarding the right of the individual to sue the government. Over a period of time, however, the immunity has been relaxed and tends gradually to be converted into liability to suit. To what extent suit against the government in the protection of individual rights is now possible will be shown in the pages which follow.

Due process of law applied to administration. The concept of due process of law was influenced by the rule of law as found in England. Due process, therefore, might be called the American counterpart of the English rule of law—except, of course, as noted earlier, that its ramifications are greater here than in England.[1]

The word "process" in the term "due process of law" calls attention to the fact that a *procedure* is contemplated. And since administration is procedural in nature, due process of law must be applied to the field of administrative action. Due process of law applies to all three branches of American government: the procedure and substance of legislation, the procedure and substance of public administration, and the procedure of judicial tribunals. Due process of law as applied to administration is customarily referred to as administrative due process. What are its principal requirements?

Principles Applicable to Administrative Due Process

The chief rules that the courts will enforce in the conduct of public administration are these:[2] 1) The administrator must have *jurisdiction* in each case. If he attempts to apply the law without statutory authorization, or to decide on the individual's rights and duties without authority to do so, the individual may go to court and have the proposed action set aside. This rule also applies to judicial tribunals. No court or administrative agency has the power to regulate the interests of individuals unless it has been given jurisdiction by constitutional, statutory, executive order or by some other form of legally constituted authority.

2) The administrator may not act in *excess of his authority.* Not only must he have jurisdiction, but he may not lawfully extend that jurisdiction to areas or subject matters where he has no authority to act. If he attempts to extend his jurisdiction without such authorization it becomes a case of excess of power. Obviously the questions of excess of power and jurisdiction in the first place are closely related; at the outset it takes an express authority to act, but even after the authority has been established, the administrator or tribunal may not exceed the competence vested in it.

3) When acting in a quasi-judicial capacity, the administrator or tribunal must *act impartially.* If the record discloses that the deciding official has a personal stake in the case, or if it can be shown that prejudice due to some

[1] Chapter 29, "The Judiciary as Policy Maker."

[2] See James Hart, *An Introduction to Administrative Law* (New York, 1940).

other cause renders objectivity of decision impossible or unlikely, the court will disqualify the deciding official and refer the case to another tribunal or administrative official whose objectivity can be relied on.

4) When an action is taken against an individual that directly affects his property rights, or in other ways affects his basic rights as a member of society, he has a *right to notice* of such proceeding. The requirements of notice vary considerably in different types of situation. In some cases the affected individual is entitled to direct, written notice. In others it is sufficient to publish the notice in the press or some other publication stipulated in advance. For example, if the Interstate Commerce Commission contemplates an order discontinuing the service on a branch line of a railroad, the company must be given advance notice of the time and place of the hearing and the matter to be disposed of. On the other hand, tax laws usually provide that newspaper publication of a list of delinquent properties is all the "constructive" notice that is necessary prior to the forced sale of an individual's property for nonpayment of taxes.

5) When an individual's essential rights are being determined in a quasi-judicial manner, there can be no alienation of his property or disposition of similar interests without giving him a *right to be heard.* When applied to courts of law, this rule assures a person his day in court. But this requirement of administrative due process, like that regarding notice, also has many provisos and exceptions. For example, in cases of summary action—such as those previously mentioned where the public health or safety would be jeopardized if immediate action were not taken—the hearing requirement is waived. But this does not estop the individual from suing the officer for damages or raising the question of his jurisdiction or fairness in a court proceeding.

The administrative hearing is not necessarily a formal hearing similar to a court proceeding. Indeed, such instances are rare. The hearing may merely involve an exchange of correspondence or the opportunity to talk with an official of the governmental agency in question, and not necessarily a top official at that. The formality of the proceeding depends on a number of factors, including the importance of the property or other interests affected, the statutory or agency requirements, the summary or nonsummary nature of the power, and the type of subject matter. Thus, for example, property is involved in both tax and public-utility matters, but the requirements of due hearing are generally greater for utilities than for taxes. Formality of hearing is designed to avoid arbitrary action based on lack of information or insufficiency of evidence. The formality is greater when a person is on trial or is being proceeded against than when he is merely seeking a privilege or some discretionary right from the government.

6) In quasi-judicial proceedings the finding must be *based on evidence.* It is impossible to generalize as to the degree of evidence required in different classes of cases. Sometimes a court reviewing administrative action will hold

that "the evidence" (an indeterminate amount) is sufficient; in other cases there must be a "sufficiency of evidence"; and in still others a "preponderance of evidence." In all of such cases, however, it must be presumed that the "weight" of the evidence sustained the finding.

7) Finally, in quasi-judicial proceedings the administrator or the administrative tribunal is usually required to give the *reasons for the decision.* Ordinarily this requirement is strictly interpreted only when the administrative process is being substituted for the judicial process. The emphasis here is on the substance rather than on the form. The court wants to know that there were express reasons that can be reviewed by outsiders, including the court, and that the conclusions or findings reached from the evidence can be examined.[3]

CONTROL OVER ADMINISTRATIVE ACTION

The requirements of due process, therefore, as developed and applied by American courts, go a long way to vouchsafe impartiality, fairness, and openness in administrative proceedings affecting individual rights. We have reason to take pride in the manner in which this part of the law was developed and its beneficent effects. We should realize, however, that without the active cooperation of the higher administrative officials, the courts would be relatively powerless to translate administrative due process into effective results. Their action is limited, of necessity, to the setting of judicial standards which must be observed and the hearing of the more important cases in which litigation is involved.

However, only a small fraction of the cases in which government officials are overbearing, arbitrary, negligent, or abusive ever gets to the courts. *The primary responsibility for keeping administration within the law, therefore, and seeing that the requirements of administrative due process are universally carried out, devolves on the supervisory officials within the administration itself.*

Thus in the long run a primary form of control over administrative action is that which comes from the higher administrators themselves. If they do a good job of supervision they can uncover the cases in which employees are lax, careless, aloof, or arbitrary. Within the administrator's own supervisory powers there are effective sanctions with which to discourage such behavior.[4] Furthermore, the supervisor's own example of fairness and courtesy will establish the tone of the organization. If incentives and morale are good, the abuses which the public complain of can be greatly reduced. Moreover, a developing spirit of professionalism also acts as a safeguard. City managers, for example, have

[3] For cases and discussion relating to administrative due process, see W. W. Willoughby, *Constitutional Law of the United States,* 3 vols. (New York, 2nd ed., 1929), Vol. III, Chapter 93, "Due Process of Law and Administrative Proceedings."

[4] Consult "Forms of Control over Administrative Action," in C. G. Haines and M. E. Dimock (eds.), *Essays on the Law and Practice of Governmental Administration* (Baltimore, 1935).

adopted a professional code of ethics similar to that of law or medicine, and this constitutes an effective regulator of individual conduct.

Internal Self-Improvement

The internal self-improvement of the bureaucracy must also be relied on to correct many of the pinpricking annoyances which citizens complain of most when their number accumulates. Good administrative supervision based on good procedural standards can also go a long way to assure a judicial attitude in administrative determinations involving quasi-judicial action.

An earlier chapter suggested that judicial temperament is by no means the monopoly of the legal profession. Although the tradition of the institution plays a large part, judicial temperament is an individual matter; it is a blending of a man's personality and character in such a way that he becomes objective, fair-minded and mellowed with experience. There is every reason to expect that persons with these characteristics can be developed in the administrative services of government as well as in the judiciary. It is a matter of recognizing the necessity for the judicial temperament in public administration, doing a good job of picking personnel, and thereafter encouraging the development of this kind of attitude.

The points made above are important enough to be repeated: most administrative offenses must be corrected by the higher supervisory personnel within administration itself—skillful supervision, the cultivation of judicial temperament in hearing officers, and the establishment of administrative standards, codes of ethics and professional conduct, and a system of punishments and rewards. This is not to suggest, however, that the matter can be wholly controlled by the self-government of administration, because recourse to courts of law will always be necessary in cases where substantive considerations are involved.

LEGISLATIVE AND POPULAR CONTROLS OF ADMINISTRATIVE ACTION

Control of administrative officers exercised by the legislature and the public must be added to what can be accomplished by administrative supervision. This subject has already been dealt with in previous chapters, and hence a mere listing of the more important forms of control should suffice in order to round out the picture here.

The principal legislative controls of administration include legislation setting limits to authority and providing procedural requirements; the creation, modification, or abolition of administrative agencies; and the appropriation of funds and the setting of financial restrictions. In addition, there are investigations of administrative conduct by special investigating committees, the interrogation of executive officials in committee hearings, and the use of the question period in legislative assemblies as a means of checking up on policies and alleged abuses. Other measures include the impeachment of public officers,

the demand for the removal of public officers and, in extraordinary cases, the abolition of the office or a reduction in the salary paid.

The methods of popular control over administration are not many but they are effective. First in importance is the periodic election of officials, which affords the people an opportunity to reject an official whose conduct is unsatisfactory. In addition, there are the recall of public officers, the effect of popular agitation and pressure by public opinion directed at the legislature or the higher administrative officials, and the election of auditors independent of the executive to pass on the legality and propriety of expenditures, and otherwise to control the executive in financial matters.

Tort Actions against Public Officials

The types of offenses on the part of public officials which can be controlled by higher administrators, by legislative bodies, and by the electorate have been discussed above. Although the controls are numerous and useful, with the exception of impeachment they are not drastic. The present treatment of actions in tort that can be settled only in a court of law brings up the question of liability to, or immunity from, suit. *A tort is any wrongful act, not including breach of contract, for which an injured party may bring a civil action against the alleged wrongdoer, usually for damages.*

Several of the examples given at the beginning of this chapter would involve tort actions: the injury of a citizen in a public building as a result of failure to maintain it in a safe condition, the negligent operation of the fire truck while off duty, the injury sustained on school property due to the faulty condition of a swing. These are all tortious actions if brought against a private individual. Whether they would be sustained against the government, however, is another matter.

The development of tort liability has had an interesting history. It is apparently agreed that such liability grew out of actions in trespass (illegal entry on something belonging to another) toward the end of the thirteenth century. Liability for negligence also became a factor in the development of the law of tort. *Negligence is simply defined as failure to exercise due care to avoid injury to others when such standards of care are legally expected.*

An action in tort may be brought when either one's person or one's property is involved. Compared with other forms of law, however—such as contracts—the predominant emphasis in tort has been on the *personal* element as contrasted with the right to the possession of *things*. This has caused a leading authority on tort to say, "If any broad general tendency can be traced in the growth of the modern law of tort, it is the idea that human life and safety ought to be protected at least as adequately as the ownership or possession of property." [5]

[5] "Tort," *Encyclopedia of the Social Sciences*, VII, 653–657.

Tort Liability of Public Officials

Because of the constitutional principle that the king can do no wrong, citizens have had to rely for redress primarily on damage suits brought against public officials rather than against the government itself. The case of the horse that was summarily disposed of in order to prevent the spread of disease would probably result in an action in tort for damages against the public health officer. If the officer was professionally trained and exercised due care in his examination, his professional judgment would probably not be overturned by a judge—not, at least, in a case involving public health and summary action. But in a different type of situation a county surveyor runs a line through a farmer's property cutting off part of his hayfield, and it is afterward found that the surveyor had been negligent. In this case if the farmer sued the county surveyor it is quite likely that he would be awarded money damages. It would be a tort action involving both negligence and trespass.

Throughout most of our American history, about the only redress the citizen has had in tort cases was against particular officials and not against the government itself. Health officers, tax officials, highway officials, and safety inspectors—all who are responsible for administering the law—may be sued in tort by citizens who have been wronged by them in the discharge of their duties. In the event of an adverse financial judgment against the official, his property, if any, may be attached and sold.

In the nineteenth century the possibility of enforcing such financial judgments led to a serious state of affairs. Men who had property or hoped to accumulate it hesitated to assume a public office that entailed the possibility of suit and financial damages. This situation was partly solved when officials were allowed to be bonded, with the bonding company liable for judgments up to a certain amount. Nevertheless, problems continue to arise when an individual official is held liable in a case where it has seemed that the government itself was at fault and should have permitted itself to be sued.

Tort Liability of Government

The doctrine of the sovereign immunity of the government to suit is reflected in the Eleventh Amendment to the Constitution, which in effect forbids suits against any state by the citizen of another or of a foreign state, without the consent of the state in question. In addition, neither the President, members of Congress, nor judges of the courts are suable for their official acts.

Over a period of time, however, these ironclad immunities have been whittled away by legislative and judicial pronouncements, with the result that government liability has been gradually increased. The general rule of law to keep in mind here is that *the government is not liable to suit by individuals when it acts in its sovereign capacity, but it is liable when acting in its proprietary or business capacity.* Unless the legislature has specifically removed the immunity in the particular area of governmental activity by legislation to that effect,

where the dividing line occurs between these two types of action depends on the decisions of the courts as they follow or diverge from precedent.

The older functions of government are almost invariably sovereign functions. The conduct of foreign affairs, the maintenance of an army and navy, the operation of the courts and the police may be taken as examples. The proprietary functions are those which resemble the operation of a private business enterprise, such as a municipal waterworks, the construction of a dam or tunnel for water and power purposes, the operation of a railroad, steamship line, hotel, banking institution, manufacturing plant, and so on. When government descends from its sovereign role to become a business operator, say the courts, then it waives its sovereign immunity from suit and is to be treated as an individual while performing a proprietary function.

The dividing line between these two categories, as will be readily seen, is subject to considerable expansion and contraction by judicial interpretation. In many jurisdictions, for example, the municipality is liable if a person is injured while walking on sidewalks that are negligently maintained. But if the injury is due to snow that has not been removed, both the property owner and the city may be proceeded against on the assumption that, while the property owner should have removed the snow, the city owes it to its citizens to see that it is actually removed. The rule varies from jurisdiction to jurisdiction; generally speaking, the liability is greater for sidewalk disrepair than for street disrepair.

The operation of municipal safety provisions is another interesting area. Fire protection has been traditionally considered a sovereign function. But in the example mentioned above, some courts have held that the negligent operation of a fire truck while on a practice tour entitled the injured individual to damages in a tort action. However, this rule is by no means universal. With regard to police activities, the law is in about the same state of development. Some suits for negligence or trespass in the discharge of police duties may be maintained against the government, but in general such action can be taken only against the officer.

Legislation a Remedy

The sovereign immunities of government may be relaxed at any time that the legislature decides it is sound social policy to do so. There have been numerous examples of this kind; in fact, reference to the federal cases will reveal that the members of the President's Cabinet are frequently sued. In effect, this is a suit against the government itself. This particular development has come about because, in creating various programs, Congress often provides that suits against the government are to be brought against the cabinet official. Wage and hour cases are brought against the Secretary of Labor or the administrator of the Wage and Hour Division, stockyard cases against the Secretary of Agriculture, and so on.

It seems to be widely agreed among the public, as well as within the legal

profession, that sovereign immunities should be relaxed when damage is done to the individual, either against his person or his property. The reasoning here is the same as in the case of workmen's compensation: *society itself can better afford to spread the risk and also the damages paid, rather than have it assumed by individual public officials who are less favorably situated.* Society, it is reasoned, is the beneficiary of the services of government. When injury is done to an individual in the course of the administration of the law, therefore, it is only just that society should compensate the injured person for his personal loss or damage.

Judicial Remedies Offered by the Courts

A tort action is not the only remedy offered by the courts in cases involving tort, excess of power, malfeasance, or lack of jurisdiction. In the development of the law, the degree of justice which citizens have been able to secure in actions against the government has tended to increase. One effect of equity was to increase the number of the writ proceedings, and some of these are now available to the citizen who has suffered damages in the course of the enforcement of a law. Some of these great writs have been referred to previously and hence a summary statement should suffice:

Remedies in tort. The action here is usually one for damages, to persons or property, in a suit brought against the government, but more often against a public official.

Injunction. This is an order of an equity court commanding a person to do, or to refrain from doing, an act which would injure another by violating his personal or property rights. For example, injunction could be used against the county surveyor who ran an incorrect line, or against a public-utility district which attempted to flood a person's land without first reaching a settlement by negotiation or the exercise of the right of eminent domain.

Quo warranto. This is an ancient writ and not as widely used today as in the past. Quo warranto is a writ issued on behalf of the state to inquire into the validity of the title by which a person holds an office, or a public corporation its franchise, as the first step in legal proceedings to vacate it. This writ has proved peculiarly useful in cases involving administrative action.

Mandamus. Mandamus is a writ compelling specific performance when ministerial, nondiscretionary duties are involved. Since it is the reverse of injunction, the power to compel is usually not as useful as the power to restrain when it comes to threatened administrative action.

Habeas corpus. This writ is designed to determine the legality of detention as speedily as possible. It is used primarily in criminal cases and not infrequently in the types of cases considered here.

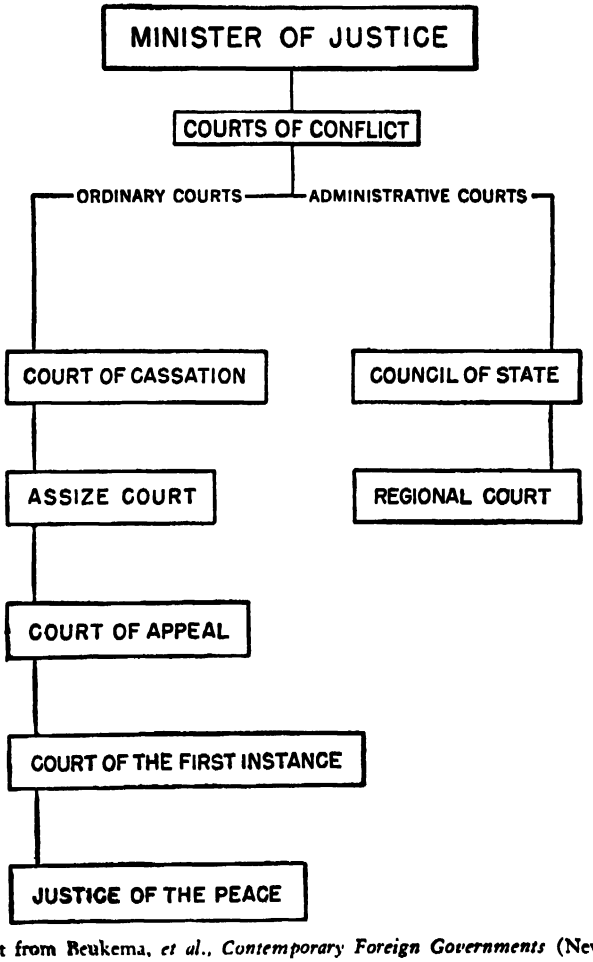
Certiorari. This is the means by which a court looks into the discretionary acts of public officials, just as mandamus is the appropriate remedy in nondiscretionary areas of administration. Certiorari is used particularly in cases involving substantive matters—such as the orders of regulatory commissions.

It might be used, for example, in the case of the utility commission disallowing a $100,000 payment to a firm of consultants, referred to in the first part of this chapter. Certiorari is not so much concerned with procedural safeguards as with substance. Each year the Supreme Court of the United States receives in the neighborhood of 250 petitions for writs of certiorari relating to administrative tribunals, of which about 50 are usually granted.

ADMINISTRATIVE COURTS

In France and other European countries, the entire field of administrative law—including the methods of legal redress afforded the citizen—is taken

COURTS UNDER THE THIRD FRENCH REPUBLIC



Based on chart from Reukema, *et al.*, *Contemporary Foreign Governments* (New York, 1946).

care of by the administrative court system. This separate court system on the Continent has appeared partly because civil law countries recognize governmental liability for negligence where generally we do not. Thus the government may easily be sued in France for what the French call *faute du service,* when a person is injured because of negligence, trespass, excess of power, malfeasance, or any number of other causes. Sometimes the suit will be against the officer (*faute personnelle*), but more often it will be directly against the government itself.

Some thoughtful students of the problem are prepared to admit that the judicial remedies offered by these foreign administrative courts are superior to our own. A real question has arisen, therefore, over the advisability of creating a hierarchy of courts for administrative cases in the United States.

Of course, if our law were changed to permit suit against the government, a separate system of administrative courts might not be necessary. Many competent observers believe that it would help. If justice is inaccessible, there is no justice. French administrative courts, in contrast to our system, are readily accessible. There are no long delays or costly charges, and judges are skilled in administration as well as in the law. We could certainly work toward these goals within the framework of our existing court system. Whether or not, in the long run, that would be better than establishing separate administrative courts remains to be answered.

Groundwork for an Administrative Court System

Actually, however, we already have a trend toward administrative courts in this country. The foundation has been laid in our existing courts. For example, we have a Court of Claims which handles all contractual claims against the federal government. Some other claims in limited amounts may be decided by the departments involved. The departmental examples of tribunals which resemble administrative courts are numerous: the Board of Appeals in the Patent Office from which cases are taken to the Court of Customs and Patent Appeals and thence to the Supreme Court; the Board of Appeals in the Veterans Administration; the Board of Immigration Appeals in the Department of Justice; the hierarchy of administrative courts for hearing customs cases in the Treasury Department. These are all similar to administrative courts.

Then there are the regulatory tribunals themselves with their quasi-judicial powers. By Congressional provision, appeals from their decisions are taken either to the Supreme Court or to a circuit court of appeals. The Court of Appeals of the District of Columbia, because of its jurisdiction arising from federal regulatory commissions in Washington, is very largely an "administrative" court. As early as 1933 one of the present authors wrote, "If Congress continues to withdraw the appeal of technical administrative cases from the district courts and vests them in the courts of the District of Columbia, we

shall have the substance if not the formal recognition of a hierarchical administrative court system." [6] The trend indicated here has gone steadily forward.

ACCOUNTABILITY EVERYBODY'S BUSINESS

In this chapter the various methods have now been explored by which government administration may be held accountable to the citizen. These include adequate control by the administration itself with regard to the actions of its employees in enforcing the law, the controls offered by the legislature, those that may be exercised by the citizen, and finally, those offered by the courts.

The main point which stands out, perhaps, is that no one method is enough to hold administrators accountable. The legislature can do much in the way of supervision through legislation, finance, and other control devices, but the greatest possibilities lie in the administrative corps itself because self-improvement, where it can be brought about, is invariably superior to forced acquiescence. And here the responsibility for enforcing administrative improvement lies with the citizen whose duty it is to exercise vigilance and to elect trustworthy officials in the first place.

Unfortunately, self-improvement is also limited in what it can do. The final legal remedy, therefore, is with the courts, exercising effective sanctions and great power. Theirs is a contribution which cannot be made from any other source. The courts' standards of administrative due process deserve to be called civilized in the best sense of that abused word. Can they be made to do more?

Each of these contributions to the securing of administrative accountability is distinctive. Few, if any, overlap. If each will do its own job we may feel relatively safe when we increase administrative power as complexity requires it. On the other hand, we must not be oversanguine. Let us not lose sight of the hard fact that the balancing of power with responsibility has always been one of government's most difficult problems.

SUPPLEMENTARY READING

1. General: Frank J. Goodnow, *Comparative Administrative Law,* 2 vols. (New York, 1893), and *Politics and Administration* (New York, 1900). Goodnow was the pioneer in this field. See also Ernst Freund, *Administrative Powers over Persons and Property* (Chicago, 1928); John Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass., 1927); William A. Robson, *Justice and Administrative Law* (London, 1928); and Frederick J. Port, *Administrative Law* (London, 1929). For cases and readings, see James Hart, *An Introduction to Administrative Law with Selected Cases* (New York, 1940), Part 5.

2. Forms of control: John M. Gaus, "The Responsibility of Public Administration," in *The Frontiers of Public Administration* (Chicago, 1936), Chapter 3. See also Marshall E. Dimock, "Forms of Control over Administrative Action," in C. G.

[6] Marshall E. Dimock, "The Development of American Administrative Law," *Journal of Comparative Legislation,* XV (Feb., 1933), 35–46.

Haines and M. E. Dimock (eds.), *Essays on the Law and Practice of Governmental Administration* (Baltimore, 1935).

3. Tort liability: In the *Encyclopedia of the Social Sciences,* see "Tort" and "Administrative Law." Edwin M. Borchard has written "Government Liability in Tort," a series of articles in Volumes XXXIV and XXXVI of the *Yale Law Journal* and Volume XXVIII of the *Columbia Law Review.* See also Leon T. David, *Municipal Liability for Tortious Acts and Omissions* (Los Angeles, 1936), and *The Tort Liability of Public Officers* (Chicago, 1940). On trends in this field, see Edwin M. Borchard, "Recent Statutory Developments in Municipal Liability in Tort," in *Legal Notes on Local Government* (New York, 1936), II, 89–100.

CHAPTER 39

Administration as a Career

AMERICAN GOVERNMENT, for almost a generation, has employed a larger percentage of young people just setting out on their careers than ever before in history. The trend accelerated during the depression of the 1930's when business was in no position to absorb the usual proportion of men and women leaving high school and college. Expanding government programs attracted great numbers of these young people, many of whom would not otherwise have thought of public employment. After the decade of the 1930's shaded off into the war years, ten million men and women went into the armed forces and additional thousands served the government in civil capacities.

In 1932 the federal government as civil employer had a pay roll of less than six hundred thousand persons. By 1940 it had reached nearly a million and at the peak in 1945 it was over three million. Also by 1945, another three million or so were employed by state and local governments. What is the future prospect? Will our governments at all levels continue to attract increasingly larger numbers of well-educated men and women? The comment of Lewis Meriam in *Public Service and Special Training* is typical of what many have observed. "As I have watched the ever changing stream," says Meriam from the vantage point of many years in Washington, "the university men seem to me to be steadily gaining ground. . . . Ph.D's and Phi Beta Kappa keys are more common in the national service than anywhere else except on a university faculty."

In the United States, as in Great Britain, France, Germany, and other countries, public employees represent a considerable fraction of those gainfully employed in the nation. One out of every nine employed persons in the United States in January of 1945, exclusive of the armed forces, was paid by government at one level or another. And since entrance to many of these governmental positions is largely regulated by an academic type of examination, it is only natural that college- and university-trained people should be attracted by them. The passage of the Veterans Preference Act of 1944 has enhanced the opportunities for veterans.

This chapter will show, first, the number and kinds of opportunities offered in public employment, and will describe the growth of the civil service idea, abroad as in the United States. It then discusses a positive approach to the field of personnel administration, including policies, functions, and machinery. This is followed by a consideration of salaries and incentives, recruitment

problems, retirement plans, government employee organizations, and the attitude of neutrality which public employees are supposed to have with regard to politics.

EMPLOYMENT OPPORTUNITIES IN PUBLIC ADMINISTRATION

At least 95 per cent of government personnel is employed in administrative capacities with the balance—consisting of lawmakers and judges—being small in comparison. Moreover, the total number of administrative positions is large and the types of work are varied.

In January of 1945, the total governmental employment at all levels in the United States was 6,500,000. It included some 1,300,000 public school teachers and officials, leaving a balance of over 5,000,000, of which federal employment accounted for 3,250,000. These 5,000,000 government employees compose what may be called the executive civil service—"executive" because they work for the executive branch of the government rather than for the legislature or the judiciary, and "civil service" to indicate that they are civilians and not connected with the military establishments.

During World War II the federal government and the state and local governments changed positions so far as total employment is concerned. Before the war the total for the federal government was a little more than 1,000,000, with nearly 3,500,000 for the states and localities, so that a figure of from 4,500,000 to 5,000,000 is probably near the point at which the peacetime government employment total will stand.

Opportunities for women have rapidly expanded in the public service. Before World War II the percentage of women to men in the federal service was in the neighborhood of 20 per cent, but during the war it rose to 37 per cent.

The table on page 626 gives some interesting data on both employment and pay rolls in government at all levels.

Types of Positions in Administration

So varied is the work of modern government that it requires every kind of professional and vocational specialization. One example is the Panama Canal Zone, where the government runs everything a modern community needs including housing, stores, hospitals, schools, transportation, recreation, and hotels. The local saying is that government does everything from bringing people into the world to burying them. Although this is not a typical situation, it shows the inexhaustible variety of positions in government. At some place or other, governments undertake every form of service, requiring every kind of vocational qualification found in the economic fabric of the nation. As long ago as 1926, 1,300 pages of print were needed to describe 2,000 vocational skills then required in the federal service. There were 23 classes of engineering position alone. The situation today shows an even wider range than existed twenty years ago.

Quantitatively, the largest number of positions in government fall into the

GOVERNMENT EMPLOYMENT, 1940–1945*
Number of employees (*in thousands*)

Type of government	Jan.† 1945	Jan. 1944	Jan. 1943	Jan. 1942	Jan. 1941	Jan. 1940
Total	6,513	6,119	6,045	4,975	4,433	4,304
Federal, civilian	3,375	3,022	2,906	1,726	1,189	974
State and local	3,138	3,097	3,140	3,249	3,244	3,330
Nonschool state and local	1,832	1,807	1,825	1,935	1,929	2,015
States	452	456	470	518	522	521
Cities‡	841	835	899	928	924	948
Counties	320	310	312	327	321	332
Townships§ and special districts	219	206	144	162	162	215
Amount of pay roll for month (*in millions of dollars*)						
Total	1,137.6	987.9	914.0	652.4	565.6	515.4
Federal, civilian	720.2	585.0	526.2	265.9	184.4	149.7
State and local	417.4	402.9	387.8	386.5	381.3	365.8
Nonschool state and local	246.3	233.6	213.2	211.9	206.7	199.5
States	65.9	63.5	58.6	59.3	59.4	58.4
Cities‡	124.3	118.3	113.1	111.5	107.4	100.9
Counties	38.7	36.5	34.5	34.2	33.2	32.2
Townships§ and special districts	17.3	15.3	7.0	7.0	6.7	8.0

* Data for work relief and contracts are excluded.
† Preliminary.
‡ Includes all incorporated places—cities, towns, boroughs and villages.
§ Includes also New England, New York, and Wisconsin towns.
Source: U. S. Bureau of the Census, *Government Employment.*

clerical, custodial, and manual categories. These correspond to the rank-and-file positions in industry and range in salary from $1,200 to $3,000 a year. But there is also a large number of positions in the administrative, professional, and scientific categories, and the breadth and attractiveness of these jobs have been steadily growing.

Another trend which has been growing is with regard to the employment of women in government. In the federal government, an unusual number of women held responsible jobs during the period of the New Deal. Later, with the advent of World War II, the shortage of men forced many appointing officers to take women instead, only to find that women were as good as men and sometimes even better on work previously thought to demand a man. Today few areas of the public service are not open to women on an equal basis with men. In Washington alone, some twenty to twenty-five women—possibly more—earn from $8,000 to $10,000 a year. Naturally these openings are most numerous in certain areas where women have traditionally played a part,

such as public welfare, education, labor, home economics, and the like. However, examples will be found of women who rank high in almost every field. The head of the Passport Division of the State Department is a woman. The Director of the Mint for many years was a woman, and so was the Secretary of Labor. A woman was also Assistant Secretary of the Treasury, a woman was a member of the Social Security Board, and a woman is a member of the Civil Service Commission. Two women have been head of the labor department in New York, and another directed a regional office of the War Manpower Commission with headquarters in New York. A large number of highly paid statisticians are women, and women lawyers have invaded the sacred portals of the Department of Justice. Everywhere today women may find attractive opportunities in the public service.

Modern government needs and employs large numbers of general administrators, economists, statisticians, librarians, lawyers, accountants, engineers, chemists, physicists, geographers, artists, doctors, nurses—the list is endless. The need for qualified and experienced persons in the skilled categories in both administrative and technical positions is far from satisfied and apparently the demand will continue.

Increasing Professionalization of the Public Service

The ever-widening opportunities for an administrative career in government are shown by figures prepared a few years ago by the Civil Service Commission. These compare the relative opportunities for scientific and professionally trained people in 1896 and in 1937. In 1896, 2.3 per cent of the total civil employment in the federal government consisted of professional, scientific, and technical positions. In 1937 this percentage increased to 12.72, in addition to those in subprofessional classifications, which comprised 15 per cent, making a combined total of 27.72 per cent.

Reference to the professional groupings in government, however, does not mean that lawyers, economists, and political scientists, for example, are limited to these positions. As a matter of fact, a most notable development of the past twenty years has been the number of people trained in social science who have gone into the public service in a wide range of jobs, either temporarily or permanently.

The rapid growth of our cities, accompanied by an ever-expanding list of services and functions which they have been forced to assume, has contributed greatly to the professionalization of the public service. Amateurs cannot be depended on to enforce health and sanitation standards, handle juvenile delinquency, modernize municipal accounts, operate water supply systems, or supervise public construction. No progressive city expects them to. Nevertheless, professionalization in the public service in America still has a long way to go if it is to overtake the older career services of Great Britain, Germany, and France. Despite its early development in those countries, however, we must

remember that even there it was not until fairly recently that the professional element became the larger one in public administration.

GROWTH OF THE CIVIL SERVICE

A brief survey of the career service in various European countries will help provide a background against which to study our own.

The Civil Service in Europe

If professionalization is regarded as a synonym for bureaucracy, then Germany was the first great nation to develop this field. In Prussia the merit system has been used since the end of the seventeenth century. No country in the Western world has placed more emphasis on academic qualifications and professional testing for entrance to and promotion in the public service. In the early period the focus was chiefly on law, but later it shifted somewhat to economics and political science. Most authorities agree that the civil service system in prewar Germany attached too little weight to practical experience and too much to academic qualifications and specialization.[1]

In France minor officialdom gained a secure status earlier than in any other country, but emphasis on the higher civil service came later than in Germany or even in Great Britain. Among the great nations, furthermore, France is singular in that she lacks a central agency—such as a civil service commission—to handle centralized recruitment and testing of personnel. Each major department is responsible for its own recruitment and appointments.

The career service in Great Britain evolved out of the personnel policies of the British East India Company, which in 1854 put applications for its positions on a competitive basis. Lord Macaulay was chiefly responsible for this development. Great Britain, like Germany and the United States, now has a centralized agency for recruitment and civil service matters. Educational requirements control entry to the higher and to many of the lower posts, and in consequence promotion from the lower to the higher ranks is rare. In fact, until recent years, Oxford and Cambridge were almost the sole sources of England's higher career men, but more recently the newer universities such as London and Manchester have exerted a growing influence.

British tradition favors a broad classical training for the public service. Unlike Germany, emphasis on law is minimized. Nor is there even today as much stress on the physical and social sciences, including engineering, as in the United States. The development of our own merit system has been more influenced by that of Britain than by that of either France or Germany.

Growth of the Civil Service in the United States

In the United States the federal government has led the states and cities in the extension of the merit system. Many prominent citizens, including

[1] See Herman Finer, "Civil Service," *Encyclopedia of the Social Sciences*, II, 515–523.

Theodore Roosevelt, took part in this movement. The Pendleton Act of 1883, culminating a fight-the-spoilsman reform that came to a head following the assassination of President Garfield by a disappointed office seeker, established a Civil Service Commission of three persons, no more than two of whom could belong to the same political party. All candidates for government positions were to be recruited by means of competitive examinations, and all appointments were to be made only on the basis of merit. At first the examinations were crude and limited to only a few positions. During the past fifty years, however, the examinations have been gradually extended and improved.

Under the procedures followed, all positions are classified. When a vacancy occurs, the list of eligibles is consulted. Generally, the so-called rule of three must be observed: the selection must be made from among the three qualified persons highest on the list. Until 1944 it was sometimes possible to take a candidate out of order if his qualifications were superior to those of higher ranking candidates, but since the passage of the Veterans Preference Act of 1944, the rule of three is now written into the law and thus may not be bypassed. Permanence of tenure is guaranteed during good behavior. If the office is abolished, the commission gives the incumbent preference in the filling of other comparable positions.

Another landmark in the merit system is the Classification Act of 1923, which provided the basis of the fivefold division of positions now in effect: professional, subprofessional, CAF (clerical, administrative, fiscal), CPA (crafts, protective, custodial), and clerical-mechanical. Recently the classified civil service itself has been broadened. Some 182,000 positions brought into the classified civil service of the federal government on January 1, 1942, constituted the largest addition to the ranks of the merit system in our history.

State and Local Civil Service Extensions

State and local governments have been slow in adopting formal civil service systems. In 1936 only nine states had passed civil service laws; eight more added in the next few years brought the total to seventeen in 1942. This does not mean, however, that merit qualifications are not used in many instances despite the lack of a comprehensive law or a civil service commission. The extensions of the system have been largely due to pressure from the federal government, especially that part of it which—like the Social Security program —is in a position to require approved personnel standards and practices in the states before authorizing the allotment of federal funds.

The larger cities have generally imitated the federal example, setting up civil service commissions and adopting comprehensive laws. In the counties and smaller local subdivisions, however, the rate of development is slow. Of the 155,000 governing units in the United States, 3,050 are counties and 16,000 are cities, villages, and other municipal units. In 1940, about 1,100 merit systems were in effect, but many of these applied to limited services only, such as police or fire departments. Of these, 869 were in cities and 173 in counties,

with the remainder scattered through smaller units. At that time there were only about 700 separate civil service agencies in the whole country.

The civil service now covers over 90 per cent of all federal employees. About 33 per cent of the states, and around 5 per cent of the county and municipal governments have adopted a civil service system. This last figure, however, is misleading because most of the larger cities have adopted merit systems and a majority of the local units that do not have a formal system are too small even to consider it.

A POSITIVE APPROACH TO PERSONNEL ADMINISTRATION

Far more significant than the extension of the civil service system in recent years has been the recognition of the need for a broader approach to the problem of personnel management and for a better administration of the existing machinery in this field. When civil service became a reform movement, attention was focused on formal and sometimes doctrinaire questions relating to who should be taken into the service, and who excluded. The fight-the-spoilsman psychology was essentially negative. It was a crusade *against* something rather than a positive action *for* something.

The redirection toward a more positive approach appeared around 1934, at about the time the Commission of Inquiry on Public Service Personnel—appointed by the Social Science Research Council—published its excellent report, *Better Government Personnel.* This commission of political scientists, educators, and business leaders pointed to the need for a government career service: "We . . . recommend that the day-to-day administrative work of government be definitely made a career service. By this we mean that steps shall be taken to make public employment a worthwhile life work, with entrance to the service open and attractive to young men and women of capacity and character, and with opportunity for advancement through service and growth to posts of distinction and honor." This report, with several supporting monographs dealing with various aspects of personnel management at home and abroad, will well repay the reader who is interested in this subject.

The importance of the changed approach is hard to overemphasize. Government employment is now regarded as an opportunity for growth rather than as a monopolistic position to which one is entitled under the law as the result of having passed an examination. Unless the responses from these two different assumptions have been actually seen, it is difficult to visualize their effect on the tone and tempo of organizations and the demeanor of countless thousands of government employees. This modern view holds that it is a merit system in which we are chiefly interested and not a formal civil service system with all its trappings. It is the substance which is to be nurtured, not the form. The object is to secure well-qualified people, assure them a reasonable tenure, and provide the incentives to competent work and self-development.

Nothing is more human—or at least should be more human—than personnel matters. It is the human aspect, therefore, that needs underscoring, not the

system as such. This being the case, emphasis should be on what happens to the successful candidate after he enters the ranks of the civil service, what the work of the departmental personnel officer should be, and what role the operating official is to play. Then there are also the questions of incentives, morale, promotions, rewards, and opportunities.

Personnel Management in the Federal Government

A century from now, when Americans look back on the development of public personnel programs, the year 1938 will probably be regarded as being as important as 1883, the year of the Pendleton Act. By executive order of President Roosevelt on June 24, 1938, two important related steps were taken. First, every major department and independent establishment was required to set up—if it did not already have one—a division of personnel headed by a director. And second, the work of all personnel agencies—including the Civil Service Commission and the departmental personnel officers—was to be planned and coordinated by a Federal Council of Personnel Administration, headed by a chairman and employing a small staff.

Prior to this time strong personnel divisions in the federal government were few. The fact that they have now been greatly improved has created a worthwhile career for men and women trained as personnel officials. The basic truth of human psychology and motivation—testified to by successful executives everywhere and now implicitly recognized in the federal government—is that more important than *who* an executive gets to work for him, is *how* he appeals to and manages that person once he is on the job. People always perform above or below their normal competence, depending on the kind of leadership provided plus the effect of all the factors entering into the question of morale.

Functions of the Departmental Personnel Officer

A difficulty experienced by a centralized civil service commission, as presently organized, is the securing of particular employees needed by a particular agency or official. Aggressive recruitment programs aimed at a given skill group are hard for a centralized agency to stage because its attention is concentrated on broad groups rather than on particular individuals. A decentralized personnel agency has the advantage in this respect because if the prospective employer knows what he wants and if the personnel agency is resourceful and determined, it can search for and get what is needed. This problem of securing specialized labor is more acute in the federal government than at the city level, for example, because of the difference in the size of the agencies. But in either case, a centralized civil service agency must work in cooperation with the personnel director of each department, who thus becomes the center of a positive personnel program.

Some of the departmental personnel director's more important functions are to organize aggressive recruitment programs at the behest of the operating officials in his agency and to secure the best-qualified employees he can from

civil service registers. He also interviews applicants, keeps personnel records, including efficiency records, and operates in-service training programs in collaboration with the operating officials. In addition, the personnel director studies and prepares improved tests for the skill groups coming within the jurisdiction of the department, and prepares and carries out classification programs. He consults with executives regarding wage and salary scales, promotions, and discipline. And finally, he plans and recommends recreation, health, and morale-building programs for the approval of the head of the department.

The success of a personnel director depends on a number of factors: he should have the right kind of personality for the job, he should understand clearly what he should and should not do, he should deserve and receive the complete confidence and cooperation of the operating officials, and he should constantly emphasize morale building and other human aspects of personnel management rather than techniques and system, which should remain in a subordinate role.

A great fault of a centralized civil service agency is that almost invariably it comes to regard itself as a policeman—an enforcement agency—rather than as a facilitator. This does not make for cooperation between the operating official and the personnel officer or for a constructive approach to the personnel problem. The departmental personnel officer cannot afford to adopt this kind of attitude. His role is that of staff assistant to the department head and the bureau chiefs. His influence comes from his ability to render service and not from the fact that he can wield the whip of legal authority. At the same time, however, he must act as liaison between the head of his department and the civil service agency, and hence he must understand the viewpoints and objectives of both.

The Federal Council of Personnel Administration

Many of our state and municipal governments could study with profit the coordinating personnel agency that was set up in the federal government in 1938 as the Federal Council of Personnel Administration. The membership of the council is made up of the directors of personnel from the operating departments, together with staff members from the Civil Service Commission and the Bureau of the Budget. Thus it is easily able to pool information, study common problems, and encourage the development of a professional attitude among personnel officers. The council has also aided with research, it has helped to represent the personnel needs of the operating agencies to the Civil Service Commission and the President, and it has assisted in the installation of personnel programs in new federal agencies.

In 1940, by executive order of the President, the Federal Council of Personnel Administration was made a branch of the Civil Service Commission. This arrangement has proved advantageous as a means of educating the Civil Service Commission in the needs of the departmental personnel officers. However, in the eyes of many Washington observers, there is the danger that the

council may lose its indispensable independence. The Civil Service Commission is traditionally resistant to change. It might have been better, therefore, if the council had been allowed to remain separate.

The Machinery of Personnel Administration

The success of a personnel program in government depends on each of several agencies doing its appointed task and none attempting to do too much. The civil service agency, for example, should be regarded as a central reservoir of personnel but not as an all-inclusive personnel program. It should delegate full responsibility for particular operating programs to the departmental personnel officers. It should avoid a dog-in-the-manger attitude and be receptive to new ideas.

It is the departmental personnel officer who has the key to his own situation because he knows the needs of his department as well as the offerings of the central civil service agency. There are worlds of opportunity for him also, in employee-training programs and in the job of building morale which few central agencies can sponsor, except, perhaps, in the smaller cities at the local level of government.

There is one besetting danger, however, that the departmental personnel officer must ever be on guard against: the danger of invading the field of the operating official. The state of morale in any organization eventually depends on the policies, skills, and personality of the operating official. He alone can hand out the rewards and the punishments. The personnel officer, therefore, may properly advise his chief, but he must not step out into the forbidden area of program execution. Thus an important part of the personnel officer's job is to educate his superior, and the closer the cooperation between them the better the results are likely to be. The besetting error of the operating official is that he fails to consult with his personnel officer as much as he should, and may therefore not give him all the responsibility he ought to carry. In a proper kind of relationship this can be avoided.

These relationships are much more difficult to work out in practice than they are to define. Every organization is jealous of its authority and apparently determined to extend it if possible. This plays hob with cooperative arrangements. The Civil Service Commission, like many other agencies, tries to do too much—perhaps from a fear that its authority may be reduced. In this respect it is no different from Congress itself, which is affected by the same institutional virus. Everyone connected with personnel programs, therefore, must educate himself in advance as to what he should and should not attempt to do.

John D. Rockefeller is supposed to have said that while the world in the past belonged to the man who controlled finance, in the future it would belong to the man who understands people. Certainly the human problems and opportunities in personnel administration stagger the imagination. Consider, for example, questions such as these: How is it possible to get people to do their

best when they know they are secure for life? What is the solution when too much security causes a loss of interest on the part of a person who has talent but is wasting it? Is financial reward the best way to increase individual effort? Should promotions be made on the basis of seniority or merit? And if on merit, then what happens to the efforts of those who are passed over?

In addition, assuming that it broadens a man to move him about from one position to another until he has learned the business as a whole, how can this be done in a modern enterprise when specialization is so great and the tempo so fast that supervisors hate to break in new employees? Are the incentives to superior effort as prominent in public as in private enterprise? How great do most people find the appeal of prestige, pride of craftsmanship, and association with an unselfish cause? [2] Is it possible to do semiroutine work on the lower rungs of the ladder without losing the zest and ability to take on more complicated tasks later on?

The discussion which follows will attempt to throw light on some of these questions, which by no means exhaust the list of major considerations. What additional ones occur to you?

SALARIES AND INCENTIVES

The aggressive effort of the federal government to draw college graduates into its ranks is shown in the examination for Junior Professional Assistant. In attractive folders the Civil Service Commission calls attention to the fact that almost every kind of academic specialization is needed by the federal government. The salary for the position mentioned above is in the neighborhood of $2,400 a year. A careful survey made in 1931 revealed that up to the point of around $3,000 a year, government remuneration for the same kind of work is higher than in private employment. But no salaries in government—not even for the presidency—compare with the very high salaries paid to some business executives. What was true in 1931 remains substantially true fifteen years later.

The career civil servant in the federal government today may look forward to a top salary of from $8,000 to $9,500 a year, this being the highest CAF classification. In the executive branch, only the President with $75,000 a year, cabinet officers with $15,000, and commission members with from $10,000 to $12,000 a year receive more. The top civil servant may earn as much as an assistant secretary who is a member of the President's subcabinet. Since the close of World War II a considerable effort has been made to increase federal salaries all along the line, and we may expect some improvement in this area.

Compensation in State and Local Governments

Although the impression is general that state and municipal governments pay less than the federal government, this is not always the case. The larger

[2] See Marshall E. Dimock, "The Potential Incentives of Public Employment," *American Political Science Review*, XXVII (1933), 628–636.

states and cities pay salaries as high as—and in some cases higher than—those of the federal government. Since so many cities and states are small, however, the average for all is naturally lower than that for the federal government.

The general level of compensation in New York City compares favorably with and in some instances is superior to that of the federal government. The action taken in 1938 is an example of New York's progressive program in public personnel management. Desiring to encourage men and women seeking positions as general administrators—the hardest kind of person to get—New York City set up a salary scale which includes the positions of junior administrative assistant at from $3,000 to $4,000 a year; administrative assistant at from $4,000 to $5,000; senior administrative assistant, $5,000 to $6,000; and administrator at $6,000 and over. Department heads in New York City receive as high as $10,000 a year. In contrast to salaries such as these, however, are those less than $1,000 a year in hundreds of small towns, where a top of $5,000 is considered unusual.

Nevertheless, those who are thinking seriously of going into government employment should investigate municipal and state opportunities as well as those in the federal government. In recent years Washington had an aura of glamour, with the result that attractive opportunities nearer home have sometimes been overlooked.

Nonfinancial Incentives

Anyone who has observed government employees at work has seen the activating force of nonfinancial incentives. President Hoover recorded this observation in his book, *American Individualism*. There is a devotion to duty all along the line, said Hoover, which businessmen would give a good deal to command. Other businessmen have been greatly impressed by the same thing. In 1946, for example, Chester Bowles, long associated with private industry, reported that although he had "expected to find a considerably lower standard of efficiency" than he had been accustomed to from the employees in a private office, he found "a general level of ability at all salary grades that compared most favorably with private industry." [3]

What are these nonfinancial incentives to which government employees are subject? There are several factors. A consciousness of security and permanence, if not carried too far, may have something to do with it. We acquire a feeling of proprietorship and loyalty toward something with which we expect to remain associated. Government is service for all the people, and hence identification with government satisfies a universal desire to be a part of a cause larger than ourselves.

Also, government has power and prestige in which the individual can easily share by reflection. Then there is what John Hobson and others call pride of craftsmanship—the satisfaction that comes from work well done. But the

[3] Quoted in *The Chicago Sun*, March 21, 1946.

strongest factor is probably what intrigued Herbert Hoover—something that may be called the public-service appeal. It is made up of altruism, patriotism, power, and prestige, and hence forms an effective combination.

Government salaries are too low and should be raised. There has been some improvement in recent years and there is likely to be more. But in general, public employment—like teaching and the professions generally—must rely heavily on nonfinancial incentives which fortunately are present and constitute powerful accompanying inducements. To the right kind of man or woman, the chance to serve the public in a vital capacity means more in the way of compensation than large personal financial profit.

Promotion Opportunities

Government, like the large corporation, is forced to give much weight to seniority in making promotions. These and salary increases in the public service occur more or less regularly, depending on length of service, the vacancies that occur, and so on. In large organizations the observance of the rule of seniority is seemingly inevitable because so many people must be taken into consideration that each can hardly be treated as a separate case.

It is possible, however, to move ahead faster by other means: a vacancy at a higher salary falling outside the seniority framework, an offer at a higher salary from another agency of the government, a reclassification of positions and salaries, or success on an examination for a job several steps above the one held. Especially in the past ten years or so, there have been no difficulties about promotion in the federal government. Indeed, observers have sometimes wondered if some young people have not gone ahead faster than they deserve. This is particularly true of a person who is trained in a specialty such as statistics, or who is able to do general executive work where the need is greatest.

Since 1925 the federal government has relied on an efficiency rating system in judging the qualifications of those who come up for promotion. Many state and local governments also have adopted efficiency rating methods of one kind or another. This plan provides a rough yardstick, but generally it is still far from reliable because in rating those who work for him, it is human for the employer to err on the side of generosity.

In the United States the decision with regard to promotion in the public service is generally made in each case by the chief supervisory official concerned. In local jurisdictions with well-established civil service commissions, it is not uncommon to find promotions based on competitive examinations. Furthermore, at both the local and the higher levels—here as in other countries—there is a growing tendency to utilize and to be guided by, in varying degree, a special promotion board; in England, for example, every department has such a body. Promotion to the very top is now a well-established tradition in the United States, and civil servants have even become members of the President's subcabinet.

Discipline and Removal

Efficiency rating schemes are also applied in arriving at decisions with regard to removals or reductions in salary—a most difficult area of governmental administration. It is usually easy to get rid of a man by abolishing his position. In that case he is thrown back on the Civil Service Commission, which must reassign him. It is also easy to force him to resign for dishonesty, immorality, or other similar reasons. It is hardest to remove a man for inefficiency. For example, if an employee has been with an agency for a long time, the loyalty factor must be taken into consideration. Discharged employees are likely to appeal to their congressmen, who will usually take the matter up with the officials concerned. Moreover, it is not always easy to prove that a particular employee falls below an approved standard of efficiency, and yet nothing hurts morale more than working beside a drone who gets the same salary for much less output.

Defenders of the civil service system maintain that it is possible to get rid of any inefficient employee if his superior has enough courage. In recent years the power of removal has in fact been used more widely in many federal agencies, but it is certain that the question will remain a perplexing one so long as permanent tenure is the rule.

The same difficulty is experienced with regard to disciplinary action. It is provided in the federal efficiency rating system, for example, that low ratings may result in reductions in compensation, but this authority is rarely used. Executives generally prefer to get rid of unsatisfactory employees altogether than to humiliate them publicly by demotion.

RECRUITMENT PROBLEMS

Many difficult problems arise in connection with recruitment. Mention has already been made of the passive type of recruitment campaign carried on by a central personnel agency as against the aggressive kind possible in the operating agency itself. A related difficulty is that of securing employees with the skill combinations not found on any existing register.

The future success of the merit system will depend in large part on the degree to which valid and reliable examinations can be devised to test the merits of competitors. With the help of psychologists, teacher specialists, and representatives of industry, considerable improvement has been made in examining techniques in the recent past. However, there is still a long way to go before nonroutine and nonstandardized work can be objectively measured. If the position is one for which no adequate competitive examination has yet been devised, why bracket it into the civil service at all? The answer usually suggested is that fitness may be tested in ways other than by open competitive examinations. There are, therefore, two main categories of examinations—the open competitive and the unassembled. The open competitive examination is the more widely used. Generally speaking, it is employed in the

case of routine, nonsupervisory positions for which standardized tests can be devised. Unassembled examinations are for administrative and professional positions.

Open competitive examinations are given on the same day throughout the country in seven hundred cities, usually in the post office or the federal building. Candidates for most clerical, technical, mechanical, and scientific positions, it goes without saying, can be tested by means of standardized questions and procedure. The Pendleton Act must have had such positions primarily in view because it provided that "such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed."

The unassembled examination is used to secure administrators and professional people who would be deterred from applying if they had to take a written examination, and whose capability can be judged on the basis of their records (hence unassembled), including formal education, degrees received, positions held, salaries received, testimonials of persons in the same field, visible accomplishments such as bridges built or books written, personality, and general qualifications for leadership. The factors are numerous, elusive, and as hard to measure as the qualifications of executive and creative workers generally.

The law now provides that no minimum educational requirements shall be specified by the Civil Service Commission in the recruitment of employees, except in the case of scientific, technical, or professional positions, and here the commission must make a positive finding that such educational standards are necessary for the performance of the work. In practice, however, in arriving at a judgment as to ability, education is taken into consideration as one of several factors.

Because of the orientation of the civil service law and its champions, the public service failed for years to get anything approaching the number of first-rate executives and specialists it needed. For one thing, emphasis was on recruiting beginning personnel solely for the job at hand, with little thought for future needs; moreover, many of the top jobs were not under civil service. More recently this deficiency is being rectified. The Junior Professional Assistant examination is a step in this direction, as is the use of the unassembled examination which makes it possible for the agency to go out and get the person needed for the particular job. The greatest deficiency of the public service is in trained administrative leadership. The colleges and universities must be relied on to fill this need.

Outside the area of the unassembled examination, however, the situation is still not as favorable as it should be. The civil service register is the list of those who have passed a particular examination, arranged in order of excellence. But suppose the Immigration and Naturalization Service, for example, wants a special class of investigator to carry on alien registration. These in-

vestigators must be familiar with both law and investigating techniques. Where are such men to be found? Not on the Federal Bureau of Investigation list, because that is not suitable—it is not policemen who are wanted. The nearest approach is a list of law officers and a list of border patrolmen, but neither of these exactly fills the bill. The Civil Service Commission is too busy to give a special examination for so small a group. The only recourse, therefore, is to use available lists—as deficient as they are—and to introduce a concentrated program of in-service training. As a rule, however, difficulties of this kind are not too frequent. The number of examinations for specialized work increases each year.

Veterans preference operates in a large way in government recruitment through civil service examinations. From 1920 to 1940, the number of those appointed to federal positions who were entitled to veterans preference ranged from 25 per cent of the total at the beginning of the period to 30 per cent at the end of it. Under the law, veterans have five points added to their score, and their names go to the head of the list in each rating. In case of disablement, they receive five more points and are automatically moved to the top of the register, irrespective of rating. These provisions have been greatly reinforced and supplemented by the Veterans Preference Act of 1944. An interesting development in this connection is that, as a result of these preferences now accorded veterans, the opportunities for nonveterans in a large number of positions have been reduced, while the opportunities for women not only remain as attractive but in some fields have improved.

Most civil service laws forbid any question regarding the applicant's religious belief. This is a necessary and desirable stipulation, and in line with one of our most cherished civil liberties. In actual practice, however, it is hard to enforce, especially when it comes to appointments. It is becoming a serious problem in some jurisdictions.

After the examination has been taken, the papers have been graded, and the eligible list has been drawn up, the successful candidate is offered a position when an opening occurs. If he accepts, he is then on probation for six months in most cases, during which time he may be removed for any cause by the appointing officer. Actually, very little use is made of this authority. Indeed, if it were applied more conscientiously it would help solve the problem of getting rid of misfits later, when the matter is infinitely more difficult.

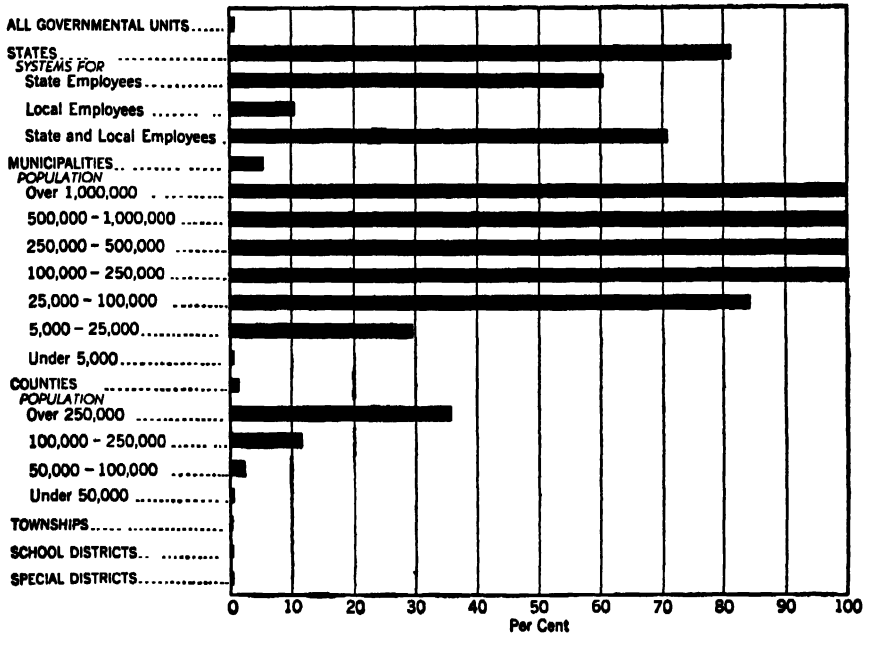
PROVISION FOR RETIREMENT

Government retirement systems applicable to the civilian population have developed outside the social security plan. In the public service, pension plans were slow to develop, but in recent years they have spread rapidly. Most of them are more liberal than that of the Social Security Board. In 1936 only 10 states had passed no retirement legislation. In 1938 there were 559 retirement plans in operation for cities of over 10,000. At about the same time there

were 30 state-wide teacher retirement systems and 56 at the local level.[4] The federal plan, one of the best, was created by Congressional legislation in 1920.

The principal advantages of a retirement plan to the government are increased efficiencies resulting from the automatic retirement of persons who are aged, ill, or physically impaired. It keeps the promotion ladder open to young people. The advantages to the individual are security in old age, protection of dependents, and opportunity to spend his declining years as he chooses.[5]

Public-service retirement plans are usually contributory and compulsory for new entrants. They may be either actuarial—resembling a regular insurance plan—or of the cash disbursement type. The former is more often preferred. In the retirement plan of the federal government, the Treasury Department invests the funds, the individual accounts are maintained by the General Accounting Office, and the Civil Service Commission determines eligibility. The states have tended to create large units of pension administration, such as state-wide plans including all state employees, and even in some cases the employees of local governments.



PER CENT OF STATE AND LOCAL GOVERNMENTAL UNITS MAINTAINING RETIREMENT SYSTEMS PROTECTING PART OR ALL OF THEIR EMPLOYEES—1941
Source: U. S. Bureau of the Census.

[4] Leonard D. White, *Introduction to the Study of Public Administration* (New York, rev. ed., 1939), p. 402.

[5] The best treatment of this subject is found in Lewis Meriam, *Principles Governing the Retirement of Public Employees* (New York, 1918).

A danger to be guarded against in the use of retirement plans is the greater difficulty in eliminating unsatisfactory employees whose salary deductions have accrued to a considerable amount. In the federal plan the deduction from pay rolls is 5 per cent. The usual compulsory retirement age in the government is 70 years, but in some cases the employee may choose to retire at 65 or even earlier. In the federal government a minimum service of 15 years is required before retirement benefits may be received.

The chart on page 640 shows the per cent of state and local governmental units maintaining retirement systems protecting part or all of their employees in 1941.

EMPLOYEE ORGANIZATIONS AND POLITICAL NEUTRALITY

The right of government employees to organize their own associations is now recognized in most countries, including our own, where it has been used in the federal government for over thirty years. Here the major employee unions are affiliated with either the American Federation of Labor or the Congress of Industrial Organizations. However, employees of the government, because of their special position, are not supposed to use the weapon of the strike and except in individual and minor instances have not done so. And in fact, their collective bargaining rights are generally well respected without it.[6] There is much concrete evidence that the unions have been able to increase wages, reduce hours, and improve working conditions.

A peculiar aspect of civil service systems is that civil service employees are not supposed to take part in political activities. It is held that they are neutral as regards political parties and that anonymity is what they seek. This assumption creates several interesting and difficult problems. The injunction against political activity has been reinforced by legislation.[7] The Hatch Acts of 1939 and 1940 were passed to put in more express form the rule which the national civil service has long attempted to enforce: that employees "while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns." Each year since the commission was created it has passed on several cases where this rule was involved. Until the time of the first Hatch Act, however, this rule covered only the classified civil service. The 1939 legislation extended it to the unclassified service. When this was thought to be inadequate, the 1940 legislation applied it to all state and local employees whose principal employment is in connection with any activity financed in whole or in part by federal grants and loans. Considering the number and variety of federal grants to the states, this law is likely to cause some complications.

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[6] See Gordon R. Clapp *et al., Employee Relations in the Public Service: A Report Submitted to the Civil Service Assembly of the United States and Canada* (Chicago, 1942).

[7] See L. V. Howard, "Federal Restrictions on the Political Activity of Government Employees," *American Political Science Review*, XXXV (June, 1941), 470–489.

The gradual extension of the civil service system raises some important questions for the American people to answer. The coverage of the civil service at the state and local levels is still far from complete, but in the national government it embraces more than a million people. In other words, a million to two million people are supposed to be neutral and anonymous. What a remarkable thing this is to expect of human nature! Is it possible? Is it even desirable? What does it do to people? If the system is further extended by governments and industry as well, we may see the day when the civil service state is a reality and no longer merely a figure of speech.

There are important aspects of this issue.[8] For one thing, an element of morale and motivation is found in this question: Will people work as hard and as well when they are required to be anonymous and neutral as when they identify themselves with a cause? And if neutrality is required of large numbers of people, what is the collective effect on their personalities and emotional releases? Will sublimations and compensations have to be found? Or is it enough if they merely identify themselves with the interests of their professional group and the program it stands for?

Of equal significance is another question: How can the gulf between the politically neutral civil service and the party leadership responsible for policy in the administrative branch of the government be effectively closed? It has repeatedly been said in this book that leadership at the top is one of the greatest institutional weaknesses in American government. It takes a higher caliber of elected leadership to energize the bureaucracy than has generally been provided. If neutrality is extended, the need for stimulating leadership will be even greater.

And finally, what is the effect of civil service on political parties and party government? Does civil service weaken party government and through it representative government? These questions go to the roots of our political system and should be fully thought out and discussed in all their ramifications.

On one factor, at least, we should be able to agree. If we are to be increasingly ruled by a professional bureaucracy, it is of the greatest importance that its members should have the best brains, the deepest philosophical insight, the closest touch with common sentiment and preferences, and as thorough a knowledge of statecraft in all its aspects as our institutions of higher learning are able to give them.

SUPPLEMENTARY READING

1. General: Commission of Inquiry on Public Service Personnel, *Better Government Personnel* (New York, 1935), and special studies entitled *Problems of the American Public Service*. This latter volume deals with municipal civil service, employer-employee relations, veterans preference, and a business-government comparison. See also William E. Mosher and J. Donald Kingsley, *Public Personnel*

[8] See Marshall E. Dimock, *The Executive in Action* (New York, 1945), Chapter 21, "Revitalizing Personnel."

Administration (New York, rev. ed., 1941). Consult also Floyd W. Reeves and Paul T. David, "Personnel Administration in the Federal Service," in The President's Committee on Administrative Management, *Report with Special Studies* (Washington, 1937), No. 1. In Leonard D. White, *Introduction to the Study of Public Administration* (New York, rev. ed., 1939), see Chapters 9–17. See also A. N. Christensen and E. M. Kirkpatrick, *The People, Politics, and the Politician* (New York, 1941), Chapter 18, "The Government and Its Employees"; and Marshall E. Dimock, *Modern Politics and Administration* (New York, 1937), Chapter 11, "Manpower."

2. Career opportunities: Lewis Meriam, *Public Service and Special Training* (Chicago, 1936); Morris Lambie (ed.), *University Training for the National Service* (Minneapolis, 1932); and Lucius Wilmerding, *Government by Merit* (New York, 1935).

3. Careers for women: L. F. McMillin, *Women in the Federal Service* (Washington, 3rd ed., 1941).

PART NINE PROBLEMS OF AMERICAN GOVERNMENT

CHAPTER 40

The Citizen Wants to Know

UP TO THIS POINT the machinery of government has been studied in relation to the causal factors determining its outlines and functions, but with primary emphasis on how government works and the principles that determine various sets of results. The emphasis shifts now to several kinds of action programs originating in the complex fabric of society: the causes and cures of war, the elements of economic growth and stability, and the welfare programs that society demands of government. This is not to say that the chapters up to the present have dealt only with the theory of government and that those which follow will be concerned with its practice; on the contrary, the problems still to be considered are needed to complete a knowledge of institutional organization and behavior and the principles applicable thereto.

In one sense the following chapters will study relationships, including the relations between our nation and other nations, the relations between government and business, and between government and the community as it operates in everyday life. They will discuss foreign policy, the regulation and stabilization of the economy, and the operation of programs as diverse as education and a police department. At the conclusion, the student may have a wider knowledge with which to judge the need, if any exists, of structural and procedural changes in the machinery of representative government.

The first part of this book has dealt with the citizen, the history and framework of government, our national traditions, the voters and political parties, public opinion and propaganda, the electoral machinery, pressure groups, legislative assemblies, the lawmaking process, the judiciary as policy maker and administrator, and public administration as the practical, working end of government. How all these elements mesh together will be discussed in this section.

All of Government Is a Problem

We sometimes speak of the so-called problem approach to government—by which we mean the study of government through a study of the manner in which it solves particular social and economic problems—as though it were one among several approaches to be adopted or rejected at will. But if we take a realistic view of the matter we are not free to reject the problem nature of government. What government does depends on the problems that society as a whole and in its various working parts creates for it. The machinery of government—which is another approach to its study—is not an end in itself;

it is merely the means of solving the problems which society has manufactured. There are two basic areas, therefore, in the study of government, both of which are as one, and separated only for convenience in organizing study materials. These two areas are the functions of government, assumed as a result of social pressure and social change, and the machinery of government, created by the necessity of adapting institutional methods to changing social patterns. Both are dynamic. Both are so inextricably related that failure of one causes failure of the other. Function and machinery are as essential to each other as any end-means combination ever found.

Government is an instrument. How we use it is the important question. If government becomes the tool of the dictator or the clique, it may be the means of exploiting the citizens, who then lose a voice in their own control and are told what they must do. But if, on the other hand, government is controlled by the people, it is the government which is told what to do in the interest of the citizens. However much authority government may exercise at the citizens' behest, it becomes the servant and not the master.

The Impact of Social Forces

Irrespective of whether governmental rule is by the one, the few, or the many, the basic problems of government are created by the interplay of all the forces and all the institutions of society. Government is not a world apart. Government is the attempted response of a central mechanism to the numerous problems and situations caused by individual and group activity. If the problems of society could be solved before they got to government, then government would have little to do. To the extent that these problems are not solved and therefore create tensions, suffering, and need, the task of government becomes difficult if not impossible.

All the elements of life are interrelated—the political, the economic, the social. The functioning of the social organization is understandable only when viewed as a joint activity. Anything that occurs in one area has repercussions elsewhere. And since government is the most comprehensive institution in society, the repercussions of its activity are more numerous, more complicated, and more persistent than those of any other institution. When government is viewed as rule over a particular area of the earth's surface, this interrelatedness is not difficult to comprehend. A little study and reflection show that a problem originating in one group affects another and ends by forcing the government to take action. The simpler the cause-and-effect relationship, the more obvious is the impact of forces. For example, if 75 per cent of the workers in a metropolitan area are commuters, if the transportation system is slow, expensive, and disconnected, and if the franchises are held by companies which lack the incentive to improve the service, then we are not surprised when the commuters demand that the government improve the situation. The service is central in their lives and they act as though they believed an appeal to the government was the best way to get results.

The more steps there are leading to the impact of forces, the more difficult it is to sort out the cause-and-effect relationships as they flow from the simple to the complex. Even in the case of federal activity in the United States, this is sometimes a difficult feat of social analysis. And yet we know from our own experience that diagnosis invariably precedes reliable prescriptions.

A Contracting World

Complex problems cannot be solved unless the causal factors are traced to their outermost limits. A century and a half ago our forebears thought the federal government was too vast and remote for most of the simple problems with which a frontier society was confronted. We now realize that even when a nation covers a continental expanse of three thousand miles—as our country does—the governmental jurisdiction may still be smaller than the life-and-death-dealing forces which surround us. With the obliteration of distance, the forces which now directly affect us are as much world forces as they are national and local. If there was ever any doubt about this, the discovery of atomic energy has eliminated it. We must raise our sights, therefore, to the level of the world conditions that shape our individual and national existence. The vital question of war and peace—which outranks all others in survival and cultural significance—is a global problem, not a national one. Thus if political science is to serve society faithfully, it must study governmental problems in the larger context which science and transportation have created for us.

For three hundred years and more, the geographical basis of statecraft has centered about the nation-state. Some nations, like the United States, the British Empire, and Russia, are extremely large, while others, such as Luxembourg and Albania, are small. If we are not to delude and cheat ourselves, we must get away from the nation-state concept and make room for a broader understanding that recognizes the existence of a world system of separate states of which we are but a part, and that the impacts released within the world community create our national problems just as local problems blow up into questions of nation-wide interest. An international political science is as much a part of the study of government as a domestic political science. Our nation is a segment of a larger whole, just as California or New York are states in a larger union. The common factor in each case is the individual and his welfare.

We have recently concluded the greatest and most destructive war the world has ever seen, in the course of which we discovered how to release the energy of the atom. The result of this discovery was to make it certain that another war will all but destroy mankind. Consequently, the most vital question before the world is this: Will there be another war? There can be only one answer: Not if we can prevent it. The means by which war may be prevented—means which include education, citizenship, an understanding of the problems of international relations, and the popular control of government—constitute a central concern of political science.

Possible Approaches

There are several possible methods by which to organize a discussion of government's attacks on social and economic problems.

First, such a study might emphasize the characteristic functions of governments at the various *levels*—local, state, national, and international. This would accentuate the distinctive functions which each layer of government performs, but it suffers from the drawback of unnecessary repetition, because almost every function is duplicated at two or more levels.

Or it might emphasize *constitutional provisions,* quoting the wording of the commerce clause, the immigration provision, and so on, until the more important items on the list had been covered. But this would be too limited an approach for the study of the kind of problems which face us today.

Third, it might analyze the functions of government at all levels and group them in order to identify the more important *common problems* at all levels. This has been one aspect of the general method used throughout the present book.

Or it could follow the classification already suggested in an earlier chapter—the functions of government represented in protection, assistance, regulation, direct service, and international relations—an approach that may be called the *analytical* method. The more important examples of governmental function under each of these headings would then be discussed.

Still another approach might be to use the *historical* method, which in fact has been relied on to a considerable extent in that an attempt has been made to trace the origin and evolution of modern problems and the solutions that have been tried.

Or, finally, this study might emphasize *social trends,* as President Hoover's commission did in its report on *Recent Social Trends.* The outline of that book might even be adapted to the present purpose: problems of physical heritage, problems of biological heritage, and problems of social heritage, with greatest attention to the last.

It is not proposed to discard any of these possible methods. They are all useful and should be drawn on as much as possible. However, there is yet another which commends itself for use in the remainder of this treatment. It is not as formal or even as conventional as those listed above, but there is much to be said for it.

THE CITIZEN WANTS TO KNOW

What are the young men and women of America thinking today, especially those who have seen service in the armed forces? What are those of us belonging to an older generation most concerned about, although perhaps not always so deeply or personally as those who face a confused world after service in the war? Our returning veterans view the problems of government and society with a maturity which many who are older will never know.

These are the questions that sober citizens, young and old, are asking:

1) What is the possibility of another war?

2) What are the chances of steady employment in an expanding economy?

3) What kind of social and neighborhood conditions may we expect in which to rear a family?

4) How can our civil and political freedoms be safeguarded and strengthened in a society characterized by rapid social change?

This last question is the subject matter of the whole book and so does not need separate treatment here. The others do.

Challenging Problems for Representative Government

The first three questions listed above may be briefly designated as problems of war and peace, problems of the political economy, and problems of the welfare state.

How to prevent war and safeguard peace is the central problem of the future. It may be a long and stormy future, or it may be a short and disastrous one, depending on the depth of our understanding and our willingness to cooperate in the solution of international problems which the discovery of atomic energy has pushed right down to the level of the citizen's home. What are the causes of war? How can governments prevent war through national ideology and international organization? How about colonies, the problem of sovereignty, and the elements of an enlightened foreign policy? Interest in government has grown as the peoples of most of the nations of the world have shown an increased determination to do something decisive about war and peace. But today this interest in government must grow even faster to keep pace with our knowledge of the means of world destruction.

The next large question relates to our futures as wage earners and sharers in an economy of abundance. How far must we expect government to go in stabilizing and fostering a reliable system of production, distribution, and exchange? The answer takes three principal forms: policy toward business, toward agriculture, and toward labor. Underlying these are problems of conservation and planning and the relation of national economics to world markets.

The welfare of its citizens is the inescapable responsibility of a government which is popularly controlled and focused on human objectives. Law and order must be maintained. These require police establishments and institutions for the socially maladjusted. Since the strength of a republic lies in the degree to which knowledge is widely disseminated, education also is a vital function of a free government. Health, housing, and public-utility standards must be maintained and improved. Government, as the servant of all, must create the conditions and provide the instrumentalities for cultural opportunities conducive to the good life.

This is the outline that will be followed from here on. The problems suggested under the alternative methods reviewed above seem to fall naturally

into place under the three principal questions that are on people's minds today. No government alone can solve any one or any combination of these problems. The individual, the family unit, the spiritual force of religion, the organizing power of business, the free expression of cultural media, the influence of philosophy and ethics, and—most of all—the vitality and essential decency of common humanity are all involved. The role of government varies in different fields of activity, but, in all, government is central because it is the most comprehensive of the institutions involved.

The task of political science, say the editors of a book of readings entitled *The People, Politics, and the Politicians,* is to "socialize the individual—to teach him to see himself as part of a vast socio-political complex which is the world of today, to end his isolation, to so stimulate his imagination that he will come to see society as one vast interrelated whole, in which the problems of geographically or socially remote persons are in some fashion connected with his own." [1] This is a worthy ideal. We must broaden our sights in order to become better, freer, and happier people.[2]

[1] *Loc. cit.* (New York, Henry Holt & Company, 1941), p. 2.

[2] Since the purpose of this chapter is to introduce the major problems that will be considered in the remainder of the book, a bibliography hardly seems necessary at this point. One assignment is recommended, however—Robert S. Lynd's *Knowledge for What: The Place of Social Science in American Culture* (Princeton, 4th ed., 1945), Chapter 6, "Some Outrageous Hypotheses."

PART TEN FOREIGN POLICY AND INTERNATIONAL RELATIONS

CHAPTER 41

The United States in the World Community

OF THE NUMEROUS theories advanced to explain war as a social phenomenon, nearly all have stressed a single causal factor. It has been argued, for example, that war is as inevitable as human nature: it is man's nature to fight. It is said also that war is due to smoldering hatreds inflamed by past conflicts: these dragon teeth cannot be pulled. Or war is held to be caused by a breakdown of individual morality: if we respected the law and every nation kept its agreements, we would have no war. Those who hold the anthropological view believe that war is a stage in man's evolution: when we become more civilized, war will disappear. Those who think primarily in economic terms, on the other hand, attribute war to the unequal distribution of the world's riches: the "have-not" nations will always fight the "have" nations so long as they possess the strength. War, they say further, is the logical consequence of disequilibriums and tensions in particular nations, where unemployment and acute suffering cause political leaders to plunge the country into international conflict as a last resort to avoid internal revolution. Others think in more political terms, believing that war is due to the intense nationalism and militant patriotism that have grown up in the major nations of the world. If we were to substitute an international loyalty for a nationalistic loyalty, they say, we would see the end of war. War is inescapable so long as nations cling to the principle of sovereignty: we should discard this costly notion. War is caused by lack of world organization: if we had an international law containing sanctions, courts with real authority, and an effective international police force, we might expect peace and order on the international as on the domestic plane.

Nor does this cover the whole field of speculation. There are, for example, many other ways of approaching the problem of war, including the cultural —through a common language, through a mutual appreciation of painting and literature, through travel, or the exchange of scholars and teachers. None of these schemes should be disparaged for they are all constructive. Indeed, it would probably not be far wrong to conclude that each of these diverse theories partially explains the causes of war and suggests their possible cure.

Many of the factors entering into the cause of war are governmental, or governmental and economic, making them of special concern to the political scientist. In this chapter, therefore, an attempt will be made to set forth some of the aspects of international relations with which students of political science should be concerned. Some of the basic elements in the problem of war will

be discussed first, including nationalism and the concept of sovereignty. This leads into the subject of international law, which is followed by a consideration of other questions that seem pertinent, including the concepts of the national will and national policy. It is then shown how wars develop through nations' use of nonmilitary weapons, and what the range of alternatives is. The chapter concludes with a study of the possibilities of international organization and those lessons in the experience of the United States as a nation that might prove helpful on the international level.

Today the world may be faced with only two alternatives:[1] on the one hand, destruction; on the other, permanent peace. There is no longer a middle road. Under these circumstances, we must have a broadly disseminated and integrated knowledge of the world community. "Education" is universally believed to be a principal method. But, admittedly, education is slow. It may be that one means of speeding the process is to emphasize the variety and character of international relationships, and to incorporate a study of the allied aspects of international relations into every other field, including the cultural, the scientific, the economic, and the political.

In each of the seventy or eighty nation-states of the world, says Emery Reves, author of *The Anatomy of Peace*, the people act as though they thought their nation to be the immovable center around which the rest of the world revolves. But our political and social thinking today, based as it is on the concept of nation-feudalism, is as outmoded as the idea that the world is flat. Quite apart from our personal interest in a permanent peace, therefore, the United States in the community of nations is now an essential part of the study of American government.

HUMAN NATURE AND WAR

Before going into other aspects of the causes of war, the argument that man is by nature belligerent, that he enjoys fighting, should be disposed of. If such were indeed the case, the political scientist could contribute little to the subject except his ideas on the humane rules of warfare. Since many assumptions regarding human nature are a part of political science, the psychologists may again be consulted for light on the question of whether man is incurably warlike. In 1945 a committee of psychologists issued a statement entitled "Human Nature and the Peace." Their conclusions were as follows:

1. War can be avoided: War is not born in men; it is built into men. No race, nation, or social group is inevitably warlike. The frustrations and conflicting interests which lie at the root of aggressive wars can be reduced and re-directed by social engineering. Men can realize their ambitions within the framework of human cooperation and can direct their aggressions against those natural obstacles that thwart them in the attainment of their goals.

[1] See Norman Cousins, *Modern Man Is Obsolete* (New York, 1945).

2. In planning for permanent peace, the coming generation should be the primary focus of attention. Children are plastic; they will readily accept symbols of unity and an international way of thinking in which imperialism, prejudice, insecurity, and ignorance are minimized. In appealing to older people, chief stress should be laid upon economic, political, and educational plans that are appropriate to a new generation, because older people, as a rule, desire above all else, better conditions and opportunities for their children.

3. Racial, national, and group hatreds can, to a considerable degree, be controlled. Through education and experience, people can learn that their prejudiced ideas about the English, the Russians, the Japanese, Catholics, Jews, Negroes, are misleading or altogether false. They can learn that members of one racial, national, or cultural group are basically similar to those of other groups, and have similar problems, hopes, aspirations, and needs. Prejudice is a matter of attitudes, and attitudes are to a considerable extent a matter of training and information.

4. Condescension toward "inferior" groups destroys our chance for a lasting peace. The white man must be freed of his concept of "the white man's burden." The English-speaking peoples are only a tenth of the world's population; those of white skin only a third. . . .

5. Liberated and enemy peoples must participate in planning their own destiny. Complete outside authority imposed on liberated and enemy peoples without any participation by them will not be accepted and will lead only to further disruptions of the peace. . . .

6. The confusion of defeated people will call for clarity and consistency in the application of rewards and punishments. . . .

7. If properly administered, relief and rehabilitation can lead to self-reliance and cooperation; if improperly, to resentment and hatred. . . .

8. The root-desires of the common people of all lands are the safest guide to framing a peace. Disrespect for the common man is characteristic of fascism and of all forms of tyranny. The man in the street does not claim to understand the complexities of economics and politics, but he is clear as to the general directions in which he wishes to progress. His will can be studied (by adaptations of the public opinion poll). His expressed aspirations should . . . be a major guide to policy.

9. The trend of human relationships is toward ever wider units of collective security. . . .

10. Commitments . . . may prevent postwar apathy and reaction. Unless binding commitments are made . . . people may have a tendency after the war to turn away from international problems and to become preoccupied once again with narrower interests. This regression to a new postwar provincialism would breed the conditions for a new world war. . . .

This is an encouraging statement. Apparently war arises not so much from the inherent nature of man as from the institutional arrangements he creates. These are determined by our environment, in which tradition plays a major part. It is possible, in some measure, to control our environment.

In the relationships between nations, the two most important political factors are nationalism and sovereignty, which we shall now consider.

THE GROWTH OF NATIONALISM

We have suggested that the modern system of nation-states began about the time of the Treaties of Westphalia, at the end of the Thirty Years' War. This was in 1648, just about three hundred years ago. It was at this time that the political units comprising the Holy Roman Empire became virtually sovereign and independent. Both France and Prussia were extended and the independence of the Dutch and the Swiss was recognized. In some countries the claims of divine right rulers, the doctrine of national sovereignty, and the growth of nationalistic fervor had been developing for some time before this, but Westphalia was a landmark in the expression of these concepts.

In the three centuries since 1648, nationalism has been the single most outstanding phenomenon in the modern system of nation-states. Nationalism early became strong in France, Austria, Spain, and Sweden. It rolled up with great force to unify the German states, Italy, and Poland. In the Americas, nationalism, first associated with the drive for independence, later stressed exclusiveness and separatism. In Russia, China, and Japan it has grown rapidly in recent years. There are now three score and more sovereign states in the world governmental system. Some are small and weak compared with the great powers, but all are acutely aware of their separate identities.

In his book, *Political Myths and Economic Realities,* a brilliant French scholar, Francis Delaisi, attempted to show that our economic self-interest is opposed to nationalistic exclusiveness, which he characterized as a "myth." In terms of rational analysis, Delaisi was undoubtedly correct. But in terms of the way people behave, he was badly mistaken. Nationalism is so strong that the very mention of the word "internationalism" suggests something subversive in the minds of countless peoples in all quarters of the earth—even those who can remember the costly wars that have despoiled their countries.

The Elements of Nationalism

The modern state exists largely in the realm of sentiment, which partly explains the explosive power of nationalism. If the state were merely the tangible things mentioned in its formal definition—people, territory, and government—the problem of reconciling nationalism and internationalism would be much easier. Since it is more than this, the factors which enter into the growth of nationhood and nationality must be considered.

Some of the chief of these are kinship, language, religion, geography, economics, common traditions, and statehood and government.

Kinship is a feeling of belonging to the same family. John Stuart Mill speculated with interest on this in his *Representative Government:* "The feeling of nationality," said Mill, "may have been generated by various causes. Sometimes it is the effect of identity of race or descent. Community of language, and community of religion, greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political antecedents; the

possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past."

Language may be more of an integrating factor than kinship and racial origins, but it is not always so. The Swiss, for example, are a small nation using four different languages; yet they are strongly united.

Religion, especially the establishment of a so-called state religion, is a strong factor. Countless wars have been fought over religious differences. Organized religion may either strengthen or weaken nationalism, depending on whether it is narrowly identified with political groupings, or whether it attempts to be more universal in character.

Geographical factors, such as mountains, bodies of water, and other natural frontiers, shut groups of people off from others and make them isolationist and exclusive. Similarly, the soil, resources, and climate of a country determine whether a nation can be economically powerful and hence great, or whether it must remain pastoral and uncomplicated.

Economic factors are closely related to the geographic. A country may be rich in natural resources, however, and yet fail to exploit them, as was true of China in the recent past, or Russia before that. It is the use made of natural resources that determines the political economy of a nation, its strength and its impact on other nations.

The influence of common traditions. This is the realm of sentiment, spiritual values, and myths. Mill gave it first place as the explanation of nationalism. Carleton Hayes, the American historian who has written so much on nationalism, gave it second place. Ramsay Muir in his *Essays on Nationalism* regarded the influence of common traditions as "the one indispensable factor."

Certainly the influence of national sentiments is hard to overemphasize. As Professor Arthur Holcombe has said, nationality is a corporate sentiment, "a kind of fellow feeling of mutual sympathy, relating to a definite home country, and binding together the members of a human group, irrespective of differences in religion, economic interests, or social position, more intimately than any other similar sentiment." [2]

Statehood and government. A common government with common symbols is a great unifier. This has caused Professor Ernest Barker to remark that "historically, the State precedes the nation. It is not nations which make States; it is States which make nations." [3] And "the State has always been the great dragoman," [4] concluded José Ortega y Gassett in *The Revolt of the Masses.* Abolish the state, say the guild socialists and some other groups of political thinkers, and men will recognize their common interests and identities. The

[2] Arthur N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923), p. 131.

[3] Ernest Barker, *National Character* (London, 1927), p. 15.

[4] Interpreter, catalyst.

myth of the state, with its great power used for nonhumanitarian purposes, is the giant dragon which sprawls over the map of the world.

Governmental institutions are the cradles of new nations. They unify and nationalize men and women even when they originally lacked common kinship, language, and traditions. Sir Arthur Keith has even gone so far as to suggest that nationalism is part of nature's machinery of evolution and "the incipient stage in the process which leads on to racial differentiation." [5]

THE CONCEPT OF SOVEREIGNTY

Closely associated with the system of nation-states that today dominates the international political scene, is the doctrine of unlimited national sovereignty about which something has already been said. Originally a legal concept underlying the claims of rule by divine right, sovereignty has since been attributed to a number of areas in the political scheme: to the people, to the legislative assembly, to the constitutional framework, to the so-called higher law which transcends the temporary ruler of a country, and to the nation-state itself. It is in this last sense that sovereignty is now most widely employed and it is in this sense also that it has the sharpest impact on the problems of war and peace.

There can be no peace and order in the world until the need for the rule of law is recognized. Our domestic law, reinforced by the courts and the coercive power of the government, assures peace and order at home. Similarly, before we will have assurance of peace and order at the international level, international law must be further developed and machinery provided whereby it will be enforced. This is the crux of the problem created by the doctrine of unlimited national sovereignty, because as yet the fact of sovereignty is interpreted to mean that a nation may obey or, under pretexts, disobey international law as it desires.

The doctrine of sovereignty holds each state to be uncontrolled in certain important respects. *Sovereignty means the legal and enforceable rights of the nation-state to supremacy within its own borders and the corresponding right to be free from interference from without.* No problem is created by the first part of this definition, but there is a real problem in connection with the second. If international law is to prevail, the nations of the world must abide by it just as citizens must abide by the domestic law of their own country. A fundamental question of our day, therefore, concerns the extent to which international law will be enforced in the manner of domestic law. This is analogous to the difficulty which confronted the framers of the federal Constitution in 1787. The thirteen states were acknowledged to be sovereign, and yet it was apparent that in case of conflict between state action and the law of the Constitution, the latter would have to be controlling, with a Supreme Court having power to decide in a conflict.

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[5] Sir Arthur Keith, *Nationality and Race* (London, 1920), p. 9.

Some American writers have tried to resolve this difficulty by inventing the theory of dual sovereignty, with both the states and the federal government supreme each in its own sphere. Sovereignty came to mean jurisdiction to act within the respective spheres of state and nation. Could this line be taken in resolving the present dilemma created by the rival claims of domestic and international law?

The term "sovereignty" has been used in two principal ways. First, legal sovereignty is a claim to power which may or may not be effectively supported. And second, actual sovereignty is the power to make one's claims stick. If legal sovereignty were recognized as operative in the international community, the teeth of sanctions might progressively be supplied by nations determined to enforce the rule of law.

INTERNATIONAL LAW

The rise of the system of nation-states was accompanied by the development of the doctrine of unlimited national sovereignty—as expounded by the French lawyer and philosopher, Jean Bodin—and by the first comprehensive treatise on international law, *Concerning the Law of War and Peace,* by Hugo Grotius, published in 1625. In this analysis, Grotius relied heavily on the dictates of reason and the law of God, which, as has been noted earlier, were greatly and persistently emphasized from Roman times down through the Middle Ages and into the present. With these, Grotius combined various usages existing among earlier peoples—including reference to Roman and mercantile codes and various other substantial philosophical materials—to set up the first real framework for a system of international law.

The subject has grown enormously since the time of Grotius, because of the work of international conferences and agreements, the Hague tribunals, the Permanent Court of International Justice, and the adoption of some aspects of international law by the legal systems of the principal countries of the world. In addition, the work of international jurists and commentators has been outstanding.

International law is that body of rules which apply to the relationships between governments or between the government of one nation-state and the subjects of another. The two main subdivisions of international law are private law and public law. It was once customary to define international law as "international morality." Perhaps it is symptomatic of a new determination to support international morality by effective sanctions that the *Encyclopedia of the Social Sciences* defines international law as "a binding body of rules . . ."

International Law a Part of Our National Law

On several occasions the Supreme Court of the United States has said, either expressly or in effect, that international law is a part of our law. In the case of *Paquette Habana* (175 U. S. 677. 1899) the Supreme Court made this clear

and then commented that "where there is no treaty, and no controlling executive or legislative acts or judicial decisions, resort must be had to the customs and usages of civilized nations."

In the United States the most express link between constitutional and international law is found in the judiciary article of the Constitution which expressly states that *all treaties are a part of the law of the land.* This applies not only to treaties with one nation but also to those in which there are several contracting parties. If, for example, the President and the Senate had agreed in 1920 that the United States should enter the League of Nations, and had accepted all the rights and duties pertaining to membership, all such agreements would have become a part of the fundamental law of the United States.

The treaty-making power has been used to extend the authority of Congress over areas where otherwise it could not legislate. It has been held that Congress, having accepted an obligation toward another country, must act in good faith and carry out the terms of that agreement. The leading case on this point is *Missouri* v. *Holland* (252 U. S. 416. 1920), which dealt with Congressional control over migratory birds. If, however, a law of Congress conflicts with international law, then the Supreme Court will uphold the Congressional act in preference to the treaty. In other words, the primacy of international law has never been recognized in the United States, although the Supreme Court early said that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." This was in the case of *The Charming Betsy* (2 Cranch 64. 1804).

International Law and International Compliance

The rule of law applies in our domestic affairs. That is a matter about which there is no choice. The question concerns the extent to which the rule of law applies in the international community. In the international community a nation may settle its disputes according to international law, or through resort to arbitration, or not, just as it chooses. No course at this stage is mandatory; it is entirely optional. When disagreements involve national security, prestige, national honor, or matters of high policy, nations customarily claim that they are beyond the restraints of international authority.

"In effect," say Frank H. Simonds and Brooks Emeny in *The Great Powers in World Politics,* "the world of today is a lawless world." They explain that this is due not to the absence of international law or the machinery of international administration and adjudication, but rather to the fact that nations generally refuse to shape their national policies to conform to international law. Nations fail to submit to the proper tribunals disputes arising from conflicts of vital national interests, or they fail to invest the machinery of peace with the necessary police power.

When nations will not provide for peaceful settlements, there is no alternative save to arm themselves. War then becomes an instrument of national policy for those who hope to gain by its use. War becomes the inescapable

necessity of those who are attacked. Military establishments are the natural concomitants of separatistic sovereignties. In the absence of adequate machinery and sanctions—international law, courts, and police as a minimum—force becomes the ultimate and inevitable means by which sovereign states seek their ends. But if the rule of law could be applied internationally and backed with sufficient physical and moral force, the danger of war might be reduced.

Summarizing to this point, a primary cause of war is nationalism. Because of nationalism, people are swept away by their sentiments, not steadied by their intelligence; they are driven by their passions for symbols, not held in check by that faith in the brotherhood of all peoples which is found in all the great religions. War is inherent in the concept of exclusive national sovereignty. A dominant factor in the history of government is that *lawlessness and wars are inevitable so long as there is no government at a higher level capable of resolving problems through law and insuring peace through adequate enforcement machinery.* This is the precarious situation in which we find the world today. Now that survival and stable relationships are world-controlled, only a world government can hope to solve the problem that nationalism most stimulates and is powerless to curb.

SOME ADDITIONAL FACTORS RESPONSIBLE FOR WAR

One reason why progress toward international security has been so slow is that important factors entering into the causes of war have not been sufficiently analyzed. Too many well-meaning people get no further than the comment that we cannot have peace until nations everywhere develop a respect for law. To this, the skeptic replies that we should first try to discover why people persist in violating the law. Some additional factors that cause nations to go to war, therefore, should be considered.

One of these is the effect of geography. A nation cut off from its neighbors by natural barriers such as mountains or oceans feels less exposed to attack than a country situated on unbroken plains. Consequently, the geographically protected nation is less likely to be concerned with world security. Until recently, the United States was a leading case in point. As we all know, however, geographical protection is now largely illusory. Airplanes, rockets, and atomic energy have reduced the relative safety which geography once afforded.

Another factor is national resources. Some countries, such as the United States, Russia, and China, are richly endowed, and their interest in international trade is not marked. But others, including Italy, the British Isles, and the Scandinavian countries, are not so fortunate. Since they must rely on foreign commerce they favor world trade and the security of trade routes. Some nations—continental in scope and rich in resources—are virtually self-supporting in peacetime even if not quite so well situated in wartime. The United States and Russia are examples of these.

Another suggested cause of war is the division of all nations into the "haves"

and the "have-nots." This is related to the question of self-sufficiency. The "have-nots" war against the "haves" unless they can get what they want by methods short of war. There is much weight to this argument, but it contains several notable defects. For one thing, a line cannot be arbitrarily drawn between the "haves" and the "have-nots." China possesses great resources but has not exploited them. Great Britain is an island, but for centuries—through manufacture, shipping, and finance—she has been one of the most powerful nations in the world both politically and economically. Moreover, the degree of pressure exerted by the population on available resources depends on a number of factors, including the rate of human reproduction and the optimum use of resources. Also, if the argument were pressed to its logical conclusion, it would have to be said that the "have-nots" constantly plan stratagems in our domestic economies to take the wealth and goods of the "haves," and we know that except in certain cases this is not true.

Ultimately, in any analysis of the causes of war, certain logical conclusions are inescapable. In a world without sufficient government, where order cannot be preserved or change take place by peaceful methods, strong nations will take care to arm themselves to protect their favored position, and the envious will do what they can to adjust the balance of territory and wealth in their own favor. The strong nations will hope to profit by trade with nonindustrial or so-called backward peoples, setting up a competition with other great industrial and trading nations, thus further increasing the dangers of clashes of economic and political interests. Injustices, whether domestic or international, add still further to the explosive potentialities of the situation.

Obviously, therefore, to be successful, world government, like national government, must seek positive means of neutralizing danger areas and not remain content merely to sit on the lid.

The Concept of the National Will

Another factor which bears on the reasons why nations go to war is the concept of the national will. This was a favorite term of nineteenth-century political science, employed almost as often as the term "sovereignty." It will be recalled that Woodrow Wilson used it in defining the nation-state. Both individuals and nations, so it is argued, define their goals and the means of accomplishing them on the basis of intelligent self-interest. This involves an exercise of the will. The national will is a necessary implication of the individual will.

But is there such a thing as a national will? Doubtless there is at given times and on concrete issues. But to talk of *the* national will as though it were preordained and unchanging represents an oversimplification that beclouds rather than furthers understanding. The national will, like the individual will, is influenced partly by reason but perhaps even more by sentiment.

The difficulty that results when the effect of sentiment is ignored is illustrated in a major assumption of the authors of *The Great Powers in World*

Politics: "It is equally evident," say Simonds and Emeny, "despite popular conviction to the contrary, that while rulers and forms of government within nation states have changed frequently, national policies, by contrast, have varied surprisingly little in purpose from century to century. Such modifications as have occurred have been due far more often to economic than to political causes." [6]

This is an interesting suggestion and contains much that is true—but in the authors' opinion it represents an oversimplification of the problem and places too great a reliance on determinism. It ignores the effect of sentiment—including patriotism, loyalty, national pride and honor, and acquisitiveness—in the shaping of national policies. Unless we take these factors into account we can make little progress toward the establishment of an international peace organization. If the national will is held to be based solely or even largely on reason, it will not serve as a reliable guide in the solution of international problems.

Another troublesome concept in the field of international relations is that of national policy. Simonds and Emeny define national policy as "the system of strategy employed by a state primarily to insure its security and to promote its prosperity." Here, too, there seems to be more emphasis on consistency and design than one finds in practice except in certain notable instances. There have been regimes—such as those of the Kaiser or Hitler or the Japanese warlords—for which the term "system of strategy" was not too strong. But it certainly seems too simple to apply it to the majority of today's nations, including the United States, China, Belgium, Denmark, Switzerland, Sweden, and the South American countries.

The famous military leader Clausewitz defined war as "politics continued by other means." If national policy cannot get what it wants by peaceful methods, it makes use of force. This is understandable, and no doubt such ideas have been influential in Germany. But we would hardly admit that American ideology recognizes the legitimacy of war as an instrument of national policy, if by that is meant getting by force what cannot be secured by peaceful methods. Nevertheless, it must not be forgotten that it takes only one mad or ambitious ruler to start a war. So long as that is true, the machinery of international government must be as effective as though all nations were on the point of becoming lawbreakers.

THE WEAPONS THAT NATIONS EMPLOY

There are several methods short of war which a nation may use in seeking to maintain or improve its position relative to other nations.[7] Any attempted analysis of the problem of war, therefore, must take these weapons into account.

It is customary to distinguish between domestic and foreign policy, as has been done at various points in this book, but closer scrutiny reveals that both

[6] (New York, 1939), p. 29.

[7] See Frank H. Simonds and Brooks Emeny, *The Great Powers in World Politics, op. cit.*

stem from the same source. A principle of international politics is that the foreign policy of a nation will generally be found to seek that which is of greatest value to its domestic welfare, although it is equally true that such seeking is pursued with varying degrees of deliberateness, national consciousness, and skill.

Of the measures used by nations to maintain an advantage or to get the better of a competitor, one is economic and includes tariffs, zones of influence, empire preference, and the closed door to the trade of others. Measures may also be financial, such as the devaluation of currency, the payment of subsidies, cartel "dumping," the use of foreign investments to interfere in the economic and political life of other countries, and the use of the money power as a means of direct coercion.

When these factors have created the beginning of a tense situation, then resort is had to political weapons, including secret diplomacy, alliances of many forms, use of the balance-of-power device, the operation of a propaganda machine, and other political moves in anticipation of eventual warfare. And finally, there is the military tool of war itself.

The Range of Alternatives

Of the several methods by which nation-states in the past have attempted to secure themselves from aggression, various combinations are being used or will be tried in the future. The first of these is *national self-sufficiency,* both political and economic. This method is sometimes called the garrison state, suggesting as it does a high wall to keep intruders out. Because of the approach from the air, however, national self-sufficiency is not as favored as it once was as a means of protection from aggression, even among the most powerful nations. Indeed, a self-sufficient nation today may be regarded as fair prey by another determined to gain an advantage.

Next, there are *alliances,* both political and military. This has been the method most widely used throughout recorded history. Athens made alliances, sometimes to her chagrin and near doom. Alliances were numerous during the period covered by the Hundred Years' War, the Napoleonic Wars, and others of the eighteenth and nineteenth centuries. Alliances existed prior to both world wars in the present century. The nation which uses this method tries to get the greatest weight of nations on its side in accordance with that old favorite of international diplomacy, balance of power. Alliances are sometimes valuable but very often prove precarious. They may intensify differences, making war at some future time seemingly inevitable, and they often fail at the last moment.

A third method of attempting to forestall aggression is to take the initiative by seeking *world dominion.* Instead of dividing power by means of alliances, nations sometimes try to consolidate it. World dominion has been tried several times but, except for the Roman success at the turn of the Christian era, it has usually proved short-lived. Men in many ages since Rome—Machiavelli,

for example—have hoped for the return of a system in which nations would be forced together by the strong rule of an overlord, but the Pax Romana now seems an empty dream.

Regional confederations have also been tried. These are usually economic and cultural, but they may also be governmental and military. The British Empire is hardly a regional confederation because its areas are not contiguous, but it serves the same purpose. Regional confederations have been much favored in recent times. Several authors of world security plans have outlined regional confederations for Europe, Africa, the Americas, Russia, Asia, and other parts of the world. The federal form of government, notably exemplified in the United States, has been a good talking point. A regional confederation and a larger amalgam of nations are not antithetical concepts. The regional confederation may serve a limited purpose, such as the obliteration of customs barriers and the establishment of free trade, while world organization assumes responsibility for maintaining peace and security.

This suggests the next alternative, which is *international organization*. Here the nations do not relinquish their sovereignty, but merely federate themselves for certain purposes. Such an organization resembles the original Articles of Confederation in our early history as a nation more than it does the union of states under which we now live. The nearest approach to international organization on a major scale, prior to the creation of the present United Nations, was the League of Nations established at the end of World War I and joined by every important nation of the world except the United States.

International administrative agencies—as distinct from those which are political—have been taking root and growing up for many years, buttressing and supporting the League of Nations and now the United Nations. This type of agency, exemplified by the International Labor Office, is created for a specified purpose that is largely nonpolitical. It develops a tradition and an expert staff, and has a definite mandate based on practical necessity. It is not in the limelight or involved in international jealousies—it simply goes about its own business.

The fourth quarter of the nineteenth century saw the establishment of several of these international administrative agencies: the International Telegraph Union (1875), the Universal Postal Union (1874), Protection of Industrial Property (1883), Copyright (1886), and many others dealing with navigation, health, transportation, commerce, and labor.[8]

The Pan-American movement started as early as 1826, but it was not until the institutional framework of administration was laid in 1890, and the Pan American Union assumed its present name in 1910, that the twenty-one American republics provided the groundwork for the conferences and cultural interchanges that have made the inter-American system the influential instrument that it is today.

[8] See Pitman B. Potter, *Introduction to the Study of International Organization* (New York, 1935), or N. L. Hill, *International Administration* (New York, 1931).

The International Labor Office, which grew out of the Treaty of Versailles in 1919 and which has increased its influence for almost thirty years, possesses in many ways the most promising record of any international body to date. Its solid basis of administration and its concentration on a definite area of commerce and labor in which all nations are interested must be accounted basic reasons for its success. The I.L.O. gives equal representation to employer and employee organizations in member countries. It holds international conferences at which definite problems are dealt with. It carries on research, drafts legislation which member countries are invited to incorporate into their national law and administration, and is generally acknowledged to have formulated a considerable body of international law relating to labor relations.

Effective as these international administrative agencies are, however, they are slow, and if we were forced to rely solely on them, disaster would soon overwhelm us.

WORLD ORGANIZATION

As a result of the discovery of atomic energy and its use as a military weapon, the requirements of world organization have been considerably extended. The League of Nations was not adequate even a generation ago. A good many people now doubt whether the United Nations is adequate. A world constitutional government has been proposed which would govern the world as a nation is governed.

This plan, which is now favored by a growing number of people in all the countries of the earth, would differ from an international confederation in that there would be world citizenship, actual lawmaking and enforcement power, and the transference of national sovereignty to the world organization as relates to all matters of international law, the prevention of war, and the peaceful settlement of disputes among nations. Former Governor Stassen of Minnesota has advocated such a plan; Emery Reves, author of *The Anatomy of Peace,* says that it is the only one which has any hope of avoiding disaster; Albert Einstein, former Supreme Court Justice Owen Roberts, and many others have affiliated themselves with this proposal. National self-sufficiency, alliances, regional confederations, and international organization, which might have sufficed at one time, now have less chance of succeeding, say the champions of world government, than bows and arrows against atomic bombs.

Whatever form international organization for political purposes now takes, it seems clear that certain features must be included. First, a body of international law should make the rules of conduct for nations and individuals. Second, there must be established a formal constitution—including a bill of rights—setting forth the powers and duties of the organization and the relations of its members to the whole. This purpose might be fulfilled by the present United Nations Charter if it could be strengthened. Or it might be that only a formal constitution creating a supranational government will be adequate.

Next, there should be created a legislative assembly with power to deal with common problems and to make decisions that will be universally binding and respected. This must be supplemented by an executive arm to see that the agreements are carried out, and to act as a catalytic agent in the central work of the world organization.

An international court is also required, with power to hear and decide cases,



Fitzpatrick in the *St. Louis Post-Dispatch.*

whose decisions shall be as binding as those of our domestic courts. To this must be added an international police force, under the control of the world government and with the necessary authority and coercive power to restrain or discourage lawbreakers. No one nation or minority group of nations should be in a position to forestall action when peace is endangered.

And finally, there is needed a mechanism for research and action on basic social, economic, and political issues which threaten the peace of the world

and which must be dealt with if the dream of peaceful change is to become a reality.

World Organization and National Independence

Effective international organization in the political field is a dream which countless people have envisaged for many years. It has been a long time coming and many obstacles are yet to be overcome before the security and orderly relations which men cherish can be assured.

How much power must an international government be accorded if war is to be prevented? What are the dangers of a supranational government, subordinating the sovereign nations to its authority in the manner of our own federal government with regard to the forty-eight states?

We must do some clear thinking on these crucial issues. To begin with, it seems obvious that international cooperation does not necessarily mean the relinquishment of all national sovereignty. There is room here for a dual jurisdiction—the national in its own sphere, the international in the broader sphere which single states cannot master.

International cooperation must mean agreement to do certain things and to refrain from doing other things. If a nation contracts to assume certain burdens in common with other nations, therefore, the theory of contract is involved, not the derogation of independence. It is rather pointless to talk about "giving up" national sovereignty because national sovereignty is too limited in scope to solve world problems. It is only the unlimited and irresponsible manifestation of sovereignty that must be voluntarily circumscribed.

The maintenance of law and order does not mean a supranational dictatorship any more than law enforcement on a national scale means the loss of individual liberty. The federal government of the United States does not attempt to eliminate all conflict within its borders. Competition remains between capital and labor, business and business, individual and individual. *The essential job of government is to establish the rules according to which conflict is permissible, and the areas in which it is not.* This it does by the democratic, representative process; by consulting the citizens as to what they want done.

Similarly, an international organization should make the rules only after consultation and after the component nations have decided what they will abide by. Law is not a denial of conflict, but an ordering of conflict. International government is not a denial of sovereignty but a legal supplementation of it. Anyone who believes in the rule of law will favor the rule of international law.

International Security and Decentralization—America Points the Way

Only when a nation feels secure does it feel free to decentralize its processes of government and industry. Neither China nor Sweden, for example, desires to maintain large armies and navies. Few countries in the world—large or small—would voluntarily carry the financial load caused by past wars and the

preparation for future wars. But none dares to relax its armed vigilance so long as the international community is lawless and international sanctions are not to be relied on.

War is the greatest economic and political centralizer that modern nations know. Eliminate the fear of war and national governments would have less to do, there would be less concentration at the center, the people could resume a closer control of government, and democratic participation would be increased. If security were assured, then nations could decentralize internally without fear of external aggressions. If we wish to increase our national freedoms to live as we choose, therefore, there seems no escape from the necessity of ordering our international relations and making them secure.

The problems confronting the world today are the same which we Americans have had to deal with on a national scale throughout our political experience. Our nation is made up of an admixture of races, languages, cultures, and religions. Our unities are intellectual and humane rather than physical and domineering. We favor local and state freedom and individual participation in the political process. We formed a federal union because we were free of outside aggression and the injurious effects of economic warfare among the several states, and because we wanted peace and order under a government controlled by law.

Our nation covers an enormous expanse of territory. We have increased the central power of government as practical need and experience required. We have done a pretty good job of it, and our experience now has an international application. The task confronting the international community is vastly more difficult than ours ever was: areas are not contiguous, diversities are greater, tradition and separatistic resistances are infinitely stronger. But despite these differences between our own past problems of cooperation and those now facing the international community, the analogy challenges respectful attention.

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CHAPTER 42

The External Affairs of the United States

THE PRECEDING CHAPTER discussed the United States as a member of the world community. The subjects to be dealt with here grow naturally out of that consideration. The content of this chapter can be formulated under four headings: What are American foreign policies? What are the governmental instruments for handling our external affairs? What are the problems of our territories and dependencies? And what is the relationship of our military establishment to American policies, interests, and problems abroad?

AMERICAN FOREIGN POLICY

The geographic isolation of the United States—separated as we are by the Atlantic and the Pacific Oceans from the European and Asiatic continents—is equaled by no other great power. In a survey of the range of American diplomatic history, therefore, the fact that stands out is that our simple national desire has been to keep non-American powers out of the Americas and, so far as possible, to stay out of the affairs of others.

Until fairly recently we have taken for granted our invulnerability to successful attack. The startling developments in military aviation and the use of atomic energy during World War II, however, have suddenly left us feeling less sure. And yet there are factors in the situation that have not changed. Geography is still on our side, so far as it can be on the side of any nation in the atomic age. Half of the machine power in the world is concentrated in the United States. Our naval strength would seem to be sufficient to protect both our coasts from a seaborne invasion. There is apparently little danger of serious trouble with any of our American neighbors. Our flanks are protected by agreements providing that in case of threatened attack by an outside power, the nations of North and South America will stand as a unit. Hemisphere solidarity has replaced the unilateral Monroe Doctrine. Add to these the fact that the United States is economically self-sufficient to a greater extent than any other great power in the world and the result seems fairly pleasing. And yet the use of an atomic weapon has greatly reduced the protective value of these factors.

We have learned from the bitter experience of two major wars in one generation that we have no ground for smugness or complacency. We know that war in any part of the world is almost sure to involve the whole world unless the concert of nations takes speedy action, and that sooner or later the United

States must become actively involved in any such conflagration. It seems clear, therefore, that the best way to prevent war is to see that it never starts, because we cannot count on extinguishing it once it gets under way. We have also learned the truth of the age-old principle of political life—that with power goes a corresponding degree of public responsibility. The United States is now first in power; and so we must be first in responsibility. It has dawned on us, furthermore, that our conduct of foreign affairs has been inconsistent in that too often we have intervened in the affairs of others without intending or even being able to back up our verbal interferences. And finally, we can see now that many danger areas remain in the world and that only the constructive, concerted action of all nations can hope to remove the smoldering threat of war.

In short, despite our favorable geographical, economic, military, and political situation, we now know that our own security is to be found only in becoming our brother's keeper in the realm of external affairs. Instead of being of little concern to us, therefore, foreign affairs have become our foremost interest.

The Touchstone of Future Policy

American aims and instincts are usually basically sound, although we often fail to make the necessary connection between ends and means. Simonds and Emeny tell us that the American viewpoint has too frequently been "intervention in words, isolation in action." In the past, they say, we have proposed pacts without effective sanctions, we have advocated disarmament without substituting security measures, and we have endorsed international order uninsured by appropriate international policies.

It is in Europe and Asia that most of our modern wars have started. This does not mean that the Near East, India, or Africa can be ruled out as possible tinderboxes of the future. *Our national interest lies in seeing that wars do not start in any part of the world,* because experience proves that we will surely become involved. This means that *we must support, and take a leading part in bringing about, an effective mechanism for preventing the outbreak of war. It also means that we must do more than we have in the past to implement our moral objections to injustices and exploitations which eventually lead to conflict.*

The basic question is whether public opinion can be educated fast enough to appreciate what our vital interests really are. The instruments of our foreign policy are the State Department, the diplomatic and consular services, the United Nations, international administrative agencies such as the International Labor Office, and effective military establishments for preventive and enforcement purposes. But unless public opinion is aware of the danger areas and realizes what needs to be done in support of the policies and machinery which can give these programs real effect, then the tools will not be adequate or ready when the need is greatest.

What must the American public become aware of? First, that our own security and prosperity are only as great as the security and well-being of other nations. Second, that if we attempt to live in a world apart we hurt no one so much as ourselves. And finally, that American diplomacy, supported by action, should be more open and expressly enunciated than in the past. This is a large order but nothing short of it would seem to suffice.

PRINCIPAL STAGES IN AMERICAN FOREIGN POLICY

There have been six rather well-defined periods in the foreign policy of the United States: (1) from the adoption of the federal Constitution in 1789 to the Mexican War of 1846; (2) from 1846 until the Spanish-American War of 1898; (3) from 1898 through World War I, 1919; (4) from the end of World War I until 1934; (5) from 1934 until the entry of the United States into World War II in 1941; (6) from 1941 to the present. There are also seven major policies to keep in mind throughout the following narrative: the Monroe Doctrine, imperialism, the open-door policy, isolation and neutrality, the good-neighbor policy, positive collaboration, and the freedom of the seas.

1. Early Period, 1789–1846

Our policy in the initial period was centered on our attempt to keep Europe out of America and to keep the United States out of Europe. Until very recently, this policy has dominated most of American diplomacy. On the one hand we have sought the elimination of European interests on this continent by the acquisition of western territories such as the Louisiana Purchase in 1803 and the Florida Purchase in 1819. As a concomitant, we enunciated the Monroe Doctrine in 1823 in order to keep European powers from extending their footholds in North and South America.

During this period we fought the War of 1812 with Great Britain but escaped the Napoleonic Wars culminating in the Treaty of Vienna of 1815. Moreover, when the Holy Alliance and the Quadruple Alliance were formed in the same year, the United States remained aloof from these agreements. Our interest centered in the westward expansion of our own nation and in the countries to the south, many of which, like ourselves, had recently attained statehood through successful revolution. There was even talk of carrying our frontiers northward into Canada and hence eliminating British influence there.

What we have come to know as the *Monroe Doctrine* was contained in President Monroe's message to Congress in 1823, in which he said: "We should consider any attempt on their part [European nations] to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, *we could not view any inter-position for the purpose of oppressing them, or controlling*

in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States." (Italics ours.)

This sharp warning was occasioned by Russia's southward extension from Alaska and by her seeming intention to join with other members of the Holy Alliance in a move to force the newly independent Spanish-American republics to return to the allegiance of Spain. But although Russia's intention was particularly in question, every other major European nation, Great Britain included, knew that the President's warning was also directed at it.

It should be noted that in the Monroe Doctrine we assumed a unilateral obligation, and such it remained for many years.

2. Expansion Continues, 1846–1898

As we look back on it now, we can see that our desire to eliminate foreign occupation of the Americas imperceptibly shaded off into aggressions of our own. With the outbreak of the war with Mexico in 1846, we developed a definite imperialistic tendency.[1] This war, which was not with a European power but with a neighbor, came about by reason of the fact that in 1845 the United States annexed Texas, also claimed by Mexico. War broke out in the following year and in 1847 Mexico was defeated. A year later, by the treaty of Guadalupe Hidalgo, Mexico ceded to us California and New Mexico and gave up her claim to Texas.

In 1867 the Monroe Doctrine was put to its first real test. While the United States was absorbed in the Civil War, French troops were established in Mexico to support the Emperor Maximilian. Soon after the close of the Civil War we backed Mexico in securing the withdrawal of the French forces and brought Maximilian's regime to an end. In the same year, 1867, we purchased Alaska from Russia at a nominal price of $7,200,000, thus protecting our northern frontier and for the first time annexing territory that was not contiguous.

The nineteenth century was a period of imperialist expansion among the major powers of Europe. Africa, Asia, and the Middle East all felt the impact, especially from the activities of Great Britain, France, Germany, and the Netherlands. It began to appear that the United States—despite her original anticolonial attitude—had joined the procession toward empire. Where would this territorial expansion stop?

The sinking of the battleship *Maine* in Havana Harbor on February 15, 1898, was an incident in a larger situation, and war with Spain followed. It was ended by the Treaty of Paris, signed December 10 of that same year. Under its terms the United States became a much greater colonial power in the Pacific, Spain having ceded to us the Philippine Islands and Guam. By the same means we acquired Puerto Rico in the Caribbean.

Cuba gained her independence of Spain and became a republic. Save for

[1] See John H. Latané, *A History of American Foreign Policy* (New York, 1926).

the Panama Canal and the Virgin Islands, the United States had attained its full territorial extent by 1898.

And what an extent it was: three thousand miles across a continent; up to the Arctic to Alaska; seven thousand miles from San Francisco out to the Philippines. Thus, before we had even consolidated our continental expansions at home, we had assumed far-flung colonial responsibilities. This fact could but complicate our governmental problems, both internal and external.

3. Tendency toward Imperialism Continues, 1898–1919

In 1899, the year following the close of the Spanish-American War, the First Hague Conference was held at the call of Czar Nicholas II of Russia. Its main purpose was to bring about a reduction of armaments. The conference adjourned without reaching any concrete results on this issue, but it was an important step in the evolution of international agreements and machinery. The Permanent Court of Arbitration was established to settle international disputes, and international law was defined relative to certain prohibitions in the conduct of war.

The imperialist pot was still boiling. Great Britain had secured the prize treaty ports from China. Germany had established herself on several of the Pacific islands and showed more than a passing interest when we moved into the Philippines. France and Great Britain had almost gone to war over the African Sudan. Europe was beginning to seethe with tension.

In the United States we were fully occupied in carrying out our own foreign policies. On February 9, 1900, we signed the Hay-Pauncefote Treaty with Great Britain, granting us the right to construct and maintain a Panama canal, such canal to be neutral but to be protected by the United States. A year later came the famous Platt Amendments, which gave the Latin-American countries reason to suspect that our Monroe Doctrine was not entirely devoid of self-interest. Eight articles that became a part of the Cuban Constitution were drafted by the United States.

The *Platt Amendments* provided, first, that Cuba should never enter into any agreements with a foreign power tending to impair her sovereignty, or grant to such power the right to construct military or naval bases. Second, Cuba would grant to the United States the right to construct naval and coaling stations. And third, the United States would have the right to intervene in Cuba in order to maintain a government adequate to protect life, liberty, and property.

To get back to the moot question of sovereignty for a moment, what did this agreement do to Cuba's sovereignty?

Tests of the Monroe Doctrine now arose in quick order. In 1895, in accordance with the policy of the Monroe Doctrine, we successfully brought pressure to bear on Great Britain to settle by arbitration the boundary dispute between British Guiana and Venezuela. The second Venezuelan incident occurred

seven years later in 1902 and was potentially much more dangerous. Great Britain and Germany had blockaded the coast of Venezuela in an attempt to force that country to pay debts due them. But the United States made a strong protest, arbitration was resorted to, and the threat of armed intervention was averted.

Our Latin-American neighbors began to talk about Yankee imperialism. In 1903 in consequence of a revolt in Panama, aided and abetted by the United States, Panama became free of Colombia. In the same year we agreed to pay Panama $10,000,000 and a rental of $250,000 a year for the right to construct a canal across the isthmus. In 1912 the United States Senate adopted a resolution against a reported Japanese colonization scheme at Magdalena Bay in Lower California, a part of Mexico. In 1914 we entered into a treaty with Nicaragua granting the United States the exclusive right in perpetuity to construct an isthmian canal from ocean to ocean. In 1916 we again expanded our Atlantic holdings, purchasing the Virgin Islands from Denmark for $25,000,000.

Concerned as we were with expansion to the south, we nevertheless kept a wary eye on developments in the Far East. In 1899 we enunciated the *open-door policy* which has since formed the basis of our diplomacy in the Orient. In a note to the European powers and Japan, the United States proposed that equal economic opportunities be made available to all. This ran counter to the existing tendency to carve out spheres of influence in Asia and to monopolize the treaty ports of China—a game which many nations, even those as small as Portugal, had been playing.

The same year of 1899 saw the Boxer uprising in which the Chinese people, their patience worn out, attacked the legations in Peking, killed many foreigners, and were throttled only by the concerted action of the interested powers. Two years later, in 1901, China was forced to pay a large indemnity.

By 1915 World War I had started. Japan took this occasion to make her famous Twenty-one Demands on China which, before the end of the year, China was forced to grant in part. The United States strongly resented this Japanese move but decided to take no forceful steps to prevent it. It was not until late in 1917, in the Lansing-Ishii Agreement, that the United States secured from Japan a partial recognition of the open-door policy. In return the United States acknowledged Japan's "special interests" to contiguous territories on the coast of China.

With the outbreak of World War I, the question of *neutrality or war* became important. The United States made a strong attempt to remain neutral. In 1915 the sinking of the *Lusitania,* with a heavy loss of American lives, was one of several severe strains on our neutrality. Others followed. Early in 1917 Germany announced the resumption of unrestricted submarine warfare. In March, through the Zimmermann note, the United States exposed a German proposal to Mexico that, in case of war with the United States, Mexico enter on the side of Germany. Finally in April, 1917, the United States and Germany

were at war. Our traditional claim to the *freedom of the seas* at all times was the rock on which relations between the two countries finally foundered.

4. Isolation Again, 1919–1934

President Wilson enunciated his Fourteen Points early in 1918. The armistice was signed on November 11 of the same year. The Treaty of Versailles, making a comprehensive settlement, was not signed until June, 1919. Among other things it provided for the establishment of a League of Nations. The United States and China held aloof from it although China later joined. The United States returned to its hands-off policy internationally and to "business as usual" domestically. The Dawes plan covering the payment of reparations by Germany went into effect and we could scarcely help being involved in this and in the Young plan, which followed it in 1930.

One of the most important European treaties after Versailles was the Pact of Locarno, signed in 1925 by France, Great Britain, Belgium, Italy, and Germany, but in which the United States did not join. Three years later, however, the United States took a prominent part in the negotiation of the Briand-Kellogg Pact, pledging the powers of the world to renounce war as an instrument of national policy and obligating them to seek solutions to all problems through pacific means. The pact was signed by most of the nations of the world but it provided no sanctions.

Despite the signing of pacts and the operations of the League of Nations, efforts to maintain peace were increasingly futile. In 1931 a portion of the South Manchuria Railways was dynamited; Japan laid seige to Mukden; the League of Nations met in 1932 to consider the crisis, sent an investigating commission to study the situation in Manchuria, but took no action on its recommendations. In 1932 the Stimson note indirectly warned Japan to desist, but in the same year Shanghai was occupied and Manchuria was converted into Manchukuo under the rule of a Japanese puppet. Early in 1933 Hitler came into power in Germany. In 1935 Italy moved into Ethiopia. Two pots were now boiling—in Europe and in the Far East.

5. Armed Neutrality and War, 1934–1941

Then things happened quickly. Franco's victory in the civil war in Spain was won with the support of Hitler and Mussolini. In 1939 the pot boiled over: Germany occupied Poland, Czechoslovakia, and other countries in rapid order. Germany and Italy became allies, constituting the so-called Axis. Japan joined it. Attempts on the part of the United States to intercede were fruitless. Norway, Holland, Belgium, and France went down to defeat. Japan moved rapidly through the Far East. On December 7, 1941, Pearl Harbor was bombed and the next day the United States was at war with the Axis.

6. Positive Collaboration against the Axis, 1941 to Date

The events of the last few years are still so fresh in our minds that they do not require chronological treatment. This seems to be the appropriate place,

therefore, to define the more important present foreign policies of the United States, so far as possible, and to indicate the direction they seem to be taking.

World collaboration. The United States took the lead in setting up the United Nations and in providing an international fund to assist stricken countries under the Bretton Woods Agreement. Unlike the sequel to World War I, Congress and the President worked in harmony, supported by a strong public opinion that, according to all polls, was staunchly in favor of continuous and full participation in an international organization dedicated to preventing future wars. Unless this state of public opinion changes markedly, therefore, it may be said that American foreign policy, reversing a tradition of so many decades, is now more collaborationist than isolationist.

The good-neighbor policy. The Monroe Doctrine has outgrown its original form to such an extent that from one point of view it no longer exists. Instead of a unilateral attempt on the part of the United States to guarantee the territorial and governmental integrity of the American republics, the agreement now—as a result of several inter-American conferences—is that this duty is a joint responsibility.

This development has helped to bury the age-old fear of the Colossus of the North on the part of the South American countries. It also seems to sound the death knell of dollar diplomacy and economic penetration so far as those nations are concerned. All of the countries of the Western Hemisphere are now equal partners, drawn more closely together than could ever have been possible so long as the Monroe Doctrine meant a unilateral responsibility on the part of the United States.

The open-door policy. This historic landmark in our foreign policy also has been broadened and expanded. A reference to the open-door policy invariably suggests the Far East and the United States steadfast determination to keep China's trading ports open to all comers, to prevent China from being carved up, and to maintain Chinese sovereignty and independence; but today the concept has been widened. American policy now asserts that not only in China but elsewhere no one nation should attempt to stake out zones of influence, but that the trade of so-called backward nations should be open to all; that certain ports should be internationalized, reciprocal trade agreements extended in accordance with American policy, prohibitive tariffs avoided, and the sovereignty of countries such as China scrupulously respected. The right of national self-determination has long been a cornerstone of American foreign policy. It would be hypocritical to deny it to others when we fought and won our own independence over that issue.

Has American foreign policy remained substantially steadfast throughout the century and a half of our national history? It would take a forced interpretation to make it appear so. Many of the attitudes and basic conditions have remained constant, but the policy itself has changed—isolationism versus collaboration, and the unilateral Monroe Doctrine versus hemisphere solidarity, for example, are cases in point. Most steadfast of all our foreign policies, per-

haps, has been our traditional championing of the *freedom of the seas.* This was an important factor in both world wars. However, even in this area, time and circumstance seem to be effecting a modification. In World War II, for example, we insisted on full freedom of the seas for ourselves, prior to our formal entry into the war, but at the same time we took action to prevent neutral trade with the Axis powers by others.

THE INSTRUMENTS OF FOREIGN POLICY

The federal Constitution provides that "[The President] 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 . . . ." and further, that the President "shall receive ambassadors and other public ministers . . . ."

Like chief executives in other nations, therefore, the President of the United States plays a central role in the conduct of our external affairs, constituting the chief instrument of our foreign policy. How much use he makes of his power depends largely on his own interests, aptitudes, and public support. He can, if he wishes, virtually combine the offices of President and Secretary of State. Or, if he is more interested in other things and has a strong Secretary of State, he may exercise only general oversight in the field of foreign affairs.

The Secretary of State, therefore, and the department he heads constitute the second principal instrument of our foreign policy. The influence of the State Department depends in large part on the qualities of the Secretary and the degree to which the President uses him as agent or allows him a free hand.

The third instrument of our foreign policy is the United States Senate, which acts as a check on the President in the matter of appointments in the area of foreign affairs (as in others) and in the all-important treaty-making power.

The states, on the other hand, are expressly forbidden by the Constitution to take any part in the conduct of foreign relations: "No state shall enter into any treaty, alliance, or confederation . . . ." says the Constitution, and "No state shall, without the consent of Congress . . . enter into 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."

Finally, the Constitution provides that treaties shall become a part of the supreme law of the land: "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 . . . ."

Plenary Powers in Foreign Relations

The powers of the federal government are greater and more expansible in the foreign than in the domestic field. In the field of foreign relations it may

be said that such powers are plenary, meaning that they are full, complete, to be broadly construed. This is the line which the Supreme Court has followed.

The Supreme Court has been greatly influenced by the doctrine of sovereignty. The powers of Congress are express and limited, although they may be implied. The authority to conduct international relations is an inherent attribute of sovereignty. The Supreme Court has held, therefore, that *although the President and other officials who conduct our external affairs must abide by constitutional mandates and injunctions, they may, if need be, invoke authority which is neither express nor implied.*

The Supreme Court has referred to this doctrine of inherent sovereignty in several decided cases. An outstanding instance arose as recently as 1936 in the case of *United States* v. *Curtiss-Wright Export Corporation* (299 U. S. 304. 1936). Involved here was the presidential embargo, under authority granted the President by Congress, placed on arms destined to Bolivia in the Chaco boundary dispute. In its opinion, the Supreme Court stressed the difference in constitutional interpretation where internal and external affairs are involved. "The two classes of powers," said the Court, "are different, both in respect of their origin and their nature. The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is *categorically true* only in respect of our internal affairs." (Italics ours.)

The Court then points out that the states never did have authority in the field of foreign affairs, but that Great Britain, from whom we gained our independence, did have this authority and in effect passed it on to the federal government of the United States. "Sovereignty," continued the Court, "is never held in suspense. *When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union . . . .*" (Italics ours.)

Now note carefully these words: *"It results that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution.* The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, *if they had never been mentioned in the Constitution,* would have been vested in the federal government as necessary concomitants of nationality." (Italics ours.)

This clearly indicates the importance which the Supreme Court is willing to accord our external affairs. Constitutional lawyers may argue as to the correctness of the reasoning, but there it is.

The Treaty-making Power

A treaty signed by the United States becomes a part of the fundamental law of the land. The treaty-making power, therefore, becomes the principal means by which we take a more active and forceful part in world organization

to prevent war. Many important issues, involving the life-and-death interests of the country, are bound up in this question.

One of these issues is the question of whether the President is better advised to "make" the treaty and only thereafter consult the Senate, or whether it is more politic to consult the Senate in advance.[2] There are arguments on both sides. Treaty negotiation must be undertaken initially by one person. It would not be possible for all the members of the Senate to sit down and talk with the Prime Minister of Great Britain or the Premier of France. Moreover, the other party to a proposed treaty must be sounded out, or there would be no way of telling in advance how it might react to particular suggestions. This does not make the procedure "secret"; it merely channelizes the treaty and makes it tentative. Furthermore, it is impossible to negotiate without first deciding who the negotiators are to be. These are strong arguments in favor of giving the President and the Secretary of State a free hand in the early stages of the treaty-making procedure.

On the other hand, the Senate is jealous of its treaty prerogative. If it is not consulted early enough, the Senate may feel that the President regards it as merely a rubber stamp, or is not forthright in his representations. That such a disregard for Congressional sensibilities may prove fatal was demonstrated by President Wilson's trip to the Versailles Peace Conference after World War I and his advocacy of the League of Nations. In contrast, Presidents Roosevelt and Truman gave the majority and minority members of the Senate Foreign Relations Committee prominent parts in the negotiation of the United Nations and everything went smoothly so far as the Senate was concerned.

Since we do not have the British type of responsible government in the United States—with the result that accord between the White House and Capitol Hill is not assured—the conclusion seems to be that it is politic for the President to include from the outset key members of the Senate Foreign Relations Committee in his plans, particularly if the matter is vital and may be endangered by legislative-executive jealousy and partisanship. The President and the State Department could still carry on the negotiations, but they would consult in advance and keep the Senate informed through its leaders. If secrecy is required—and it sometimes is if embarrassment to the other country is to be avoided—the discretion of the key members of the committee would have to be relied on.

Fortunately situations of this kind arise in only a small fraction of the cases in which treaty making is involved. In the others, the President and his aides can act with the assurance that they have a freer hand.

The Two-Thirds Requirement

Another vital issue is whether we should amend the Constitution to change the requirement that two thirds of the members of the Senate present must

[2] See Kenneth Colegrove, *The American Senate and World Peace* (New York, 1944).

approve a treaty before it becomes law. The history of the world may be altered when a small handful of men fails to support an important treaty that has been negotiated. Since the ratification of a treaty requires a two-thirds vote of the senators present (presumably a quorum), 17 senators voting against a treaty when only 49 are present would kill it. To be sure, this situation is not likely to arise in practice because a full membership could ordinarily be counted on when so important a matter is at issue. But even if the Senate's full membership of 96 were present, anything over one third of this number, or 33 votes, could prevent affirmative action. What chance is there of approval, therefore, if the party membership is evenly divided in the Senate and the opposition votes as a phalanx? If the treaty were not killed outright, the number of reservations and amendments might be so onerous that the other contracting party would lose interest.

It is an old and perplexing question. A pessimistic view of the situation was taken by one of our ablest Secretaries of State, John Hay, who once commented that "a treaty entering the Senate is like a bull going into the arena; no one can say just how or when the vital blow will fall—but one thing is certain—it will never leave the arena alive."

The facts in the matter are that, until 1824, no treaty was killed outright by the Senate. In the history of the country to 1935, 62 treaties had been disapproved, while four fifths of the total were unconditionally approved. In the case of over 150 treaties, the Senate insisted on amendments or reservations. Finally, a half dozen or so extremely important treaties were turned down, among them the treaty for the annexation of Texas in 1844, the Taft-Knox arbitration treaties of 1911, the Treaty of Versailles and the Covenant of the League of Nations in 1920, adherence to the protocol of the Court of International Justice in 1926 and 1935, and the St. Lawrence waterways treaty in 1934.

The number of treaties rejected by the Senate does not indicate the gravity of the issue. In this respect the problem is similar to that of the judicial review of legislation—a single case of rejection may outweigh the combined importance of several others that have been approved.

What changes could be made in order to bring about a more democratic process? One proposal would *give the House of Representatives an equal voice in treaty making.* It is argued that if both houses of Congress agreed to a treaty by a majority vote the safeguard would be sufficient. This method, in use in most of the countries of the world, would be more fair and more democratic.

The second major proposal is *to amend the Constitution to require only a majority vote of those present in the Senate,* instead of the two-thirds requirement as it stands today. If a majority vote is sufficient for other legislation, it is held, it is likewise adequate for treaty making. Those who object to this plan reply that treaties become a part of our fundamental law, and hence

should be surrounded by peculiar safeguards; that since no great harm has yet been done by the two-thirds requirement, there is no need to change it.

The Senate will naturally look askance at any proposal to amend the Constitution so as to detract from its own powers. If a change is ever effected, therefore, it will doubtless be after a long, hard struggle. But the possibility of its happening sometime should not be discounted.

Executive Agreements

Another fundamental problem arises over the relative place to be accorded treaties, which must be approved by the Senate, and so-called executive agreements, which need not be so approved. Why not solve the difficulty, therefore, by making more extensive use of executive agreements? [3] This idea has occurred to many a President and Secretary of State and increasingly so, it would appear, in recent years.

Executive agreements arise in a number of ways. They may be in pursuance of a blanket authorization of Congress through legislation, giving the President permissory power which he may or may not use. Or they may arise in connection with the carrying out of the terms of a treaty which has already been assented to and put into effect. Authority to conclude executive agreements is also a part of the President's powers as commander in chief of the Army and Navy. And finally, they may be drawn under the general, undefined authority, which inheres in national sovereignty, to conduct the external relations of the United States.

As a rule, executive agreements are not objected to by Congress. There have been dozens of them—such as those relating to postal conventions, trade agreements, the pecuniary claims of American citizens against a foreign government, and the like—which Congress has never questioned. Some have had a far-reaching effect on our international relations. The Boxer protocol with China in 1901, the so-called gentleman's agreement with Japan in 1907, the open-door agreements, the neutrality of the Panama Canal, and the turning over of fifty overage destroyers to Great Britain during World War II are examples of the use of executive agreements.

What control does Congress have over the President's power to conclude executive agreements? For one thing, Congress may refuse to appropriate money to carry out the terms of the arrangement, as it did when President Roosevelt negotiated an executive agreement with Canada relative to the St. Lawrence waterway.

In other notable instances, however, Presidents have used this power and Congress has later confirmed the existing agreement in the form of a treaty. President Theodore Roosevelt worked out a *modus vivendi* with Santo Domingo relative to the administration of customs, guaranteeing its territorial integrity, and like matters, after Congress had refused to approve a treaty in

[3] See Wallace McClure, *International Executive Agreements* (New York, 1941).

1905. Two years later the Senate approved a treaty regularizing the transaction. President Taft did the same thing in 1911 with reference to Nicaragua, and in 1916 it was confirmed by a treaty.

There is much that the President can do in the field of executive agreements if he does not fear political repercussions in Congress. The collective hostility of the Senate is his principal deterrent. *But once an executive agreement is confirmed, it becomes the law of the land as though it were a treaty.* This legal rule was upheld by the Supreme Court as recently as 1937 in the case of *United States* v. *Belmont* (301 U. S. 324. 1937). *At no time in our history has the Supreme Court held an international agreement of any kind to be unconstitutional.* This presidential weapon, therefore, deserves to be watched. In some respects, its use is analogous to President Roosevelt's threatened Court-packing plan.

Congress, in turn, has its own methods of forcing the hand of the President. It may, for example, pass a concurrent resolution imposing policies and programs on him. It may annex territory by joint resolution—as it did in the cases of Texas and Hawaii—or it may terminate a war as it did in 1921 after turning down the Treaty of Versailles. It may refuse to appropriate funds. Or it may pass legislation invalidating the effect of treaties or executive agreements already entered into. The only ultimate solution, therefore, is to establish a satisfactory working accord between the President and the Senate.

TERRITORIES AND DEPENDENCIES OF THE UNITED STATES

This survey of American foreign policy has shown that at one time it looked as though the United States might join the imperialist procession—as though our empire might rival even that of the British Commonwealth of Nations. Of course, it is still possible that imperialism may be resumed at some future time, but recent trends indicate an opposite policy. The most notable is the Philippine Independence Act of 1934, under which the Islands received their independence in July of 1946.

The threat of future wars, however, is bound to complicate the picture. Shall we retain our Pacific acquisitions, such as Guam and Midway, and possibly add new ones in that area? Naval and military policy—which in turn depend on possible future threats—are bound to play a determining role in the resolution of issues of this kind. Again, shall we increase our fortifications in the Caribbean and the Panama Canal, or are they sufficient? This question takes practical form when we consider the long-standing debate over the construction of a second canal across the isthmus of Nicaragua.

The traditional isolationism of the American people tends to check any imperialist leanings we might develop fortuitously or otherwise. The substitution of hemispheric solidarity for the Monroe Doctrine also acts as a brake. But all of this is in the future. Because they must be organized and governed, the present problem concerns the territories and dependencies which we now have.

Congress Has the Power over Territories and Dependencies

The power to govern outlying possessions of the United States, like the power to conduct our foreign affairs, is exclusively national. The federal Constitution provides that "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."

When this provision was inserted in the Constitution, noncontinental lands were not envisaged. It was meant to apply, rather, to the western lands such as those regulated by the Northwest Ordinance of 1787—and so for many years it was employed. Congress has full power to organize territories, accept the application of states for admission to the Union, approve their proposed constitutions, and finally to admit them to the United States. This procedure of admitting new states extended even into the present century.

Before the last state was admitted, however, a new and totally different problem had appeared in the necessity of organizing and governing outlying territories such as Alaska, Hawaii, Puerto Rico, Guam, the Panama Canal Zone, the Philippines, American Samoa, and the Virgin Islands. Every such instance raised distinctive and troublesome problems. These lands were far away. Race, language, color, customs, and economy were different from our own. There was little here that resembled the admission of new states to the Union.

In the case of most of the colonizing powers of the world, the tail appears to be wagging the dog. The Netherlands, for example, is small compared with her colonial holdings. France has a much smaller land surface than that of her colonial possessions, which include most of the Sahara Desert. It is the same with Great Britain. In fact, the pattern is typical.

But the continental land surface of the United States is over 3,000,000 square miles and our outlying possessions in 1945 were less than a quarter as large, comprising only 700,000 square miles including the Philippines. Our population is approximately 140,000,000, while the corresponding figure for our possessions in 1945 was less than one eighth as great, being only 19,000,000. Of this total, the population of the Philippines was over 16,000,000; with Philippine independence, therefore, the problem has been greatly reduced.

The Incorporated and Unincorporated Territories

There are two incorporated territories of the United States—Alaska and Hawaii.[4] All of the others are unincorporated, although Puerto Rico comes close to meeting the full legal requirement of incorporation, as did the Philippines. What is the difference between these two types of territory?

The distinction was developed by the Supreme Court, which got its clue

[4] George W. Spicer, *The Constitutional Status and Government of Alaska* (Baltimore, 1927), Chapter 1.

from the language of the treaty of 1803 by which the United States acquired Louisiana: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all rights, advantages, and immunities of citizens of the United States."

An incorporated territory is a territory in which all parts of the federal Constitution and all the laws and treaties of the United States apply in full force. In the case of unincorporated territories, on the other hand, Congress may decide what exceptions there shall be to this general rule. With regard to Puerto Rico the exceptions are now minor. *Moreover, the conferment of American citizenship is independent of whether a territory is incorporated or unincorporated.* Citizenship may be and has been extended without according the territory full incorporated status.

Incorporation has important economic advantages. The inhabitants may ship their goods to the continental United States without paying duties and may travel or migrate without being stopped by the immigration laws. Except for full representation in Congress and the right to vote in continental elections, they have the same rights and privileges as citizens of the continental United States.

Territorial Governments

The governments of territories belonging to the United States were created by Congress and naturally resemble our own political institutions in most important respects. The people of the territory participate in the conduct of their own representative government. As we learned when we reoccupied the Philippines in 1945 after the invasion of the Japanese, the general effect of this participation has been to prepare the citizens for self-government and eventual independence.

The basic act of Congress with regard to each territory comprises its constitution. There is a territorial legislative assembly, usually of two houses. Members are elected by the citizens and voting qualifications are few. Legislative power extends to all matters not denied by the basic act of Congress. Congress usually imposes some financial limitations on the territories, particularly with reference to indebtedness and the necessity of sustaining certain essential offices and services. The inhabitants of Alaska and Hawaii, the incorporated territories, are authorized to elect resident commissioners, by popular vote, to sit in the lower house of our Congress, where they have the right to participate but not to vote.

The court system of the territories resembles that of the United States, and appointments are made by the President. Special bills of rights were incorporated into the basic acts of Puerto Rico and the Philippines. Each territory has a governor, appointed by the President. In the incorporated territories this official serves for a fixed term and in the unincorporated territories he serves at the President's pleasure.

The Future Prospect of Empire

What of the future of empire? Will the United States set a practical example of democratic treatment for the rest of the world? Under the terms of the Philippine Independence Acts of 1933 and 1934, the Philippine Commonwealth was granted independence on July 4, 1946. What of Hawaii? Will she become the forty-ninth state? There is talk of it. Will Alaska be admitted to statehood? And Puerto Rico—will she be given her independence?

The Panama Canal Zone creates no special problem because it is a military area administered by a governor chosen from the United States Army. The District of Columbia is a territory in name only—actually it is a teeming metropolis of 1,500,000 people who want local self-government. How long will it take them to get it? The future of Guam and other small Pacific islands depends, as has been said above, on the military prospect of the future.

From the financial standpoint, colonial rule is not a paying proposition. Free access to markets by all countries is much fairer and more profitable to everyone. Will the United States drop its insular possessions or add new ones? The international situation is the controlling element.

THE ARMED FORCES AND FOREIGN POLICY

The size of the armed forces that the United States must maintain and the amount that the taxpayer will be required to pay for preparedness depend on the effectiveness of our foreign relations and the security provided by international guarantees. High-ranking Army officers have often been heard to say that of course the Army never starts a war, that it is the failure of diplomacy which sets it off. The pacifists deny this, contending that the very existence of large armaments and highly trained military forces in themselves ignite the powder keg.

The defense of our insular possessions is also a major aspect of the preparedness situation. If we could not be sure of holding the Panama Canal, for example, we would have to maintain a two-ocean navy twice as large as any. And if we intend to fortify and hold Guam and other Pacific islands, again we will need a strong force which will further increase our financial outlays. Thus international relations, foreign policy, colonial expansion, and military policy are all closely joined.

The War Powers of the Constitution

The Constitution contains even more references to war powers than it does to the conduct of foreign affairs. Some aspects of these matters have already been discussed in preceding chapters.[5] However, a rounded view of the picture will appear if these constitutional provisions are listed in one place:

"The Congress shall have power to lay and collect taxes . . . to . . . provide for the common defense . . . . To declare war, grant letters of marque and

[5] Especially Chapter 31, "Our Civil Liberties."

reprisal, and make rules concerning captures on land and water; To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; To provide and maintain a navy; To make rules for the government and regulation of the land and naval forces; To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; 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."

"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."

All of these provisions except the last are found in Article I of the Constitution, which confers powers on Congress. That regarding the republican form of government is found in Article IV.

Checks on the Military Power

Our forebears were at least as suspicious of standing armies as they were of a strong executive. It is all the more remarkable, therefore, that the Constitution contains so many references to military authority. But the framers of the Constitution were equally intent on seeing that the power once given was not abused.

Most of the safeguards against the abuse of power have been dealt with in the chapter on our civil liberties; hence a mere enumeration will suffice here. It should be remembered that most, if not all, of these provisions are duplicated in the bills of rights of the forty-eight states. They include the prohibition against quartering troops, the stipulation that habeas corpus shall not be suspended except in extreme emergency, and the right of individuals to keep and bear arms. In addition, the crime of treason is defined, and the indictment of a civilian by grand jury is assured, even in a military area. This, however, does not apply to the members of the armed forces.

These are the most express constitutional references to limitations on the power of the military. Others indirectly involved, of course, are the freedoms of speech, press, assembly, and petition.

In order to safeguard the United States against the development of militarism and a military class—which the colonists had observed at firsthand in the countries of the Old World—the framers of the Constitution took pains to assure civilian control of the armed forces. In addition, in every state constitution save that of New York, there is an express provision to the effect that "the military shall, in all cases, and at all times, be in strict subordination to the civil power." All of the states have provided for state militias, and in all of

them the governor acts as commander in chief, except when the militia is employed in the service of the United States.

Civilian control of the federal government is assured by the Constitution in the words defining the powers of the President, who "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." As in the case of foreign affairs, the degree to which the President becomes active in the wartime conduct of military operations depends on his abilities and preferences and his relations with his Secretaries of War and Navy and the Chiefs of Staff.

A Single Department of Defense?

A live issue of administrative reorganization before Congress today (1946) is the Secretary of War's proposal for the establishment of a single department of national defense. At present, as we all know, there is a separate War Department and a separate Navy Department, which also includes the Coast Guard and the Marine Corps. It is largely because of the importance of the air arm that the proposal to consolidate the armed forces in one organization was made.

Other arguments are worthy of consideration. Joint planning, like joint execution, would assure more effective teamwork. Modern warfare requires the closest kind of cooperation between all branches of the service. A basic factor in the effectiveness of the air arm, for example, is the degree to which command in a particular sector is unified. Merger, so it is claimed, would encourage integration and avoid the danger of independent planning and execution.

The objections to the consolidation are equally familiar to anyone who has dealt with similar problems. The combined military establishment, so it is said, would be too large for the most efficient results if it were centrally planned and maintained; specialization is held to be the secret of success. The particular traditions and techniques of the Army and Navy are so different that both would suffer if combined. The argument that financial savings could be effected by merger is usually denied.

The alternative to consolidation is to improve the methods of liaison and coordination between the two departments. There are already joint chiefs of staff, joint training schools for the highest officers, and joint strategy boards and commands in time of war. This type of coordination, it is argued, is more efficient than unification.

The tendency in other countries, however, has been toward a single defense department. Will the United States follow suit?

The Tradition of a Small Peacetime Army

Another live issue revolves around whether or not the United States should continue its tradition of a skeleton peacetime army or whether the Army

should be greatly expanded. The problems of the Army and Navy are different in this respect. The Navy has a large fleet, the size of which cannot be changed overnight. It must either maintain and replace the units in it or scrap them. The Army, however, can maintain a small regular army, at the same time emphasizing the training of reserve officers and men. A most disturbing and much-debated question is the effectiveness of any type of armed defense if the weapons of the future are to include atomic bombs.

How large a Navy we should maintain depends on a number of factors, including the outlook for peace or war, the strength or weakness of the United Nations, and the naval programs of other nations. There are also the matters of possible changes in the design of vessels, the need of defending the Panama Canal Zone, our policy with reference to territories and dependencies, and the foreign policies and programs of other nations.

Akin to the problem of the future of the Navy is the question of maintaining a merchant marine large enough to sustain our troops in the event of another foreign war. Should a large merchant marine be kept alive by the government, even though it must be subsidized by the federal treasury or operated by the government itself?

One of the livest issues of all concerns the proposal of universal compulsory military training for all men between certain ages. The arguments in favor of compulsory training are that it will discourage other nations that might consider attacking us, it will put teeth in any collective international organization, and it will make it possible to get along with a small standing army and hence help reduce the expense. It will also provide a fighting force quickly and hence save lives, money, and time. And it is good for the health and civic-mindedness of the population.

Those who argue against universal compulsory military training say that it is not necessary because war has been mechanized and the best defense lies in a small, hard-hitting army. Therefore the need is less for large numbers of men than for highly trained mechanical specialists. It is argued further that wars are won by industrial strength, which the United States has, so that our emphasis should be on machines rather than on military training.

The United States has never had such a program in peacetime and has done very well when put to the test. Compulsory training not only interferes unnecessarily with the lives of countless thousands; it might encourage a militaristic attitude which the United States has never had and should never acquire. Health and civic training, so it is argued, can be better secured by other methods.

But none of these arguments is as powerful as that which holds that in another war atomic bombs will make a land army as a defensive weapon quite useless. Compulsory military training, therefore, is another issue that we shall hear more about.

THE FUTURE OF OUR FOREIGN POLICY—UNCERTAINTY AND PROMISE

These are vital decisions; if we knew the answer to them we would have the answer to the question every young person and many older ones are asking: Will there be another war during my lifetime?

War takes so many lives, leaves such a load of debt, dissipates so much of our natural resources, engenders so many hates that grow into future wars, and weakens so much of the democratic vigor of our institutions by centralizing power. And now, another war might destroy two thirds of the human race in a short time.[6]

To what extent may we substitute world organization and diplomacy for battleships, bombers, armament, and the atomic bomb? We work hard in war; do we have the incentive to work even half so hard to secure a durable and just peace? William James, the great American psychologist, said we would never get rid of war until we find the moral equivalent for it. People are competitive and like to fight; they like excitement and victory; they like to be bound together in a great common cause which submerges their own petty interests and problems. Are there any equivalents that meet these requirements? The field of sports is similar to war in its ability to satisfy our competitive instincts and martial spirit. Some types of business enterprise fulfill the same purpose. Is there any other solution—any other means of discovering a moral equivalent—or is time the only solvent? Social change and improvements of all kinds do take time, but they take longer when people come to feel that not much of anything can be done about it.

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CHAPTER 43

The Foreign Service as a Career

IN ANY COMPLICATED PROBLEM of government, the solution of its personnel aspect will go a long way toward final mastery of the difficulty, as the diplomatic and consular services of the United States so strikingly illustrate. These services and those of the other great powers are the agencies on which the world must depend for most of the representation, negotiations, and statesmanship that endanger peace or war. The officers of our foreign service are the eyes and ears of the United States abroad; and, personally symbolizing to others what we stand for, they are also the mouthpiece of our foreign policy. If the reports from our consular and diplomatic agents are penetrating and accurate, war may actually be avoided, and if the service is poor, the dangers of war are increased.

Appeal of the Foreign Service

Every year the foreign service interests thousands of American university and college students. Considering that it offers the individual a chance to contribute to the cause of sounder international economic and political relations, this is to be expected. Moreover, the glamour that attaches to service outside the country is easily explained: travel, adventure, social advantages, exotic cultures, the opportunity for a certain amount of independence, and a sense of personal importance as the official symbol of our country in a foreign land. To many the foreign service also means a chance to learn foreign languages and the opportunity for cultural improvement. And yet anyone contemplating the foreign service as a career should look at the practical realities of the situation and take care not to be wafted away on flights of imagination. This suggestion is not to discourage interest in this field, but to help those who enter it to do a more effective job by appreciating the difficulties as well as the attractions.

Relation of Foreign Office Personnel to Democratic Control

Foreign office and diplomatic personnel is a key area that must be improved if world problems are to be solved constructively and democratically. This improvement, however, is a complicated matter. The personnel of foreign offices the world over is notoriously an elite, particularly in the older countries. In Germany, for example, where the Junker class was in control, the Prussian clique has long been impervious to democratic influences. Even when a democratic regime came into power under the Weimar Constitution following

World War I, the foreign office elements were unsympathetic to democratic policies and took every opportunity to further their own nationalistic and reactionary designs.

The problem has been more pronounced in Germany than elsewhere, perhaps, but the tradition is widespread. The highest diplomatic posts in most countries have long been the preserve of men of wealth, with the result that in their conservatism they often fail to reflect the true policy of the entire citizenry which presumably they serve. This is bound to be the case when the expense of serving in a diplomatic post far exceeds the compensation afforded. One solution, therefore, is more adequate compensation. But there are undemocratic influences inhering in the diplomatic career itself. The tradition is one of silk-hatted gentlemen, lavish dinner parties, and association with royal courts and the "diplomatic set." Historically, ambassadors were dispatched to the court of the king, not to the people or the country. Thus they were thrown with courtiers, the aristocracy, and the socially elect elements of the population. This had the effect of separating diplomatic representatives from the common pursuits and the common people of the country, with the result that impressions reported back home were not always complete or reliable and much of significance was overlooked.

An inherent danger of the foreign service, therefore—as with any other bureaucracy—is that it may be self-contained and, paradoxically, shut off from the rest of the world. Moreover, in the case of the diplomatic game more than most, the emphasis has been largely social rather than economic and political. A second problem, therefore, is how to secure foreign representatives capable of understanding what is going on at the grass-roots level—how to secure men and women who are disposed to rub elbows with all classes of the population. In this respect the United States, because of its democratic tradition, has had more success than many of the other great powers. One immediately thinks of the versatile and unassuming Benjamin Franklin, or of one of our recent ambassadors to Great Britain, John Winant, both of whom were as much at ease and as content in a dock worker's home as when dining at the Court of St. James's!

To be blunt, a danger to guard against in the foreign service is snobbery. A person who tilts his nose too high often misses a good deal of what goes on. Of necessity, however, the numbers of those admitted to the foreign service are small and the selection is rigid, so that the danger of snobbishness is greater. How to guard against this hazard is the key to the problem. There must be an aristocracy of ability together with a democracy of human attitudes. The success of such a program obviously depends on recruitment policies and on the way in which successful candidates are handled after admission.

THE DEPARTMENT OF STATE

The Secretary of State is the highest ranking member of the President's Cabinet. Since the State Department is the oldest and in many ways the most

important in the federal government, the Secretary of State sits at the President's right hand in cabinet meetings. Moreover, in case the President and the Vice-President both die during their terms of office, the natural assumption is that the Secretary of State will succeed them unless Congress provides otherwise.

The men who have served as Secretary of State since 1789 compare favorably with the honor roll of the Supreme Court or even the presidency itself. Among the more notable are Jefferson, John Marshall, Madison, John Quincy Adams, Clay, Webster, Seward, Blaine, Olney, Hay, Root, Hughes, Stimson, Kellogg, and Hull. The Secretary of State is assisted by an undersecretary, six assistant secretaries, several special advisers on law, policy, economics, and the like, and his functional branch heads.

The Department of State naturally focuses most of its attention on our external relations, as well it should. It has several additional important duties, however, relating to the internal affairs of the nation. For example, it receives the laws of Congress, promulgates them, and preserves the original copies. This is a function also performed by the secretary of state in each of the forty-eight states. The State Department also keeps and affixes the Great Seal of the United States to important documents such as executive proclamations, commissions, and warrants of extradition. The same function is performed by the corresponding offices in the several states. The State Department proclaims the admission of new states to the Union, corresponds with the states relative to constitutional amendments passed by Congress, and handles the authentic lists of electors in presidential elections, which lists are then passed on to Congress. In all of these respects the functions of the federal State Department resemble those of the corresponding departments in the state governments. Each is the central document and recording agency of that particular jurisdiction.

A major problem which has always confronted American Secretaries of State is whether the department should attempt to remain small—a skeleton organization for important diplomatic duties—or whether it should grow so as to take on heavier administrative and supervisory functions. As previously observed, our foreign interests extend into every department and remote agency of the federal government. Should they be put under the same roof or should the State Department remain small so as to be able to move more quickly? In one case direct supervision would be involved; in the other, liaison with many agencies.

The policy on this basic question has fluctuated from time to time. Generally, however, our Secretaries of State have resisted the temptation to take on more than could easily be administered. This has increased the liaison work, but because of the prestige of the Secretary of State and the backing he gets from the White House, this method works better in the handling of foreign affairs than it does in many other departments. An example of this occurred during the Franklin D. Roosevelt administration when the State

Department was at odds with the Board of Economic Warfare, the Lend-Lease Administration, and other wartime agencies; the President unhesitatingly supported the State Department and gave it power to coordinate these respective policies and programs.

Recent years, however, have seen a noticeable tendency for the State Department to absorb new programs under its own roof. Although this expansion perhaps could not have been avoided, it is a move that should be watched and checked with great care. It is natural to want to grow, but growth may not always be the wisest policy—an observation that particularly applies to the Department of State.

Extent of the Opportunity in the Foreign Service

The consequence of the policy of avoiding extra duties has been to make the State Department for many years the smallest in Washington from the standpoint of budgets and personnel. At the time this chapter is written, only the Department of Labor has a smaller budget. And yet it would be a mistake to assume that influence is measured by size.

The total personnel of the State Department is in the neighborhood of 6,500 persons. Of these, about 25 per cent (the usual percentage for a federal department is 10 per cent), or 1,500 persons, are stationed at the national capital. About 1,000 so-called career officers are in the foreign service personnel and another 4,000 or more are doing other classes of work. The total employment of the department is only about one half of 1 per cent of the total executive civil service of the federal government, a figure which suggests how relatively small and hence select it really is.

All the signs indicate, however, that career opportunities in the foreign field —in addition to those offered by the State Department—may be expected to grow for many years. Many private and semiprivate as well as wholly governmental organizations must be kept operating. These include the United Nations Relief and Rehabilitation Administration, plus major agricultural, banking, and other programs which will apparently continue indefinitely. Then there are the United Nations and the numerous international administrative agencies such as the International Labor Organization, the Universal Postal Union, and over two score agencies of that nature. In private enterprise older lines of activity include the international banking corporations, the oil companies, and the automobile manufacturers, in addition to many new opportunities now springing up. In recent years Latin America has afforded many excellent openings to businessmen and experts of all kinds, especially engineers.

As a result of the high degree of interchangeability between the skills required in the business, professional, and social-service fields and the skills demanded of foreign service officers of the State Department, failure to enter the State Department does not rule out numerous other opportunities abroad that require similar qualifications.

General Aptitudes Required for Foreign Employment

Whether the employment in the international field is governmental or private, some skills should be acquired by all persons planning to work outside the country.

The first is *linguistic ability.* If you are going to understand the country in which you work, a practical knowledge of its language is necessary. Generally speaking, the more languages you command, the more valuable your services will be if you have had training in a special field. Traditionally, French and German have been emphasized as languages to know, but Chinese, Spanish, and Russian are also being regarded as essential. Those who have no aptitude for modern languages find it difficult to make a success of foreign employment.

A knowledge of *geography and economics* is a requisite, no matter what you expect to do in the foreign field, whether it be private employment or the government foreign service.

An understanding of *foreign governments and cultures* is particularly essential if governmental service is contemplated, and it is almost equally necessary in private employment abroad. An official of a large oil company once said that "international politics" was the company's principal stock in trade. If he expects to get very far, a foreigner must understand the workings of the government departments in the country in which he is stationed.

The histories of foreign nations—diplomatic, political, and social—are subjects to which the examinations for the United States foreign service give great weight; they are equally valuable in private employment.

The study of international law and politics is essential for anyone entering the foreign service.

Knowledge of Particular Areas

In the career service in the State Department it is customary to provide the younger consular and diplomatic officials with experience in several parts of the world as a part of their training. This is an obviously desirable policy. However, as specialization increases—and it has in this field as in most others—a superior knowledge of a particular area of the world is an advantage. There are many classifications of major areas, but some of the principal groupings are Latin America; Russia, China and the Far East; the Middle East; the Mediterranean region; Africa; the South Pacific and India; and Western Europe and Great Britain.

For many years the State Department used a fourfold classification that presently seems to be undergoing some modification and expansion. However, it is still suggestive as well as useful. The four so-called political divisions were European Affairs, Far Eastern Affairs, Near Eastern Affairs, and Affairs Relating to the American Republics. Three of these—the European, Latin-American, and Asiatic—represent the areas of our traditional major interests.

But as our diplomatic horizons broaden—and they have broadened measurably in the recent past—it naturally follows that the internal organization of the State Department should reflect the newer approach. Thus anyone who can correctly predict the direction in which American interests will move can prepare himself for valuable service as a specialist in that area. At the same time, however, it is a good idea to guard against the danger of becoming too geographically delimited because today policies and solutions must invariably transcend political and geographic boundaries.

THE DIPLOMATIC CORPS AND THE CONSULAR SERVICE

A landmark in the development of a unified career service in the United States was the Rogers Act of 1924. Prior to that there was no unified channel of recruitment for both consular and diplomatic posts. The diplomats, who dealt with political questions, were one distinct group; the consuls, who dealt with trade and economic affairs, were another. Once a consul, always a consul, was the way the system worked. Since 1924, however, entrance to both fields is by the same channel, and individuals may move from one line of work to the other. Under the terms of the Rogers Act, all persons in the foreign service below the grade of minister must be appointed on the basis of competitive examinations, both written and oral. The subject matter of these examinations and the standards required are such that only college-trained persons *of superior ability* can hope to pass them.

In a relatively short time the career idea has made enormous strides. Former Undersecretary of State Sumner Welles was a career official, as was Joseph C. Grew, who succeeded him as Undersecretary. In 1941 half the ambassadorial and ministerial posts in the United States diplomatic service were held by career men. There is no question now that the foreign service as a career has been definitely recognized. Its future expansion will depend on how good it can be made.

The Entrance Examination

The State Department issues an informative bulletin entitled "The American Foreign Service: General Information for Applicants and Sample Entrance Examination Questions." The examination is usually given once a year in the fall. In recent years 600 to 800 applicants have taken this examination and of these, from 60 to 100 have qualified. Then follows a rigorous oral examination which reduces the number to from 25 to 30. The minimum age for candidates is 21, the maximum 35. Women are eligible, and since 1924 several have been appointed. Special schools in Washington prepare for these examinations. A preparation not quite so specialized may be secured at one of the schools of international relations that have been established in some of the universities throughout the country.

Service after Appointment

After appointment, the successful candidate is assigned for a few months to a minor post in a near-by consular office. Following a brief period of induction, he is brought back to Washington for further training in the foreign service officers' training school operated by the State Department. After completing this thorough course of several months' duration he is ready for assignment to a position at the foot of the career ladder—vice-consul, third assistant secretary of a legation, or some such rank. From time to time he is transferred to a new post, either to a higher grade or at a more important station. If he is in the consular service he eventually becomes a consul; if he is in the diplomatic service he becomes a higher-ranking secretary of legation or a counselor.

As is true of the armed forces, tours of duty between headquarters and field positions are encouraged. Since 1924 consuls, ministers, and other foreign service officers have been brought to Washington to serve in various capacities up to a maximum of four years at a time; they must then be reassigned to a field position. This sound procedure gives the Washington official a much-needed tour of duty in the field and at the same time familiarizes the field officials with the policies, personnel, and organization of headquarters. Service in Washington is required before promotion to higher positions—such as consul general or minister—can be made.

The Consular Service

Although the Rogers Act combined the consular and diplomatic services for certain purposes, such as recruitment and careers, administratively it left them separate. The diplomatic service deals with political policies and problems; the consular service with commercial policies and interests.

The two major functions of the United States consulate in a foreign country are to take care of the business and trading interests of the United States and to assist American citizens in numerous ways irrespective of whether they are businessmen, seamen, tourists, or just plain eccentrics. Some idea of the business interests with which consular officials may be concerned is gained from the figures in the table on page 702, showing the extent of American-owned property abroad in 1943.

So numerous are the duties of the consular official, however, that a brief description of them is difficult. Among the more common may be included reporting on trade opportunities and economic policies and problems, and supervision of treaties of commerce and navigation. The consular official also inspects vessels, ships' papers, invoices, and the like, and handles deserters, trouble aboard ship, and infractions of the law. He issues visas and applications for immigration papers, acts as paymaster for the American government abroad, handles estates, and takes care of income tax matters. And he also acts as good shepherd to his fellow countrymen who need help, advice, or

AMERICAN-OWNED PROPERTY IN FOREIGN COUNTRIES
AS OF MAY 31, 1943

Europe	
Austria	$ 180,000,000
Baltic States	20,000,000
Belgium	110,000,000
Bulgaria	10,000,000
Czechoslovakia	160,000,000
Denmark	50,000,000
Finland	35,000,000
France	370,000,000
Germany	1,290,000,000
Greece	140,000,000
Hungary	55,000,000
Italy	265,000,000
Netherlands	215,000,000
Norway	40,000,000
Poland	255,000,000
Portugal, incl. Azores and Madeira	15,000,000
Rumania	65,000,000
Spain, incl. Canary Island	110,000,000
Sweden	35,000,000
Switzerland	90,000,000
United Kingdom	1,030,000,000
Yugoslavia	30,000,000
U.S.S.R.	35,000,000
Other Europe	30,000,000
Total, Europe	$4,635,000,000
Canada and Newfoundland	
Canada	4,375,000,000
Newfoundland	25,000,000
Total, Canada and Newfoundland	$4,400,000,000
West Indies	
Cuba	785,000,000
Dominican Republic	45,000,000
Haiti	15,000,000
Other West Indies	75,000,000
Total, West Indies	$ 920,000,000
Central America and Mexico	
Costa Rica	$ 35,000,000
Guatemala	90,000,000
Honduras	40,000,000
Nicaragua	15,000,000
Panama	185,000,000
Salvador	20,000,000
Mexico	420,000,000
Total, Central America and Mexico	$ 805,000,000
South America	
Argentina	355,000,000
Bolivia	25,000,000
Brazil	330,000,000
Chile	305,000,000
Colombia	185,000,000
Peru	70,000,000
Uruguay	35,000,000
Venezuela	270,000,000
Other South America	30,000,000
Total, South America	$1,605,000,000
GRAND TOTAL	$12,365,000,000

Source: U. S. Treasury Department Statement.

merely companionship. At times the consular official feels like the old lady who lived in the shoe.

Although a distinction exists between the trade and political functions of the combined foreign service, consular duties must not be thought of as strictly nonpolitical. Far from it. Almost every matter of economic importance has a political significance. For example, a difficult problem which arose in the United States during World War II was that of handling deserting seamen from Allied merchant ships. In the United States these matters were handled by the consulates of the various United Nations. The whole problem was shot through with political dynamite. Chinese seamen would desert from a British ship. Norwegian seamen would be signed on an American ship. Sitdown strikes occurred in American ports, and consuls and even ambassadors called on American authorities to throw the ringleaders into jail. To a man, the foreign consuls wanted more teeth in our American immigration laws,

their problem being to effect this change without seeming to interfere in the domestic matters of a country not their own. Problems similar to these are constantly arising in the work of our own consular officials abroad.

The Diplomatic Corps

Because of the unified career service, consular officials may now be interchanged with diplomatic personnel. In the diplomatic corps the highest rank is that of ambassador, and in recent years the United States has created a large number of them. Our highest diplomatic official in Norway, for example, now has the designation of ambassador instead of minister, which is considered more of an honor to the country and to the officeholder. Similarly with Panama and the countries to the south of us. In other words, in line with our position as a major nation we have adopted the policy of establishing embassies headed by an ambassador instead of mere legations under the direction of a minister.

This policy is in sharp contrast with our earlier one. For the first hundred years of our participation in the family of nations, the United States refused to appoint diplomatic officials of a rank higher than that of minister. Our ideas of equality and democracy frowned on the folderol of rank and precedence. The change occurred around 1893, when Congress provided that as a general policy the United States would send to each country a diplomat of the same rank as that of the diplomat accredited to us.

Like the functions of a consular agent, those of a diplomatic official are hard to describe briefly. The lower embassy personnel do many of the same things the consuls do, especially when it comes to being "guide, philosopher, and friend" to Americans traveling abroad. However, the minister or ambassador has certain major responsibilities that only he can do and that divide about as follows: He observes and reports on matters that come only to his attention. He communicates and negotiates. Whatever the interests of his country and his countrymen may be, he protects and promotes them. He negotiates treaties, helps to arrange important conferences, and reports on military preparedness and policies that tend toward war. He helps to encourage friendly relationships, communicates his government's policies to the heads of the state to which he is accredited, and reports on any alliances that may jeopardize his country's interests. And finally, he encourages cultural exchanges between the two countries, promotes trade, and generally supervises the consular and other officials who serve their country's interests.

Like the consul, only to an even greater extent, the diplomatic official must be a versatile fellow. Among his other guises, he is a glorified factotum. Walter Hines Page, referring to the demand on him for speeches while he was Ambassador to the Court of St. James's, once wrote, "You'd never recover from the shock if you could hear me speaking about Education, Agriculture, the Observance of Christmas, the Navy, the Anglo-Saxon, Mexico, the Monroe Doctrine, Co-education, Woman Suffrage, Medicine, Law, Radio-Activity,

Flying, the Supreme Court, the President as a Man of Letters, Hookworm, the Negro—just get down the Encyclopedia and continue the list."

The ambassador is a busy person. His social obligations, which form a large part of his work, take up much of his time. In important posts, such as London, ambassadors have been known to work until one or two o'clock every night for weeks on end. In a way, a diplomatic official is like a doctor—always on call when the family needs him. President Washington stated the qualifications of the diplomatic official in a way that seems hard to improve on. The work of the minister, said our first President, "should be marked on the one hand by firmness against improper compliances, and on the other by sincerity, candor, truth, and prudence, and by a horror of finesse and chicane." Actually there is not a great deal of glamour—in the Hollywood sense—connected with the position. But there is much to appeal to the best that is in a man. What the position amounts to depends largely on the type of individual who holds it.

Diplomatic Privileges and Immunities

The fact that diplomatic and consular officials are clothed with the sovereignty of the country they represent explains why children born to diplomatic officials in this country, for example, do not become citizens of the United States. Their parents, enjoying diplomatic privileges and immunities, are not subject to its jurisdiction. The diplomat has a special passport—A Special Passport and Safe-Conduct, as it is officially referred to. His personal belongings are not subject to customs search or to tariff. His mail goes through in diplomatic pouches which may not be opened or tampered with. His salary is not taxable. Ordinarily, unless he waives his immunity, the diplomatic official is not subject to either the civil or the criminal jurisdictions of the country to which he is accredited. The embassy property is sanctuary and may not be entered by local police and officials. This does not mean, of course, that a diplomatic official is above the law and may disregard it as he chooses. If he were to adopt such an attitude it would not be long before he became *persona non grata* and would be likely to be recalled. Every diplomatic official must be acceptable to the country to which he is sent, and that country can generally arrange the withdrawal of an unpopular emissary without breaking diplomatic relations.

Remuneration

If the foreign service of the United States is to prove successful as a career for those best qualified to enter it, obviously it must pay salaries high enough to attract those who lack independent means. A difficulty in the past has been the payment of very low salaries, so that the highest posts were parceled out among wealthy retired businessmen or scions of well-to-do families, with the result that the diplomatic service had the reputation of being a rich man's club.

In recent years steps have been taken to correct this situation, although it would seem that salaries will need to be still further increased.

The Rogers Act provides for a scale ranging from $2,500 a year at entrance to $10,000 at the top, not including ministers and ambassadors, for whom salaries range from $10,000 to $17,000 a year, with extra expenses provided for. In 1926 a step forward was taken when Congress passed the Porter Act, which initiated the policy of providing embassy, legation, and consular buildings to house diplomatic and consular personnel rent-free. In effect, therefore, the salaries mentioned above are greater than they seem, although they remain largely inadequate if diplomatic careers are to be democratically open to all classes of the population. The salaries paid by the United States are still considerably below those of other important nations, such as Great Britain. And they do not emphasize democratic opportunity as much as we have tried to in other walks of life.

Two former ambassadors to Great Britain—Charles G. Dawes and John W. Davis—have testified that it cost them from $50,000 to $75,000 a year to occupy that post. Others—including the late ambassador to Germany, Professor William E. Dodd, the American historian—have said that if they were extremely careful they could just about break even, but this meant less entertaining than is customary in Old World embassies.

Private employers usually allow an increment of from 10 to 25 per cent over salaries in the continental United States for employees working outside the country, especially where the climate is arduous or the cost of living high. That the federal government is also aware of this need is seen in the recent allowances for extras that have become increasingly common. Among these are payments for rent (where housing is not provided), for entertainment expenses for the heads of missions, adjustments in salary where the rate of exchange is unfavorable, and retirement allowances.

Such considerations may be mundane but they must be given the attention they deserve if the foreign service is to become a full-fledged opportunity for the best trained and the best qualified—irrespective of private wealth, social standing, or political contributions to the party in power.

FUTURE OF THE FOREIGN SERVICE

Only a few years ago, political scientists in this country were accustomed to point with envy to the conditions in the foreign services of other leading powers. There, for some time in the past, able young men could look forward to careers lasting from thirty to forty years. During that time a man might live in every quarter of the globe, whence he would transmit to his homeland the best that he saw and heard and immeasurably improve the understanding and appreciation of his own people in the countries where he resided. By comparison, most of our top appointments were for four years or less, depending on political fortunes at home and the preferences of the temporary holder of the top diplomatic post.

In scarcely more than a generation this situation has changed. The quality of our consular service has always compared favorably with that of other nations, and the introduction of a career service with its longer terms, plus the use of specially trained commercial advisers and attachés, has still further strengthened it. The career men have rendered a good account of themselves. We may look forward to a near future, therefore, when almost all diplomatic posts will be filled by career officials and when even the exceptions will be men with corresponding qualifications. Former Ambassador John Winant, for example, has spent most of his adult life in public office, having been Governor of New Hampshire, Chairman of the Social Security Board, Director of the International Labor Office, and now American delegate to the United Nations Economic and Social Council.

On the other hand, when the career service has become universalized, it will encounter the problems faced by all bureaucracies: how to prevent in-growing tendencies, aloofness, superciliousness, loss of intimate contact with the people and the simple traditions of the country served. One of Washington's most skilled political observers, John Fischer, has observed that "the [State] Department has been dominated for the past thirty-five years by a small clique of Foreign Service officers, . . ."[1] These career men, according to Fischer, regard the State Department as a sort of private club and diplomacy as a gentlemanly hobby. It is an aristocracy "like grouse-shooting"; they are "virtuosos of bureaucratic intrigue," and while it is next to impossible to "root them out," this should at least be attempted for the country's good.

The role of diplomatic statesmanship will increasingly center on problems of world security and organization. National interests will have to be reconciled with the interest of the community of nations as a whole. This challenge should be sufficient to stimulate the highest type of personnel as a means of guarding against the faults of bureaucracy and their deadening effect.

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2. Foreign Service: For an early account, see T. Lay, *The Foreign Service of the United States* (New York, 1925); for a more recent one, Hugh R. Wilson, *Diplomacy as a Career* (Cambridge, Mass., 1941). For information concerning entrance

[1] John Fischer, "Mr. Truman Reorganizes," *Harper's Magazine* (January, 1946), pp. 26–35.

requirements, consult *The American Foreign Service, General Information for Applicants and Sample Entrance Examination Questions* (Washington, Government Printing Office), issued periodically. See also S. F. Bemis (ed.), *The American Secretaries of State and Their Diplomacy,* 10 vols. (New York, 1927–1929); Graham Stuart, *American Diplomatic and Consular Practice* (New York, 1936); and T. A. Bailey, *A Diplomatic History of the American People* (New York, 1940). Additional Department of State publications: *Bulletin,* published weekly; *The American Foreign Service Journal,* published monthly; and *Foreign Relations of the United States,* published at intervals. In the *Encyclopedia of the Social Sciences,* see the articles on "Diplomacy" and "International Relations."

3. Biographical: H. R. Wilson, *Diplomat between Wars* (New York, 1941); W. E. and Martha Dodd, *Ambassador Dodd's Diary* (New York, 1941); Martha Dodd, *Through Embassy Eyes* (New York, 1939); and Charles G. Dawes, *Journal as Ambassador to Great Britain* (New York, 1939).

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PART ELEVEN

GOVERNMENT AND ECONOMIC WELFARE

CHAPTER 44

Government and the Political Economy

NEXT IN IMPORTANCE to the dilemma of how to combine effective international controls with national sovereignty is the problem of reconciling economic plenty and economic freedom. This is the subject of the present section of six chapters.

In some ways, what happens in the national economy is even more significant than the problem of war and peace, because wars are so often caused by internal unrests. Hence, if the national economy of every country could be put in order, the chances of international upheavals would be less. The domestic and the foreign policy of a nation are closely connected, with the domestic generally controlling; consequently, every important act of state affecting the internal economy of a nation has some kind of impact on the international situation.

The problems of peace and plenty, therefore, are joined. In the preceding group of chapters the question was, "Will there be another war in my lifetime?" The question in this part of the book is, "Will there be another major depression in my lifetime?" Or, to state it positively, "Can we look forward to an expanding economy in which benefits are generally and universally shared, and in which our essential economic freedoms are as secure as our political freedoms?"

This chapter will introduce the subject in its many aspects. Next comes a chapter on financial stabilization, followed by others dealing respectively with government's relation to business, agriculture, and labor. The last chapter in this part takes up the role of government in planning and stabilizing economic welfare.

Aspects of Economic Stabilization

The stock market crashed in 1929 and a major depression set in. Many banks failed, moratoria were declared on certain kinds of private and public indebtedness, and more than 15,000,000 persons were eventually unemployed. Government tried to take up the slack by initiating programs of self-liquidating public works and work relief, the latter largely of a non-self-liquidating kind, in an attempt to avoid the demoralizing effects of a dole. The National Recovery Administration was created as an aid to industry and was later declared unconstitutional. The government insured bank deposits through the Federal Deposit Insurance Corporation. The Federal Reserve System, the Reconstruction Finance Corporation, and numerous housing, agricultural, and

other public credit agencies tried to prime the pump and get the stream of commerce fully functioning again.

The Securities and Exchange Commission was set up to regulate transactions involving financial capital. Labor's bargaining power was increased through the National Labor Relations Act of 1935 and similar laws. The Agricultural Adjustment Administration was established as an aid to agriculture. Government helped to finance railroads, public utilities, and business ventures of many kinds. Extensive programs of public housing were undertaken. The Tennessee Valley Authority was launched. A National Resources Planning Board—which became a part of the Executive Office of the President, until it was abolished by Congress—worked on plans for the conservation and use of natural, industrial, and human resources. The government's concern for the nation's economic health, already great, was immeasurably extended during the 1930's by all these programs. There was much trial and error. There were significant successes and equally significant failures. The depression, with its central controls, shaded off into a world war during which even stronger governmental controls were set up.

People, who up to that time had been only mildly interested in problems of the national economy, then began to ask searching questions. Typical of these are the discussions by a group of authorities in a symposium published in 1941 under the title *Planning for America,* edited by political scientist George Galloway. Will governmental controls be withdrawn when the country returns to more normal times, or must we expect continued and possibly even extended controls? The answer offered in *Planning for America* is "that regardless of fluctuations in party politics, the government will steadily extend its control over the machinery of investment and credit, the management of basic industries, the distribution of the labor force, and the direction of foreign trade."

Assuming that a high-level use of our material and human resources is necessary to national defense, a sound economy, and the well-being of our citizens, are these objectives better secured by a relaxation of governmental interference, or by means of an even more clear-cut and more positive role for government than has yet been attempted? Can a mixed economy combining private and public enterprise—such as ours now is—function satisfactorily, or is the middle ground untenable? What is the real meaning of conservation? What are the economic freedoms that we must seek to preserve and combine with over-all administrative efficiency? Can government and business work together as a team? And are their respective structures, integrations, and internal efficiencies adequate to the task at hand? These are some of the questions which people are beginning to think about and which will be explored further in the chapters that follow.

OURS IS A MIXED ECONOMY

The economic role of government in any nation is a matter of degree. In a laissez-faire economy envisaged by one school of economists, government

should do little more than maintain peace and order and provide the conditions under which private enterprise may do the rest. The antithesis of laissez faire is socialism, also a matter of degree, in which the government plays a dominant role as both planner and operator of the economy.

Between these extremes is a large area in which both the individual enterpriser and the government play an important part in fulfilling society's economic wants, each attempting to supplement what the other does. The United States occupies this middle position today. The seeming differences in laissez faire, a mixed economy, and socialism reduce themselves to questions of structure, organization, and incentive, the very kind of societal problem this book has been considering.[1]

The Structure of the American Economy

The structure of the American economy may be divided into five main segments, including small enterprise, big business, public utilities, government enterprise, and cooperatives.

Small enterprise is the locally owned department store or the corner grocery. This is the traditional form of American enterprise and still predominates so far as numbers of units are concerned. Big business includes the giant corporations such as motors, steel, chemicals, or the motion pictures. A development of the last half century, for the most part, it has had an extremely rapid rate of growth.

In the field of public utilities are transportation, communications, and various kinds of power, such as gas and electricity. This classification shades off into insurance, banking, and other essential areas where public control is now extensive. Many enterprises are operated by government itself, which undertakes almost every conceivable form of economic service but with the major concentration in transportation, communications, finance, and public works. There are also the United States Post Office and the school system. Finally there are the cooperatives—both producers' and consumers'—extending over a wide area but concentrated in agriculture.

All of these forms of organization are found to some extent under both laissez faire and socialism. Their presence in each system, therefore, becomes a matter of emphasis or degree, but the degree is important because it determines the system.

The basic factor in our American economy is the rise of the modern giant corporation, which evolved as a result of technical and social invention.[2] As Adolf A. Berle and Gardiner Means have pointed out in their notable book, *The Modern Corporation and Private Property,* our giant industrial and financial corporations have fundamentally changed American life. Instead of small

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[1] See Benjamin E. Lippincott (ed.), *Government Control of the Economic Order* (Minneapolis, 1935), Chapter 1.

[2] See National Resources Planning Board, *The Structure of the American Economy* (Washington, 1939, 1940).

enterprise operated as a unit with ownership and management combined, we now have in large areas a separation of ownership and control, with thousands of individual stockholders—few of whom have the least chance of exercising any kind of guidance—served by a paid management. Private property, thus represented, has undergone a fundamental change of character, with ownership divested of its managerial function. The "semipublic" corporation resembles government more than it does private enterprise. Berle and Means also pointed out that "at least 78 per cent and probably a larger proportion of American business wealth is corporate wealth. Since the largest 200 non-banking corporations controlled approximately 49 per cent of all corporate wealth, the rough calculation would indicate that they controlled 38 per cent or more of all business wealth." Because of the influence of depression and war, the figure has increased considerably beyond 38 per cent since these authors wrote in 1937.

Effect on Government of the Large Corporation

Concentration in industry stimulates an extension of the economic role of government. Big business creates problems of monopolies, cartels, and trade associations, thereby inducing a demand on the part of consumers and competitors for price and service regulations. Scientific invention, with its resulting patent rights controlled by large corporations, handicaps the small firm, which is generally denied access to it, and government is asked to interfere. The stronger financial situation of big concerns in comparison to smaller ones changes the investment picture. Small business demands the regulation of large competitors, who in turn naturally resist any such move.

As a result, pressure on government from small business, agriculture, labor, and consumers and big business itself increases as the tempo of corporate growth accelerates. Thus almost before we know it we find that big government has grown in size to equal big business. Problems of the economy become the chief concern of government, spurred on by pressure groups. The so-called fourth department of government, which is responsible for regulation, expands until it almost overshadows the older executive departments. Regulations multiply so that even the experts find it hard to keep track of them.

The effects of public policies are sometimes difficult to assess. There is a natural tendency to emphasize the number and extent of controls rather than their utility. But with all the drawbacks and hazards which stem from the regulation of industry, there seems no escape from regulation. A mixed economy places more complicated problems before government than any other kind.

THE GROWTH OF POLITICAL ECONOMY

Throughout the history of organized society government has been concerned with the economic life of the community. Even in ancient Babylon and Egypt, we are told, the government operated market places, regulated prices, and

undertook extensive programs of public works. Constructed largely by means of slave labor and under the control of the military, the pyramids of Egypt stand today as symbols of ancient state enterprise.

In the Greek city-states, economic life and political life were fused. In twentieth-century Europe, the great roads and aqueducts laid out by the Romans are seemingly impervious to the elements and the ravages of time. From Rome, too, as noted above, came the social invention of the corporation which dominates our life today.

Governmental responsibility for an expanding economy increased most rapidly, however, from the end of the fifteenth century to the latter part of the eighteenth.[3] The concept of political economy as the economy of rulers coincided with the growth of the nation-state and the centralization of power under a single ruler. In Austria and the German states, as in France and England, the kings chartered mining companies, navigation ventures, and land settlement schemes both at home and abroad. The cities of the Hanseatic League were similarly busy.

From these early beginnings arose three systems of political economy. Mercantilism in England, cameralism in Germany, and Colbertism in France all had much in common. Each recognized a connection between state control and national wealth. The economy was the principal instrument by which the monarch maintained his control, expanded his frontiers, and kept his subjects content with his reign.

In England, the theories of mercantilism held that national wealth depended on increased population, the protection of agriculture and industry, an economy of low wages, a favorable balance of trade, the development of colonies, accumulated capital, and low rates of interest. Special emphasis was placed on the development of a merchant marine. Mercantilism, which aimed also at industrial supremacy through national control and the limiting of backward areas of the world to the supplying of raw materials, may be regarded as the forerunner of modern imperialism.

Cameralism in Germany was somewhat similar to mercantilism, but was more concerned with the domestic economy than with international trade. Emphasis was on the method of production, and the economic plan was so logical and thoroughgoing that it was taught as a symmetrical discipline in the universities. The program of state enterprise was supported by an administrative organization and personnel—including a civil service—that knew no equal. With German thoroughness, cameralism was adapted to the purpose at hand. Scientific management in American industry and Soviet Russia's concept of national planning were both foreshadowed and possibly influenced by the planning and administrative genius of the Prussian cameralists.

In France, a king's adviser like Colbert—from whom Colbertism gets its name—viewed it as his duty to assist the ruler in replenishing his treasury,

[3] See Herman Finer, *The Theory and Practice of Modern Government* (New York, 1934), Chapter 3.

adding to his industries and colonies, and increasing the armed might of the nation for military and welfare purposes. Under Colbertism there was a period in which extensive regulations covered both entrepreneurs and laborers. The state was held to have three main functions in relation to the economy of the nation: it was to encourage industries, both old and new; to regulate currency, prices, and wages in order to keep the economy stable and expanding; and itself to operate certain monopolies which would enrich the king, such as the post office, salt, tobacco, and other reliable commodities of commerce.

Each of these three systems regarded the state as entrepreneur and stabilizer, and each accepted the necessity of extensive regulations as to price, quality, and wages. They emphasized the importance of currency as central to their designs and sought national expansion at a time when nationalism and monarchy were in their prime. And they relied heavily on a governmental organization, supported by a bureaucracy, which would be sufficient to translate the design into living reality. Government and business were not then separate and distinct, as men came to view them later. The economy was subordinate to government and was merely one of the weapons which government used to mold its power and popular support.

In France, Colbertism was followed in the middle of the eighteenth century by a school of political economists called the physiocrats. The source of all national wealth, said the physiocrats, is agriculture. Commerce and manufactures are of little value. And individual choice is of higher worth than state regulation. The influence of the physiocrats, however, was confined pretty largely to France for a short period of time, and so did not for long tend to influence the active interest of the state in the political economy of the nation.

Adam Smith and "The Wealth of Nations"

Adam Smith's famous book, *The Wealth of Nations,* was published in the same year that saw the start of the American Revolution. Like the mercantilists, Adam Smith was concerned with the sources of national strength and greatness—as the title of his book suggests—but he disagreed with the mercantilists as to method. Monarchy had passed its peak. Individualism and democracy were coming into their own, for the people had revolted against the authority of both the church and the state. Science was teaching them to trust their own powers of observation and analysis, and the individual's confidence in his power to shape his own destiny was moving in like an ocean tide. In such a climate of opinion, Adam Smith's individualistic theories were destined to strike a responsive chord.

Adam Smith's economic views are the equivalent of natural law in the fields of law and government. He believed that there is an equilibrium in nature, and that if men would learn to identify the laws of that equilibrium and abide by them, instead of interfering with them, they would be well off. The intelligent self-interest of the individual, said Smith, adds up to the welfare of the community. Natural law constantly refers to "right reason," which is assumed

to be inherent in man. Following this line, Adam Smith argued that intelligent self-interest is the economic manifestation of reason. Pointing out that wealth and resources are limited, he believed their value to depend on the value of the labor added, with supply and demand constituting the automatic regulators of the economy. Each nation has a relative advantage in what it can best produce, and thus well-being is found in the international exchange of goods and services and not, as the cameralists had assumed, in national self-sufficiency. Gold for gold's sake, he said, is a fallacy—gold is valuable only as an instrument by which the natural balance is operated.

The Doctrine of Nonintervention

Until the time of Adam Smith, economic thought had assumed that central contrivance and planning were requisite to national well-being. When Adam Smith counseled reliance on natural forces, his doctrine came to be interpreted in a way that possessed enormous significance for later development: ***individuals should plan and contrive, because it is in their self-interest to do so, but groups and governments should not.***

The individual is reliable; the group is not. Adam Smith did not underrate the importance of government. Government, he believed, had essential functions, especially the maintenance of peaceful and orderly relations. Although he realized that the lawmaker held the key to national well-being, he argued that legislation should not interfere with the natural laws of the market place. In the economic realm the rule should be laissez faire—let things alone. From the economic standpoint, therefore, government was more important for what it should *not* do than for any positive measures it might take. In the hands of Adam Smith's followers, notably Ricardo, this doctrine came to be interpreted in such a way that a sharp dividing line was drawn between business and government and any positive action by government was regarded as "intervention." Economic theory had come a long way from the teachings of mercantilism, cameralism, and Colbertism.

The Influence of Laissez Faire

Adam Smith's doctrine—together with the doctrines of most of the classical economists—have been more influential in the realm of assumptions and emotions than in their actual effect on people's behavior.[4] The power of government to grant favors to industry and commerce in the form of tariffs, subsidies, or restrictions on others, continued to be utilized without appreciable diminution so that in a practical sense there has been a continuous tradition of state activity with regard to business despite the influence of the classical economists.

The first industrial revolution—which followed less than fifty years after the publication of *The Wealth of Nations*—brought with it a wave of factory

[4] See Walter Lippmann, *The Good Society* (Boston, 1937).

legislation that the government was naturally called upon to administer. Soon afterward the development of railroads, gas and water supply, roads and canals, and later electricity and modern machinery, created public-utility monopolies which undermined much of Smith's doctrine. The public utilities, for example, were legal monopolies, not natural monopolies, and everything about them increased the responsibility and power of the government in the economic realm.

By the end of the nineteenth century, technology and the corporation had revolutionized the economy of Adam Smith of a hundred years before. Individualistic assumptions prevailed, but men characteristically operated through groups. Hence, as the psychologists would say, a discrepancy arose between theoretical assumptions and actual behavior. This divergence has been the cause of much of the groping that has marked the programs of national economy in recent generations. The classical economists are not quite as sure as they once were that their theories are unassailable. An awareness of relationships might help to reconcile the differences.

INDIVIDUALISM AND NATIONALISM TODAY

Increasingly, people are beginning to doubt whether the so-called natural economic order is self-operating. Modern psychology has shown us that although rationality is a desirable ideal, it is far from constituting an effective force today. Men have always voted their sentiments and their prejudices rather than their reason, and apparently they always will. Even if one holds to the doubtful assumption that the majority of men are sufficiently self-disciplined to withstand the temptation to use government for their own advantage, there is always the minority that is free to do so and thus to pervert the laissez-faire system.

Nationalism and sovereignty are powerful determinants of human behavior, in economic as in political life. We may wish to moderate or abolish these concepts, but that is quite different from actually doing so. As a mechanism, government has no inherent life of its own; it may be used for any purpose or to anyone's advantage. So long as this is true, government will continue to upset the fine theories of the economists.

People are also skeptical of the theory which holds that individuals may properly scheme and contrive, while groups and governments may not. To many of us it seems like an unrealistic double standard. It would be a great loss, however, if we were to reject those elements of classical economics which have permanent value. One of these is the theory of international trade—the idea of relative advantage, the economy of exchange, and the resulting interdependence of nations. Why pay more to produce things under artificial conditions at home when they cost less to produce in their natural environment? Why not increase world trade and so help to reduce the likelihood of war? Arguments such as these appeal to the self-interest of man as well as to his best sentiments.

Another useful heritage of classical economics is the theory of individualism, when it is defined in human rather than negative terms. Individualism may mean the encouragement of effort through effective rewards and incentives, the development of talent, and the nurturing and rewarding of genius and invention. Further, individualism may hold that business acumen is an art comparable to any other form of artistry, that men should have definite authority and not be driven to their wits' end by constant interferences and obstructions. It may mean making ends meet and having something left over for replacements, expansion, and profit. These are essential ingredients of any system, and, as such, individualism is something we prize. It should be equally clear, however, that individualism does not mean the use of unbridled power, irrespective of the social consequence. It does not mean the right to use any device—fair or foul—in order to get the upper hand of a competitor. Individualism does not mean monopolistic privileges free from monopolistic duties, nor does it mean group power based on individualistic assumptions.

In these areas the rules applicable to political government apply equally to economic government, because as economic life becomes increasingly corporate and large scale, the problems of institutional structure and behavior everywhere are increasingly the same. The political economy is and always has been the concern of the community acting through government.

The Revival of Political Economy

It is for these reasons that economics and government should be studied together, not as separate disciplines. When classical economists are forced to admit that their analyses apply only to things as they ought to be and not as they actually are because of the way people behave, then it is obvious that their analyses overlook human nature, institutions, and government. And when political scientists concentrate on institutional life to the neglect of policies and consequences, their analyses are equally incomplete and potentially as dangerous. Economics and government belong together as political economy, and it is encouraging to note that today they are increasingly headed in that direction.

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CHAPTER 45

Financial Stabilization Programs of Government

THE TRADITIONAL RELATION of government to the economy in the United States has been to foster and promote all economic segments of the population, including finance, industry, general business, labor, and agriculture. Government also regulates any and all of these when public opinion, reflected in legislation, thinks such measures necessary. And finally, government attempts to restrain, support, and guide the activities of these major groups so as to remedy dislocations and help to stabilize the economy. The various measures of stabilization will be dealt with in all of the chapters in this part of the book. Government controls finance, regulates public utilities, monopolies, and trade practices in commerce generally. Government initiates measures to stabilize the industrial relations between capital and labor. It fosters, regulates, and conserves agricultural processes and resources. And it plans public works programs to help correct the fluctuations of the business cycle.

The area of stabilization with which this chapter will deal is that of finance. In a capitalistic system such as ours, the financial mechanism is the center of business controls and expansion. Money, banking, credit facilities, the stock market, and insurance form the nucleus of the competitive system, and their currents run throughout the length and breadth of our economic life.

Fiscal policy has already been considered in Chapters 12 and 13, which dealt with public revenues and expenditures. The point to be recalled here is that tax policy may be used by government as a means of regulating our economy. If venture capital needs to be encouraged, taxes can be reduced so as to make that possible. If speculation and inflation are to be discouraged, taxation may be used as a check. If sales and excise taxes fall more heavily on the numerous poor than on the fewer rich, the amount left over for goods and services will be insufficient and there will be a depressing effect on production and sales. The use of these taxes, therefore, must be undertaken with caution. If the income tax is skillfully applied and efficiently administered, it may recapture excess profits which would otherwise accentuate economic differences. If governments are efficiently and economically run, business confidence increases. If governments operate services at a profit comparable to that of private ventures, there will be lower taxes in that jurisdiction. If the national debt is not too large in relation to the national income, there is nothing to be feared. But if the interest on the national debt is a burden, it may have a harmful effect on the economy of both individuals and the nation.

Theoretically, therefore, tax policy—when properly used—may become a principal instrument of stabilization and guidance, while its misuse can be disastrous. It must be admitted, however, that, in practice, the influence of powerful interests and the lack of an adequate comprehension on the part of fiscal planners often make our national fiscal policy more spasmodic than coherent. Opportunism dictates, "Get the money where you can."

REGULATION OF THE CURRENCY

Another tool of stabilization is the use of the money power as an economic regulator. A sound and consistent national currency policy may act as a balance wheel, while a revolutionary change might cause inflation and economic chaos. If money is cheapened, the debtor repays relatively less than he borrowed and hence gets out of debt more quickly. But when money becomes dear the advantage lies with the creditor, who gets back more than he loaned. The effect of this rule was shown in 1933 when Congress abrogated the gold clause in existing public and private contracts, and reduced the gold content of the dollar.[1] This move, which was designed to cheapen money in favor of debtors, to assist stricken agriculture and prevent further mortgage foreclosures, and to enable farmers to get higher prices for their products, was widely criticized in financial circles. If one dose is good for the patient, it was argued, why not more? Then where is the limit? It is the part of statesmanship to know the answer to this question because unless there is a limit to devaluation, inflation occurs. In 1933 the banks were closed, foreclosures were extensive, and thousands of people saw their life's savings wiped out. Desperate situations, it was argued, therefore, require drastic remedies.

Article I of the federal Constitution, wherein the powers of Congress are enumerated, states that "the Congress shall have power . . . To coin money, *regulate the value thereof,* and of foreign coin, and . . . To provide for the punishment of counterfeiting the securities and currrent coin of the United States . . . No State shall . . . coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts. . . ." (Italics ours.)

These provisions were included in the Constitution as a result of the experience of the country during the Revolution and immediately thereafter. Gold and silver were scarce. When prices soared under the influence of inflation, money was hoarded. Congress had its own monetary system but so did a number of the states, and gold and silver were not always the sole mediums of exchange. The lack of a uniform system had a chaotic effect on commerce, making it the more difficult to check inflation. The framers of the Constitution sought to prevent the recurrence of any such difficulties as these.

The currency issue, as remarked in Chapter 12, has been perennial in American politics. From time to time, powerful groups have supported the printing of greenbacks—paper money not backed by either gold or silver. Even more

[1] See J. P. Dawson, "The Gold Clause Decision," *Michigan Law Review,* XXXIII (March, 1935), 647-684.

hotly contested has been the gold versus silver controversy, with the silver backers and the advocates of free silver finally lost their battle in 1900, when states of the West opposed by the financial interests of the East. The green- Congress established the gold standard as the sole basis of United States currency. There it remained until the depression of the 1930's.

Present Parity of Gold and Silver

The change on the gold and silver issue occurred shortly after the so-called bank holiday in 1933. Congress, by joint resolution, enacted as follows: "All coins and currencies of the United States (including Federal Reserve notes and circulating notes of the Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues . . . ."

Thus gold was no longer the single standard of value, although the United States at that time had most of the gold of the world stored in its subterranean coffers. Under the authority of this resolution, the President reduced the gold content of the dollar to 59 per cent of what it had formerly been. Moreover, the country's entire supply of gold, including new coinage, was called into the Treasury, and all currencies of the United States—including gold, silver, and paper money—were placed on a parity basis.

The joint resolution was soon brought to question. In the important Supreme Court decision of *Norman* v. *Baltimore and Ohio Railroad Co.* (294 U. S. 240. 1935), the Court upheld the administration, holding that the government could properly call in all available stocks of gold and silver, devalue the gold content of the dollar, and use paper money to pay all debts, private as well as public.

Since 1933, therefore, the United States—in common with the other great powers—has been off the gold standard. A good deal of international discussion has arisen as to what the future policy shall be. Shall there be a return to gold? How can the currencies of the principal nations be equated? It is a difficult problem and vital to world trade opportunities. But we have learned that going off gold does not spell ruin, as many had assumed. We have learned that currency, like the government itself, is a medium, not a fetish. And we have learned that currency policy may be a powerful regulator of the national economy.

CENTRAL BANKING AS A STABILIZER

An area of the economy in which government has shown great interest in recent years has been banking and credit facilities. This concern is indicated by the number of new laws and agencies that have been created in this field. A similar trend exists in other countries whose situation is like our own—Great Britain, for example. Generally, this new interest stems back to the economic distress of the 1930's, when bank failures were so widespread that they received as much attention as any other factor. But government's concern

with credit may be attributed to another reason. There is a logical series of steps from full employment to adequate credit, which may be outlined as follows: If there is to be full employment, there must be high production; high production requires extensive productive equipment, and this calls for capital which calls for credit; thus an assured flow of credit to productive enterprise is a chief means of maintaining a healthy economy.

Because of our economic individualism and our attachment to federalism, the United States did not move toward a full-fledged central banking system as early as many other countries—including Germany, France, and England—where there is a long tradition of a centrally managed economy. In these countries, banking has been recognized as a public function since early in the eighteenth century, and in some, notably Australia, banks are government owned and operated. In the United States, however, central banking did not become the predominant banking influence until the Federal Reserve Act of 1913. In all modern nations, however—including our own—government now has a strong voice in banking policy. In the United States, the federal government is virtually a partner in the Federal Reserve System, created in 1913.

Steps in United States Banking History

Four principal periods in the evolution of banking policy in the United States may be distinguished. The first is from 1789, the year of the adoption of the Constitution, to 1863; the second, from 1863 to 1913; the third, from 1913 to 1933; and the last, from 1933 to the present.

1. Early period, 1789–1863. The controversy between state and national banks began in 1791 when Congress, on Hamilton's recommendation, created the First Bank of the United States. Its charter expired in 1811 and in 1816 it was succeeded by the Second Bank of the United States under the operations of which there arose the case of *McCulloch* v. *Maryland*. This decision, it will be recalled, developed the doctrines of implied powers and federal supremacy and upheld the authority of Congress to create national banks.

The charter of the Second Bank expired in 1836 and was not renewed because of the opposition of President Jackson and others. From 1791 to 1836, therefore, the United States had a dual system of banks, both state and national. But from 1836 to 1863—a period when states' rights predominated—there was no national bank.

2. Second period, 1863–1913. National banking came back into the picture in 1863 and 1864 as a result of Congressional legislation. The dual system of state and national banks that was re-established remains in operation today. In this period, however, the United States had the dubious distinction of leading the world in the number of bank failures. Judged by today's standards, both state and federal regulations were lax and were the cause of widespread criticism and dissatisfaction.

3. The Federal Reserve System, 1913. The passage of the Federal Reserve Act by Congress in 1913 is a landmark in American banking. Imperfect as the

original plan was, it laid the groundwork for the development of a stable banking and economic system in the United States. The country is now divided into twelve federal reserve districts with a headquarters bank in each. This bank is managed by a board of nine directors. Three represent member banks; three others, also selected by member banks, represent agriculture, commerce, and industry in the district; and the remaining three, appointed by the Federal Reserve Board in Washington, are chosen from the area but are not bankers.

The federal reserve banks are largely bankers' banks. Under the law, all national banks—of which there were more than 5,000 in 1943—must join the system and state banks may choose to. In either case, so many banking transactions are now tied in with the federal reserve structure that it has a virtually complete coverage in the banking field.

Each federal reserve bank is the center of all banking activities in its own district, and each in turn is a major unit in the larger Federal Reserve System. The apex is the Board of Governors of the Federal Reserve System, located in Washington. The seven members are appointed by the President with the consent of the Senate for fourteen-year terms. Thus at the top, the Federal Reserve System is closely tied in with the federal government. Earnings over a certain per cent revert to the federal Treasury.

The Federal Reserve Board has general control over the district banks and in recent years has drawn the controls increasingly tighter so that the United States now has, in effect, a unified banking system. By manipulating the discount rate on loans the board may speed up or check banking activities as needed. Failure to take a stronger position with reference to the stock market boom of the late 1920's was widely criticized. It is hoped and expected that the board is now in a strong enough position to wield greater influence if a speculative boom of this kind occurs again.

The Federal Reserve System is interesting to the student of government because it combines the democracy and self-government of management in the districts, with the strong central control of federal appointees at Washington. Now that the lion's share of banking in this country is under the Federal Reserve System, we are finally in a position analogous to that of older countries whose central banks were established long before ours.

4. Insurance of bank deposits, 1933. The modern period in our banking history was inaugurated in 1933. The collapse of many of our banks in 1932 and 1933 came as a shock to those who considered the Federal Reserve System an impregnable fortress in the center of our economic structure. The causes of the depression were so comprehensive, however, that banking was swept along with the torrent. It became clear then that our central financial edifice needed further strengthening and support.

The attempted solution came in the form of the Banking Act of 1933 which, with later amendments, established the Federal Deposit Insurance Corporation

—one of a growing number of government-owned corporations. The FDIC is managed by a board of three, including the Comptroller of the Currency, ex officio, and two others appointed by the President with the consent of the Senate for six-year terms. The stock was subscribed to by the United States government and the federal reserve banks themselves. All national and state banks in the Federal Reserve System are required to affiliate with the FDIC, and other banks may subscribe with the approval of the district federal reserve boards. Almost 100 per cent of the commercial banks of the United States have now insured themselves in this manner. Individual deposits up to $5,000 are insured in full. The annual reports of the corporation show an excellent situation both as to the financial condition of the corporation and the small number of losses sustained in recent years because of bank closings.

The Federal Reserve System and the Federal Deposit Insurance Corporation apparently make a good team. Our banking situation is in a more stable condition than ever before in our history, and the controls exercised by the Federal Reserve System provide the means, if they are used, of doing much to iron out some of the curves in the business cycle. However, it is too much to expect that financial controls alone can cure all the economic ills of the kind experienced in the United States since 1929.

State and Federal Supervision of Financial Institutions

The duality of our banking system—which includes both national and state banks and is attributable to federalism—still creates some difficulties of control. State laws govern state commercial banks, building and loan associations, and small loan companies. Since many of the state commercial banks are tied in with the Federal Reserve System, it is primarily in this field that overlapping and divided jurisdictions occur. The number of state commercial banks has been reduced by well over half since 1920. Most of the larger state banks are now in the Federal Reserve System; the smaller ones are not. In some cases, as many as four sets of officials are concerned with state banks, including the state banking department or bank examiner, the federal Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation.

The states have made their best record in the field of building and loan and small loan company regulation. Billions of dollars flow through these associations and annually hundreds of thousands of borrowers make use of them. State banking departments are responsible for their control, but in recent years the federal government also has entered here, to guarantee loans and generally to stabilize the financial structure. Some duplication exists, although as yet it is not serious.

Most of the states have also taken steps to eradicate the loan-shark evil by fixing approved rates of interest and affording relief to victims. In many of the states, however, a great deal more of this nature remains to be done.

The interest of the federal government in state banking institutions is growing and a definite trend is now clear. In 1936 the late John Maynard Keynes, the noted English economist, in speaking of the situation in Great Britain, commented that he expected to see "the State . . . taking an ever greater responsibility for directly organizing investment." This was before the British Labor party was returned to power in 1945 with an announced program of socializing banking and credit. But even in 1936 Keynes's prediction was already being borne out in the United States. Indeed, the most pronounced extension of government ownership and operation in the past generation has been in the field of credit facilities of all kinds—general business, public utility, housing, and agriculture.

CREDIT FACILITIES

The Reconstruction Finance Corporation

The most powerful of our modern public credit institutions established by the federal government is the Reconstruction Finance Corporation, created at the end of President Hoover's administration in 1932 as an emergency depression measure. Like the Federal Deposit Insurance Corporation which came later, the RFC was organized as a government-owned corporation, with a capital stock of $500,000,000, a board of directors, and the power to conduct its business with the freedom of a private enterprise.

In the first twelve years of its existence the RFC loaned a total of $30 billions—more than the national debt at the beginning of World War II, more than the value of all manufacturing equipment in the United States at the outset of the war, and more than all the assets of the largest half dozen of our giant corporations. It was hoped from the first that the RFC would be a means of stabilizing the economy. As a vast credit agency, it was to be used to prime the pump when the assets of private institutions were frozen or investors did not wish to take the risk. The RFC made loans in almost every conceivable area of the economy, including banks, railroads, public utilities, manufacturing plants, savings and loan associations, agricultural ventures, credit unions, education, public works, and municipalities. It was supposed to make its financial resources available when the private investor had turned the opportunity down. Actually, largely because of the demands of World War II, it became an entrepreneur on a vast scale, and the record of repayment is highly creditable.

An interesting feature of the RFC was that Congress gave it a blanket authority to create subsidiary corporations of its own if the need arose. This was taken advantage of during World War II when, by action of its seven-man board, the RFC set up the Defense Plant Corporation and five others whose loans in some cases totaled billions of dollars. Editorially, the *Chicago Tribune* commented that the RFC could, if it wished, produce anything from steam engines to carpet tacks. Wars and depressions are great levelers.

Credit Facilities for Agriculture and Housing

The President's Committee on Administrative Management in 1937 reported the existence of approximately ninety separate public corporations owned by the United States. Of these, the majority dealt with credit facilities of one kind or another. Most of the separate credit units were controlled by the Farm Credit Administration, created by executive order of the President in 1933. It will be referred to again in the chapter on agriculture. Another bloc of credit agencies dealt with housing. The best known of these, perhaps, was the Home Owners' Loan Corporation, which loaned $3 billions to home owners forced to refinance mortgages in the ten years following 1933. The purpose here was to prevent people from losing their homes—which in some cases represented their life's savings—in consequence of the depression. Still another group of credit agencies using the corporate form of organization dealt with cooperative credit, savings and loan, and the like. Probably the best known of these is the Federal Credit Union.

PROTECTING THE INVESTOR

A further consequence of the depression of the 1930's was to strengthen the protection afforded the investing public. In 1933 a United States Senate report stated that in the preceding ten years, some $25 billion worth of securities had been unloaded on the public through misrepresentation and fraud, with a consequent loss of $250 for every man, woman, and child in the United States.

How serious a matter this may be, if it is not controlled, will be realized when we consider the extent of stock ownership in this country. A single corporation, for example, may have as many as three or four hundred thousand separate stockholders. Since there are hundreds of these semipublic corporations, hundreds of thousands of individuals own at least a few shares of stock apiece. Moreover, with the separation of ownership and control which accompanies the large semipublic corporation, the individual owner's personal influence is negligible or nonexistent. Except for the honesty and ability of the management, therefore, the only real protection to the stockholder is found in government regulation.

In 1933 Congress passed the Securities Act and a year later the Securities and Exchange Act, both of which established federal controls over the stock market and security issues in an area where federal regulation had been virtually nil. Stock markets are operated in several of our large cities, with the principal one in New York. Prior to 1933 the only restrictions on them were certain types of rather ineffectual state regulation, plus restrictions self-imposed by the members of a particular exchange acting through their governing board. A vocabulary had grown up which suggests some of the questionable practices described in a Senate report [2]—wash sales, matched orders, buying on margin, rigging the market, jiggles, and pools.

[2] Report of the Senate Committee on Banking and Currency, "Stock Exchange Practices," 73d Cong., 2d Sess. (Washington, 1934).

Most of the states in which there is a stock exchange had set up state securities commissioners, the duties of which included the licensing and control of issues and sales. In all of them, registration was compulsory but enforcement provisions differed considerably. In some cases the law provided for investigations, denials of the right to sell, and control over misleading advertising, but these were rare. Generally speaking, state regulation was ineffective except from the standpoint of compulsory registration before business could be undertaken. Some states had early passed so-called blue-sky laws, but these were usually vague, not rigidly enforced, and generally limited to a small area.

Federal Securities Legislation of 1933 and 1934

The main provisions of the Securities Act of 1933 and the Securities and Exchange Act of 1934 may be briefly summarized.

First, it is made a penal offense to sell or offer for sale any security which has not been authorized by the Federal Trade Commission up to 1934 or by the Securities and Exchange Commission after that date. Second, a heavy civil liability is imposed on the principal officers of a corporation for any untrue or partially true statement contained in the prospectus or registration statement of a proposed issue. And third, the commission tries to obtain full and complete information regarding any proposed issue, to see that this information is made available to the public, and to scrutinize the advertising campaign so that fraud and misrepresentation may be avoided. The commission's acceptance of an application, however, is not to be construed as an endorsement.

The Securities and Exchange Act of 1934, which applies particularly to the stock markets themselves, provides for the Securities and Exchange Commission, consisting of five members appointed by the President with the consent of the Senate. A considerable enforcement staff has since been authorized. The transactions of stock exchanges, said the legislation, are "affected with a national public interest" (the words used to describe a public utility), and the purpose of the legislation was constitutionally grounded on the statement in its preamble: "In order to protect interstate commerce, the national credit, the federal taxing power, to make more effective the national banking system and the federal reserve system, and to insure the maintenance of fair and honest markets in such transactions. . . ." The SEC also tries to prevent shady practices by manipulators, to discourage the internal malpractices already referred to, and generally to make stock markets "fair and open market-places for investors and not a rendezvous for speculating conspirators." By these means the SEC attempts to control credit and speculative methods which would imperil the economic stability of the country.

Few problems of regulation are more difficult than those in the field of investment. How successful the controls will be in the long run remains to be seen. In New York there was an immediate housecleaning on Wall Street. Already the combination of self-government plus federal regulation seems to

have improved some of the conditions about which the public complained most loudly.

THE REGULATION OF INSURANCE COMPANIES

The insurance companies constitute the largest single group of investors in the country. In the field of life insurance alone, outstanding policies exceed $100 billion, "admitted assets" are $30 billion, annual revenues exceed $5 billion, and annual benefits are over $3 billion. With these enormous funds the insurance companies invest in railroads, public utilities, and government bonds, and still have large sums which must be put into such projects as multiple housing, the purchase of large tracts of land, and so on. Insurance, therefore, is almost the foundation stone of the capitalist structure.

Until fairly recently the insurance business was outside federal control and regulation and so was left entirely to the states. This was due, as remarked in Chapter 9, to the holding of the Supreme Court in *Paul* v. *Virginia* (8 Wallace 168. 1868) that insurance was not a proper subject of interstate commerce. Not until 1944, in the case of *United States* v. *South-Eastern Underwriters* (322 U. S. 533. 1944), did the Supreme Court take a different view of the matter, reversing its former decision and holding that insurance is subject to federal regulation and control under the commerce clause of the Constitution.

State control of insurance companies is exercised through separate insurance departments in the state administration, or through combined departments regulating all business corporations. In most cases a single insurance commissioner is appointed by the governor for a fixed term of office. However, as in the case of security and investment transactions, the principal emphasis has been on licensing and provision of general investment policies rather than on investigation and enforcement. A National Association of Insurance Commissioners meets annually to pool useful information and to assist in the development of standards of legislation. The besetting difficulty in the regulation of insurance has been the lack of uniformity in state laws, permitting nation-wide companies to operate under different laws and rules in each jurisdiction. For many years the insurance companies have maintained one of the most effective lobbies at state capitals that the country has ever seen.

Insurance is a difficult business to regulate. It is essential to the welfare of millions that it should be free from abuses and injustices. In this connection, the disclosures of the Temporary National Economic Committee of Congress—which held hearings and published numerous reports between 1938 and 1942—are exceedingly interesting. The tendency toward monopolistic practices in the insurance business came in for more attention than any other single matter. What use the federal government will make of its new-found authority under the 1944 Supreme Court decision remains to be seen.

Government Operation of Insurance Plans

For many years before World War II, the extension of municipal and national governments into the field of insurance was a principal development in public ownership in Europe. Recently similar tendencies, paralleling those in banking and credit, have appeared in the United States. State workmen's compensation programs go back to the beginning of the present century. Some of the states, such as Massachusetts and North Dakota, have developed insurance businesses of their own, partly in connection with the pension system for their retired state employees.

But the outstanding example of government-operated insurance is the old-age and unemployment-insurance plans of the states and the federal government as part of the social security program, which will be dealt with in a later chapter.[3] These insurance plans make the federal government the largest single insurer in the country. Whether there will be a further extension into other fields of insurance makes interesting speculation. Such an extension apparently depends in large part on the practices of the privately owned insurance companies themselves.

THE FUTURE OF GOVERNMENT FINANCIAL CONTROLS

The long-term significance of government control of our financial system is hard to assess, but several things are clear. The government has extended its economic controls enormously. The nerve center of the economic system, which is banking and credit, is the point where government impact has been greatest in recent years. The depression was not allowed to run its natural course, wiping out banks, business establishments, home owners, and farmers. The apologists for natural economic law contend that the law cannot operate because it has been interfered with too much. At any rate, government interference in our financial system is apparently to continue. Whether we approve or not, the federal government is in the thick of things as the central control mechanism of our economy. If it cannot get what it wants by regulation, it tries outright ownership and operation. The government, through the RFC and its subsidiaries, has been the country's principal investment banker since 1932.

To quote again from Professor Keynes in his *General Theory of Employment, Interest and Money,* published in 1936: "I conceive, therefore," said Keynes, "that a somewhat comprehensive socialization of investment will prove the only means of securing an approximation to full employment. . . . But beyond this no obvious case is made out for a system of State Socialism

[3] Chapter 50, "Welfare, Social Security, and Public Health."

which would embrace most of the economic life of the community." Was he right? Or is Frederick Hayek right in *The Road to Serfdom* when he says that when intervention in matters of this kind is once started there is no stopping until the entire economic system is government dominated and controlled?

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CHAPTER 46

Business and the Government

WITH SO MUCH DISCUSSION in the past dozen years or so of the impact of government on business, we tend to forget that the concern of government for business is not a new development. A previous chapter showed how this concern accompanied the rise of the nation-state, how the monarch sought to strengthen his position by fostering the national economy, and how—despite the theories of the classical economists—governmental regulation and control have steadily increased since shortly after the appearance of Adam Smith's *The Wealth of Nations* in 1776.

Another current error in our thinking is to assume that government intervention in the field of business is solely for the purpose of regulation. This is natural in view of the emphasis in the past few years on such agencies as the Securities and Exchange Commission, the Federal Communications Commission, and others of that type. Yet, in historical perspective, government has paid at least as much attention to the encouragement of business enterprise—if not more—as it has to fixing the rules of the game.

In any political economy, it would seem, government must assume a variety of roles if economic well-being is to be nurtured. Government must promote and encourage all industry and commerce, as it attempts to in this country through federal and state programs. Government is called on for financial and other forms of assistance to particular sectors of the economy, especially transportation—including the railroads, the waterways, the highways, the oceanic steamship companies, and the air lines, which have all benefited from governmental largess. Infant and senile industries alike have profited financially from the tariff barriers that Congress has placed around the country.

The development of the United States from a union of thirteen colonies to a nation that maintains a regular passenger air service to all parts of the world has been a story of the closest kind of cooperation between business and government. As *Nation's Business* has repeatedly pointed out, businessmen are ever running to government for assistance for themselves and for protection from the other fellow.

In addition, American government has been entrepreneur on a giant scale in developing western lands, encouraging railways and waterways, extending credit facilities, conducting a Bureau of Foreign and Domestic Commerce, granting patent rights, sponsoring basic research, and operating enterprises

that were unprofitable at the outset.[1] Indeed, an analysis of governmental programs, particularly at the federal level, reveals that most of the functions of government are economic, if that term is broadly construed. Under this heading, for example, one may put the protection of property, the enforcement of contracts, the regulation of weights and measures, laws relating to bankruptcy, and maintenance of the credit structure.

According to the American concept of government, the public interest is served only when—in addition to promotion and assistance—government also assumes the roles of umpire and regulator, and, in certain cases, owner and operator. At various times and in its several capacities, government is thus encourager, entrepreneur, regulator, and operator. No other institution in our common life is required to assume so many guises.

This chapter will deal with government assistance to business, industry, and commerce. It will also discuss the major fields of regulation, especially public utilities, monopolies, and general business. Government as owner and operator will be the subject of a later chapter.[2]

GOVERNMENT ASSISTANCE TO BUSINESS

Ever since the beginning of our history, several major arguments have been made in behalf of the active collaboration of government with business enterprise: that infant industries need protection and encouragement; that American industry must be put on a footing equal to that of older countries; and that what is good for business is good for the country. It is also argued that the country must be made industrially strong for its military defense; that the government has access to cheap credit as newer forms of economic enterprise do not; that government should pioneer so long as the enterprise is unprofitable and should then turn it over to private management; and, finally, that government should permanently operate those enterprises which are essential to the community but which cannot be made to pay.

Alexander Hamilton, in his justly famous *Report on the Subject of Manufactures,* published in 1791 and perhaps the first outstanding contribution of an American in public life to the literature of national planning, was the first American to offer a comprehensive philosophy of government as promoter of the political economy. Almost as famous was Henry Clay's *American System,* published early in the nineteenth century. Clay advocated an emphasis on tariffs and a sound banking policy to assist the industrial East, as well as a federal program of internal improvements in the West to aid farming and business enterprise in that section.

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[1] For a critical view, see Warren E. Persons, *Government Experimentation in Business* (New York, 1934).

[2] Chapter 49, "Planning, Stabilization, and Economic Welfare."

The Department of Commerce

The Department of Commerce is the businessman's department in Washington just as the Departments of Agriculture and Labor represent the other members of the Big Three. In view of the influence of the businessman in American life and the substantial assistance government has rendered him, it is surprising that the Department of Commerce was not established until 1903. The explanation is that although business *sentiment* held government assistance to be unnecessary, business *behavior* was in favor of such assistance. The Department of Commerce, therefore, came into existence with the broad mandate "to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishing industries, and the transportation facilities of the United States." [3]

It is also strange that from the outset the Department of Commerce has been one of the smallest central departments in Washington. At the present time, only one of the five industries mentioned in the above enumeration comes wholly within the department's immediate jurisdiction. Mining, shipping, fishing, and transportation have all been placed elsewhere in the federal hierarchy. Thus, of the areas contained within its mandate, only manufacturing is left.

The Department of Commerce has undergone several reorganizations in the past few years. In 1945 its principal bureaus were Foreign and Domestic Commerce, Census, Coast and Geodetic Survey, the Bureau of Standards, Patent Office, Weather Bureau, and Civil Aeronautics. The Inland Waterways Corporation and the Textile Foundation, Inc., were also affiliated with the department, although as government corporations they have a certain degree of independence. The Business Advisory Council, the National Inventors Council, and the Foreign-Trade Zones Board have been created for special purposes and were also affiliated with the department.

The backbone of the Department of Commerce is the Bureau of Foreign and Domestic Commerce, created in 1912 and greatly expanded by Herbert Hoover when he became Secretary of the department in 1921. Expenditures and personnel multiplied fivefold in a short time, with the main emphasis on foreign trade. Since that time, however, the domestic area of commerce has received equal attention and in 1946, under the secretaryship of Henry A. Wallace, the foreign and domestic programs were made separate bureaus. With the cooperation of the Business Advisory Council, created in 1933 and representative of major business and sectional interests, the Bureau of Foreign and Domestic Commerce has increasingly raised its sights and broadened its emphasis.

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[3] See Pendleton Herring, *Public Administration and the Public Interest* (New York, 1936), Chapter 18, "The Department of Commerce Responds to Business."

The Department of Commerce has become a useful and practical fact-finding and information agency for American business, and is now in the process of becoming the center of business policy and the focus of business attention to the larger needs of the economy. As the Secretary of Commerce said in his report for 1939, the department is designed "to assist all policy makers, whether of business or government, by indicating the significance of current and proposed policies in the light of underlying developments." The Business Advisory Council greatly assists in this work. Its members are businessmen and so have the confidence of other businessmen.

When Henry A. Wallace became Secretary of Commerce in 1945 he undertook a study of the organization and services of the department, at the conclusion of which he announced a six-point program:

1. A revitalized foreign trade service to play a more effective role, in cooperation with the State Department, in the formulation of commercial policy and to promote vigorously a high level of foreign trade on a sustained basis.
2. A strong, balanced program of current and "benchmark" statistics to provide adequate intelligence for business and government.
3. A complete analytical program to give business and government current information on the economic situation and business outlook.
4. Technological aids and service to business, especially small business.
5. Management aids and other forms of direct service for business—again oriented to the needs of small business as well as large.
6. Strengthening of the technical service functions of the department to make them as helpful as possible to the nation's commercial and industrial life.

The future effectiveness of the Department of Commerce seems to depend on the attitude of the business community toward government. If the emphasis is on self-discipline in industry and resistance to government, such organs of business as the United States Chamber of Commerce and the National Association of Manufacturers must develop any economic statesmanship that is forthcoming. But if business chooses to cooperate with government in addition to developing its own internal control, the Department of Commerce may become a key instrument of national policy and effectiveness.

Other Federal Agencies Relating to Business

The importance of business in the American economy is shown in the many agencies which, with others among the so-called independent establishments of the federal government, constitute what is known as the fourth department of government. These agencies are not brought together in one place such as the Department of Commerce, as might be expected; instead, they are scattered and independent. The fact that they control a large segment of American life is one reason for the statement that ours is a "managed" economy. The following outline lists the more important independent agencies of the federal government which have a direct relation to business:

FEDERAL AGENCIES HAVING A DIRECT RELATION TO BUSINESS

Agency	*Created*	*Purpose*	*Organization*
Federal Communications Commission	1934	Regulation of wire and radio communications	7 members
Federal Power Commission	1920, extended in 1930 and 1935	Development of hydroelectric power; regulation of interstate electrical utilities	5 members
National Advisory Committee for Aeronautics	1915, extended in 1929 and 1938	Research and research coordination	5 members
Federal Trade Commission	1914, extended in 1938 and 1941	To promote free and fair competition; to control false and misleading advertising; to study business practices	5 members
Interstate Commerce Commission	1887, extended in 1906, 1935, 1940, and 1942	Regulation of common carriers—rails, trucks, waterways	11 members
Securities and Exchange Commission	1934, extended in 1935, 1938, 1939, and 1940	Regulation of security investments	5 members
U. S. Tariff Commission	1916, extended in 1922, 1930, and 1934	Investigate and report on tariff matters	6 members
U. S. Maritime Commission	1936	Foster and promote the merchant marine	5 members

This is not an exhaustive list but it does include the major units. Indeed, there are few agencies of the federal government which are not of some interest to business in some connection. The Federal Reserve System, the Federal Deposit Insurance Corporation, and the Reconstruction Finance Corporation might also have been included here. However, since they relate primarily to finance, they have been discussed in the preceding chapter.

FINANCIAL ASSISTANCE TO TRANSPORTATION

Transportation is one of the major industries that has received special attention from the federal government. Just prior to World War II, the Federal Coordinator of Transportation issued a series of studies entitled *Public Aids to Transportation,* which had been in the course of preparation for some time. Although the entire report is worth careful study, only a few of its general findings will be noted here, as examples of government assistance in this area.

It is interesting that from the creation of the railroads in 1814, public assistance to this industry has amounted to the substantial average annual total of almost $150 million, although the grants were concentrated in the early years. Highway construction, vital to the motor-carrier industry, is one of the heaviest expenditures of state and local governments, with federal aid; these expenditures amount to untold millions of dollars each year, although since 1927, says the report, "motor-vehicle users as a class have paid their way." Public assistance to the aircraft industry between 1926 and 1936 amounted to over $170 million. In 1939, operating subsidies to the merchant marine totaled $15 million for that year, while construction payments amounted to almost $36 million.

Public grants to the railways were made chiefly in connection with construction. Aside from the assistance afforded them by the Reconstruction Finance Corporation during the depression of the 1930's, they have needed little financial assistance from the government in recent years.

Waterways are a continuing expense, however, as new channels are opened and old ones improved. Highway construction will probably also continue to be a major object of expenditure for many years in the future. Aviation has rapidly come into its own, but the subsidies for certain air-mail contracts will doubtless be continued indefinitely. The merchant marine, it is generally recognized, will require a large annual subsidy if it is to keep pace with foreign competition and to remain a reliable instrument in time of war.

History shows that as new forms of transportation are developed, government is called upon to subsidize or operate the older forms if it is vital to the national interest that they be kept running. In a period of revolutionary change in this area, therefore, we may witness some startling innovations in the entire transportation picture.

TARIFF POLICY IN THE UNITED STATES

The tariffs are another form of aid to business, and a very substantial one. The history of tariffs in the United States is almost as old as the Constitution. Influenced by Hamilton's doctrines and the advocates of protection of infant industry, tariff walls were not long in coming.

The economist regards the tariff as a tax which the domestic consumer pays in order to protect manufacturers from the competition of goods which might otherwise be imported and sold at a lower price. To government, tariffs were once chiefly a source of income, but to the powerful economic groups of the nation, tariffs are a part of the "American System." [4]

A symbolism has grown up around the institution of the protective tariff resembling that of other patriotic appeals. Businessmen, farmers, and labor have all had their reasons for supporting tariff walls: tariffs protect American standards of living, make it impossible for cheap labor to compete unfairly with American labor, create an assured market for American agricultural products, and by promoting the economic self-sufficiency of the United States equip her for successful self-defense. In addition, it is held that tariffs maintain the price level at American rather than lower standards, make it possible for certain marginal enterprises to remain in business when otherwise they would fail, and add to the prosperity of all save those American industries which, like motors, are able to dominate world markets without such assistance.

Because he is largely unorganized—and despite the fact that he is everybody—the consumer has had little influence on tariff policy except as he belonged to one or another of the three major producing groups of industry,

[4] Pendleton Herring, *Public Administration and the Public Interest, op. cit.*, Chapter 6, "Political Storms and the Tariff Commission."

labor, or agriculture. And in this case, as a consumer, he has often argued against his own good.

The tariff has been primarily regarded as an instrument of national power rather than as a revenue measure. In view of this tradition, there is some question whether in the future tariffs will continue to be viewed from the standpoint of group interest and national power, or whether there is any chance of considering them from the standpoint of international relations and consumer welfare. If there is this chance, then our national tariff policy could become a useful instrument in creating harmonious international relations.

Five principal periods of tariff history in the United States may be distinguished:

1789 to 1815—during which protectionism gained force.

1816 to 1832—in 1816 the first tariff was put into effect and was later broadened and heightened.

1833 to 1860—a period in which tariff policy was under attack and duties were generally lowered because of the influence of the agrarian population.

1861 to 1933—a long period in which tariffs soared upward except during two presidential terms when Cleveland and Wilson were in office.

1934 to date—a period in which tariffs have again tended downward because of the influence of reciprocal trade agreements and the modern emphasis on international accord.[5]

Except for the initial period, there have been two cycles of rising and falling tariffs. It is too simple an explanation to say that Republicans have advocated high tariffs and the Democrats low tariffs, although, generally speaking, this difference has prevailed since the Civil War.

The United States Tariff Commission

The modern history of tariff administration began in 1916, when the United States Tariff Commission was created during President Wilson's term of office. Prior to that time Congress had enacted only those duties which particular pressure groups were powerful enough to secure. No group of interests, said President Wilson, possessed so much power or tended to corrupt American government to such an extent as the tariff lobbies. It came to be recognized, therefore, that several things were wrong with unassisted Congressional action in the field of tariffs. A more objective method was needed for securing access to the facts with regard to particular tariff questions. Information would have to be comprehensive, up to date, and based on comparative analyses of the costs of production in different countries. And finally, Congress would require an administrative agency of the government to get the facts and facilitate changes as the need arose during periods of Congressional inactivity on tariff matters.

[5] See G. Beckett, *The Reciprocal Trade Agreements Program* (New York, 1941).

In answer to these needs, the United States Tariff Commission was given investigative and administrative functions. The commission consists of six members drawn from both major political parties and appointed by the President with the consent of the Senate for six-year terms. It has a staff of over three hundred persons who work on various aspects of the tariff problem, such as relative costs of production, unfair competition, the fiscal effects of tariff laws, and their impact on industry, labor, and agriculture.

From 1916 to 1922 the powers of the Tariff Commission were purely investigatory. In 1922, however, the commission was given authority to recommend to the President specific (not general) increases on particular items. Also introduced at this time was the so-called flexible tariff policy under which the President was authorized to increase or decrease schedules up to 50 per cent in either direction without specific sanction from Congress. This was regarded as a means of rapid adjustment to changing conditions, based on investigations of comparative costs. Actually it encouraged intensified pressure from the tariff interests and did not prove very successful.

Reciprocal Trade Agreements

In 1934 Congress passed the Trade Agreements Act, which was extended in 1937 and 1940. Under this new policy and procedure, the President is permitted to negotiate tariff agreements which will be mutually beneficial to the nations concerned and to world commerce. These are bargaining tariffs designed to lower unnecessary obstructions and hence lead the world back to freer trade. Congress surrounded with several fixed policies the President's power to negotiate reciprocal trade agreements. Articles may not be transferred from the free list to the dutiable list or vice versa, rates may not be altered more than 50 per cent in either direction, the most-favored-nation principle must be continued, and agreements may not be used to reduce indebtedness to the United States.

Within these broad limits, however, the President is free to negotiate. He has this authority independent of the Tariff Commission, but naturally he relies on it for the facts. The actual bargaining and negotiation are carried on by the State Department. This was a principal area in which Secretary of State Hull made his reputation as a statesman. In effect, this arrangement has meant that the initiative was transferred from the Tariff Commission to the President and the Secretary of State, as a result of which the commission became primarily a research agency.

It is perhaps still too early to assess the long-term effectiveness of this program. In general, however, informed opinion inclines toward the belief that reciprocal trade agreements have not injured our essential American interests and that they have contributed to improved international economic relations. The future outlines of our postwar tariff policy hold far-reaching import for both our domestic and our international concerns.

THE REGULATION OF PUBLIC UTILITIES

A public utility is any business which is given that designation. If a legislative body grants certain kinds of privileges to a particular kind of business and establishes certain types of control—and if the courts uphold these acts of authority—that business becomes a public utility. The list of public utilities has been expanding ever since shortly after the Civil War, and it is still growing. The principal fields are transportation, communications, and power. There are many areas which resemble public utilities, however—banking, insurance, and the metropolitan milk supply, to name a few. If the list of public utilities continues to enlarge, we may see the time when the preponderance of business is found in that category.

A public utility is more easily analyzed than defined. Thus a public utility is a business which is "affected with a public interest." It usually requires a franchise for the use of public property—a right of way or some similar privilege—before it can do business. It is usually a monopoly or a near monopoly, such as a telephone system or a municipal water supply. And finally, in return for the franchise and privileges of various kinds which the public grants it, the utility is subject to a number of governmental regulations. Thus the valuation of its property must be agreed on; the rates for its services are fixed; the allowable rate of return on the investment is limited; and the utility must maintain an acceptable standard of service to the public, a principal requirement of which is that the service be available to all without discrimination.

However, a public utility is difficult to define accurately and fully, even by analysis. A public utility is anything the legislature and the courts decide to call a public utility. Many businesses affected with a public interest—such as automobiles—are not public utilities. Many a near monopoly—aluminum, for example—is not a public utility. And so on down the line. Perhaps the problem can be clarified by a brief historical summary of how public-utility regulation arose.

Principal Steps in Public-Utility Control

For convenience, the steps in public-utility control are listed as they arose. In the first place, the public-utility category in business grew out of the regulation of the railroads, which started soon after the Civil War. The Supreme Court first used the phrase "business affected with a public interest" in the case of *Munn* v. *Illinois* (94 U. S. 113. 1877) to uphold a state law regulating the prices charged by grain elevators. An analogy was drawn to the English common law by which public inns and similar establishments are open to all and hence are subject to public supervision. When the case of *Munn* v. *Illinois* established the public-utility concept, it was then only a matter of adding to it as the occasion arose. Gradually, nearly everything connected with common-carrier transportation, including warehouses, trucks, and the like, came to be

considered a public utility whether monopolistic or not, and most of them were placed under the jurisdiction of the Interstate Commerce Commission.

Community services, such as water supply, gas supply, and electricity, came to be included as public utilities. There was usually a single business of each kind in the community and hence the prices and services had to be regulated. As one communication agency after another was developed, they became public utilities—the telegraph, the telephone, the cables, and the radio industry. Since 1934 these have been under the control of the Federal Communications Commission. The newspapers and the motion-picture industry, however, are not considered public utilities.

Public utilities, therefore, include some of the largest corporations in the country. Indeed, the largest of all is the American Telephone and Telegraph Company, closely seconded by railway systems such as the Pennsylvania and the New York Central, all of which are public utilities subject to public control. When so great a segment of the economy—variously estimated at between one fifth and one quarter of the capital wealth of the nation—is subject to close public control as regards both price and service, it is obvious that the load on government is heavy.

A Leading Case in the Public-Utility Field

That the concept of the public utility is expanding rather than contracting is clear from the Supreme Court decision in the case of *Nebbia* v. *New York* (291 U. S. 502. 1934). New York, like other large cities, has a milkshed from which it draws its daily supply. In 1933, extensive state regulations were adopted. A milk control board was set up and maximum and minimum prices were fixed. Nebbia argued that this constituted price fixing and so was contrary to the due process clause of the Fourteenth Amendment to the federal Constitution. But the decision went against him. In upholding the state's authority, the Supreme Court made some telling points. No person, said the Court, has the "unrestricted privilege" to engage in business or to conduct it as he pleases. Legislative regulation of business "incidentally affecting prices" has been and will be upheld. Futhermore, public control is expansible. Said the Court, *"There is no closed class or category of businesses affected with a public interest,* and the function of courts in the application of the Fifth and Fourteenth Amendments is to *determine in each case* whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority . . . ." (Italics ours.) And, finally, the Court held that "a state is free to adopt whatever economic policy may reasonably be deemed to promote the public welfare, and to enforce that policy by legislation adapted to its purposes."

Since the *Nebbia* case no sharp line distinguishes public utilities and other types of business. The milk industry was not designated a public utility, but it was treated in all essential respects as though it were. Perhaps this decision indicates that prices may be fixed in industries other than public utilities,

even in time of peace, if the legislature and the courts decide that the public interest justifies it. How much reliance the legislatures and the courts will place on this decision in the future remains to be seen. If it were followed, the way is apparently open to a far more extensive control of business enterprise than has heretofore been thought possible. In the meantime, however, the public-utility category remains significant and the problems connected therewith grow no less complicated.

STATE REGULATORY COMMISSIONS

As the number of utilities grows, the matter of regulation and enforcement raises many perplexing problems for government. Should the legislature itself attempt to fix the rates? This method was tried and it failed, for the same reason that the attempt to fix tariffs by legislative action alone also failed. Should the municipal council grant a franchise and try to fix the restrictions in it so that administrative enforcement would be unnecessary? This plan also has been tried without success.

It becomes clear, therefore, that to be effective, public-utility laws must be backed by an adequate administrative process. But what form should that process take? Should there be a separate agency for each category of public utility? At first this plan seemed the logical one, but soon the number of separate agencies so complicated municipal and state organization that something else was required.

The Progressives were principally responsible for suggesting, about 1907, that each state set up a single commission for regulating all public utilities. The commission would be a nonpartisan group, alert to safeguard the interests of consumers. If regulation could be made to work, it was reasoned, then public ownership would not be necessary. Under this scheme the cities would give up some of their regulatory powers but, working with the state commission, they would continue to control those utilities which came wholly within their own borders.

The suggestion took hold, and by the end of World War I, most of the states had created a single central commission for the regulation of public utilities. Their jurisdiction varies; they do not always have complete control over all types of utilities regulated in other states. Their titles also vary, the more common being Railroad Commission, Public-Service Commission, Public-Utility Commission, and Corporation Commission.

Organization, Personnel, and Functioning of State Regulatory Commissions

The size of the state regulatory commissions is generally smaller than that of the federal government. In the states, three members are the common number, seven commissions have five members, and the largest has seven. This compares with five or six in the federal government, where the biggest—the Interstate Commerce Commission—has eleven members. In the states, appointment by the governor is the most usual method, being found particularly in

the Northeast and the Far West. Popular election is characteristic of the Middle West. Terms range from two to ten years, the usual period being six years.

In a quasi-judicial area such as economic regulation, the caliber of the personnel of a regulatory commission naturally goes far to determine public satisfaction or disapproval. Some very excellent officials have been developed but, generally speaking, the quality is disappointing.[6] Among the more frequent reasons for this situation is the fact that the salaries paid by state commissions are low, generally ranging from $2,000 to $5,000 a year. Federal commissioners, by comparison, receive a minimum of $10,000 a year. It is thus not surprising to find that the personnel of the state regulatory commissions turns over rapidly, and that reappointment or re-election is not common. In many cases the subordinate staffs are also inadequate and underpaid. In addition, it is difficult to secure technically trained men who know as much as or more than those connected with the business being regulated. Frequently the most able of the regulators leaves government employment to work for one of the utilities at a salary which may be several times higher than the amount he received as a member of the commission.

And finally, it is hard to rule out political and partisan considerations. Sometimes these work to the advantage of the public but more often they favor the utilities. These factors often lead to the charge that the regulators are being regulated. Regulation is a difficult and trying assignment that seldom fully rewards the individual who performs it. For example, to determine what constitutes the public interest is hard when the objectives and the law are vague. It is not easy to balance utility interest against consumer interest and to secure effective public control without imposing unnecessary and burdensome restrictions on the companies rendering the service. Moreover, regulation sets up one group of men to watch another, always a difficult working relationship if the regulators assume too much power. And finally, utility management is divided between the commission and the paid management of the company, a situation that invites stalemating and confusion.

THE FUNCTIONS OF THE REGULATORY COMMISSION

The principal functions of public-utility regulatory commissions at any level of government include, first, the determination of valuation on which the return, or profit, shall be earned. As will be seen, this is a big job and a hard one. Next, rates must be fixed, together with the amount of allowable earned profits. This problem will also be considered. Third, standards of service, involving hearings and field investigations, must be established and enforced. Accounting methods must also be prescribed and supervised, and the issuance of securities and financing must be regulated. Finally, the commission must approve consolidations, discontinuances, and the like. This includes the thorny

[6] See William E. Mosher and Finla G. Crawford, *Public Utility Regulation* (New York, 1933), Chapter 1.

problem of holding company arrangements, which caused so much trouble in the 1920's and the 1930's and with which the name of Samuel Insull is usually associated.

Valuation and Rate Making

How much a public utility will be permitted by a regulatory commission to earn depends on how much the utility has invested in the enterprise. The total valuation of its property and installations is known as the rate base. The first and most difficult task of the regulatory commission, therefore, is to determine the value of the utility. When there are many separate companies, and when the valuation is constantly changing, as it is bound to, the problem becomes very complicated. Add to this the fact that the utility may contest the valuation in the courts, and the task of valuation becomes even more difficult. In a contest, the utility usually contends, under the due process provision of the Fourteenth Amendment to the Constitution, that its property is being taken without due process of law.

The courts, therefore, must decide whether the valuation arrived at by the regulatory commission is or is not "confiscatory." The rule that it must be "fair and reasonable" involves highly technical questions of accounting and pricing as well as matters connected with the operation of the business cycle. The legal landmark in valuation cases is that of *Smyth* v. *Ames* (169 U. S. 466. 1898). Here the Supreme Court presumably laid down a "rule of valuation" to be used in similar cases, but later experience has shown that the so-called rule merely enumerated the several and sometimes conflicting theories which might be used for valuation purposes. As a result, the regulatory commissions have had no definite guide on which to rely, so that much litigation, uncertainty, and criticism have followed.

Concerning this problem, Mr. Justice Brandeis said in the case of *Los Angeles Gas and Elec. Corp.* v. *R.R. Com. of California* (289 U. S. 287. 1933): "The so-called rule of *Smyth* v. *Ames* is . . . legally unsound . . . . The experience of the twenty-five years since that case was decided has demonstrated that the rule there enunciated was delusive. In the attempt to apply it, insuperable obstacles have been encountered. It has failed to afford adequate protection either to capital or to the public. It leaves the door open to grave injustice."

As the Supreme Court has tried to apply the rule of *Smyth* v. *Ames* to later cases three principal alternatives have appeared, all seeking dominance. These are:

Original cost—meaning the original cost of the property plus the cost of extensions and betterments.

Reproduction cost—meaning the cost of reproducing the property as of any given time at current rather than the original prices.

Prudent investment—meaning the total cost of providing the services in question at noninflated values which businessmen would agree constitute "prudent" or thrifty management. This rule of valuation was first sug-

gested by Mr. Justice Brandeis in the case of *Missouri ex rel. Southwestern Bell Telephone Co.* v. *Public Service Commission* (262 U. S. 276. 1923).

Each of these alternative rules possesses its own difficulties of interpretation and application. Words such as "prudent," "fair," and "reasonable" are obviously not self-interpreting and give rise to different understandings, all of which may be honestly held. When current prices are low, the public utility will naturally favor original cost, but when they are high it will prefer reproduction cost. The lack of certainty has encouraged numerous appeals to the courts, some of which have been long and costly both to the public utility and to the public.

"The present enfeeblement of utility administration by the states," wrote Professor (now Mr. Justice) Frankfurter in 1930, "is in no small measure due to interference in administration by the lower federal courts." In some notable cases—*Smith* v. *Illinois Bell Tel. Co.* (282 U. S. 133. 1930) is one—appeals in the federal courts have been known to drag on for a dozen years or more.

Unfortunately, the simple solution is not always the fair one. Fluctuating price levels are a major complication. Questions of professional judgment also arise. What, for example, is the value of the services of a firm of consulting engineers? How much shall be allowed for "good will"? How much for salaries paid to executives? How much for expensive materials when, in the judgment of the commission, less expensive ones would have done just as well?

Another factor is that the normal instinct of most businessmen to keep costs down is not fully effective in the case of regulated monopolies because everything allowed as a legitimate cost becomes a part of the rate base and makes a higher profit possible. The larger the investment, the larger the total capital on which earnings may be paid.

A Fair Return on a Fair Value

When the rate base valuation has finally been determined, then the regulatory commission must decide what rate of return, or profit, to allow on the investment. This, too, is no easy matter. In recent years, as we all know, the rate of return on investments has dropped as investment capital has been more plentiful than the effective demand for it. Interest rates are very low.

What, then, should be the policy of the regulatory commission with regard to the profits of a public utility? If it earned 6 per cent ten years ago, should it be allowed to earn as much as that now? How much risk is involved in an essential service that is a monopoly, and so lacks competition, and whose rates are fixed by public authority? The troublesome problems of public policy in this area can be readily seen. If interest on an investment rewards the risk that is run, and if the risk is negligible or nonexistent, then what theory of interest should be substituted?

In the last analysis it is the Supreme Court—in giving effect to the rule of a

fair return on a fair value—that must decide the rate of return to be paid. A leading case on this subject is *McCardle* v. *Indianapolis Water Co.* (272 U. S. 400. 1926). Reference was also made in an earlier chapter to the interesting case of *United Railways and Electric Co. of Baltimore* v. *West* (280 U. S. 234. 1929), wherein the point at issue was whether 6.26 per cent or 7.44 per cent was a fair return on a street railway, the Court holding that the lower rate was "confiscatory." But this, it should be noted, occurred in 1929.

Public-Utility Holding Companies

Federal control of public utilities has increased in recent years, as shown by the expansion of the Interstate Commerce Commission, the creation of the Federal Communications Commission, and the strengthening of the Federal Power Commission. One reason for this was the rapid extension of public-utility holding companies which cut across state boundaries and hence limited what the state regulatory commissions could do. As long ago as 1932, Bonbright and Means pointed out in their book, *The Holding Company,* that ten groups of systems in the electric light and power industry were doing three quarters of the nation's business, and that a similiar situation existed in the gas industry.

The comprehensive investigation of public utilities by the Federal Trade Commission and its report of 1935 entitled *Utility Corporations* called attention to the evils which had arisen, culminating in the crash of the Samuel Insull dynasty of nation-wide proportions. By pyramiding one company on another, millions of dollars at the base could be controlled with a few hundred thousands of dollars of initial investment at the top.

In the same year that the report of the Federal Trade Commission appeared, Congress enacted a comprehensive law called the Public Utility Holding Company Act. Under the provisions of this legislation the Federal Power Commission continues to have jurisdiction over the interstate transmission of power, the regulation of rates, the building of hydroelectric projects on navigable streams, and so on. But it is also provided that complete information regarding holding companies must be lodged with the Securities and Exchange Commission. Because of the last named provision all electricity and natural gas holding companies engaged in interstate commerce must register with the Securities and Exchange Commission unless the commission decides they come within the exceptions contained in the law. Failure to register deprives the utility of the use of the mails and the right to do an interstate business. In addition, full information must be filed as to the utility's organization, interconnections, and financial condition. The issuance and sale of stock and the acquisition of new properties also come under the commission's control, and its approval must be secured in advance.

Thus the no man's land created by the limits of state regulation in the public-utility field has now been occupied by federal authority. Henceforward it should be possible to safeguard the public against the flagrant abuses found

in some of the holding company practices. However, the divided authority between the Securities and Exchange Commission and the Federal Power Commission is bound to create internal jurisdictional problems.

The Future of Public-Utility Regulation

The alternative to public-utility regulation is outright government ownership and operation. A vital issue of our time, therefore, is whether regulation can be made to satisfy the public or whether the demand will increase for more extensive municipal ownership, additional TVA yardsticks, and so on. Other countries have not relied very much on regulation as a major public-utility policy, believing it better in general to undertake outright public ownership and regulation.[7] In the United States, on the other hand, it has long been held that regulation represents the traditional American preference for a middle position, combining as it does public control with private ownership.

If it should come to a matter of choice, therefore, the effectiveness of regulation will constitute a determining factor in the outcome. Some of the vital areas of the problem have been discussed here: How competent can the personnel of the regulatory commissions be made? "The ideal interstate commerce commissioner," said Joseph Eastman, "should be caught when young and trained a lifetime." Can the commissions be adequately organized and fully staffed? Can their jurisdictions be rounded out? Can the rules of valuation and fair return be made more certain and more workable? Can holding company abuses be effectively eliminated? Can a solution be found for divided authority between private managers and public regulators? These are some of the main problems.

The eventual decision between regulation and public ownership will have a far-reaching effect on government as on the economy. Regulation now occupies a substantial portion of the peacetime organization, personnel, and budgets of government at all levels of administration. Would government's load be lessened or increased if outright ownership and operation were widely substituted for commission regulation? Different people give different answers. But one thing is clear: the load on government is now so great that there must be a sound disposition of such problems.

THE CONTROL OF MONOPOLIES

An assumption of common law is that trade shall be free and competitive. The public utility is an exception to the rule because competition is so generally lacking in this field. If competition can be sustained, argue the economists and the courts, then governmental intervention will not be necessary. The success or failure of free competition, therefore, is vital to the maintenance of the capitalist system.

With the improvement of transportation after the Civil War, however, and

[7] See John M. Clark, "Government Regulation of Industry," *Encyclopedia of the Social Sciences*, IV, 122–129.

the ingenious use of corporate powers virtually free from governmental restraint, combinations of business organizations grew rapidly in power, invading one field after another and greatly circumscribing the play of free competition. Hence we now find ourselves in a situation where competition in such instances can be preserved only if government can effectively regulate monopolies. What the ultimate outcome will be no one can say. All we know at present is that the federal and state governments have attempted to enforce competition for almost seventy-five years, and yet the trend toward larger units of business organization continues.

The states have long had provisions in their constitutions and their statutes excoriating monopolies and championing competition. The federal government passed the Sherman Antitrust Act in 1890 and strengthened it with the Clayton Antitrust Act and the Federal Trade Commission Act in 1914. The Antitrust Division of the Department of Justice, the Federal Trade Commission, and the federal courts are all trying to break up the trusts, preserve competitive units, and enforce fair-trade practices in competition. And yet it seems there are no limits to the social inventions which businessmen may use to evade the antitrust laws. As a people we pay lip service to competition, but our business leaders continue to foster monopolistic conditions under the guise of competition.

State Control of Monopolies Proves Ineffective

What is the solution to this growing trend toward monopoly? In the United States, most corporations have been chartered under state incorporation laws. States such as New Jersey, Delaware, and New York have become famous for their liberal incorporation requirements. Wide powers have been granted, and few if any restraints imposed to avoid monopoly and unfair competitive practices. Since a business enterprise so incorporated may operate throughout the country, state incorporation becomes a mere fiction.

The extent of such operations is increasingly national, a fact which has led to the suggestion that Congress pre-empt the privilege of incorporation and attempt to put teeth in legislation to guard against monopoly. Congress undoubtedly has this power, but it is questionable whether so drastic a proposal would ever receive effective support.

The constitution of Maryland states that "monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered." But such strictures have proved powerless to prevent combinations, cutthroat competition, and unfair business practices. Ever since the Hundred Years' War or earlier, the common law has held monopolies illegal and has provided remedies whereby the individual could seek redress in the civil courts. But these common law remedies, unsupported by adequate statutory provisions and enforcement machinery, have proved ineffectual weapons against the trust devices conceived by corporation lawyers and zealous businessmen.

The Sherman Antitrust Act of 1890

When business became national in scope it began to appear that only national power could cope with monopoly problems if any government could. The two most significant provisions of the Sherman Antitrust Act of 1890—the basic enactment in this field—may be set forth as follows:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor . . . ." The penalty provided is a fine up to $5,000, imprisonment up to a year, or both.

"Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with a foreign nation, shall be deemed guilty of a misdemeanor . . . ." The penalty here is the same as provided above.

Experience has shown, however, that there is apparently no limit to the number of legal inventions leading to combination and restraint. They range all the way from gentlemen's agreements to the complete merging of separate identities in a mammoth corporate combine. Nor need agreements be written down and signed to be effective. If they are merely oral they may prove just as binding. If a businessman attending a trade association conference, for example, agrees orally to a certain schedule of prices, this agreement may prove as effective as though it were in writing.

The very names of the legal inventions which have been used give some idea of the ingeniousness with which the antitrust laws have been evaded—pools (similar to the modern cartel), trusts, mergers, charter-mongering, holding companies, trade associations, and cartels. The Sherman Antitrust Act, with its sweeping indictment of monopolies, simply incorporated the words of the common law prohibitions. How was it to fare?

As it turned out, there was not much that could be accomplished. Although the first word in Section 1 of the Sherman Act is "every," it was not long before its scope began to be narrowed by judicial interpretation. In 1895, for example, the sugar trust was prosecuted in the case of *United States* v. *E. C. Knight Co.* (156 U. S. 1. 1895), but the action failed because the Supreme Court held that the company was primarily concerned with manufacturing where the Sherman Act was held not to apply. How could combinations be prevented when the whole field of production was eliminated at one stroke?

Two important decisions in 1911 in some ways weakened the foundations of the Sherman Act even more significantly than the sugar trust case had done. These were prosecutions of two of the most notorious trusts of that time, the Standard Oil Company and the American Tobacco Company. Both of these trusts were ordered dissolved, but in rendering its decisions the Supreme Court

enunciated the famous "rule of reason." [8] It is not every combination that the law enjoins, said the Court, but every "undue restraint," and it must "be *determined in the light of reason* . . . in every given case whether any particular act or contract" is contrary to law. (Italics ours.) The effect of this decision was to encourage would-be combines and to frustrate those charged with the enforcement of the law.

The Clayton Antitrust Act of 1914

Although President Theodore Roosevelt made trust-busting a keynote of his administration, during his term of office combinations grew and convictions were infrequent. His successor, William Howard Taft, fared slightly better, but Congress and the country were far from satisfied with the results. When Woodrow Wilson was elected on a progressive platform, therefore, it was clear that the antitrust laws would be strengthened. An element in the situation at the time was the fact that organized labor had been held to come within the provisions of the Sherman Act in the famous *Danbury Hatters'* case, decided in 1908. The full title of this decision is *Loewe* v. *Lawlor* (208 U. S. 274. 1908) and it concerned a nation-wide boycott instituted by employees against the products of the employer. The Supreme Court held this to be a restraint of trade under the Sherman Act and triple damages were assessed. Organized labor was determined, therefore, that it should be specifically exempted from the antitrust laws in any amendatory legislation.

The principal provisions of the Clayton Antitrust Act of 1914 were as follows: first, it forbade price-cutting to drive out competitors, false and misleading advertising, rebates, and interlocking directorates in banks and large businesses. In other words, instead of relying on general admonitions, the wording was precise with regard to concrete practices uncovered in the course of attempts to enforce the Sherman Act. In addition, officers of corporations were made personally responsible for violations. Organized labor was specifically exempted from the operation of the act, as were agricultural organizations not conducted for profit. And injured competitors were allowed to use the injunction as well as evidence unearthed by the government in any prosecution.

The Federal Trade Commission Act of 1914

The Federal Trade Commission was also created in 1914 as a companion to the Clayton Act for enforcement purposes. As in other fields of public regulation and control, it had been discovered that effective enforcement requires a full-time agency for the job. The Federal Trade Commission was empowered to enforce the monopoly provisions of the Clayton Act and also to prevent "unfair competition in interstate commerce." In other words, the emphasis of the commission was to be on practices. Since that time the jurisdiction of the commission has been further extended so that it now includes the preparation

[8] These cases are *Standard Oil Co. of N. J.* v. *United States* (221 U. S. 1. 1911) and *United States* v. *American Tobacco Co.* (221 U. S. 106. 1911).

of broad studies and investigations relative to interstate commerce, and special reports which Congress may order. The commission also investigates unfair trade practices such as those involving price discriminations, and deceptive practices in foods, drugs, cosmetics, and labeling.

The Federal Trade Commission consists of five members, no more than three of whom may be chosen from the same political party. They are appointed for seven-year terms by the President with the consent of the Senate. The size of the commission's staff and its over-all effectiveness have varied considerably at different times. When its functions are separated into the two principal categories of monopoly and unfair trade practices, the commission's record is somewhat as follows:

The control of monopoly since 1914. The attempt to regulate monopolies since the creation of the Federal Trade Commission in 1914 divides naturally into three periods, from 1914 to 1920, from 1920 to 1933, and from 1933 to the present time.

In the first period, from 1914 to 1920, when President Wilson was in office, strong efforts were made to put effective sanctions in the Sherman and Clayton Acts, but with results which generally proved disappointing, chiefly because the entry of the United States into World War I in 1917 stopped most domestic reforms and, as war invariably does, tended to contribute to concentration.

In the second period, from 1920 to 1933, Republican Presidents Harding, Coolidge, and Hoover held to the policy of placating business and treading lightly on questions relating to major public regulation. Little use was made of the antitrust powers during this time, and the effect was a considerable expansion of the movement toward concentration in industry.

The third period began when President Franklin D. Roosevelt took office in 1933 and continues to the present. The drive made to prosecute monopolies in restraint of trade was stronger than that in any previous period of antitrust history. The principal burden fell on the Antitrust Division of the Department of Justice. Its colorful head for several years was the former law professor, Thurman Arnold, author of *The Folklore of Capitalism* and *The Bottlenecks of Business.* A larger number of convictions and dissolutions was secured than in any comparable period, but again war acted as a complicating factor, further intensifying the trend toward concentration in industry. In the balance, therefore, since 1933 there has been a continued rise of industrial combination rather than a decline.

The experience of the past few years seems to indicate that if judicial prosecutions of monopoly are to succeed, they must be undertaken by the Department of Justice rather than by the Federal Trade Commission. The latter, as will shortly be seen, has properly confined its attention pretty largely to the definition of fair and unfair competitive practices. Structural dissolutions are the work of the nation's law department.

The Antitrust Division has created staffs of special attorneys on a regional basis, thus securing greater freedom and dispatch in prosecuting particular

cases. The general attitude of the higher courts—especially the Supreme Court —has been increasingly sympathetic to rigorous enforcement of the anti-monopoly laws. But present staffs, although large, are not adequate if the legal procedure, with all its technicalities and delays, is to make any deep inroad on the concentrations of industry which have taken form and consolidated their positions in the last decades.

Unfair trade practices. May a magazine publisher require dealers to accept all of his magazines in order to get the one they really want? Is it false and misleading advertising to claim general curative powers for a patent medicine that has been tried in only a few cases? When the members of a trade association are found to receive a standard list of prices from their central office, does this constitute a restraint of trade if they proceed to be bound by it? These are typical of the range of questions which are thrown up by the score every week.

The principal accomplishments of the Federal Trade Commission are with regard to concrete practices such as these, and not in the big prosecutions where the commission has proved relatively ineffectual. However, in the multiplication of numerous standards, and in prosecutions against unfair practices in the protection of the consumer, its work has been noteworthy. The commission may enjoin unfair advertising practices by instituting an appropriate action in a United States district court. In cases of unlawful conspiracies or combinations to restrain or divert trade, after a hearing the commission may issue a cease-or-desist order which may be set aside by a circuit court of appeals, but which becomes final if not appealed within sixty days. Surprisingly often, however, the commission has secured voluntary agreements among companies to terminate competitive or trade practices which are of questionable legality.

A most constructive action of the Federal Trade Commission was the creation of a trade practices conference wherein the differences between fair and unfair methods of competition are discussed and defined by representatives of particular industries meeting with commission officials. Few American businessmen would violate the antitrust and fair competition laws if they knew in advance what is and is not permitted. The principal criticism of the antitrust laws on the part of the business community is their lack of precision.

The Future of Antitrust Programs

In the famous *United States Steel* case [9] of 1920 the Court held that combinations are of two kinds: those in which large size produces efficiency, and those in which monopoly characteristics result in economic inefficiency. Size alone, said the Court, is not a sufficient criterion. This holding was considered a body blow to the antitrust laws, and yet increasingly people are inclined to make some such distinction. In the case in question, a divided Court said that "the law does not make mere size an offense, or the existence of unexerted power

[9] *United States* v. *U. S. Steel Corporation* (251 U. S. 417. 1920).

an offense. It . . . requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible."

This case is cited here because it raises basic questions on which public opinion seems to be divided. Is mere size, leading to a virtual monopoly, bad in itself? Or may large size prove beneficial to the public if power is not abused? How efficient is big business, anyway? There are some clear advantages, compared with small business, in that big business usually has ample financial resources, is generally more stable in troubled times, can afford to undertake extensive research and development programs, can emphasize standardization and thus, if it wishes, reduce unit costs, and finally, can pay large executive salaries in order to attract outstanding executive ability.

But big business also presents inherent difficulties so far as the economy is concerned. It may use its research facilities and financial power, for example, to get a corner on patents, which are then withheld from its smaller competitors. It may force smaller units out of business merely to gain a larger hold on the market for itself. Also, big business is forced by its very size to adopt elaborate rules of internal procedure and organization which may make it bureaucratic and slow moving. It may give good service but at the same time it may earn profits so large that they have a disturbing effect on the economy. Its scale of wages may be lower, except for executives, than that in smaller businesses of the same kind. And finally, big business reduces the number of self-employed persons and increases the number of wage earners, thus restricting individual enterprise.

This problem of bigness and monopoly, therefore, runs to the very roots of our social and individual assumptions. A continued trend toward large size may gradually change the entire fabric of American life. Monopolies and virtual monopolies, it has been found in foreign experience, are a constant invitation to government ownership and operation. The problem of control is also complicated by the fact that people say they want one thing but in practice favor another. They say they dislike chain stores, for example, and even get legislatures to pass laws restricting them, but then most of these very same people trade in chain stores to save money.

Compared with the problem of size, the minor regulatory fields of state and local governments are simplicity itself. Licensing and inspection laws are necessary, but usually simple to enforce. Hotels, barber shops, eating establishments, and the like must be regulated for cleanliness and sanitation, motion pictures and magazines for morality and good taste, weights and measures for honesty, and industry for safe and sanitary working conditions. These are all areas of largely state and local activity.

National questions of size and monopoly raise problems of quite a different dimension. The public policy involved determines the kind of society in which we wish to live. People are uncertain as to what they really favor, and even after the law has been clarified, the problems of enforcement are sometimes

well-nigh insuperable. Concentration, once it has occurred, is not easily dissipated. The history of Standard Oil since 1911 is instructive in this respect—or the history of United States Steel or the American Tobacco Company. Do the American people so demand small size and unrestricted competition that they will work for it harder than in the past? Or, as some say, have we gradually accommodated ourselves to the concepts of bigness and a managed economy?

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CHAPTER 47

Labor and the Government

WHAT IS LABOR going to do? In recent years no question has been asked more often by Americans of all classes and shades of opinion. Out of a total American population of 140 million in 1945, some 85 million persons were of voting age and 64 million were in the wage-and-salary category. Allowing for the fact that not all who work are of voting age, labor still controls approximately half of the votes and constitutes the largest single interest group in the country.

Of the 64 million persons in the wage-and-salary group in 1945, roughly 11.5 million were self-employed, leaving a balance of 52.5 million who might be called the wage earners or "organizables" of the country. Of these, approximately 13,000,000, or about a quarter, were members of the three major labor organizations: the American Federation of Labor, the Congress of Industrial Organizations, and the Railroad Brotherhoods. Moreover, in a period of slightly over ten years, the ranks of organized labor had tripled and were still growing.[1] No development of the past generation has attracted more attention or has been fraught with greater economic and political significance.

Labor Comes of Age

The three most powerful nations of the world in 1945 were the United States, Great Britain, and Soviet Russia, and two of these had labor governments in office. What would be the effect of such a development on the United States? Would labor become increasingly political here? The organization of the labor vote in the 1944 presidential election was the outstanding development of a hot campaign. What will labor do in the future? Three general courses are possible. First, labor may shy clear of political action and concentrate its attention on trade-union activities, making use of such economic weapons as collective bargaining and the strike to achieve its goals. As an alternative, labor might rely primarily on government for social legislation of the humanitarian variety—child-labor legislation, safety regulations, and improved working conditions and hours—as it has done in the past. Or labor might bolt the older political parties, establish a national political party of its own and attempt to secure a majority of the country's votes as the British Labor party did in July of 1945.

Anyone who prophesies labor's continued interest in social legislation would be supported by the record, for labor's influence on legislation has grown

[1] Stuart Chase, *Democracy under Pressure* (New York, 1945), p. 70.

steadily for fifty years. A complete account of the laws that labor has sponsored would sound like the combined list of major economic and social enactments of the nation. In the recent past, for example, organized labor more than any other interest group has been responsible for social security legislation, public housing programs, changes in the immigration laws, and the whole field of direct labor legislation, which has grown more rapidly than any other category.

This chapter will deal only with labor legislation, reserving for later consideration the field of social legislation, such as social security and welfare activities generally.[2] It takes up first the question of labor as a political force in the United States. This is followed by a consideration of labor's gains in the past hundred years, including a discussion of the state and federal departments of labor and their functions relating to research, wages and hours, child labor, women in industry, immigration policy, and public employment offices. Then comes a section on safety and workmen's compensation. It concludes with a study of the various aspects of the settlement of labor disputes, and the role of government in that area.

Evolution of Labor as a Political Force

Labor is a comparative newcomer on the political stage, a fact which makes its rapidly increasing influence all the more significant. Labor, like the modern corporation, became a dominant political force only in consequence of intensive industrialization. Generally speaking, the welfare of labor received little consideration prior to the nineteenth century, and it did not become a powerful political force until the present century. As Emil Lederer has pointed out, "It is only in a hierarchically organized society . . . that labor acquires a specifically social character." [3]

Many primitive peoples showed an aversion to manual labor and had little sympathy for those who constituted the laboring group. The earliest civilizations we know about—Egypt, Greece, and Rome, for example—relied almost entirely on slave labor. Because of its association with the idea of slavery and serfdom, labor was looked down upon until a fairly late period in European history. Christianity and the growth of urbanism finally changed this point of view and laid the foundation for the modern concept of labor as possessing a peculiar worth and dignity of its own. This development was also helped by the organization of the guilds during the Middle Ages, in which skilled craftsmanship was emphasized. With the growth of the science of political economy, the prevailing attitude toward labor changed, because labor came to be viewed as the principal factor contributing to the value of economic goods and services.

The Industrial Revolution in the first part of the nineteenth century threw labor into a state of confusion bordering on despair. Its first instinct, to which it sometimes gave way, was to smash the machines that threatened its future. Class consciousness appeared at this time, and labor began to take a greater

[2] Chapter 50, "Welfare, Social Security, and Public Health."

[3] See his article entitled "Labor," in the *Encyclopedia of the Social Sciences*, IV, 615–620.

interest in politics, demanding the right to vote and the abolition of the "rotten boroughs," together with a reform of representation in Parliament. Labor demanded and shortly obtained factory legislation, the beginning of modern social legislation. It demanded free public schools in order to give the children of laboring families a chance to rise in the social scale, as well as to keep them from flooding the market with cheap labor. The increasing influence of labor on government resulted in more social legislation and a greater amount of government intervention in business.

LABOR'S GAINS IN THE LAST HUNDRED YEARS

"It can be broadly stated," says Professor Royal Meeker, "that until the beginning of the nineteenth century, government regulation of labor conditions was designed to keep laborers in their place, to compel them to work for such wages and hours and under such conditions as their masters chose to offer." [4]

Thus the common law of England developed the law of conspiracy and applied it to labor. Beginning with the Statute of Labourers in the fourteenth century, any attempted association of two or more workers to try to influence wages and conditions of work, or to form a combination of workers to match the power of the employer, was held to be unlawful per se, and indictable as criminal conspiracy. In the economic realm, labor was tied hand and foot. Small wonder, then, that it turned increasingly to governmental remedies for release.

The United States inherited the doctrine of conspiracy from Great Britain, but in both countries it is now obsolete. In England legislation was first directed against it in 1824 and it finally passed out of existence in 1875. In the United States the doctrine was practically moribund by 1850. It is commonly agreed that its death blow was delivered by Chief Justice Shaw of Massachusetts, the principal industrial state of that day, in the celebrated case of *Commonwealth* v. *Hunt* (45 Mass. 111. 1842).

Landmarks in Labor Legislation

Modern humanitarian labor legislation, as contrasted with the previous repressive kind, started in England with the Health and Morals of Apprentices Act of 1802. This was followed in 1833 by the Factory Act. By the end of the nineteenth century, England, Germany, Australia, and several other industrial countries were far ahead of the United States in labor law and administration, a relatively more advanced position that they have succeeded in maintaining to this day.

In the United States the industrial state of Massachusetts was a pioneer in the field of labor legislation. The mechanics lien and wage exemption laws of the 1830's and 1840's represented the earliest labor legislation in this country. Then followed the statute in 1836 providing for the schooling of employed children, and in 1842 a ten-hour law for children under twelve. By 1853 a total

[4] Royal Meeker, "Government Services for Labor," *Encyclopedia of the Social Sciences*, IV, 644.

of seven states had passed laws regulating the permissible hours of work for children. Massachusetts, however, continued to set the pace: in 1874 came a ten-hour law for women, factory inspectors were provided for in 1876, the first state department of labor was created in 1876, and the first industrial safety law was enacted in 1877. Other industrial states lagged about ten years behind. It was not until the 1880's that labor laws reached any real volume. Since then the principal periods of labor legislation have been from 1910 to 1915 and from 1934 to the present.[5]

State Labor Departments

Fourteen states had created labor departments before the federal government established the Bureau of Labor in the Department of the Interior in 1885. However, state administrative machinery for labor matters does not make a very impressive showing even today: few have a rounded jurisdiction, many are labor departments in name only, frequently they are required to administer laws which have no direct connection with labor problems, and nearly all are understaffed and underfinanced. Moreover, in about a dozen states there are separate labor and workmen's compensation departments.

As might be expected, it is the industrial states that have provided the best machinery and financing. The leaders are Massachusetts, New York, Connecticut, Ohio, Pennsylvania, Illinois, and California. By contrast, some of the other states have only a handful of officials who are usually confined to factory or mine inspection. In 1929 the entire expenditure on state labor departments (not including workmen's compensation) amounted to less than $7,000,000, and half of this was spent in the three states of New York, Pennsylvania, and Illinois. Among all the states, New York has the most complete department of labor. It includes seven divisions: inspection, industrial codes, engineering, industrial hygiene, statistics and information, women in industry, and industrial arbitration. Of all fields of labor administration in the states, workmen's compensation and safety inspection are the best administered.

The officials of the state and federal labor departments are affiliated in an organization known as the Association of Government Labor Officials of the United States and Canada, which meets once a year and attempts to improve standards of legislation and administration.

THE UNITED STATES DEPARTMENT OF LABOR

As noted above, the federal government lagged behind the larger industrialized states, such as Massachusetts and New York, in the early nineteenth-century development of labor legislation and administration. And even today the Department of Labor in Washington has the smallest appropriation of any of the ten major departments in the federal government. In 1932–1933 the annual appropriation for the department was roughly $13,000,000, about three fourths of this going to the Immigration and Naturalization Service. In 1940 the

[5] John R. Commons and J. B. Andrews, *Principles of Labor Legislation* (New York, 1920).

appropriation was only $30,000,000 and the departmental staff totaled 3,700 persons, although the Immigration and Naturalization Service was no longer a part of it. The Department of Labor has initiated much new social legislation, but the resulting programs have nearly always been lodged elsewhere in the administrative setup in Washington.

The United States Department of Labor has had a curious history. Created in 1885, it was originally established as a bureau in the Department of the Interior. Acceding to the demands of the Knights of Labor, Congress in 1888 provided for a separate department of labor, only to have it absorbed in 1903 when the combined Department of Commerce and Labor was brought into being. Not until 1913 was the political influence of labor strong enough to force the creation of the present Department of Labor. The wording of its purpose, as stated in the enabling legislation, resembles that of the Department of Commerce except that it is applied to labor: "To foster, promote and develop the welfare of the wage-earners, to improve their working conditions, and to advance their opportunities for profitable employment."

The principal bureaus of the Department of Labor in 1945 were the Bureau of Labor Statistics (going all the way back to 1888), the Children's Bureau, the Women's Bureau, the Division of Labor Standards, the Wage and Hour Division, and the Conciliation Service. The United States Employment Service, originally a part of the department, had been transferred to the Federal Security Agency in 1939. In 1945, however, it was transferred back to the Department of Labor. In 1940 the Immigration and Naturalization Service was turned over to the Department of Justice. At the end of World War II the remaining functions of the War Manpower Commission and the War Labor Board were merged by executive order with those of the Department of Labor, thus simplifying the over-all picture so far as the labor agencies of the federal government are concerned.

The Department of Labor has never included more than a fraction of the agencies which have been established for the benefit of labor or primarily through labor's influence. It is estimated that during World War II there were approximately thirty agencies in the federal government which performed labor functions. The National Labor Relations Board, the War Labor Board, the extensive machinery for railway labor disputes, the Railroad Retirement Board, and several other labor agencies were all independent establishments. If they had been brought together under one head—a proposal that was being favorably considered [6]—the Department of Labor would have become one of the largest departments in Washington.

Functions of a Labor Department

How important is it that all of the instrumentalities affecting labor (or for that matter, business or agriculture) be brought together in one place? The

[6] A distinct step in this direction was taken in 1945, when, by executive order of President Truman, several hitherto independent labor agencies were tied in with the Department of Labor.

answer is not as simple as it may seem. To begin with, the problems of railway and seafaring labor are so distinctive that a good case can be made out for keeping them with the special agencies (such as the Railroad Retirement Board and the Maritime Commission) that were created to deal with these areas.

The question then arises as to whether labor and welfare functions should be brought together to form a combined Department of Labor and Welfare. A major consideration here is the fact that while such a program as unemployment insurance is of direct concern to labor, if all the welfare programs sponsored by labor were combined in a large department, welfare might overshadow its economic functions, including employment offices, wage-and-hour regulations, and industrial relations machinery.

Ultimately, our concept of what a labor department should comprise comes down to what we believe to be government's appropriate role in relation to labor. Labor itself is not agreed on this point. That body of labor opinion which holds that trade unions should rely on economic weapons rather than on the government will be satisfied with a primarily social-service function. But those who believe that government can make or break labor will naturally favor comprehensive services, stressing the economic with the social.

As for the public, most people naturally hold that the departments of the three major interests—Labor, Commerce, and Agriculture—should be more than special pleaders for the interest that they represent. Their task is to combine special interest with the over-all public interest, and to reconcile the points of overlap in all three programs where give-and-take, based on industrial statesmanship, is found necessary. If the liberal tradition of democracy as competition, but also as the ultimate blending of interests, is continued, nothing short of this goal will suffice. If, however, one accepts the class conflict theory, then the departments representing the Big Three become power agencies working within the government itself.

What Does Labor Want?

The best way to understand why certain programs have come into existence and why others are sought by organized labor is to attempt to discover what labor seeks through its own organization and through government. The general outlines, at least, are fairly clear. In a public opinion poll conducted by Elmo Roper, four major findings were set forth; according to this survey,[7] labor wants:

First, *security*—in a poll of *all* workers (not merely the labor unions) it was found that three times as many wanted an annual guaranteed wage as those who sought labor-management committees. The vast majority thought that the federal government should guarantee security in the form of full employment.

[7] *American Mercury*, February, 1944.

Second, a *chance to advance*—this is the American tradition of opportunity for all without regard to class boundaries.

Third, *to be treated like human beings*—the view that labor is a commodity has been outgrown. Labor wants the political goals of democracy carried over into the field of employer-employee relations.

Fourth, *to feel important*—this means that labor wants recognition, status, and influence.

Mr. Roper shrewdly observes what others have surmised: "In describing what labor wants," he says, "perhaps I have been describing what everyone, everywhere, wants." Since those who must earn a living include most of the population, it follows that the goals of our political democracy and our industrial relations have much in common.

But the analysis must be pushed further. The studies of economic historians and experts on labor economics show that labor also wants good wages and—closely associated therewith—good hours. Labor also wants steady employment, which necessarily involves full employment; it wants protection against cheap labor such as child, convict, and immigrant labor; and it wants safe and healthful working conditions. Furthermore, labor wants its fair share of the national income produced by machines and scientific invention that might otherwise deprive it of a livelihood or lower it in the economic scale. This aspiration involves labor organization, collective bargaining, and labor-management cooperation, factors that constitute the principal area of difference between labor and management.

These desires of labor provide an outline that may be followed in the remainder of this chapter. They do not, however, complete the list of what labor seeks. Labor also wants unemployment insurance and other forms of social benefits. It wants good housing because it is a means of providing employment and of improving living conditions. And finally, labor is interested in banking, agriculture, and foreign trade—matters which are dealt with in other sections of the book.

The order in which labor programs and labor's demands on government have unfolded in the United States and other Western countries will not be rigidly adhered to in the following discussion. Chronologically viewed, they began with a demand for a prohibition against child labor and for the regulation of hours of work for women and children. Next came the establishment of sanitary and safety standards, factory inspection, provision for conciliation and arbitration of industrial disputes, compensation for accidents and sickness, the fixing of minimum wages, state health insurance and old-age pensions, compulsory unemployment insurance, and governmental machinery to promote better employer-employee relations and to provide for worker participation in management problems.

The Bureau of Labor Statistics

Before labor can negotiate with management over wages and other matters, it must be armed with an arsenal of facts. The United States Department of Labor and the labor departments in the larger industrial states assist labor here by maintaining bureaus of research and statistics. The Bureau of Labor Statistics in Washington, as noted earlier, has been continuously in existence since 1888. It has a large staff of economists, statisticians, and other specialists who secure, compile, and disseminate basic data relative to the entire economic system. During World War II it was found that the economic data of the Bureau of Labor Statistics were the fullest and most reliable of any in the government.

Thousands of businessmen cooperate with the bureau to make the required information regularly available. It deals particularly with the labor supply, hours, wages, price levels and cost of living, labor productivity, strikes and lockouts, women and children in industry, labor laws and court decisions, industrial accidents, workmen's compensation, and all the other basic needs of other governmental bureaus and of labor itself. For many years the BLS has been in close touch with the International Labor Office.

In addition to the facts secured from the BLS, the major labor unions maintain extensive research staffs of their own, specializing in their particular fields.

The Division of Labor Standards

The Division of Labor Standards in the United States Department of Labor is much smaller than the Bureau of Labor Statistics, but their activities are related. The former, a service agency to state labor departments, specializes in studying and advising on comparative labor legislation and the standards that have evolved in connection with the various problems coming under their jurisdiction. The work of the Division of Labor Standards might be called applied research. Although it has some of the characteristics of a trade association, its planning and promotional activities also resemble the general staff of a military organization.

WAGES AND HOURS

"Dissatisfaction over wages," comments Royal Meeker, "seems to be the most important immediate cause of labor disputes." Reports of the Bureau of Labor Statistics covering a period of forty-one years confirm this, for they show that the wage question has caused more than twice as many disputes as any other factor.

The Wage and Hour Division in the federal Department of Labor created by Congress in 1938 culminated a half century of effort by organized labor to establish minimum wages and to limit working hours in industry. The law is known as the Fair Labor Standards Act. It seeks to maintain nationally, in most industries, a minimum of hourly rates and a maximum of hours worked.

The Fair Labor Standards Act follows and is built on the foundation of

the state minimum-wage laws. The chief difficulty with state minimum-wage enactments was their limited geographical jurisdiction so that employers who wished to escape them had merely to move into a state which had no restrictions. This naturally discouraged enforcement in the states where such laws had been adopted. This same factor has also been at work in the application of child labor laws, hour legislation for women in industry, and other similar enactments. As a result, like most other groups, labor has concluded that only federal power can bring about an effective nation-wide control.

What is the effect of federal legislation on state minimum-wage laws? It is a question that many are asking. Over half of the states—including most of the largest industrial states—and the District of Columbia have now passed minimum-wage laws. Massachusetts pointed the way in 1912. It has been a long and bitter fight with many judicial setbacks. In this connection will be recalled the case of *Lochner* v. *New York* (198 U. S. 45. 1905), which concerned the hours of bakers; or the District of Columbia minimum-wage law for women that was declared unconstitutional in *Adkins* v. *Children's Hospital* (261 U. S. 525. 1923) and the holding overturned in the decision of *West Coast Hotel Co.* v. *Parrish* (300 U. S. 379. 1937). The federal Fair Labor Standards Act is not as favorable to labor as the laws of some of the larger industrial states. It may be expected, therefore—especially since the *West Coast Hotel* decision—that the movement for an extension of state minimum-wage legislation will continue. In many cases its administration must also be improved if it is to have real effect.

What does the Fair Labor Standards Act provide? The floor under wages is to be gradually lifted. It started at 25 cents an hour minimum and was raised to 60 cents during World War II. The ceiling on hours is presumably to be lowered at a progressive rate. The forty-hour week went into effect on October 24, 1940. It is now difficult to remember that a seventy-hour week was once common. Only in certain industries—such as those which are seasonal—may exceptions be made to the forty-hour rule and then only after collective bargaining. Time and a half must be paid for overtime, and there are important provisions, as will be seen, relating to child labor.

Certain industries are excepted from the operation of the Fair Labor Standards Act. These include some forms of agriculture such as dairying as well as the fishing industry and retail service establishments which are intrastate. Executive, professional, and local retailing positions are also exempt on the assumption that executive and professional personnel do not need protection of this kind.

Enforcement of the Federal Wage-and-Hour Legislation

The administration of the Fair Labor Standards Act by the Wage and Hour Division of the federal Labor Department is decentralized into regions. The work consists largely of field investigations by inspectors, chiefly as a result of complaints of workers. An effective hearing procedure has been set up both

for establishing new industry standards and for hearing complaints against alleged violators. Severe penalties may be imposed.

In 1941 the constitutionality of the law was unanimously upheld by the Supreme Court in the case of *United States* v. *Darby Lumber Company* (312 U. S. 100. 1941). This decision expressly overruled the famous case of *Hammer* v. *Dagenhart* (247 U. S. 251. 1918) wherein, it will be recalled, the attempt by Congress to use the commerce clause to regulate child labor was thwarted. In the *Darby* decision it was held that Congress, under the Fair Labor Standards Act, had the power to prohibit the shipment in interstate commerce of lumber manufactured by employees whose hours exceeded the prescribed maximum and whose wages fell below the stipulated minimum.

The Wage and Hour Division is in some ways the most ambitious attempt to administer American labor law ever to be undertaken. With a floor under national wage standards and a ceiling over hours, organized labor is protected on both flanks and is now in a position to bargain collectively with employers for higher compensation in the higher-paid industries.

CHILD LABOR AND THE CHILDREN'S BUREAU

The Children's Bureau in the federal Department of Labor was created in 1912 and has had a distinguished leadership under such able directors as Grace Abbott and Katharine Lenroot. The bureau takes a broad view of its function, conceiving everything that affects the interest of infants and children as its proper concern. It operates a medical division which does excellent work, and its bulletin on how to care for babies is a "best seller" of the Government Printing Office. A few years ago the bureau acquired a large sum of money for a Conference on Children in a Democracy. The bureau is solidly supported by labor, parent-teacher associations, women's clubs, and other influential groups. Although a large share of the bureau's activity is social rather than economic, attention here will be confined to that which has to do with wages and hours and bears on the interests of adult workers.

Child labor is a serious threat to adult labor. The fact that children will work for less depresses wage levels. The social ill effects are equally important because the health of the nation may be weakened and the number of educated citizens reduced, thus affecting self-government and all we consider worth while. There is no question that the states under their police power have the authority to regulate child labor. This they can do—and many have done—in two principal ways: by passing compulsory school attendance laws, and by making the employment of child labor illegal.

As mentioned above, some of the states—particularly Massachusetts—began the attempt to eliminate child labor shortly after the Civil War, but progress was generally slow. About 1912, therefore, the Progressive party demanded federal legislation or a constitutional amendment as the only solution to the child labor problem. Nevertheless, until the passage of the Fair Labor Standards Act in 1938, all efforts to control child labor through Congressional legis-

lation had proved fruitless because of adverse Supreme Court decisions. However, the states have helped the situation by their own legislation in related fields. Today the customary age for leaving school throughout the country is sixteen, and a third of the states have made this binding through law. Five states have raised the age to seventeen, and four states have raised it to eighteen. The effects of industrialization are such that the minimum of compulsory schooling will probably have to be made as high as this or higher throughout the nation. Some states have passed child labor laws but, as suggested here, the system does not seem to work until it is made universal. An industrial state will not rigidly enforce its child labor law if the only result is to drive its industries into other areas.

The Proposed Child Labor Amendment to the Constitution

In an attempt to make the prohibition against child labor binding in all the states, Congress passed the child labor amendment to the Constitution in 1924. This amendment, which would give Congress authority to create and maintain uniform requirements, reads as follows:

> Sec. 1. The Congress shall have power to limit, regulate and prohibit the labor of persons under the age of eighteen years.
>
> Sec. 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

State ratification, however, has made slow progress. By 1933 only six states had taken such action. The proposed amendment is supported by labor, women, and philanthropic groups, but it is opposed by a well-financed lobby of industrialists. By 1942 the number of ratifying states had been brought up to twenty-eight. Can eight more be secured? Judging from the past record, it will be a hard fight and it may be a long one.

Child Labor under the Fair Labor Standards Act

Meanwhile the problem of child labor has been partially solved by a section of the Fair Labor Standards Act of 1938 which, as has been seen, has been upheld as to its constitutionality. The provisions of this act apply to all firms that ship goods in interstate commerce, who may not so ship their products if they employ children under sixteen or if their occupations are held by the Children's Bureau to be hazardous. The provisions do not apply to employment in agriculture or to employment by the parents of the children, except in mining and manufacturing. The Children's Bureau may grant permission for children to work in occupations other than mining and manufacturing if it does not interfere with their health, schooling, or general well-being.

Thus there are some highly discretionary decisions that must be made. For example, is it good or bad for a boy to carry a paper route? How old must he

be? And is it worse if he gets up at five o'clock in the morning than at seven o'clock?

Although it is estimated that something like a million children under sixteen are exempt from the coverage of this act, other legislation has been helpful in this area. The Sugar Act of 1937, as amended in 1940, provides that no child between fourteen and sixteen may be employed in the sugar-beet industry for more than eight hours a day. The enforcement of this law was turned over to the Secretary of Agriculture, who may impose penalties for violations. As legislation gradually closes in on child labor, therefore, the time may come at last when opposition to a constitutional amendment will be ineffectual.

OTHER SPECIAL CLASSES OF LABOR

The Women's Bureau and Women in Industry

Another big problem concerns women in industry. Women outnumber men in the population. Millions of women saw industrial service during World War II, were successful at it, and liked it. Our ideas of equality allow women to work in any industry that is not so arduous as to be harmful to their health. But from the standpoint of organized labor the employment of women constitutes a serious threat to adequate wage standards at a time when machine production tends to limit employment opportunities. It also has an important social bearing in so far as it discourages marriage and through it family life and the birth rate. What is the solution?

The Women's Bureau in the federal Department of Labor was created in 1920 under the fine leadership of Mary Anderson. Like the Children's Bureau, it takes a broad view of its functions. Its staff is much smaller, however, and its emphasis has been economic to a greater extent. The Women's Bureau has been chiefly interested in helping the states to secure legislation fixing minimum wages and maximum hours for women in industry. The labor departments of the larger industrial states usually have a corresponding bureau dealing with this area of control. Various women's organizations and the labor unions constitute the principal supporters of such programs. If women continue to be more widely employed, as seems likely, the activity of the Women's Bureau will grow in importance. The goal it seeks is equal pay for equal work. The modern trend is for men and women to work together for labor legislation that will apply to both, rather than to pull in separate directions.

Labor and Immigration Policy

Labor has taken the lead in sponsoring restrictive immigration laws. Commencing with the Chinese Exclusion Act of 1882, a number of provisions seeking to safeguard American wage rates have been written into law. When as many as 1,250,000 immigrants were coming to the United States each year—as they did just prior to World War I—it can be seen that competition from these newcomers would have a marked effect on the labor market. Foreigners

who are admitted for a temporary stay or as students are not permitted to work except in unusual circumstances. Labor has been solidly behind the policy of recent years that has resulted in a net emigration over immigration.

However, there is a problem for the future here. The United States is less heavily populated than most countries, and the pressure from peoples uprooted by war and seeking resettlement is great. The resulting decision of public policy, therefore, is a difficult one.

From the time the Department of Labor was created until the Reorganization Act of 1939, the Immigration and Naturalization Service was the largest part of the Labor Department. It was transferred to the Department of Justice in 1940 because its work is largely of a police and legal nature and the emphasis had shifted to naturalization.

Convict Labor

In 1938 Congress passed the Ashurst-Sumners Act under which all prison-made goods sent in interstate commerce must be plainly marked. It also forbade the shipment of goods into states that have laws where the sale of such goods is regulated or prohibited. In 1940 over three fourths of the states had such laws in effect.

The Ashurst-Sumners Act was upheld in the case of *Kentucky Whip and Collar Co.* v. *Illinois Central Railroad Co.* (299 U. S. 334. 1937). In this instance the Supreme Court again departed from its earlier decisions in the child labor cases, holding, in effect, that goods which are not injurious in themselves may be prohibited from interstate commerce.

EMPLOYMENT OFFICES

One method of promoting steady employment is to afford efficient facilities whereby those who want work can be brought in touch with the available opportunities. The larger industries and business concerns operate their own employment offices, but of course their scope and effectiveness are necessarily limited. Privately operated employment offices have been found efficient for skilled positions of certain kinds but they have not been able to fill all requirements. The decision of the Supreme Court in the case of *Ribnik* v. *McBride* (277 U. S. 350. 1928), in which it was held that the states could not regulate the charges of private employment offices, seemed to have the effect of discouraging this business, as a result of which it was increasingly turned over to government agencies.

Nevertheless, the United States has been slower than most other industrial countries to establish a national system of public employment offices. Among the states, however, Ohio took the lead in this movement as early as 1890. The employment agency it created was imitated by other states and finally by the federal government. World War I led to heightened interest in state and local employment offices but in the prosperous 1920's it subsided. With the depression that began in 1929, however, the states again bestirred themselves.

Employment agencies, state-organized and -financed, were set up, but in 1932 there were still less than 250 free public employment offices in the country as a whole.

The Wagner-Peyser Act and the United States Employment Service

In 1933 Congress passed the Wagner-Peyser Act creating the United States Employment Service. After a good deal of debate as to whether this should be a unified federal service or whether the grant-in-aid principle should be employed, it was finally decided that states' rights should predominate with the addition of federal aid.

Consequently the United States Employment Service, which was responsible for the federal section of the program, became a part of the federal Department of Labor, where it remained until 1939. In that year, however, in accordance with one of the reorganization plans, it was transferred to the Federal Security Agency and combined with the Unemployment Insurance Division of the Social Security Board. During World War II the USES again became independent of unemployment insurance and was merged with the functions of the War Manpower Commission, where it became the backbone of that key war agency. In 1945 it was again placed in the United States Department of Labor.

By 1940 the number of public employment offices in the United States had expanded to 1,500, compared with only 250 eight years before. During this single year of 1940, furthermore, the USES accepted over 16,000,000 applications and made 3,500,000 placements, 3,000,000 of which were in private employment. In the war years the volume of business skyrocketed still further. A prominent feature of the USES is that it is capable of expanding and contracting the number of its local units, depending on the need for them. The Wagner-Peyser plan provides for a matching of federal and state funds. Payments are based on population, with no state getting less than $10,000 a year. Civil service conditions are required for the administrative personnel of the agencies. All plans must be approved annually by the headquarters office in Washington.

What does the future hold for this type of program? A successful employment office system is a key to full employment. The states differ greatly in the salaries they pay their employees, the caliber of administrative personnel they attract, and the effectiveness of their programs. Should the USES be converted into a unified federal program? There is much opposition to this on the part of the states. The employees in the state systems constitute a powerful interest group seeking to maintain the *status quo*. Labor, so far, has remained relatively neutral on this issue. No doubt it will be solved one way or the other, depending on the future success of the state programs.[8] One thing, however, seems clear. The United States Employment Service is so important in

[8] In 1945 President Truman vetoed a bill which would have returned the United States Employment Service to the states.

itself that it should not be combined with any other program—with unemployment insurance or with anything else. The success of the employment office system depends on its single-minded aggressiveness in bringing prospective employers and employees together. Therefore it should be given as much freedom and independence as possible.

SAFETY LEGISLATION

Massachusetts passed an industrial safety law in 1877. In the following decade several states followed, and soon safety legislation exceeded in volume all other types of labor law. In fact, this is one field in which our labor legislation is more extensive than that of European countries. In a nation industrialized to such a degree as ours, this is both natural and necessary.

Prior to 1911, safety legislation was enacted in great detail, setting forth what machines were to be guarded and even how they were to be guarded. Since that time, however, legislatures have been content to lay down general objectives and standards, leaving their application to be worked out by administrative orders. As in so many other fields, therefore, there has been a transfer of the ordinance-making and enforcement power to the executive branch of government.

Most of the work is done by safety inspectors, sometimes trained as engineers but often not so highly skilled. The administration of safety laws has improved, but the casualty figures show that much improvement is still needed.

Workmen's Compensation Laws

Workmen's compensation began in 1910, when New York passed a law holding that the cost of accidents to the victim should be spread as a charge on the industry, rather than as a claim against the employer and involving precarious suits. Today every state in the Union save one has passed a workmen's compensation law. Certain groups of employees, such as agricultural workers and domestic servants, are not always covered by their provisions. In most of industry, however, the old common law method of forcing the injured individual to sue his employer for damages, with the necessity of proving negligence, has now been replaced by workmen's compensation.

These programs are generally administered by state workmen's compensation commissions.[9] Accidents must be immediately reported. Competent medical authorities are called in. Disputes concerning the cause of the injury are decided informally by the commissioners, but as a rule, the principal question is whether the disability occurred during the course of employment. Where doubt exists, the benefit is usually accorded the worker. Various amounts are specified for the loss of various parts of the body, and payment may be in a lump sum or spread out over a longer period. Some state laws also cover

[9] See W. F. Dodd, *Administration of Workmen's Compensation* (New York, 1936).

industrial diseases such as silicosis and lead poisoning. Federal workmen's compensation laws have been enacted to supplement state laws in this field so as to take care of employees engaged in interstate commerce. Consequently, the area of industrial accidents is now fairly well covered.

LABOR ORGANIZATION AND DISPUTES

The National Labor Relations Board

The National Labor Relations Act was passed in 1935 and immediately hailed by labor as its Magna Carta. Under its provisions the right of labor to organize and bargain collectively was fully recognized. Company unions were made illegal. To labor it provided the chance of extending unionism generally into the ranks of those previously unorganized. If this could be done, the economic and governmental pressure that could be exerted seemed limitless.

The forerunner of this law, which bears the name of Senator Robert Wagner of New York, was the justly famous section 7A of the National Industrial Recovery Act of 1933. This provided in part that every code of fair competition approved by the President must guarantee to workers the right to organize and bargain collectively, uncoerced by employers. The National Labor Board was created to administer this section, which gave a tremendous impetus to unionization. When the NIRA was declared unconstitutional in the *Schechter* case,[10] however, the National Labor Relations Act was passed at once to carry that part of the work forward.

The improvement of commerce was stated as the cardinal principle involved. The act, according to its wording, "promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes and by restoring equality of bargaining power between employers and employees."

This idea of an equality of bargaining power is basic. At another point the act says: "The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce."

The three members of the National Labor Relations Board are appointed by the President with the consent of the Senate for five-year terms. The board conducts elections in plants that are being organized, examines labor complaints and disputes, hears and settles controversies, and issues cease-and-desist orders where necessary. These may be applied either to the employer or to the union. Enforcement is vested in the federal circuit courts of appeals.

The principal unfair labor practices against which the board may proceed include interference by the employer with the employees' right to organize and

[10] *Schechter* v. *United States* (295 U. S. 495. 1935).

bargain collectively, discrimination against employees by employers because of union activity, and refusal of the employer to bargain collectively.

The wording of the act clearly reveals its purpose and coverage: Employees "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." The employer must deal with the majority; he may not choose a minority group instead. The winning of the election must be recognized by the employer. Employers are forbidden to interfere with union organizing activity.

The Supreme Court had no difficulty in upholding the constitutionality of the National Labor Relations Act. This it did in April of 1937, in the already famous case of *N.L.R.B.* v. *Jones & Laughlin Steel Corp.* (301 U. S. 1. 1937).

Future of the Wagner Act

The right of labor to organize and bargain collectively is essential to everything that the labor unions do. Hence the Wagner Act—as the National Labor Relations Act is often called—is the key to the future influence of the unions. Some of the larger industrial states have since passed so-called "little Wagner Acts" that apply the principles of the parent legislation to intrastate commerce. Among them are New York, Massachusetts, Pennsylvania, Wisconsin, and Utah.

Contemporaneously, however, other states have passed legislation which goes counter to the principles of the Wagner Act in that it places heavier restrictions and controls on the labor unions. A future battleground of public policy, therefore, will doubtless be the further encouragement or restriction of union organizing activities. Are you for the closed shop or against it? Do you believe that labor unions should be required by law to give a full accounting of their expenditures and be fully liable for injuries sustained by employers in the course of illegal strikes? These are already live issues. It will not be surprising if they become hot ones.

Anti-injunction Legislation

For many years labor viewed the courts with alarm. Did not the courts apply the provisions of the Sherman Antitrust Act to organized labor, a thing labor never remotely anticipated? Labor also became exercised over the use of the injunction as a weapon provided by the courts against strikes in labor disputes and disturbances. An outstanding case involving the use of the injunction in strikes is that of *In re Debs* (158 U. S. 564. 1895), which came out of the famous Pullman strike in Chicago when violence occurred and the federal government was prevailed upon to intercede. From the time of the *Debs* decision in 1895, employers relied increasingly on the injunction in case of strikes. But since the strike is labor's principal economic weapon, the widespread use of the injunction against the strike was regarded as a mortal danger to trade

unionism itself. Relief came in the form of the Norris-LaGuardia Act of 1932. Several states have followed the federal example here by placing restrictions on the use of labor injunctions by state courts. Under the principal provisions of the Norris-LaGuardia Act it was declared to be the "public policy of the United States" that workers should have the right to organize and bargain collectively without restraint from employers; that the use of the injunction by federal courts was denied with specific reference to refusal to work, joining a union, paying dues, peaceful assembly, and peaceful methods of encouraging or inducing others to adopt similar measures.

Organized labor has seldom complained in recent years that the terms of the Norris-LaGuardia Act are not being carried out. Labor's attitude toward the judiciary, therefore, has improved.

The United States Conciliation Service

The more equally matched employers and the labor unions become in bargaining strength, the more necessary it is to perfect the means of breaking deadlocks that threaten the steady course of production and even the peace of the community.

In a free society we must expect occasional strikes because if we outlaw them we would not be free. A certain amount of robust rough-and-tumble is not only a part of the competitive system; it is a stage through which organized labor must apparently pass in every country as it evolves from the organizational to the administrative phase of its existence. But during these periods of transition organized labor creates important and sometimes difficult problems.

What have other countries done with regard to strikes? In Great Britain, special courts of inquiry may be set up with power to take testimony and make the findings public. Britain, like the United States, relies almost entirely on voluntary methods and public opinion rather than on compulsion.

Compulsory arbitration, on the other hand, is used in Australia and New Zealand, and was also employed in Germany following World War I. Italy, under its totalitarian regime, forbade all strikes and lockouts. "In Soviet Russia," says Royal Meeker, an authority on the subject, "although strikes are theoretically legal under certain circumstances, the combined effect of restrictive legislation and the domination of the unions by members of the Communist party has made strikes practically non-existent."

The two principal alternatives in industrial disputes are conciliation and arbitration. In conciliation the submission of the dispute is optional with both parties; in arbitration it is mandatory. In conciliation the friendly third party who tries to bring the disputants together merely urges agreement; in arbitration he makes a decision that is binding. In conciliation the parties do not agree in advance to be bound by the mediator's judgment; in arbitration they do. Thus arbitration is more compulsive than conciliation.

Our tradition has been one of conciliation. The United States Conciliation

Service was created in the Department of Labor in 1913. Several of the states also provide conciliation facilities. In the history of this movement since 1913, remarkable results have been secured. The number of cases submitted annually has increased, and the proportion satisfactorily settled was almost 100 per cent up to the outbreak of World War II. Among some of the more notable successes have been major disputes such as those in the coal mining industry.

For this important work the Conciliation Service has a relatively small number of conciliators with outstanding skills along certain lines, principally a knowledge of people, business and labor psychology, and the arts of compromise and persuasion. The educational effect of teaching labor and management to talk their differences over rather than slug it out is hard to overemphasize.

The War Labor Board

In recent years, however, a greater degree of compulsion has been introduced in the settlement of labor disputes. What it portends for the morrow remains to be seen. Three steps led up to the creation of the War Labor Board in December of 1941:

Under the provisions of the National Industrial Recovery Act of 1933, as has been noted, a National Labor Board was created, one of its duties being to aid in the settlement of labor disputes. At the outset it had eight members, a number later increased to thirteen. Under this board there were established nineteen regional labor boards from which appeals could be taken to Washington. Two years later, when the NIRA was declared unconstitutional, this machinery went out of existence. The National Labor Relations Board which followed the National Labor Board did not have mediation powers, but some valuable experience had been gained. Then in March of 1941, a National Defense Mediation Board was set up with eleven members. Its purpose was "to assure that all work necessary for national defense shall proceed without interruption and with all possible speed." Management, labor, and the public were represented. Disputes were certified to the board by the Secretary of Labor only after the Conciliation Service had failed to secure a settlement. If mediation also failed, the board could recommend arbitration. This board went out of existence when the War Labor Board was created at the end of the same year.

In this metamorphosis, the War Labor Board resembled its forerunner, the National Defense Mediation Board, in many essential respects except that it had more compulsory power. With twelve members, it gave equal representation to labor, management, and the public. It was given power to "determine" disputes, and the act stipulated that "*for this purpose [the Board] may use mediation, voluntary arbitration, or arbitration under rules established by the Board.*" (Italics ours.) If none of these measures succeeded, the President could be appealed to, and in a few cases he ordered plants taken over temporarily by military authorities.

The War Labor Board also had a policy function. Representatives of labor and management voluntarily agreed that for the duration of the war there would be no strikes or lockouts and that all disputes would be settled by peaceful means. This was a repetition of the assurances which were also given at the time of World War I.

Railway Disputes

The railway industry is an old one in which the relations between capital and labor have been largely stabilized. A distinctive machinery dealing with disputes has usually proved successful. Experience in this field, therefore, may be studied with profit by industries whose labor-management relations are still in a more formative stage.

The basic legislation in the settlement of railway disputes is the Railway Labor Act of 1926, as amended in 1936. It provides for a three-step process. First is a National Railroad Adjustment Board of thirty-six members which settles most matters by negotiation. Above this is a National Mediation Board which deals with major issues. And in case this quasi-judicial board is unsuccessful, special emergency boards appointed by the President are created to study the matter. This last-mentioned remedy has rarely been necessary.

Labor-Capital Cooperation

In an article on "Labor-Capital Cooperation" in the *Encyclopedia of the Social Sciences,* J. B. S. Hardman has suggested that there are typically four stages in the evolution of labor-capital relations. It begins with the nonrecognition of unions, proceeds to collective bargaining, then to cooperation to insure more efficient production, and finally to social peace. This is a suggestive idea. Assuming its validity, the United States would appear to be moving from the second into the third stage of this progression. When labor unions fight for recognition they produce a militant type of leadership. Once they have been recognized, however, they seem to substitute the administrative type of leadership with characteristics not unlike those associated with leadership in business.

Many interesting experiments are now afoot in the United States looking toward an improvement in labor-capital relations. Some of the more progressive labor unions and employers are jointly conducting courses for workers dealing with management principles and processes and the elements of political economy. There have been some notable cooperative and profit-sharing plans, the best known of which, perhaps, is that of the Baltimore and Ohio Railroad, a scheme which was started in 1923. Under this arrangement, money saved or profits increased as a result of employee suggestions are shared with the workers. There have been many other schemes, including that of the Electrical Construction Industry, Hart, Schaffner & Marx, and the Dennison Manufacturing Company. Industrial statesmanship is a most challenging and fertile field for talent today.

The Future Role of Government

How much more than at present the government should do to promote peaceful accord and mutual well-being in the relations between capital and labor is a question on many people's minds today. As pointed out, the United States—although now the first industrial nation in the world—has lagged some twenty-five years behind most others in its governmental labor program. In 1931–1932 the United Kingdom appropriated £119,000,000 for its labor and social services, or nearly 14 per cent out of the central government's total appropriations of £865,000,000. One of the three main divisions of the Ministry of Labor deals with industrial relations—the other two being labor services, and general, which includes statistics, employment, and insurance.

In the Soviet Union, "The scope of government labor services," says Professor Royal Meeker, "is more comprehensive . . . than in any other country, although the Administration is as yet imperfect." This was written about 1930. The labor unions work in close conjunction with the government officials. As of the time this article was written, there were over eighty institutes engaged in research on working conditions. Every conceivable kind of social insurance is provided, says Meeker, except unemployment insurance, "since there is presumably no unemployment." In 1931 the total expenditures on labor protection and social insurance amounted to two and one half billion rubles.

Another vital question is whether American labor will attempt to form its own national political party. The answers to this complicated question will not be attempted here. The Independent Labor party in Great Britain was founded in 1893, but was preceded by the Fabian Society, the Labor Representation League, and other forerunners which sometimes succeeded in electing candidates to Parliament. In 1922 the British Labor party became the second largest in Parliament, replacing the Liberal party as the opposition. In 1924 the Labor party first came into office. The second time was in 1929, and the third was in 1945. But the mere listing of dates cannot possibly describe the slow and difficult time the party has had in developing skilled leadership and in disciplining its members for governmental responsibilities of the first magnitude.

The problems of labor and the problems of democracy have much in common. Both have great vitality. Both have much to learn about self-government. Their future course is bound to hold great interest and drama.

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CHAPTER 48

The Problems of Agriculture

IT WOULD BE hard to find a person more individualistic than the American farmer; and yet, judging by the programs they have sponsored in recent years, farmers might be considered the most collectivistic group in the nation. The explanation is partly economic, in that farmers have serious problems that they need help in solving. They have found that by working together through government they can improve their situation, which otherwise grows increasingly precarious. Partly, also, the reasons are geographic and political. Because our system of representation is based on the single-member district and because a majority of our districts are necessarily rural, farmers have a strong voice in the constituency of most members of legislatures, both state and national. In seven states the rural population constitutes around 50 per cent of the total, and in half the states it is 30 per cent or better. Thus when the farm lobbies call for help there are those who must listen. As a previous chapter has indicated,[1] agriculture has therefore constituted as effective a political force as any interest group in the nation, and every indication points to its continued vigor. The farmer lobbies are well organized and effective, both in Washington and at the state capitals.

This chapter will take up, first, the various aspects of the economy of farming and the special problems involved. Next it describes the principal stages in public agricultural policy in the United States, the agricultural legislation passed since 1933, and the various loan agencies that have been created for the benefit of the farmer. It concludes with a discussion of special programs of aid such as the Rural Electrification Administration, the Farm Security Administration, and the Soil Conservation Service.

THE ECONOMY OF FARMING

A far-reaching revolution has occurred in the economic life of the United States during the last 150 years. In 1800, for example, 9 out of 10 members of the population lived on farms; today 3 out of 4 live in settled communities. The strictly rural population is now less than one quarter of the total population of the country. And yet the farming areas have the highest birth rate. Without their sustaining influence the country might, over a period of time, commit national suicide. Nevertheless, it is an ironical fact that the farm population continues to shrink. In any farming area of the United States, it will be found that, except in time of depression, the cities are draining off most

[1] Chapter 20, "Interest Groups in American Politics."

of the young people as they reach working age. Farming as a way of life is seriously threatened.

In the United States we have the largest acreage of cultivable land per capita of any great power. Yet the number of farms tends to decrease. Of the more than 7 million farms in the United States today, two fifths are tenant-operated. From 1930 to 1937, some 5.5 million farms changed hands, 1.5 million of them as a result of foreclosures, forced sales, tax sales, or bankruptcy proceedings. In 1890, farmers as a whole had a 69 per cent equity in their land. In 1930, in some states it was only 30 per cent, in many it was 40 per cent or less, and the average for the nation was 52 per cent.[2] This weakening of property ownership is another factor helping to explain the changing attitude of the farmer toward public programs.

The single-family farm, which has been the rural way of life in America from the beginning, is also threatened. The tendency has been toward big factory farms, sometimes owned by large corporations. Migratory workers frequently constitute the uncertain labor supply, especially in the Far West. Since 1930 these big industrialized farms of 1,000 acres or more have increased 25 per cent, while small farms of under 50 acres have decreased 15 per cent.

The question of farm income is another vital matter. In 1929, the average gross farm income for 1,700,000 farms was less than $600 a year. In the depression years that followed, farm income dropped considerably lower. The total farm income fell from $12 billion in 1929 to $5.5 billion in 1932.[3] By 1937 it was back to $10 billion and, because of the wartime demand for agricultural products, by 1942 it had increased to nearly $18 billion, to which another $697 million was added in subsidies. Nevertheless, for 23 per cent of the population this still constituted only 15 per cent of the total national income for that year. In peacetime, of course, the share of the national income that goes to the farmer is nearer 10 per cent. It is this discrepancy that underlies most of the problems the farmer has complained of and has attempted collectively to cure through legislation.

Generally speaking, the public policy of the agricultural associations may be stated as follows: *Farmers want more assistance from government and more regulation of industrial prices, of the cost of living, tariffs, and other factors that throw the farmers' income out of balance in relation to the rest of the national economy.* Since this is also what business and labor want, the general desires of all three groups may be summarized as "more assistance for me, and more regulation for the other fellow." This is not said cynically. There are logical reasons for it—or at least they seem logical to each group.

The farmer, however, has a peculiar problem that does not apply to most city dwellers in that he has a relatively high fixed investment and a low annual

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[2] Arthur B. Chew, "The City Man's Stake in the Land," in *1940 Yearbook of Agriculture* (Washington, 1940).

[3] William T. Ham, "Farm Labor in an Era of Change," in the *1940 Yearbook of Agriculture* (Washington, 1940).

income. In 1945 the average value of farm land and improvements in the United States was $7,600 per farm, having increased in the decade between 1930 and 1940 from $5,500 per unit. This is a heavy investment to be tied up with an income as low as that of most farmers. Taxes must be paid and generally interest on a mortgage as well. When it is realized that half of the farmers of the country received less than $1,000 worth of cash income apiece in 1929 (a boom year in industry), it is plain to see why farmers must fight to keep from losing out entirely.

Waste of Resources Complicates the Problem

A dilemma confronting the student of agricultural economics is that although alleged overproduction has been one of the causes for low farm prices, at the same time the fertility of American farmlands has been reduced so seriously that if it is not restored we face the threat of eventual scarcity. Even the seemingly inexhaustible top soils of the Middle West—the breadbasket of the nation—are threatened by the vice of taking out of the soil more than is put back. In large areas of the United States—principally the Great Plains, the northern Lake states, and the Southeast—the land occupance is often unsuited to the land resources and the market conditions that are available.

Another reason for the serious farm problem is that we have come to the end of our exploitation of arable public lands and we must learn to make the best use of what we have. European countries reached this point many centuries ago, and since then have concentrated on intensive, high-quality cultivation, using every conservation measure available.

The total land area of the continental United States is nearly two billion acres. At one time or another, three fourths of this land has been under federal ownership, but over a period of 150 years, most of it has been given away or sold at a small price. Between 1787 and 1931, the total amount of land so disposed of was more than a billion acres, or just about half of our national area. Land was cheap and unfortunately it was treated as though it were inexhaustible. It was quickly worked out and then abandoned to erosion and lowered production by those who could afford nothing better.

Most of the land remaining in the public domain today is found in the Rocky Mountain region and in the arid sections of the West. There are 175 million acres in national forests, 70 million acres in Indian lands, and 50 million acres in reclamation and similar projects. This is considered a permanent heritage of the nation, although a large part of it—perhaps as much as 200 million acres—will eventually be turned over to private ownership.

Forty per cent of the land of the United States (728 million acres) consists of prairie, plain, desert, forest, and mountain range land in the West. This amount of land comprises four fifths of the important water-producing area of that section. A little more than one fifth of the total area of the United States (415 million acres) is under cultivation. But 18 per cent of this (76 million acres) has been so seriously eroded or is so erosive that it should be retired

from cultivation, and many thousands of additional acres will require intensive treatment if they are to remain in permanent use.

World Markets for Agricultural Products

Nevertheless, in peacetime, American agricultural production is so great that it cannot all be sold domestically at a profitable price. This fact has long meant that foreign markets are essential to the well-being of the American farmer.

But the period between the two World Wars was one of contracting world markets in which less than 10 per cent of the commerce of the United States was foreign commerce. We built our tariff walls high against Argentine beef and other farm products, but even higher against manufactured products and raw materials. Farmers as a class, therefore, lost out in two ways: on the one hand, other nations could not buy our agricultural products because we would not take their products in exchange; and on the other, farmers were forced to pay higher prices for many American-manufactured products that were shut off from world competition. American agriculture, therefore, was faced with three choices. It could either try to sell a greater percentage of its total production in world trade, or it could attempt to get a better price, relative to other prices, on the domestic market. Failing in both these programs, the third choice was decreased production. Legislative policy has emphasized the domestic more than the international phase, but with the end of World War II in 1945 there may be a greater possibility of expanding world trade.

Greater Industrialization and Increased Efficiency

Improving the farmer's lot is a complicated problem. The causes and cures of the farmer's problems are so extensive that no matter where the analysis is begun, it runs into all the ramifications of our economic system.

One approach to the solution emphasizes increased agricultural efficiency, to be effected chiefly through the retirement of submarginal lands and the substitution of machine for human labor. This process of mechanization has already made rapid headway. The tractor is daily replacing that characteristic symbol of the farm, the work horse. The dairy industry—agriculture's largest—increasingly uses the milking machine, the electric cooler, and mechanized hay and crop equipment. In the South, the cotton picker—improved during World War II—does the work of hundreds of men. With the aid of modern equipment, 50 per cent of American farmers now produce 90 per cent of the commercial farm products, while the other 50 per cent with outdated methods and often poor land, produce only 10 per cent.

If the farm population is further reduced by the use of laborsaving methods, restriction of output due to a lack of effective markets, and a poor outlook so far as individual income is concerned, then the cities and their industries will have to absorb an even larger percentage of farm boys and girls than in the past. And it was in considerable part the inability of the economic system to

absorb additional industrial workers—throwing many of them back on impoverished farms—that added to the severity of the agricultural depression.

The evidence from many quarters, therefore, suggests that farming as a way of life can be little more than moderately profitable except for those who cut costs by machine processes on a thoroughgoing scale. Furthermore, as farming has tended toward mechanization, both farmers and industrial workers have increasingly discovered that they have interests and problems in common. This begins to assume political significance if the two groups should find it possible to form a united political front. The close cooperation of the Farmers Union with the industrial unions during recent political campaigns is evidence of a tendency that will undoubtedly grow.

STAGES IN PUBLIC AGRICULTURAL POLICY

The federal Constitution does not give Congress any more express powers relative to agriculture than it does in the case of labor or industry. However, the power is there and is found in several quarters. It is in the clauses relating to interstate and foreign commerce, in the taxation, appropriation, and expenditure power (a very important one), and in the postal power, making it possible to maintain roads and bring rural free delivery service to the farmer's mail box. It is also in the authority to dispose of territories and the public domain, and in the navigation, war, and other express powers from which statutory authority has been deduced. Advantage has been taken of this power by the federal government in the interest of the farmer. Four main stages have marked the development of a public policy toward agriculture, and we are perhaps on the threshold of a fifth. In the earliest period, attention was on the distribution of land. This was followed, partly as a result of World War I, by the stimulation of production. In the early 1930's, however, efforts were made to reduce production so as to raise prices, and then this policy was suddenly overturned as a result of the needs of World War II. What the future policy will be is, at the moment, still a question mark.

To the government fell the role of surveying the potentialities of the public domain, disposing of it, and helping to settle it for agricultural purposes. The frontier as a continuous line of settlement came to an end in 1890, but problems relating to the disposition of the land continued to be an important governmental responsibility until the time of World War I. Since then it has been less of a problem, and it has also been overshadowed by other policies.

Around 1916–1917, emphasis shifted to the stimulation of production through research agencies, the experiment stations, and the county agents who carried knowledge thus secured to the farmer's door. Much of this research had been carried on for a long time, but the requirements of World War I gave it a forward push. The federal Department of Agriculture during this period has been appropriately characterized as "a commonwealth of research institutes." A sharp change in policy, however, came with the depression of the 1930's, when farm prices fell to pieces and nation-wide mortgage fore-

closures ran a rapid course until checked by the debt moratorium in 1933. The emphasis turned to the limitation of production and an attempt to increase farm prices. It also involved devaluating the dollar, cheaper credit, mortgage relief, and subsidies. All of these aids have been furnished the farmer and continue to be furnished in large measure.

It was when the government began systematically to study the farm situation that the wastage of resources and the hazard of soil erosion—which have been going forward at a frightening pace since World War I—were clearly realized for the first time.

In an attempt to reverse the trend, a complete inventory of land use was instituted by the federal and state governments. "No other segment of the economy," says Gilbert White, a leading authority on land-use classification, "has received such systematic attention by federal, state, and local agencies as have certain aspects of land use." [4] It was found that 50 million acres of cropland had been essentially destroyed, that more than three fourths of the original surface soil had been lost on 282 million acres of all types of land, and that 75 per cent of the cropland areas were in need of conservation practices. In addition, more than 500,000 farm families were living on land too poor to maintain a decent standard of living.

Not all of the interest which government has shown in agriculture was due only to the government, however. Through their influence on government, the farmers themselves have done much to help. And more is possible. "Once the farm organizations stand together," said Washington correspondent Kenneth Crawford, referring to the power of the Farm Bureau, the Grange, and the Farmers Union, "they can get anything out of Congress short of good growing weather." This group of organized agriculture, he continues, controls at least 15,000,000 votes, "once the organizations stand united."

Stuart Chase, in *Democracy under Pressure,* has described the agricultural programs of recent years by saying that "to give the farmers so many of the things they wanted, the New Deal had to increase central planning . . . . By a curious irony the individualistic, freedom-loving, leave-me-alone farmers of the nation were the first major group to become integrated in an over-all national plan. The banks, the railroads, the insurance companies, the unemployed, received cash relief; but agriculture was in effect collectivized—lifted clean out of the free market and put in a market where prices, or production, or both, were controlled." [5] Many farmers would trip over Mr. Chase's use of the word "collectivized," but otherwise they would have to agree that his description was fairly accurate.

The fourth stage in public agricultural policy began with the enormous need for agricultural products which accompanied the outbreak of World War II in 1939. Even before the United States entered the war two years later, we

[4] Chapter entitled "Land Planning," in George B. Galloway (ed.), *Planning for America* (New York, 1941), p. 90.

[5] Stuart Chase, *Democracy under Pressure* (New York, 1945), p. 92.

were shipping great quantities of food abroad, and from 1941 on the need went even higher. The farmer performed a mighty task despite a shortage of labor and machinery and sometimes even grain for his stock.

Has the United States now entered an era wherein the farmer may concentrate on production and conservation, with the assurance of freedom from restrictions on production made necessary by economic disorders affecting the consumer? There is much uncertainty here, but if the instincts and desires of the farmers themselves were the sole determinants of policy, there is little question that full-scale production would be their clear choice.

The United States Department of Agriculture

The United States Department of Agriculture was created during President Lincoln's administration, but its period of greatest expansion has occurred since 1933. During the New Deal years, the department became a billion dollar concern, compared with a paltry $30 million to $40 million a year going to the Departments of Labor and Commerce, respectively.

The largest part of the Agriculture Department's huge appropriations went out to farmers in the form of cash subsidies and other payments of many kinds, so that possibly a third of its total budget—or some $300 million—would be a fair sum to use in making a comparison of the administrative costs of the departments of the Big Three in Washington. The total appropriation of the Department of Agriculture in 1941 was $1,136,000,000, and it had been even higher. In the same year it had over 80,000 employees, compared with some 4,000 in the Department of Labor.

The bureaus and agencies of the Department of Agriculture are now so numerous that it is difficult to give a connected picture of them. There are several groups:

First is *general research and development,* including the Bureau of Agricultural and Industrial Chemistry, the Bureau of Human Nutrition and Home Economics, the Bureau of Entomology and Plant Quarantine, and the Bureau of Agricultural Economics.

Another group of agencies relates to *special crop and agricultural subjects,* including the Bureau of Dairy Industry, the Bureau of Animal Industry, the Bureau of Plant Industry, Soils, and Agricultural Engineering, and the Forest Service.

A third group contains agencies peculiarly concerned with *direct service to the farmer,* notably the Extension Service, the Office of Experiment Stations, the Soil Conservation Service, the Rural Electrification Administration, and the Marketing Service.

A final group consists of agencies emphasizing *financial credit, distribution,* and the like, such as the newly created Production and Marketing Administration, the Farm Credit Administration, the Agricultural Adjustment Administration (AAA), the Farm Security Administration, the Commodity Credit Corporation, and the Federal Crop Insurance Corporation.

Several of these units were combined with still others in the War Food Administration during World War II, but the typical peacetime pattern closely resembles the grouping given above. There are overlappings in this classification but perhaps it gives a better idea of the area covered than a mere unsegregated listing of bureaus and programs. An alternative classification would be research and education, production, marketing credit, soil conservation, rural electrification, farm tenancy, and production restriction and control.

The remainder of this chapter will be devoted to a discussion of the programs of the Department of Agriculture and the problems of the farmer that were responsible for their creation.

State and Local Assistance to Agriculture

Some state constitutions specifically provide for the creation of a state department of agriculture, but every state in the union makes some provision for assisting the farmer, and in many the department of agriculture is the dominant one. All state departments contain a nucleus of common functions plus several that are distinctive because of regional specializations. In some states grazing is the primary agricultural industry. In others, it is dairying—this being the largest nationally. In still others it is hogs and corn, or tobacco, or cotton that dominates. These differences are naturally reflected in the planning and administrative organization of the agricultural program at the state level.

New York has one of the largest and best state departments of agriculture. It has a single head—a Commissioner of Agriculture and Marketing—supported by a dozen main divisions including animal industry, a state food laboratory, food control, institution farms, markets, plant industry, traffic, weights and measures, and milk control, among others. Additional facilitating services include finance, publications, and statistics.

In addition to most of the functions mentioned here, Minnesota, one of the important agricultural states in the Middle West, has special services reflecting the regional character of that state's agriculture. These are seed potato certification, weed inspection, egg and poultry inspection, and fruit, vegetable, and livestock market news services.

With the exception of the county agricultural agent, local governments supply few direct services to agriculture, although important indirect services include rural roads—indispensable to the farmer who must take his products to market and do his trading—as well as the maintenance of fencing laws and the settlement of boundary disputes, provision of free rural education, provision of health and social services, the operation of county fairs, and the control of certain pests such as weeds, wild animals, rampaging dogs, and so on.

The County Agent and Complete National Coverage

In no field of American government is intergovernmental cooperation more effective than in agricultural administration. Farmers, working through their organizations and their coordinating committees, have seen to that. Neverthe-

less, this degree of intergovernmental cooperation could never have been secured without the work of the county agricultural agent. It is he who carries the federal and state departments of agriculture to the grass roots. He is found in practically all of the 3,050 counties of the United States and thus in government his coverage is surpassed only by that of the Post Office.[6]

The county agent is responsible to several masters and hence he is in a good position to act as liaison. His salary derives from local, state, and federal sources. Technically he is a county employee and serves the local farming community. At the same time he ties in with the state and federal programs, constituting an essential part of them. Indeed, as a rule, his state and federal relationships are more important than his contacts with the county government.

The county agent is like the area commander in time of war. There are many government agencies at headquarters but they all normally funnel through him. He is a Jack-of-all-trades. He tells the farmer about the latest discoveries in agricultural research and helps him to solve his farming problems. He assists in the administration of certain legislative programs, doing much to guide public opinion for or against existing or proposed programs. The county agent's work is largely planning, encouragement, and explanation. He is only incidentally an administrator. He is at everyone's beck and call, and if he knows his business he may have great influence in the community. Farmers are sometimes constitutionally averse to trying new methods, and the county agent conceives it as his job to get them out of the rut. It is hard to imagine how many of the farm programs of the government—especially those involving research and development—could succeed without him.

A key contact of the county agent is with the state agricultural colleges and experiment stations, which most states operate with the assistance of federal funds. In California, for example, the results of the work done by the experiment stations on problems of the citrus industry have been made directly available to the grower through the county agent. Similarly with the agricultural schools where future farmers are trained—the county agent is the liaison between the school and the farm families in the region. Much of the credit for our outstanding agricultural production records belongs to the experiment stations, the agricultural schools, and the county agent.

AGRICULTURAL LEGISLATION SINCE 1933

Generally speaking, the purpose of agricultural legislation between 1933 and the end of the decade was to restrict production, whereas from about 1939 on, and especially after the United States entered World War II in 1941, the emphasis shifted to the stimulation of as much production as possible.

During the world-wide depression of the 1930's, purchasing power at home and abroad was seriously curtailed. People who ordinarily bought such things

[6] See Gladys Baker, *The County Agent* (Chicago, 1939).

as oranges, bacon, and a host of other luxury or semiluxury items, largely cut them out. Even the consumption of basic necessities was greatly reduced. When the demand grew less than the output, there was no remedy—if profitable prices were to be maintained—except to curtail production. Or at least so it seemed. Restriction came hard to most farmers because of their tradition of getting as much out of the soil and their own industry as possible. And it was hard, too, on the millions of undernourished people who could not afford to buy the food they needed and which the farmers needed so badly to sell.

In the preceding period of the 1920's, Congress had passed two tariff acts—in 1921 and 1922—placing higher duties on farm imports. But the anticipated rise in farm and export prices did not materialize. Then two other experiments were tried. The first of these was another series of tariff measures, the most spectacular of which was the McNary-Haugen Bill, twice passed by Congress in different forms and twice vetoed. This legislation sought to create an export corporation to buy American farm products and resell them on the foreign market. Great Britain, Australia, New Zealand, and several other countries have experimented with these export corporations and in some cases —notably Australia—with apparent success. But the President would not approve it.

The second experiment of the 1920's foreshadowed the New Deal policy of the following decade. This was the Agricultural Marketing Act of 1929. Its purpose was to limit domestic production, assist in the marketing of the principal agricultural crops, and encourage the formation of farmers' cooperatives. A government corporation was formed to help stabilize the price of grain by purchasing surpluses in order to take them off the market. But the depression deepened and a new administration took control in Washington before this program got well under way.

The New Deal farm program, under Secretary of Agriculture Henry Wallace, was called the National Farm Program. It was, as Stuart Chase has suggested, a comprehensive and an ambitious one. It sought the ever-normal granary and parity prices with industry and labor. It was concerned with conservation, efficiency of production, regulation of production and distribution, crop insurance, rural electrification, a farm tenancy program, and cheap credit —in fact, it ran the gamut of the farmer's needs.

Among the more notable features of the New Deal farm program was the Agricultural Adjustment Administration, which virtually removed the great staples of cotton, corn, rice, tobacco, and wheat from the free market. A government corporation purchased and held butter and other food and agricultural surpluses for resale and distribution as needed. The Food Stamp Plan was also designed to withdraw agricultural surpluses from the free market and utilize them outside it. Various marketing agreements were negotiated, especially in milk, in order to fix and maintain prices.

In addition, the Farm Security Administration made small loans to a million or so poor farmers to help them get their crops in and purchase needed tools,

equipment, and livestock so as to get a new start. Vast government credit agencies saved hundreds of thousands of farmers from mortgage foreclosures. Regulation sought to control middlemen who tried to speculate and gouge the producer. Depleted farmlands were restored through soil conservation programs virtually free of charge. And the Rural Electrification Administration was designed to bring electric power to a million or more farm families.

The First AAA Program, 1933 to 1938

The Agricultural Adjustment Act—first passed by Congress in 1933 and later revised in 1938 after being declared partially unconstitutional in 1936—was the basic agricultural act of this New Deal period. As a landmark in American agricultural history, it is not inappropriately compared to the Wagner Act of 1935 in the field of labor.

The purpose of the original AAA legislation was to adjust farm production to effective demand in order to bolster farm prices and to make farming more profitable. Specifically, farmers were paid cash benefits for agreeing not to produce more than a certain amount of specified products. The processors of agricultural products were then taxed a certain amount on the volume of business they handled and these funds were used to help defray the cost of benefit payments. Farm prices rose, assisted by a serious drought in 1934 which reduced production still further.

How did this plan actually operate? In the case of corn, for example, experts in the Department of Agriculture would figure out how much corn could be sold nationally and internationally at a price that would give the farmer a certain profit. Then each corn state was given its prorata share, and this in turn was allocated among the corn-producing farmers. The farmer agreed to raise only so much, and for this he received a Treasury check. If good weather resulted in a larger crop than expected, the surplus was taken up by the government. But if the weather was unfavorable, the government insured the farmer against loss. In other words, the farmer could not lose if he carried out his part of the bargain.

A very interesting element of democratic participation—not unlike that of the New England town meeting—was incorporated into the functioning of this system. Farmers were asked first to vote for or against this crop restriction plan before it was put into effect. This they did in what was probably the most ambitious referendum ever staged in the United States, and the proposal was overwhelmingly approved.

But that was not all. Every participating farmer belonged to a county agricultural conservation association. In 1939 there were more than 3,000 of these county associations in the nation, comprising an equal number of county farmer committees, and more than 24,000 community committees. These community committees actually had the major responsibility for administering the plan at their own level. Each group consisted of three elected members whose job it was to prepare, check, and approve forms used in connection with the

programs; to recommend acreage allotments and soil-building goals for farms in the community; to assist in checking performance preliminary to granting payments and loans; and to help county committees and extension agents in educational work.

Supplementary Legislation, 1934 to 1936

Only the basic staple crops were included in the original AAA plan, but its underlying purpose was extended by the legislation that soon followed. The Bankhead Cotton Control Act and the Kerr Tobacco Act, for example, provided for compulsory controls in those fields—the key crops of the agricultural South. The Soil Erosion Act of 1935 set up the Soil Conservation Service. The Soil Conservation and Domestic Allotment Act of 1936 was even more clearly a progenitor of the AAA legislation of 1938, seeking as it did to achieve price parity by emphasizing conservation measures rather than crop restriction. Farmers received payments for planting soil-holding crops such as grass, thereby restricting the production of staples and at the same time conserving topsoils and moisture.

In 1936, part of the original AAA was declared unconstitutional by the Supreme Court in the case of *United States* v. *Butler* (297 U. S. 1. 1936). This is one of the decisions that fanned the flames of the so-called Court-packing controversy of that period. The invalidated part of the AAA had to do with the processing tax provisions, which were held to invade the reserved powers of the states. The other provisions of the act were not affected, but sentiment immediately favored newly drafted legislation in which conservation would be emphasized more than the restriction of production.

Conservation Emphasized—the AAA of 1938

The AAA of 1938 was a comprehensive program built on the foundations of preceding legislation. According to its main provisions, farmers were paid financial benefits for agreeing to plant less of soil-depleting crops—such as corn or cotton—and to plant more of soil-building crops such as grass, which could either be plowed under for fertilizer or kept as a semipermanent crop.

In addition, in connection with certain basic crops—corn, wheat, cotton, tobacco, and rice—farmers were paid parity prices for agreeing to plant less than their previous allotments. Commodity loans were granted to support prices. Surpluses were witheld from the market when two thirds of the producers voted in favor thereof. And the wheat crop was given federal crop insurance.

Among the administrative devices under the AAA, certain developments were important. First, another government corporation, the Federal Crop Insurance Corporation, was organized to provide crop insurance for wheat farmers. Second, the Surplus Marketing Administration succeeded the Federal Surplus Commodities Corporation and was given expanded powers to keep agricultural surpluses off the market. It was authorized to pay export sub-

sidies and to seek the means of increasing domestic consumption. Methods included the distribution of food to the poor, the victims of floods, and so on. Third, the Food Stamp Plan was initiated, by which low-income families were given stamps entitling them to acquire specified surplus commodities through regular retail channels. This was regarded as a means of increasing purchasing power and helping the farmer to dispose of surpluses. It was first tried in 1939 in Rochester, New York, and spread rapidly to scores of other communities.

Farm prices continued to rise, although not as sharply as between 1934 and 1936. And the emphasis on conservation and the accumulation of surpluses was to prove beneficial when the outbreak of war a year or two later greatly expanded the demand for agricultural production for the benefit of the United Nations and ourselves.

By 1939 the personnel of the Supreme Court had changed. So also had the AAA legislation. The marketing quota provisions of the AAA of 1938 were upheld in *Mulford* v. *Smith* (307 U. S. 38. 1939) and the provisions of the Agricultural Marketing Agreement Act of 1937 were favorably acted on by the Supreme Court in the case of *U. S.* v. *Rock Royal Cooperative* (307 U. S. 533. 1937) and *Hood and Sons* v. *U. S.* (307 U. S. 588. 1939).

THE FEDERAL GOVERNMENT AS AGRICULTURAL BANKER

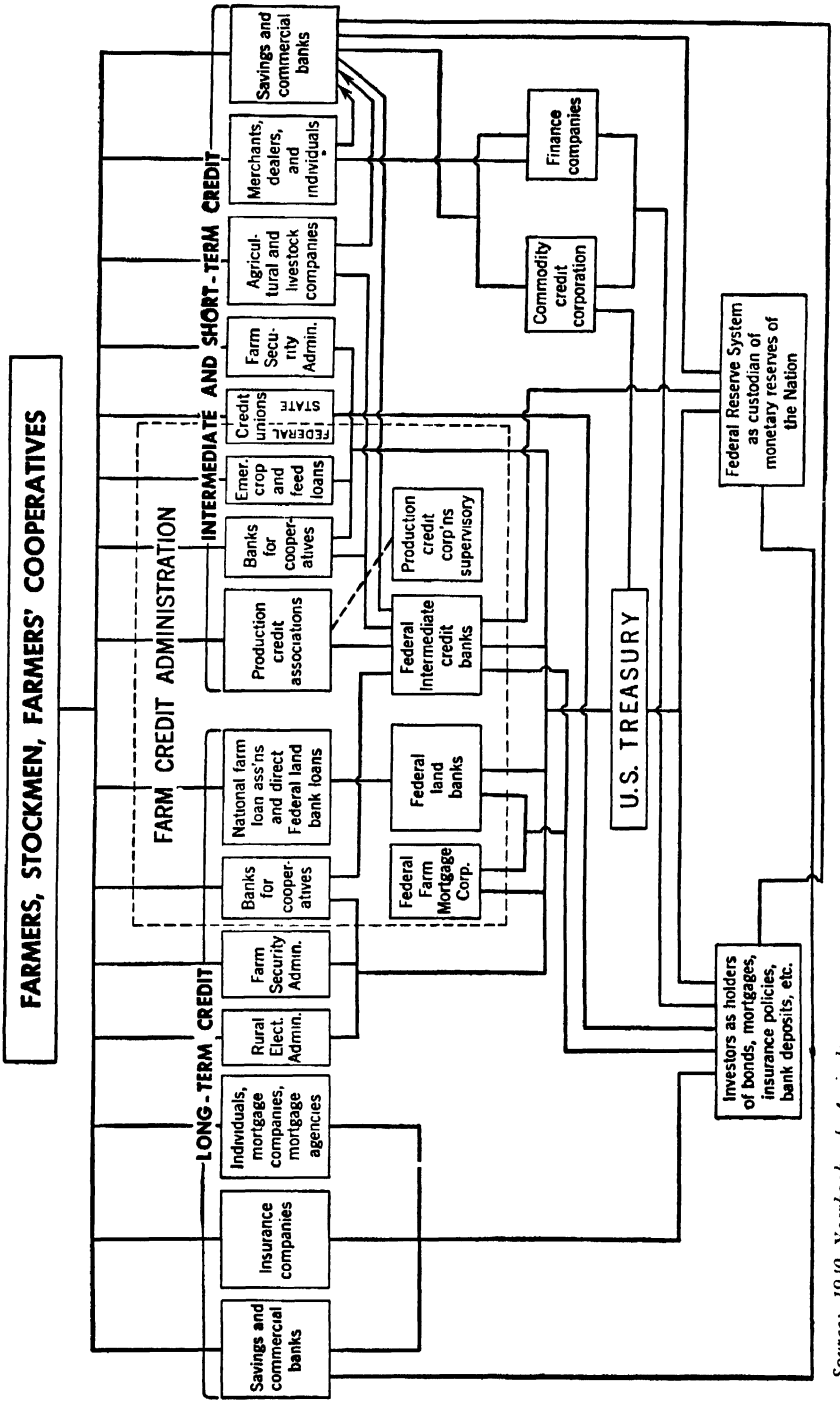
Agricultural credit is a principal key to farm prosperity. It is difficult for many farmers to make a decent living if their farms are heavily loaded with debt. Farmers are widely threatened with bankruptcy—as we learned during the depression—unless credit facilities are liberal. For these reasons the agricultural credit agencies of the government have become exceedingly extensive.

The Farm Credit Administration

The federal government's interest in agricultural credit extends back to President Wilson's administration when, in 1916, the Federal Farm Loan Act was passed. Further steps in this field were taken by President Hoover, and in 1933 under President Roosevelt the Farm Credit Administration was created, consolidating all existing agricultural credit facilities.

The Farm Credit Administration was originally an independent agency. Its numerous operating units consist largely of government corporations. In 1939, however, under one of the federal reorganization plans, the FCA was placed under the jurisdiction of the Secretary of Agriculture, where it has since remained.

In extending to the farmer a great variety of credit facilities—in the management of which the farming communities themselves actively cooperate—the Farm Credit Administration has divided the country for administrative purposes into twelve regions. A central city in each region becomes FCA headquarters, and in each there are four units, including a federal land bank, a federal intermediate credit bank, a production credit corporation, and a bank for cooperatives.



Source: 1940 Yearbook of Agriculture.

Each district has an over-all farm credit board whose members are the heads ex officio of the four credit institutions mentioned. Each bank and each corporation have their own officers. Coordination is secured through the Farm Credit Board and a top executive called the General Agent. Interest rates formerly ranged from 1½ to 5 per cent but on July 1, 1944, most rates that had been 5 per cent were reduced to 3½ per cent.

What do all these separate agencies do? [7] Each has its own sphere. The federal land banks make long-term loans at low interest rates to farmers who give a first mortgage as security. Other loans, financed through a corporate affiliate, may be made with a second mortgage as security and are used for refinancing.

The intermediate credit banks assist other federal institutions by supplying short-term funds at lower rates. The production credit corporations also make short-term loans but, as their name implies, they are for the limited purpose of production. Farmers generally get cash for their crops in an annual lump sum, and the balance of the year they may need financial help.

And finally, the bank for cooperatives helps farmers' cooperatives in their buying and selling operations. In 1940 there were more than 12,000 of these farmers' cooperatives. Interest charged is as low as 1½ per cent. The extent of coverage and business of farmers' cooperatives in 1942–1943 is shown in the table on page 793.

In addition to the credit facilities listed above, the Commodity Credit Corporation, which has been mentioned, was created by executive order in 1933 for the purpose of buying, selling, holding, lending on, or otherwise dealing in, such surplus agricultural commodities as might be designated. A year later the Federal Farm Mortgage Corporation with a capital of $200 million and bonds to the extent of $2 billion was created by Congress to swell the financial resources of banks engaged in refinancing farm mortgages.

As a result of these measures, farm mortgage foreclosures were stalled. Billions of dollars were made available for any and all purposes that farmers might have. The agricultural credit system has apparently been established on a permanent footing. Loans on mortgages may be repaid over long periods of time and refinancing is made easy. Interest rates are high enough so that as financial ventures these agencies have paid on a strictly business basis. A picture of the agricultural credit structure is shown in the diagram on page 791.

The farmers themselves play an active role in agricultural banking policy and management, especially in the banks for cooperatives and the production credit units. The credit structure of agriculture is now apparently on a sound basis. But credit, of course, is only part of the farmer's problem.

[7] Full information concerning these banks and corporations is found in the *U. S. Government Manual*, published several times a year by the federal government in Washington.

FARMERS' MARKETING AND PURCHASING COOPERATIVES IN THE UNITED STATES

(*Marketing season, 1942–1943*)

State and group	*Associations*	*Membership*	*Business*
State:			
California	478	92,150	$ 391,760,000
Minnesota	1,399	358,600	336,500,000
Illinois	628	336,040	282,740,000
New York	379	166,040	235,270,000
Iowa	760	244,370	210,620,000
Wisconsin	1,105	234,800	202,940,000
Ohio	309	168,800	179,740,000
Missouri	328	183,800	147,260,000
Texas	481	136,940	141,840,000
Indiana	204	146,400	129,320,000
All others	4,379	1,782,060	1,522,010,000
Total	10,450	3,850,000	$3,780,000,000
Group:			
Marketing			
Cotton and products	539	235,000	$ 167,000,000
Dairy products	2,369	710,000	950,000,000
Fruits and vegetables	944	160,000	450,000,000
Grain, dry beans, rice	2,358	400,000	700,000,000
Livestock	700	600,000	595,000,000
Nuts	46	53,000	75,000,000
Poultry and eggs	166	111,000	145,000,000
Tobacco	11	124,300	17,700,000
Wool and mohair	134	85,000	34,000,000
Miscellaneous	441	101,700	46,300,000
Total marketing	7,708	2,580,000	$3,180,000,000
Purchasing	2,742	1,270,000	600,000,000
Total marketing and purchasing	10,450	3,850,000	$3,780,000,000

Source: Farm Credit Administration.

OTHER PROGRAMS AIDING THE FARMER

Other major programs aiding the farmer in special problems are the Rural Electrification Administration, the Farm Security Administration, the Soil Conservation Service, and the Office of Labor.

The Rural Electrification Administration

The mechanization of farming requires that electrical energy be made widely available and in cheap enough units so that milking machines, coolers, pumps, barn and poultry-house lighting, hay-drying machinery, and similar equipment can be run at low cost. Up until the 1930's, rural electrification had proceeded only slowly in the United States, largely because concentrations of urban population are highly profitable while sparsely settled communities are not.

In 1935 Congress passed the Rural Electrification Act appropriating an

initial $410 million to be used for this program. Half of the amount was earmarked for generation and transmission, the remainder for loans to farmers for wiring, the purchase of equipment, and other expenses. The investments in the production and transmission of power are self-liquidating—that is, they are repayable in full, with interest. They may be made to state and local governments, to farmers' cooperatives, or to private companies and individuals. Many parts of the country have benefited greatly. There are regions in Nebraska, for example, where the electrical facilities are comparable to those furnished by the Tennessee Valley Authority.

The results are interesting. In 1935, only 10 per cent of the nation's farms were receiving a power-line electrical service. Four years later, in 1939, they had increased to 27 per cent, representing the power-line electrification of more than a quarter of the farms of the country. With the conclusion of World War II, in 1945, many privately owned electricity companies announced their intention of extending their rural facilities. Thus it may not be many years before rural electrification is largely complete. Countries like Norway and Sweden have proved that electrical power may be made universal.

The Rural Electrification Administration was originally a separate agency with corporate characteristics. In 1939 it was transferred to the Department of Agriculture under a reorganization scheme. By 1945, however, Congress had decided that it was better off as a separate unit and it was once more made an independent establishment.

The Farm Security Administration

The Farm Security Administration grew out of the earlier Resettlement Administration, created in 1935. Both were designed to assist farmers in the lower income groups, and especially tenant farmers, sharecroppers, dust-bowl farmers and those who fell within the designation "forgotten man." Like most programs which aim at social and economic reform, the FSA has seen stormy days.

The Resettlement Administration, created by executive order under the Emergency Relief Appropriation Act of 1935, was designed to help the four million "economic refugees" in areas hardest hit by the depression.

The work of the Resettlement Administration was in four principal parts. A land-use program was designed to close out some 10 million acres of submarginal land and resettle its populations. A resettlement program was to furnish homes and a new start in life for persons moved from submarginal areas and for those left stranded as a result of failing industry, as in the case of some of the coal-mining regions of West Virginia.

Next, a rehabilitation program aimed at the alleviation of immediate distress and the provision of loans for seed, livestock, equipment, and so on. And a suburban resettlement program was to build model housing communities on the outskirts of large cities so as to encourage a better balance between city and rural life.

When these programs of the Resettlement Administration were dispersed in 1937, the Rural Rehabilitation Division became the Farm Security Administration simply by virtue of the Secretary of Agriculture changing its name. As of 1945, a million farm families who lacked other sources of credit had been aided by loans to purchase machinery, equipment, livestock, seed, fertilizer, and other farm and home supplies they needed in order to get back on their feet following years of depression.

Furthermore, since 1938 an extensive program of medical and dental group health has been carried on by the FSA in a cooperative fashion. Almost a hundred semipermanent camps have been established, especially in the Far West, for migratory laborers and their families. The program of the FSA is not as comprehensive as that of the Resettlement Administration, but it is probably more direct and practical.

In 1937 a Committee on Farm Tenancy appointed by President Roosevelt submitted a comprehensive report on that subject which is well worth reading.[8] Two fifths of the farmers, it revealed, are tenants and the number is increasing. Three million farmers live under conditions that make them a "prey to economic and even political parasites." Families are living in conditions "little, if any, above the lowest peasantry in Europe." Most people do not know it, but America is full of rural slums.

The report also showed that these submerged classes are undernourished. "Their food," it revealed, "is lacking in variety and in essentials for nutritional balance. Their bodies are easy prey to the ravages of disease; pellagra, malaria, and the hookworm and other parasites exact heavy tolls of life and energy. Suitable provisions for the maintenance of health and treatment of disease for these classes of families are lacking or inadequate in many localities." These findings were confirmed by the Selective Service records of World War II, which showed a discouraging number of rejections for medical reasons.

In an effort to deal with the situation reported by the Committee on Farm Tenancy, in 1937 Congress passed the Bankhead-Jones Farm Tenant Act and placed its administration under the Farm Security Administration. The purpose of the act is to help deserving tenants to purchase single-family farm units. During the first seven years of this program, Congress appropriated almost a quarter of a billion dollars for its operation. Loans to farmers are repayable over a period of forty years and bear 3 per cent interest. During the first six years of operation, more than 35,000 families were assisted in securing family-type farms.

The Soil Conservation Service

Soil conservation is not a new emphasis in the Department of Agriculture. As early as 1900, Theodore Roosevelt and Gifford Pinchot were arousing the country to our profligate waste of resources, as a result of which the Forest

[8] Report of the President's Committee, *Farm Tenancy* (Washington, 1937).

Service was created in the Department of Agriculture and is now responsible for 160 national forests covering 175 million acres, or nearly a tenth of the nation's land surface. Land is a basic resource, next only in importance, perhaps, to people. All we eat and wear comes from the earth. Agriculture is the basis of any economy. Why, then, are we so wasteful?

The Soil Conservation Service was created in 1935 in pursuance of the Soil Erosion Act of that year, already mentioned. It administers a comprehensive and long-range program, relying largely on the education of farmers and cooperation with them. An objective is the retirement and replanting of submarginal lands no longer suitable for agricultural purposes. By 1940, state laws providing for the establishment of soil conservation districts had been passed by 38 states, and 314 districts had been organized embracing a total area of some 190 million acres. At the same time, an equally large area was covered by districts in process of organization.

The work went forward rapidly and by 1945 all but three states had passed enabling legislation and more than 1,400 districts, covering 763 million acres, were in operation. Over 2,500,000 farms are affected. This is one of the most promising areas of federal activity.

In the operation of the program of the Soil Conservation Service, the cooperating farmer enters into a contract with the service and agrees to carry out a long-range program with the assistance of the government's resources. His land is then surveyed from the air, the soil and layout are analyzed and charted for use. Water supply is conserved and regulated. Soil erosion is checked. Fences are changed and contour lines surveyed for strip-cropping. Pasture clearance and minor engineering jobs are furnished by the service at cost. Areas that should not be used for cultivation are reforested.

Most of the SCS programs deal directly with the farmers and include farmers on the local district committees. Thus local control is combined with centralized management and technical skill. And great sections of the country are being restored to a useful purpose.

The Office of Labor

Another interesting development in the Department of Agriculture—the creation in 1937 of an Office of Labor—is an indication of the fundamental changes that have taken place in our agricultural economy.

Agriculture is now an industry, it is mechanized, it has a large labor force. The functions of the labor unit in the department, therefore, are to contract with employers for the hiring of foreign and domestic interstate farm workers, to provide necessary transportation, shelter, medical care, and subsistence, to operate farm-labor supply camps, and to stabilize the wages and salaries of agricultural workers. Agriculture has become increasingly aware of the fact that ours is "one world."

THE FARMER FACES THE FUTURE

Farming as a way of life cannot remain an American tradition and a mainspring of national strength unless farmers become widely aware of what is happening to undermine that way of life and adopt measures to safeguard it in the future. This protection cannot be achieved without a fight, and there is no use fighting until the elements of the problem are understood.

The farmer has learned much in the past twenty-five years. He has had to probe deeply into economics and government. He has always known that the forces of nature can not be charted with certainty, that thunderstorms come up when a big jag of hay is ready to go into the barn, or a summer drought will ruin the crop. This would seem to be trouble enough. But to it, the farmer has discovered, must be added the uncertainties of human associational living. Are these equally precarious and uncontrollable?

Many farmers have not made up their minds on this point. But they intend to keep at it until they find the answer. Farmers have learned what most of us have found—that no one segment of life is more secure than the balance of the political economy. It is no wonder, then, that W. N. Kiplinger, author of a Washington news letter, once remarked that "farmers as a class have gotten themselves married to government."

SUPPLEMENTARY READING

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2. Organization and functions: John M. Gaus and L. O. Woolcott, *Public Administration and the Department of Agriculture* (Chicago, 1941); C. R. Ball, *Federal, State, and Local Administrative Relations in Agriculture,* 2 vols. (Berkeley, Calif., 1938); O. M. Kile, *The Farm Bureau Movement* (New York, 1921); Gladys Baker, *The County Agent* (Chicago, 1939); and Kirk H. Porter, *State Administration* (New York, 1938), Chapter 13.

3. The AAA program: E. G. Nourse *et al., Three Years of the Agricultural Adjustment Administration* (Washington, 1937); Department of Agriculture, *Agricultural Adjustment Agency* (annual reports) (Washington, Government Printing Office); and J. D. Lewis, "Democratic Planning in Agriculture," *American Political Science Review,* XXXV (April, June, 1941), 232–249, 454–469.

4. Agricultural credit: E. S. Sparks, *History and Theory of Agricultural Credit in the United States* (New York, 1932); and E. L. Butz, *The Production Credit System for Farmers* (Washington, 1944).

5. Rural facilities: *Report of the President's Committee on Farm Tenancy* (Washington, 1937); annual reports of the Administrator of the Farm Security Administration and of the Administrator of the Rural Electrification Administration.

CHAPTER 49

Planning, Stabilization, and Economic Welfare

As SOCIETY BECOMES more complex, more and more private and public programs will apply to social and economic life. The multiplication of such programs multiplies the interrelationships involved. The need for careful, over-all planning, therefore, is going to increase. The situation in agriculture shows how this works. The amount that agriculture must produce depends on a variety of factors lying outside the field of agriculture itself, including domestic and world markets, industrial production and prices, employment or unemployment, and wage rates generally—factors that determine how much can be spent annually on the market basket. At some point in the social complex, therefore, there must be the means of determining and correlating these factors for the benefit of the farmer.

Similarly with the other two of the Big Three. Businessmen must know how much of their product can be sold at a profitable price. This knowledge requires full information about such things as world markets, competing products, what the public will buy, how much can be spent on advertising, the trend of wage rates and taxes, and so on. The success of most American business enterprise depends on how fully and accurately it can plan ahead.

Labor, in turn, must know how much individual employers can afford to pay in wages, how much social wealth is produced by scientific discovery and improved mechanization, what the effect may be of foreign competition or of tariffs, and the operation of the business cycle.

The principle to remember is that *if some parts of the economy are carefully calculated in advance, while others are not, those that are not planned will throw the whole economy out of order, including that part which has apparently been stabilized by rational design.* No truth of political economy in recent years stands out more clearly than this. Those business concerns that plan are pulled down along with everybody else by those that make no attempt to gauge supply and demand.

Imagine what would happen, for example, if such major industries as the Bell Telephone System or General Motors—despite their staffs of economists, statisticians, and engineers—failed to plan as carefully as possible. In large cities such as New York, Chicago, and Washington, the Bell System is not satisfied with a mere five-year plan. Washington's telephone extension program alone requires a twenty-five year plan. There the company must be able to foretell where population and industries are going to expand—whether to the northwest, the southeast, or in some other direction—in order that the

main cables, switchboards, and necessary installations will be available when needed. No company can afford to dig up a million dollar cable merely because, through carelessness, it guessed wrong a few years ago.

When government fails to comprehend the totality and interconnections of economic forces, the effects are more serious than when individual segments of the economy fail to take heed of the morrow. *Government, standing at the center of the economic system and attempting to legislate for it and stabilize it, must do the best planning job in all of society.* Otherwise one law will cancel another out, causing confusion rather than stability; vast sums of money and energy will be wasted; and the uncertainty will act as a general depressant. We have seen it happen this way before.

Until World War II, the federal government made some progress in over-all planning, but achieved less than was apparently required. This caused George Galloway to say, in *Planning for America,* that in the past few years the federal government "has not tried to plan output to meet consumer needs or to balance income distribution with productive capacity or to achieve . . . a full and balanced use of available resources. Its 'planning' has been of the interest-group kind that neglects the over-all effects on the economy as a whole, as well as the interactions of inconsistent policies." These lines were written before World War II. During the war, of course, there was a very thorough planning of the national economy: nothing short of that would have achieved victory.

This chapter will consider, first, the extent to which planning already takes place in the United States, and will discuss some of the principles relating to planning. It will then show where and how planning takes place, with special reference to public works, and will conclude with a section on the public ownership and operation of particular types of enterprise.

PLANNING ALREADY EXTENSIVE

It is unfortunate that it is necessary to use the word "planning." Most of us react to that word in a manner quite different from our reaction to its synonyms. The term "forethought," for example, does not cause such chills to run up and down our spines. Nor do other synonymous terms such as anticipation, prevision, looking ahead, rational design, prediction, balance, equilibrium, skillful calculation, or acumen. To many of us the word "planning" suggests totalitarianism, dictation, and undemocratic domination. No doubt a good deal of this emotional antipathy stems from the use of the word "plan" in Soviet Russia's announced Five-Year Plans, coupled with an uncritical fear of the bewhiskered Bolshevik commonly portrayed as intent on blowing up the capitalist world.

Because of the way we have been conditioned in this area, therefore, it is hard to deal rationally and soberly with the practical concerns that control our future.[1] For one thing, we fail to realize the extent to which planning

[1] For an excellent discussion of "The Climate of Opinion" with regard to planning, see George B. Galloway, *Planning for America* (New York, 1941), Chapter 2.

normally takes place in our everyday lives. All legislation, for example, is a form of planning, whether we call it that or not. And since there has been much legislation in recent years, it follows that there has been much public planning. Planning has no fixed meaning—we can have as much of it and as many kinds of it as the problems of society seem to require.

Since we already plan, the question confronting the American people is not whether to plan or not to plan; it is not a choice between *a* plan and *no* plan that confronts us. Rather, we must determine the degrees and type of planning that we think are necessary to undertake in the future.

Principles Relating to Planning

There is every indication that public planning will grow as our social and economic complexities increase. It becomes important, therefore, to consider the factors involved.

What is planning? Planning is fact finding applied to problems and policies, from which a work plan emerges. Planning is the advance determination of how the ends and the means are to be bridged. Public planning is the application of the best intelligence available to programs of common affairs in the public field. "Planning," says George Galloway, "is the opposite of improvising. In simple terms, it is organized foresight plus corrective hindsight. It takes all public problems for its province and pertains to all the problems of government, economy, and society."

What are the elements of planning? In planning there are five principal steps. First comes the determination of objectives. Examples of this would be the achievement of a full level of employment, or the control of soil erosion. In a democracy, the determination of objectives is often the most difficult problem of all because all sides must be taken into consideration. But we are constantly doing this when we pass major legislation.

The next step is research, or fact finding. If we do not have the facts, we act blindly. Following this comes the consideration of alternative solutions. Often there is more than one way of solving a complex situation. Then there is policy making, or decision. This part of the process, like lawmaking, involves a consideration of the relation of the proposed step to affected and related areas, and the decision between alternatives. The final step is the detailed execution of the plan that has been decided on.

This is the way we plan as individuals, or as members of business, labor, professional, or agricultural groups. The steps involved in public planning are the same except that the factors involved are usually more numerous and more complex.

What are the aims of planning? Planning, like government, is an instrument. What we do with planning depends on how we go about it and whether the control is broadly democratic or narrowly selfish. Intrinsically, planning is neither good nor bad. It may be used by the warlords of Japan for nationalistic purposes, or by the staff of the Children's Bureau to improve the lot of

children in a democracy. It may be employed to produce motor cars or atomic bombs. Simply because government is sometimes dictatorial does not mean that it cannot be democratic. The same statement applies to planning.[2]

According to Harlow S. Person, an outstanding American authority in the field of scientific management of industry, no more regimentation is involved in the execution of a planning program than in one that is unplanned.[3] Compulsion is present in both. On the whole, says Person, planning probably produces less regimentation by eliminating some of the uncertainties in the situation. In either case, *how a plan is formulated and later executed is subject to much variation; it may be either dictatorial or democratic depending on the type of control.* Planning is no more inherently freedom-robbing than government is inherently freedom-robbing. Both may serve as the instruments of freedom.

Is planning compatible with free institutions? Professor Eugene Staley, an economist, has suggested some interesting points in his reply to the question of whether planning is compatible with free institutions. The guiding considerations, says he, are, first, that all planning for the United States should be designed to fit a mixed economy, in which one part is competitive and free from major regulation, and the other is monopolistic and controlled. Second, economic planning must be positive and adaptive, not restrictive and rigidifying. It must take into account the interests of all who are affected by it, and must offer the opportunity for democratic participation. Planning must not be controlled by any one group. And when each group in the economy knows its allotted task, then it should be allowed to accomplish it. In addition, planning must not be narrowly national or nationalistic, because if it is it will merely contribute to mightier cataclysms on the world scene. Equally, a stable condition of peace is necessary if planning combined with democracy is to succeed.

If, therefore, we in the United States were to undertake a program of comprehensive national planning, it would have to be democratic in purpose and method, and it would have to follow the traditions of majority rule. Otherwise, national planning would not accord with the American tradition.[4]

There is much in our history and spirit as a nation that disposes us toward a more comprehensive type of national planning. Have we not led the world in the study of business management and scientific management generally? Scientific management applied to business is almost identical with public planning. The framing of the Constitution, Hamilton's plan of manufactures, our infant-industry policies, the growth of trusts and monopolies, the organizing skill we demonstrate in time of war—these are some of the manifestations of the organizing traits which make planning a success. We see it also in our

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[2] See Barbara Wootton, *Freedom under Planning* (Chapel Hill, N. C., 1945).

[3] Harlow S. Person (ed.), *Scientific Management in American Industry* (New York, 1929), Chapter 1.

[4] Eugene Staley, "Economic Planning and Free Institutions," *Plan Age* (February, 1940).

city planning. Our whole planning for the use of natural resources and land is the lineal forerunner of planning on a broader scale. Indeed, the United States has more of a tradition and more of the tools of planning than the collectivist countries whose names we associate with the idea.

Planning and the National Economy

A valid criticism of planning and one that alarms many people is the fact that planning is "too much up in the air." An effort to give body and substance to planning, however, has been made in fields as diverse as economics, natural resources, and social welfare.

In the National Resources Planning Board report entitled *The Structure of the American Economy,* Gardiner C. Means described what is embraced by the full, balanced, and efficient use of resources. "If a country were using its resources to the optimum," says Means, "there would be no unemployment of men or machines except the minimum unemployment necessitated by seasonal production, transfer from one activity to another, and similar causes. The resources going into different uses would be in balance with each other and in relation to the consumers' wants: so much land and labor in wheat and so much in cotton, so much in labor and equipment in making clothing and so much in making automobiles; and finally, in doing any particular job, the minimum amount of resources would be used or consumed consistent with the job to be done. Thus, effective use of resources could be said to consist of full, balanced, and efficient use. . . ." [5]

The extent to which, as a nation, we have failed to make a "full, balanced, and efficient use" of our national resources is illustrated by the fact that between 1929 and 1937—a period of only eight years—we wasted through idleness some $200 billion worth of goods and services.[6]

In the book *Planning for America,* the objectives of economic planners are said to be: "(1) A progressively rising standard of living, including minimum essentials for all at all times; (2) maximum utilization of our productive powers to increase output so as to make a rise in standard of living possible; (3) the adoption to this end of policies of expansion rather than restriction by industry, labor, and the government; such policies to be based in turn upon scientific methods of increasing efficiency, productivity, and distribution; (4) the reduction of industrial fluctuations and the maintenance of a balance between production and consumption; (5) an increase of, and greater equality in the distribution of, the national income; (6) greater stability of employment and continuity of income; (7) greater interest and satisfaction in work; and (8) a reduction in the hours of labor." [7] It is one thing, however, to state

[5] National Resources Planning Board, *The Structure of the American Economy* (June, 1940), p. 4.

[6] *Ibid.*

[7] George B. Galloway (ed.), *Planning for America* (New York, Henry Holt and Company, 1941), p. 10.

objectives and another to work out the detailed plans for putting them into effect. But it is an achievement even to state the objectives. Planning is not something done all at once by some divine flash of inspiration. Planning is a slow, methodical process in which everyone who performs a social function must cooperate.

WHERE PLANNING TAKES PLACE

Another reason that many Americans are opposed to national planning is that we often assume planning to be something that takes place only at the top of the governmental pyramid by a small group of men holding dictatorial powers. Some zealous advocates of planning have undoubtedly cherished this view, but in general they may be classed as impractical visionaries.

If planning is judged by the examples found in the United States, the impression it makes is quite different. In business enterprise, in government, and among the interest groups, planning is a process in which the entire staff of the organization must participate. Planning relies on fact finding and on past experience, so that each segment of the group must contribute to this pool of information. And finally, planning involves the division of labor, each section of the organization having an essential task to perform. Thus planning is a two-way traffic. The impulses go up the line to supply information and, when plans have been articulated, they go back down the line to be administered.[8]

This is not to suggest that comprehensive planning can be undertaken without adequate machinery at the top. Such machinery is necessary to every kind of planning group. In a business corporation planning is usually the function of a policy committee, assisted by a technical staff, which has the responsibility for over-all planning. In cities, such a group is called a city planning commission; in the states, it is generally called a planning board; in the federal government, until recently, it was the National Resources Planning Board.

The important point to remember is that *top planning is essential because there must be coordination at that level; but planning that is realistic and successful involves the active cooperation of all parts of the enterprise.* In terms of national planning, therefore, the more active the collaboration of all elements in the economy, the more successful our national planning process will be. But where should the top planning board be located? Two requirements must be observed at whatever level of administration is involved: the planning board must be organizationally separate rather than subordinate, if it is to do its best work; at the same time, however, it must be tied in closely with the responsible top officials. In the case of the federal government, this means both Congress and the President.

To the extent that responsible government obtains, and cooperation between the legislative and the executive branches is assured, the top planning arrangement may be expected to work very well. In fact, in a democracy, that is the

[8] Marshall E. Dimock, *The Executive in Action* (New York, 1945), Chapter 10.

only satisfactory way of providing public control over this area of governmental activity. But where cooperation is not assured, we may expect institutional jealousy to flare up as it did when Congress abolished the National Resources Planning Board. If the President had consulted Congress more fully beforehand, would the result have been different? It is possible.

Planning by the Big Three

Planning has its place in the work of business, labor, and agriculture. For example, all business corporations must plan. Some plan well, others not so well, and some, it would seem, very poorly. But by and large, successful corporations do a good job of planning and pride themselves on the accuracy of their predictions. Business interest group organizations also plan. Trade associations have become increasingly skilled at it. The National Association of Manufacturers, the United States Chamber of Commerce, and state and local chambers of commerce constitute the chief over-all planning agencies in this area. These groups call it self-government of business, but that is simply another term for planning. They want to foretell what is likely to happen so as to be prepared to meet it. Once they are able to predict the course of events, they are in a better position to shape the future to their own needs.

Organized labor's staffs of economists, statisticians, and technicians of all kinds chiefly account for the growth of its power and influence today. In its annual conventions, labor's well-organized executive committees plan the strategy toward both industry and government. The better these labor groups plan, the more rapid is the progress of their program. A large part of labor's planning, as has been seen, is directed toward government programs, such as the Wagner Act creating the National Labor Relations Board, social security, housing, and public works—indeed, all the major legislative enactments of the past decade or so. Generally, a well-financed department in each of the labor organizations deals exclusively with legislation and contacts with government.

In agriculture, which has done more planning since 1933 than any other segment of the economy, there is a hierarchy of planning machinery all the way from community farmers' committees and the county agent right up to the vast network of organization in the Department of Agriculture in Washington. One planning bureau alone—the Bureau of Agricultural Economics—was spending something like $2 million a year during the New Deal period. At present it is organized, not as a separate bureau among many in the department, but as a unit in the Secretary's office, so as to be readily available at all times.

Government Planning Agencies

Of the literally hundreds of planning boards and commissions existing in the United States, city planning is probably the oldest of all—William Penn's plan for Philadelphia goes back to the 1680's. The nineteenth century saw an extensive development in city planning. Planning also is the most important

peacetime concern of the general staff of the armed forces. Natural resources and conservation depend on widespread planning activities, including the consideration of forests, water, land, minerals, fuels and energy, transportation, land use surveys, and mapping. Indeed, planning is a part of the work of every department and agency of government. From the Department of Commerce and other federal agencies, through the Tennessee Valley Authority, down to the remotest New England or prairie town, plans and projects of many kinds are being formulated this very minute. But everything that has to do with planning is not called planning.

With the creation in Washington of the National Resources Board in 1934, scores of planning agencies, so designated, were established at all levels of government. By 1936, every state save Delaware had set up a state planning board. In the United States today a hierarchy of governmental planning boards and commissions—local, county, state, regional, national, and even international—deals with a wide variety of problems. Most of these boards are concerned with city planning or with natural resources, but increasingly they are studying the total situation in the area. In the Pacific Northwest, for example, the regional board, assisted by state and local boards, has dealt with all of the elements of an expanding economy, including land, water, electrification, industry, transportation, farming, labor, social problems, government, schools—all the interrelated elements of community well-being. The planning of the Tennessee Valley Authority is organized on a similar scale.

Surveys of public opinion have shown that people are apparently solidly behind local and state planning programs even when they are opposed to planning at the national level. They can see the need when the problems are close at hand and the solutions hold promise of a direct benefit. But in the case of national planning, we apparently still associate the idea with foreign "isms."

The National Resources Planning Board

The most outstanding public planning agency that the United States has so far produced was the National Resources Planning Board, created by executive order of President Roosevelt in 1934 and allowed by Congress to lapse in 1943. During the fateful years of the depression, the National Resources Planning Board gave us a start in national planning that will sometime be considered historic.

Under various guises, the board supplied the President and Congress with a wealth of research and plans. It attracted to its staff some of the most able experts, in a wide variety of fields, that have ever been brought together in one organization. The board served as the means of stimulating, financing, and continuing the planning agencies at the regional, state, county, and local levels, so that even though the board itself was abolished, its work at the lower levels carries on.

In 1940 the board was transferred into the White House organization as

part of the Executive Office of the President, who hoped that Congress would give the board a permanent statutory basis together with more adequate financing; instead, Congress abolished it. The reasons are uncertain. Institutional jealousy between Congress and the Chief Executive undoubtedly had much to do with it. In addition, some members of Congress connected the board with "brain-trusting" and the proliferation of alphabetical agencies in Washington. This latter explanation seems to have little base. But the first—the question of where planning should be located in the federal governmental organization—raises a difficult problem of long-range significance.

The National Resources Planning Board consisted of three members and two part-time advisers, appointed by the President. It had a research staff headed by a director, and a field service operating in nine regions. The board's total staff in 1940 was less than two hundred persons and its budget was in the neighborhood of a million dollars. At the outset, the board confined itself almost entirely to the physical, or resource type of planning, but later it broadened its view and included economic, social, and governmental problems as well. In other words, the board became a real national planning agency rather than one concerned merely with natural resources. This spreading emphasis was undoubtedly one reason for the disapproval of some members of Congress, since any broad consideration of matters is regarded by some people as socialistic.

Some of the outstanding studies turned out by the National Resources Planning Board include the following:

Criteria and Planning for Public Works, 1934
Economics for Planning Public Works, 1935
Regional Factors in National Planning and Development, 1935
State Planning, 1935 and 1938
Public Works Planning, 1936
Our Cities, Their Role in the National Economy, 1937
Technological Trends and National Policy, 1937
Energy Resources and National Policy, 1937
Consumer Incomes in the United States, 1938
Consumer Expenditures in the United States, 1939
The Structure of the American Economy, 1939 and 1940
Research—A National Resource, 1939 and 1940
Land Classification in the United States, 1940
Development of Resources and Stabilization of Employment, 1941

This incomplete list indicates the range of interests and the significant problems with which the National Resources Planning Board was concerned. The report on *The Structure of the American Economy* is especially outstanding.

City Planning in the United States

City planning, as mentioned earlier, is one of the oldest forms of public planning we have in the United States.[9] Moreover, as the population becomes increasingly urban (it was 77 per cent nonfarm in 1940), city planning will have a growing influence on people's lives. Can slums be abolished, transportation made fast and cheap, recreation facilities used to maintain health and vitality, and the cultural life of the city made to compare with that of the Greek city-state? Planning is one of the keys to these and many other civic betterments. City planning is concerned with the orderly, artistic, and efficient development of urban regions. Examples are the original plans for Philadelphia, Washington, D. C., and a few other American cities which looked ahead.

The city planning movement gained force during the latter part of the nineteenth century but did not become general until after 1900. At first it emphasized the physical aspects of urban development, including land, buildings, streets, recreational facilities, transport and transit lines, and other matters of that kind. In recent years, however, as in other fields of planning, city planning has emphasized the interrelationships of economics, social, political, and physical factors. In only a few cities, however—such as New York—has the planning agency been assimilated into the operating structure of the municipal government. The correlation of planning and administration is a most difficult problem.

In 1937 the National Resources Committee (as the National Resources Planning Board was then called) made a survey of city and town planning agencies. Of the 1,073 units that it found, 933 were official and the remainder were either unofficial or undesignated. In addition, there were 128 city and town planning and zoning agencies, and 506 metropolitan and county planning agencies, of which 316 were official. The number of town, city, metropolitan, and county agencies, therefore, came to a grand total of over 1,500.

By 1937 all but two states had passed enabling legislation—some of which went back forty or fifty years—for the creation of city planning boards. The distribution, therefore, was nation-wide. The heaviest concentration of planning boards was found in the following states:[10]

New York	142	Illinois	45
Massachusetts	124	Connecticut	35
California	107	Wisconsin	31
Ohio	89	Michigan	25
Pennsylvania	71	Indiana	23
New Jersey	47		

In Massachusetts the appointment of planning boards is required by law in all cities and towns having a population of 10,000 or more.

[9] For a brief survey, see George B. Galloway (ed.), *Planning for America, op. cit.*, Chapter 28.

[10] National Resources Committee, *Status of City and County Planning in the United States*, Circular X, May 15, 1937.

The personnel of these planning commissions is generally composed in part of legislative and administrative officials of the local government, ex officio, plus prominent citizens with technical qualifications who serve without compensation. The commission hires its own staff, whose members are usually affiliated with the American Society of Planning Officials.

City planning has made rapid strides in the last twenty-five years, but considering the complicated problems of most American cities, the surface of what needs to be done has hardly been scratched. A challenging opportunity is here for American college students who have the necessary technical training and the additional qualifications of diplomacy, drive, and a thorough knowledge of the social sciences.

National Planning Associations

The several associations of professional planners include the American Society of Planning Officials, with headquarters in Chicago, which has a large membership consisting of city, county, state, regional, and national planning officials; the American Institute of Planners; and the American Planning and Civic Institute. The National Planning Association, which in 1945 published *Strengthening the Congress,* includes key leaders in business, labor, and agriculture. Prominent businessmen, such as Charles E. Wilson of General Electric and Beardsley Ruml of R. H. Macy & Company, are connected with it. This group has a comprehensive program.

Several national research foundations are engaged in work that is, or leads to, planning. Among these are the National Bureau of Economic Research, the Twentieth Century Fund, the Brookings Institution, and the Russell Sage Foundation.

PUBLIC WORKS PLANNING

Public works programs, as noted above, are among the major activities of city and local governments and are accounting for a large part of the peacetime expenditure of both the federal and the state governments. People of all shades of opinion agree that these programs are indicated in the future development of the United States, just as they have played a central role in offsetting the depression since 1933.

Among the objectives of physical and public works planning that have been suggested are the conservation and efficient use of natural resources; the effective location of economic and social units—that is, the adjustment of site to function; and the maintenance of a coordinated transportation system related to the physical, economic, and social needs of the country. In addition, planners stress the maintenance of a suitable environment for natural, healthy recreation, and the preservation of the aesthetic values in the landscape.[11] These, of course, are over and above the counterdepression factor mentioned.

[11] George B. Galloway (ed.), *Planning for America, op. cit.,* p. 10.

Public works programs, if carefully planned, can be a powerful means of stabilizing the economy and helping to straighten out the depressions in the business cycle. The theory is that when private employment lags, the purchasing power of the population must be sustained or the productive capacity of the country will not be used and so will cause further unemployment. Therefore, if a comprehensive program of public works is planned in advance —including roads, bridges, grade-crossing elimination, public buildings, public housing, and other programs of that kind—then such a scheme can be put quickly into operation and will take up the slack by creating employment, which in turn creates a demand for the products of the economy. This should help to start the business cycle on its upward trend, although it is not always quite as simple as that. An additional factor is that if the public works projects are self-liquidating—that is, pay for themselves over a period of time—and are socially useful, they add to the wealth and well-being of the nation.

One reason why public works planning appeals to most businessmen is that, in addition to helping to stabilize the economy, it makes available greater areas for profitable business enterprise. Many of the projects—especially in roads and construction generally—are undertaken on a contract basis by private concerns. Business, therefore, demands that such programs shall not be planned to displace or interfere with business but to supplement and help stabilize it.

Among the major projects used for economic stabilization during the depression of the 1930's were flood control, municipal water supply improvements, hydroelectric and related multiple-use projects, soil erosion control, land reclamation, agricultural land-use and resettlement, highways, bridges, grade crossings, public building construction, public housing for low-income groups, and health, recreational, and cultural activities.

How Much Shall We Spend on Public Works?

In planning for full employment, various estimates of what governments must be prepared to spend on public works, in case unemployment becomes acute, range all the way from $5 billion to $20 billion a year. The amount depends on a variety of factors, chief of which is the estimate of how serious the extent of unemployment might become. Other considerations are the recuperative powers of private business, and the availability of funds. Most people agree that the planning of these programs should be undertaken well in advance, that all of the possibilities should be explored, and that the available projects should be studied, compared, sifted, and given priorities in advance of the emergency.

The Federal Works Agency

The Federal Works Agency was created in 1939 for the purpose of drawing together in one place the engineering and public works units of the federal government, some of which were very old. This consolidation in itself was an indication that the public works function had become a permanent one.

Among the programs absorbed were the PWA (Public Works Administration) and the WPA (Works Projects Administration), both of which became famous in the dark days of the depression. The Federal Works Agency also took in the United States Housing Authority from the Department of the Interior, the Bureau of Public Roads from the Department of Agriculture, the Public Buildings Administration from the Department of the Treasury, and several similar agencies. Since World War II, the United States Housing Authority has been withdrawn from the Federal Works Agency and combined with other federal housing programs to form the National Housing Agency, which is now an independent establishment.

The consolidation of public works programs is by no means complete, however, and it is doubtful that it ever will be, or that it is even desirable. Among the major exceptions are the Corps of Engineers of the United States Army, which has jurisdiction over river and harbor development in peacetime; and the Bureau of Reclamation in the Department of the Interior, which undertakes extensive water and irrigation development programs in the semiarid lands of the Far West. Nevertheless, the creation of the Federal Works Agency, consolidating planning and programming in this field, has put the United States in a much better position than formerly to undertake ambitious development measures in times of depression, or even in good times.

Public Works Departments in the Cities

The public works activities of the cities are already extensive and will probably be broadened. During the past twenty years, as seen in an earlier chapter, the federal government became public works banker to city and local governments. Millions of dollars that the cities once raised through local taxes now come instead from funds in the form of grants-in-aid and loans from federal public works and lending agencies. There is every indication that this federal-city bond will be drawn still closer and that municipal public works, in consequence, will be considerably augmented. This development will prove the more likely if major depressions again beset us. But irrespective of depression, the cities are far in arrears in their necessary public works—because of wartime controls on labor and materials—so that the need for current improvement is great.

In the municipalities, the public works program is usually headed by a single officer rather than by a board or a commission, as one finds typically for schools and libraries. The exception is in the field of housing, which is generally the responsibility of a virtually independent housing authority working directly with the federal government. The chief of the public works department is often an engineer, since his is the engineering department of the city government. And this department is generally the largest in terms of appropriations and personnel.

The city public works department includes the operation of the water-supply system, which is essential to all aspects of city life. Water must be adequate

and pure, else human life, industry, sanitation standards, and community living cannot be maintained. One hundred and fifty years ago, 90 per cent of the municipal water-supply systems were privately owned. Today they are over 90 per cent publicly owned. In some cases the cities must go a long distance to get their water. Los Angeles, for example, goes 300 miles into the mountains and across a desert.

The city public works department is also responsible for streets, which constitute a major expense. The laying of streets is usually done by contract by a private concern, but their maintenance, repair, and cleaning are the job of the city's own staff. This area also includes the maintenance of sidewalks and street lighting.

Another responsibility is that for the transportation facilities of the city. Some of these facilities, as in Detroit, Cleveland, Chicago, Seattle, and Boston, are municipally owned and operated. In other cities they are regulated public utilities. Chicago's subway system, built just prior to World War II, was constructed with federal assistance.

Electricity and gas systems are often publicly owned, the former being more numerous. When these systems are privately owned they are subject to regulation. Municipalities also maintain and supervise public buildings, and ports and docks. A major responsibility is the collection and disposal of waste and garbage, and the disposal of sewage. This tremendous task may be the job of either the public works department or of a separate sanitation department. The amount of garbage, rubbish, and waste collected each year in New York City, it is said, would build a tower three times the height of the Empire State Building or fill a train 3,500 miles long.

Public housing, as noted above, is only indirectly a part of a municipal public works department. The working relationships between the two agencies may be close, but the housing authority generally occupies a position apart in the municipal organization.

This does not complete the list of the duties of the municipal public works department. Cities operate and regulate public markets. Cities such as Milwaukee operate civic operas, festivals, and other activities of a cultural nature. How much a city undertakes in the public works field depends on a number of factors, two of the most prominent being the size of the city and the extent to which its inhabitants make it the center of their community life. Milwaukee, for example, has a strong civic tradition.

PUBLIC OWNERSHIP AND OPERATION

The development of broad public works programs often results in an extension of the public ownership and operation of economic services. Examples of this are the Tennessee Valley Authority, the hydroelectric projects of the Far West —such as Boulder Dam, Bonneville, or Grand Coulee—and the electrification programs sponsored by the Rural Electrification Administration. Housing is another field where public ownership and operation have recently made great

strides. Anyone who studies the history of public ownership will discover that the principal growth has taken place in times of emergency, such as war or depression.

Public ownership and operation are already widespread in the United States, though not so much as in the older countries of Europe. More than one third of the railway mileage of the world is publicly owned, but if the United States were excluded, the figure would be near one half. Great Britain is the other major exception in this field, but in 1945, when the Labor government came into power, it announced plans to nationalize the railways. Telephone and telegraph systems outside the United States are almost wholly state owned. In the electricity industry in prewar Germany, public ownership and operation were three fourths complete, and in Great Britain it was two thirds complete. In the United States, on the other hand, it is a mere 10 to 15 per cent of the total. Los Angeles is the largest city in the country where the municipal electric supply is publicly owned and operated.

Municipal ownership has been particularly widespread in other parts of the world and extends well back into an early period. City ownership of water-supply systems, street railway systems, and electric light and power services, on a world-wide basis, surpasses in magnitude private ownership in those fields, but this statement does not apply to the United States. A quick view of the existing situation in this country is set forth in the table on page 814.

Banking, as noted in an earlier chapter, is another field in which public ownership has made great strides in recent years. That the United States is no exception is apparent when the Reconstruction Finance Corporation and the many agricultural credit agencies dealt with in the preceding chapter are recalled.

Although the principal concentration of public ownership is in transportation, communication, power, municipal utilities, and banking and credit, these by no means complete the list. "There are indeed few lines of economic activity which have not been undertaken by some branch of government in some part of the world," says Stacy May in an article on "Government Ownership" in the *Encyclopedia of the Social Sciences*. He then mentions a list of the fields in which governments have operated in recent years. It begins wtih abattoirs and ends with woolen mills, and includes approximately a hundred forms of economic enterprise in bewildering array. Almost everything in modern life is listed, including some rather bizarre entries such as art wares, museums, golf courses, and bull rings.

Public ownership and operation are often regarded as an alternative to public regulation. If the prices of private monopolies are high and the service is inadequate, it is argued, the government should create a yardstick—as in the case of the Tennessee Valley Authority—and force the regulated monopolies to improve their service in accordance with the standards and prices maintained by the government in the same field. Others argue that, in the nature of the case, all monopolies and near monopolies should be owned and operated

INCOME AND EXPENSE ITEMS AND SELECTED TRANSACTIONS OF MISCELLANEOUS CITY-OWNED AND -OPERATED PUBLIC-SERVICE ENTERPRISES, BY TYPE OF ENTERPRISE: 1942

(In thousands)

City	Income and expense items									Selected transactions				
	Operating revenues			Operating expenses	Provision for depreciation	Provision for taxes	Non-operating revenue	Non-operating expenses except interest	Interest on debt	Grants from other governments	Payments into sinking funds	Direct debt redemption paid from other than sinking funds	Payments from surplus to municipal general funds	Value of plant and equipment
	Total	Revenue from sales of services	Other operating revenues											
25-city total	$6,821	$6,450	$371	$4,165	$403	$26	$58	$217	$392	$33	$322	$92	$631	$24,781
Group V (Pop. 50,000 to 100,000)	4,457	4,117	340	2,710	303	...	21	168	277	33	104	77	278	18,075
Gas systems (3)	1,590	1,561	29	902	58	...	8	17	32	...	88	...	225	2,397
Airports (3)	97	97	...	89	1	...	...	...	...	...	...	...	...	806
Transit systems (3)	1,227	1,227	...	916	87	...	2	...	20	...	...	...	48	453
Port facilities (4)	558	247	311	244	71	...	1	151	105	...	5	70	...	7,287
Steam-heating system (1)	488	488	...	384	86	...	...	...	...	...	...	...	5	580
Canal (1)	102	102	...	33	...	...	. .	...	14	...	11	7	...	2,250
Radio station (1)	54	54	...	71	...	...	...	...	...	...	...	...	...	156
Tunnel (1)	341	341	...	71	...	...	10	...	106	33	...	...	...	4,146
Group VI (Pop. 25,000 to 50,000)	2,364	2,333	31	1,455	100	26	37	49	115	...	218	15	353	6,706
Gas systems (4)	1,623	1,621	2	1,138	74	5	. .	49	11	...	2	15	276	1,649
Airports (3)	88	61	27	52	...	...	37	...	...	. .	...	...	4	1,461
Transit systems (3)	294	292	2	179	21	...	...	...	...	. .	...	...	14	162
Port facilities (1)	8	8	...	2	...	...	...	...	1	...	3	...	59	1,064
Steam-heating system (1)	54	54	...	31	5	...	...	...	...	...	...	...	...	117
Toll bridge (1)	297	297	...	53	...	21	...	...	103	...	213	...	...	2,253

Source: U. S. Bureau of the Census, *City Finances, 1942.*

by the government. Among the advocates of this idea are some conservative laissez-faire economists such as Henry Simons, author of *A Positive Program for Laissez Faire.* Still others look on public ownership and operation as a means of reducing taxes. And still others—such as the Labor party in Great Britain and the Communist party in Soviet Russia—view the public ownership and operation of essential units of the economy as the only effective means of economic stabilization and planning.

Public ownership in the United States has been sustained by the Supreme Court much more consistently than has the regulation of public utilities. It is quite possible that this difference in treatment may have a long-range effect in determining which of these two social policies will be favored in the future —regulation or ownership. The general attitude of the Supreme Court toward government ownership and operation of economic enterprises was expressed by Chief Justice Taft when he said that the state may engage in "almost any private business if the legislature thinks the state's engagement in it will help the general public and is willing to pay the cost of the plant and incur the expense of operation."

The leading cases dealing with government ownership and operation are *Jones* v. *City of Portland* (245 U. S. 217. 1917); *Green* v. *Frazier* (253 U. S. 233. 1920); *Ashwander* v. *TVA* (297 U. S. 288. 1936); and *Tennessee Electric Power Co.* v. *TVA* (306 U. S. 118. 1939). The first two of these cases relate to the powers of the states and their subdivisions, the last two to the federal authority. The earlier cases seemed to suggest that the states, because of their reserved powers, have a broader authority as business enterpriser than the federal government, but in the more recent ones the powers of Congress have been construed so liberally that today there appears to be little practical difference.

How much public ownership there will eventually be in the United States depends on a number of factors. Among them is the degree to which private ownership satisfies dominant public opinion. In the long run, the public will choose the group that is most competent and reliable, whether it be public or private. Even if particular units of private ownership are efficient, if the major part of the economic system is unreliable and wasteful, a demand for increased public ownership will spread, catching some of the more efficient private firms in the net.

Public Ownership and Public Control without Ownership

Widespread public ownership places a heavy load of administration on government. The question arises, therefore, of whether the energy of government can best be spent on public ownership and operation, or on something else. If the stabilization of the economy is a primary task of government, then can this goal best be achieved through extensive ownership and operation, or

through less emphasis on ownership and more on planning and stabilization?[12]

Government works through human agencies. There is a limit to how much it can do. *The greater the load of government, therefore, the greater is the need of decentralizing its administrative operations.* To be sure, this view is contrary to that of some political scientists who seem to think that "integration" is the first essential of public administration and that hence everything should be organized into the smallest number of units and administered as tightly as possible. The effect of such a policy is to burden government to the breaking point. It creates a strain at the center that cannot be withstood for very long. Government is like a human being—like an executive, for example. The more he takes on, the more he must delegate. He must keep a tight control on plans, but if he is wise, he does not make the mistake of trying to administer everything himself.

If this principle is applied to government, it becomes clear that government should not burden itself with operating responsibilities to the point of neglecting its policy and planning functions, which cannot be undertaken as well anywhere else and upon which the stability of the economy depends. The national government, therefore, should devolve upon subsidiaries the responsibility for extensive programs of public ownership and operation.[13] The cities should bear a major part of the load. So should the states and the regional authorities, such as the Tennessee Valley Authority or the Port of New York Authority. If the service is to be owned and operated at the national level, however, then wide use should be made of the public corporation. A corporation is a decentralized type of agency which does not clutter up and overload the central framework of the administration.

These are important considerations. Experience in other countries confirms the validity of the argument in favor of centralization of planning and control and decentralization of operation. Every major country has invented its own corporate means of bringing this decentralization about. Great Britain uses the public-utility trust; Soviet Russia, the state "trusts"; France, the mixed enterprise; the United States, Canada, Australia, and many others, the government corporation. All of these devices have in common the fact that they are corporate, and hence do not form part of the central framework of government. They are decentralized and operate under freedoms comparable to those of the private corporation.

To summarize, if government's economic functions are to expand, too high a degree of administrative integration will prove a disservice. The best formula is centralization of policy, plus decentralization of program execution. The central function of government in the economy is stabilization. This requires

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[12] For the consideration of the advantages of control without ownership, see Stuart Chase, *Government in Business* (New York, 1935).

[13] See W. F. Willoughby, "The National Government as a Holding Corporation," *Political Science Quarterly*, XXXII (1917), 507.

central planning by central authorities. Planning is already extensive, but the indications are that it will be even broader.

For complexity we must pay a price. Part of that price, apparently, is the careful calculation by the central government of how the individual contributions of the segments of society are to fit together, because if the over-all plan is limited or inadequate, individual plans will fly apart.

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PART TWELVE



GOVERNMENT AND SOCIAL WELFARE

CHAPTER 50

Welfare, Social Security, and Public Health

THE TWO PRECEDING sections discussed two of the questions that people everywhere are asking, especially those who are starting out on their life's work. The first was, "What are the chances of another war in my lifetime?" Because in it lies the answer, the matter of international relations was explored. The second was, "What are the prospects of steady work in an expanding economy?" This is the field of political economy that has just been discussed.

We come now to the third question: "What kind of social environment can I expect in which to raise a family?" This is the field of public welfare, including social security, public health, protection to the community, recreation, and education, and constitutes the subject matter of the present chapter.

THE EXPANDING CONCEPT OF PUBLIC WELFARE

In the whole range of governmental activities, none has undergone a more pronounced change in the recent past, so far as viewpoint is concerned, than that of public welfare. The shift occurred about 1933 and, like so many other innovations in government, it was due to an emergency which could not be temporized. In this case, altered assumptions regarding social welfare appeared spontaneously under the impact of distressing economic and social conditions. This is not to say that the new attitude had not long been held by many social workers, because it had. But around 1933 it became nearly universal.

Between 1920 and 1936, gainful employment decreased by 25 per cent—despite the boom period of the 1920's—while population increased by only 18 per cent. The depression merely deepened the trend. Unemployment was apparently more than a passing phase, and by 1933 it was clear that something would have to be done by government to alleviate unemployment, physical want, and the plight of children and the aged. A factor here was that the average age of the population was rising and it was predicted that by 1980 persons over sixty-five years of age would constitute one out of eight in the population.

It came to be recognized, therefore, that public welfare programs could no longer be regarded as stop gaps, as merely personal and local responsibilities, solely or even largely. They were now a permanent function. Historically, those who needed assistance from private and public sources were assumed to be weak, handicapped, or otherwise deficient. They were to be afforded a measure of aid in the name of charity. It had now to be admitted that the

economic system was more at fault than the individual. Employment opportunities were lacking and the strong and the willing suffered along with the weak. The conditions responsible for unemployment and distress were seen to be nation-wide, and it was now realized that the remedies would have to be on a corresponding scale. A brief description of these remedies will suggest the changes that have occurred in society's approach to the welfare function.

In the first place, welfare is now synonymous with the democratic ideal of security and well-being for all. Opportunity has replaced need as the principal criterion. The words in the Constitution that lay upon Congress the duty of providing for "the common defense and general welfare" have come to have a broad, human, generalized meaning instead of the more narrow application that was clearly intended to refer only to limited forms of public improvement.

In the past, public welfare has meant the care of dependents, defectives, and delinquents. Public welfare now means all of the positive programs of government designed to produce economic security, health, knowledge, and well-being. Professor E. C. Lindeman has stated the principle in these words: "There is a distinct tendency," he says, "for welfare services to come into existence in response to the needs of the least capable members of the community, and then to be extended to larger and larger groups until the duty of serving the whole public is recognized. . . ." [1]

The term "public welfare" was once ambiguous. It is still expansible, but in content it has become increasingly clearly defined as areas of state activity and administration have taken form. Thus public welfare now includes social insurance, public education, public health, crime and its prevention, and child welfare, as well as several fields that have not as yet been so clearly developed. It is for this reason that most of these subjects are grouped together in the present section relating to the welfare function of the nation-state.

Public welfare activities have increasingly emphasized insurance, which is a right, rather than a dole, which suggests pauperism and inferiority. Social security has largely supplanted the relief of poverty through charity, which historically was viewed as the core of welfare programs. To what extent this is true will be learned from a study of the operation of the Social Security Board program, launched in 1935.

Modern welfare programs, largely of a preventive or insurance nature, now absorb a large share of the annual national income. We may expect the social security program alone to require from 5 to 10 per cent of our total national income. In this connection, it is interesting to note the replies that a number of economists made to a question contained in a national poll relating to "The Function of Government in the Postwar American Economy." The question was, "Assuming a national income of 150 billion dollars per annum, what maximum amount would you regard as an appropriate expenditure (i.e., disbursements to beneficiaries) for social security?" According to the findings,

[1] "Public Welfare," *Encyclopedia of the Social Sciences*, VI, 687–689.

"The maximum expenditure on social security ranged from 1 to 29 billion dollars, with a majority indicating a range from 5 to 9 billion and the median around 9 billion." [2] If present proposals are carried out, however, the annual outlay may be even higher than the median indicated here.

And finally, since 1933 the federal government has played a leading role in welfare administration, whereas at first it was considered a matter of private charity and then as primarily a local and state obligation. Private and local governmental agencies will continue to serve an important function in the field of public welfare, but the federal government may be expected increasingly to assume the major responsibility.

PRINCIPAL STAGES IN THE DEVELOPMENT OF SOCIAL-SERVICE PROGRAMS

Public welfare activities began to take primitive form in the period of transition from feudalism to capitalism. In the medieval period the care of the needy was the joint responsibility of the family, the guilds, and the church. Our ideas of relief and charities came from the old English poor law statutes, which have been dealt with in great detail by Sidney and Beatrice Webb.[3]

The first important welfare laws were passed by the English Parliament in 1572, when provision was made for the collection of taxes by the parishes for the care of the poor. In 1601 this legislation was extended, and poor law administration became a governmental responsibility. Under the new law workhouses were established, boys and girls whose parents could not support them were bound out, able adults were forced to choose between work and jail.

With the growth of industrialization, the need for social services grew rapidly, but legislation and administration lagged behind. Distress was still considered more a personal than a social problem. It was not until the nineteenth century that industrial countries such as England, Germany, and the United States began to expand their social-service laws and facilities.

The United States inherited from Britain the poor law approach and strong evidences of it remain today, especially in the New England states. Responsibility for the care of the needy was almost entirely local, and the "town's poor" became a common expression. Those who were hard up were given a work test to determine their qualifications for employment or charity. Poor farms were created where the indigent and handicapped were supported at public expense. A distinction, still used today, was made between indoor relief, which included public assistance in a public poorhouse or similar institution, and outdoor relief, which consisted of food, clothing, and funds supplied to the individual in his own abode.

If the handling of the poor and needy were kept a local responsibility, it was

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[2] "Function of Government in Postwar Economy," *American Economic Review*, XXXV (May, 1945), p. 440.

[3] See their books, *English Poor Law Policy* (London, 1910), and *English Poor Law History, English Local Government*, VII–IX (London, 1927–1929).

argued, there would be far less danger of sponging and malingering. To become a "charge on the town" carried a social stigma that was hard to live down. The purely local approach to relief, however, did not square with the growing need resulting from industrialism. When people lived on the land they could survive somehow. But when they lived in cities they had to be fed in times of depression, flood, or other castatrophe, or they would perish. Furthermore, congested populations created health, sanitation, and moral problems in aggravated form.

In the United States, Massachusetts was the first state to establish a state board of charities in 1863. Kansas City, Missouri, created the first board of public welfare in 1910, another milestone. But in general, social services remained rudimentary, and the essentially local basis of relief work was not seriously challenged. The states merely supervised local activities, operated state correctional institutions, and helped the communities with their financing. The federal government continued to hold aloof from the whole field of social service and public welfare except for the work of the United States Public Health Service.

By 1900 the states were beginning to increase their welfare facilities more rapidly. Specialized institutions for the insane, feeble-minded, blind, deaf-mutes, and epileptics became necessary. The social importance of prison administration, parole, juvenile delinquency, and child welfare was recognized. By 1931, New York alone was spending $20 million a year for those suffering from the effects of the depression, and a Temporary Emergency Relief Administration was created in the state executive branch to work with local agencies in both home and work relief.

During this early period a social work profession was growing up. Special schools were organized as separate institutions or were set up in some of our leading universities in order to train experts in the various fields of welfare work, including child care, medical social service, and outdoor relief. The private welfare agencies and charitable institutions that have always existed were mainly responsible for this development, but it was also a result of the growing demand for civil servants with social work training for posts in local, county, and state departments of welfare. The approach was that of case work, involving individualized treatment of the needy and the handicapped. Broad attention to the social and economic causes of dependency and the enactment of comprehensive measures such as social insurance were to come considerably later.[4]

Organization of State Welfare Departments

The public welfare field has long been deficient in central organization and administration, which is by no means adequate even today. State governments, as observed in an earlier chapter, have been notoriously loose in their organ-

[4] See John O'Grady, *An Introduction to Social Work* (New York, 1928).

izational functioning. In general, for every new responsibility, a new agency was created. Even today few state governments have pulled together all of their welfare activities into a single department of public welfare. And yet the number of programs falling into this category is now large. In the field of law enforcement are city and county jails, state prisons, reform schools, houses of correction or special workhouses, and reformatories for women and sometimes for men. A larger number of institutionalized people are found in hospitals for the mentally diseased than are in institutions for any other medical cause. There are tuberculosis sanitariums and city, county, and state hospitals of many kinds. Another group of welfare institutions consists of workhouses, poor farms, and homes for children, the aged, and the infirm. When to these programs is added the care of the unemployed, it is evident that the list of social agencies expands far beyond the comprehension of most people.

Only about a quarter of the states have created a state welfare department with one person at its head. In the remainder, state welfare administration is by separate boards and commissions, which is the traditional form of state government. Four general types of state welfare organization may be distinguished.

The newest and probably the best form consists of a single department with a single head. Indiana set a good example of this early in the 1930's, but relatively few states have followed it.

The most common method of administration is by a state board of control for all welfare agencies, including prisons, reformatories, and so on. Whether or not the members of the board are paid a salary varies with the states, but the superintendent of public welfare is often a professional. Appointments to the board are made by the governor. The powers of such boards vary considerably: they may have jurisdiction over welfare institutions but not over penal institutions; they may or may not appoint the heads of the local institutions; in general they at least act as a control or supervisory and inspection unit for all agencies coming under their jurisdiction.

A few states in the Middle West use the commission type of administration similar to the commission plan of municipal government. The members of the commission, who are paid, meet together on policy matters, but each administers a separate institution within the combined jurisdiction.

Under the oldest type of state welfare, administration is by means of a separate board for each institution without any attempt at integration. In a small state this may be a satisfactory method, but in the larger states it usually proves expensive, leads to conflicting policies, and discourages over-all planning.[5]

[5] H. W. Odum and D. W. Willard, *Systems of Public Welfare* (Chapel Hill, N. C., 1925).

The Federal Government Becomes Active

Although the states had become increasingly effective in their welfare programs since the beginning of the twentieth century, they were not prepared to handle an emergency as serious as that caused by the depression starting in 1929. It was not long, therefore, before the balance of responsibility in the public welfare field was shifted in the direction of the federal government. This change was attended by the altered attitude toward public welfare administration noted above and which constituted one of the sharpest reversals of governmental policy the United States has ever seen.

President Hoover, in office when the depression began, held the conventional view that relief was either a private matter or primarily the responsibility of state and local governments; hence he was opposed to federal intervention in the relief field. But members of Congress—as a result of pressure from home—pointed to the national scope of the unemployment problem caused by the temporary collapse of the economic system. Under these circumstances, they argued, only a federal program with vast powers and large financing could hope to be effective. Congress in 1932 created the Reconstruction Finance Corporation and authorized it to make loans for relief purposes. This was a start, but the major part of the work was left for the incoming administration in 1933.

Many of the programs created in 1933 and later have already been dealt with in previous chapters. In the area of agriculture, for example, the Resettlement Administration and the Farm Security Administration were discussed. These were outright welfare activities aimed at helping the underprivileged. Practically all of the National Farm Program falls within the broad category of public welfare—soil erosion control, farm electrification, and the various attempts—through the AAA and other agencies—to keep people on the farm by making farming a more profitable way of life.

Business also was aided by a host of agencies dealt with in an earlier chapter, chief among them being the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission. Labor got the United States Employment Service in addition to the various public works and social security programs to be taken up in this chapter.

NEW DEAL RELIEF AND WORK-RELIEF PROGRAMS

The direct attack on unemployment and relief of the needy proceeded along two lines.[6] First, employment was provided through made work as a substitute for the dole. Second, the social security program, consisting of unemployment insurance, old-age and survivors insurance, and public assistance, was set up in 1935. In the relief and work-relief field, the principal agencies were PWA, FERA and CWA, the CCC, the NYA, and WPA.

[6] See Arthur W. Macmahon, John D. Millett, and Gladys Ogden, *The Administration of Federal Work Relief* (Chicago, 1941).

PWA. The public works program under the Public Works Administration was generally popular, although it was slow to get started because its emphasis on heavy construction required extensive preparatory work. PWA was administered under the direction of the Secretary of the Interior. Created along with the NRA in 1933, PWA was started off with an appropriation of $3 billion; its projects were to be self-liquidating so far as possible. A large part of the money went to the state and local governments whose responsibility it was to offer projects, and to supervise the work as carried out by private contracting firms. Outright grants to the states and localities could be made up to 30 per cent of the cost of a project, with the balance of 70 per cent taking the form of a loan. Each project proposed by a local sponsor had to be approved in Washington, and the local PWA offices were ultimately responsible for what was accomplished. Housing was emphasized, as were many other useful types of work such as highways, hydroelectric developments and other utilities, public buildings, and the like.

In 1939, PWA became a part of the newly created Federal Works Agency. As defense and later war work absorbed the labor supply, the PWA program was reduced and by 1943 the agency had been largely liquidated.

FERA and CWA. When PWA was created in the spring of 1933, it was recognized that the effects of a major public works program could not be felt at once. With from 8 to 15 million persons unemployed, some other means of relief had to be offered. Consequently, the Federal Emergency Relief Administration was created by Congress, modeled after the Temporary Emergency Relief Administration of New York state. The FERA, as it was called, provided direct relief in cash payments where the need was great, and also attempted to develop made-work projects where possible on the theory that any kind of employment was preferable to a dole. It was largely a federal-aid program with administration at the state level under the direction of state authorities, accompanied by a large measure of control from Washington. A matching of federal with state funds—or at least some contribution from the states—was required where feasible, but often the emergency was so great that this rule could not be adhered to. The initial grant to the FERA was a sum of $300 million left over from an RFC appropriation for relief purposes, but that did not last very long.

With a hard winter for the unemployed anticipated in 1933–1934 and the PWA program still not in full swing, a need for additional relief was seen. Because work relief always seemed better than a handout, the President created the Civil Works Administration program, which was set up in record time on an emergency basis. Placed under the general direction of the FERA in Washington, it differed from the FERA in that it was wholly a federal program, administered at the state level by federal officials, who were often state relief officials as well. No matching of funds was required, and work was offered to all who applied for it irrespective of whether or not they were eligible for relief. The projects consisted of any job that could provide employ-

ment quickly to large numbers of people. The CWA program reached a sharp peak in the middle of the winter of 1934 and fell quickly in the early spring. By the first of May it was almost entirely liquidated, and FERA resumed the major part of the relief and work-relief burden.

CCC. The Civilian Conservation Corps was created by executive order of the President in April of 1933. Wholly a federal program, it was designed to provide employment for young men between the ages of eighteen and twenty-five, and emphasized the conservation and restoration of natural resources. The boys lived in camps operated by the Army, and worked for various other government agencies such as the Forest Service, the Soil Conservation Service, the Bureau of Reclamation, the Biological Survey, and so on. The CCC was probably the most popular relief measure ever created by the New Deal.

In 1937 Congress gave the CCC a statutory basis and in 1939 it was transferred to the Federal Security Agency. In 1942, however, it was disbanded when the need for its opportunities disappeared following the onset of World War II. The CCC accomplished a great deal of useful work on forests, public lands, state and national parks, erosion control projects, and other outdoor jobs. It supplemented the public works program in rural areas, and the type of life it offered was beneficial from the standpoint of the health of those taking part in it.

NYA. The National Youth Administration was also concerned with the plight of young men and women who could not find work. A national agency created by executive order in 1935, it was independent of but administratively connected with the newly established Works Progress Administration, successor to FERA. Like WPA also, the NYA was a federal program operated in cooperation with state and local authorities. The purpose was to provide part-time employment assistance for youths attending school and for those between sixteen and twenty-four whose families were on relief. The NYA also included an apprenticeship training program and a youth placement program, together with training in constructive leisure-time activities.

In 1939 the NYA was transferred to the Federal Security Agency; with the advent of World War II, it was allowed to lapse, at which time its apprenticeship training section was absorbed by the War Manpower Commission. Although during the depression days it had been regarded with a natural concern by organized labor because of its competitive potentialities in a market already glutted with skilled workers, this part of the work of the NYA probably had the greatest long-run significance and was especially valuable when the war suddenly accelerated the demand for skilled workers.

WPA. Following the liquidation of the CWA program in March of 1934, members of the staff of the FERA undertook a study of the best means of providing work rather than direct relief to the unemployed, on the assumption that direct relief was a national hazard from the standpoint of the morale and self-respect of workers. The depression had not been checked to any marked degree, and it became clear that expensive public works projects under

PWA could neither provide directly nor stimulate all of the employment needed. In the spring of 1935, therefore, after several months of planning, a comprehensive works program was launched by Congress under the Emergency Relief Appropriation Act and provided with an initial sum of $4 billion. The FERA as such was replaced by the Works Progress Administration, consisting largely of the same administrative personnel. Although WPA was not designed to become the major work-providing agency under this new program, it soon became clear that such would be the case because of its facility in creating inexpensive work projects in which a major part of the funds could be spent on wages rather than on costly materials.

Many other federal agencies were involved in the work program both in the sponsoring of particular projects and in over-all administration. Among the administrative controls were the Bureau of the Budget, the General Accounting Office, divisions of the Treasury Department, and the United States Employment Service. General supervision, however, was exercised by WPA so far as wages, hours, costs, and types of work were concerned.

By 1936, some 4 million persons were employed on the works program, the majority by WPA. The underlying purpose was to provide work for the needy on useful projects at a so-called security wage. The variety of projects was great. They were largely of a light public works character, or non-public works projects such as sewing, white-collar programs, and the like. Additional sums were provided by Congress each year, and the final total amounted to many billions of dollars.

Administratively, WPA differed from FERA in that it was a federal rather than a grant-in-aid program, although the states and cities managed to contribute substantial sums. Wages were paid direct by the national government and the program in the states was administered by federal officials. In other words, the federal government was now squarely established in the work-relief business. The Washington headquarters approved work projects, set wage scales, and regulated hours. Local governments contributed what funds they could and as much of the necessary equipment, supervision, and materials as possible.

Under the federal reorganization program of 1939, the Works Progress Administration became the Works Projects Administration and was transferred to the new Federal Works Agency. By this time defense employment was reducing the number of those needing work relief, and WPA appropriations were sharply curtailed. In 1943 the agency went out of existence.

WPA was a program fraught with a good deal of controversy. A new word, "boondoggling," was used to describe the characteristics of useless projects. Nevertheless, by trial and error, and with dismal failures as well as many striking successes, America learned much about unemployment, relief and work relief, and public welfare administration. In the ten-year period from 1929 to 1939, the federal government transformed itself from onlooker in public welfare to dominant participant. Although the experience was valuable,

it is to be hoped that we shall never have to repeat it. One factor that may protect us from such a repetition is the social security program launched during this period as a permanent and expanding welfare agency.

THE SOCIAL SECURITY BOARD AND THE FEDERAL SECURITY AGENCY

The Social Security Act, one of the measures sponsored by the United States Department of Labor, was passed by Congress in 1935 after several months of intensive study by a commission of experts. It provided for a board of three members appointed by the President with the consent of the Senate. John Winant, later Ambassador to Great Britain and then American delegate to the Economic and Social Council of the United Nations, became the first chairman of the board and was later succeeded by Arthur Altmeyer, former Second Assistant Secretary of Labor. The Social Security Board administers three main operating programs: the Bureau of Old-Age and Survivors Insurance, the Bureau of Employment Security (unemployment compensation, which at one time also included the United States Employment Service), and the Bureau of Public Assistance. In addition, it administers other types of aid to social dependents, and certifies federal grants-in-aid to the several states for these purposes. The board has a large appropriation and a large staff, and carries on its work through regional and state offices.

In 1939 the Federal Security Agency was created, and the Social Security Board became the senior partner in the new firm. For many years the social workers of the country had been in favor of a federal public welfare department, but in 1932 it seemed a long way off. With the deepening of the depression, however, and the rapid expansion of national social-service programs, a semidepartment of public welfare quickly became a reality. Although the Federal Security Agency is not an officially designated department of the federal government with cabinet status, to all practical intents and purposes it fulfills that function. It occupies a semidepartmental rank along with the Federal Works Agency and the Federal Loan Agency. The administrators of these three organizations frequently attend the President's cabinet meetings and have large policy and executive duties.

What does the Federal Security Agency include? The first agencies drawn into it were the Civilian Conservation Corps, the National Youth Administration, the Office of Education from the Department of the Interior, the Public Health Service from the Treasury Department, the Social Security Board, and the United States Employment Service.[7] Subsequent reorganization plans added sections of other programs, plus the Food and Drug Administration from the Department of Agriculture.[8]

[7] The USES has since been transferred back to the Department of Labor.

[8] On May 16, 1946, President Truman, taking advantage of powers to reorganize the national administration, announced that portions of the Bureau of the Census, formerly in the Department of Commerce, and of the Children's Bureau, formerly in the Department of Labor, would be transferred to the Federal Security Agency, subject to a sixty-day approval period by

The present (1946) main operating programs of the Federal Security Agency, after consolidation, are the Social Security Board, the United States Public Health Service, the Office of Education, the Food and Drug Administration, and the Office of Vocational Rehabilitation. In addition, the administration of several federal institutions has been taken over by the FSA, including Howard University, Freedmen's Hospital, Saint Elizabeths Hospital for the insane, and Columbia Institution for the Deaf, most of which were formerly in the Department of the Interior.

In combining elements as diverse as education, health, and social service, the new public welfare department reflects the modern idea of welfare as the concern of the community for democratic well-being.

Extension of the Insurance Principle by Modern Governments

The Social Security Act of 1935, said President Roosevelt, was "the most useful and fundamental single piece of federal legislation ever enacted in the interest of the American wage-earner." This evaluation is in line with a world-wide tendency to recognize the importance of social insurance as constituting a right to which people are entitled. Many other countries have been considerably in advance of us in this field. During World War II, for example, the Beveridge Plan received widespread attention in Great Britain—for which it was designed—as well as in the United States. If this plan were put into effect, social insurance would become the principal element in the over-all economy of Great Britain. Germany had a highly developed social insurance system in operation prior to World War II. Probably the most extensive plan, however, is found in Soviet Russia. Indeed, there is scarcely a prominent country in the world today that has not made social insurance a primary function of government.

The theory of social insurance holds that if everybody contributes a little, a large fund will accumulate from which benefits may be paid out as needed. From this source, individuals may be supported after retirement, the unemployed may be taken care of in times of depression, and those who suffer accidents or other disablements may be provided with an assured income during the time they are laid up.

Insurance involves spreading the risk. It is not a substitute for a wage or a salary, but it does remove the specter of a sudden cessation of income. Moreover, insurance is a legal right and hence obliterates the old poor law tradition, which casts a stigma on those who need help. But where does the money come from? Most public insurance systems are contributory—that is, the employer agrees to deduct from the pay roll a certain percentage of the employee's remuneration. To this the employer or the government or both contribute a

Congress. He also abolished the three-member Social Security Board as such, stating that "a full-time board in charge of a group of bureaus within an agency is at best an anomaly." The President further announced that he would ask Congress to make the Federal Security Agency a regular department of the federal government, headed by a secretary of the Cabinet.

stated amount. These levies accumulate into a fund in the public treasury. Rather than being left there untouched, however, the money is put to work—loaned, spent, or otherwise used. *In the final analysis, therefore, social insurance benefits, like most government programs, are paid for out of the annual national income of the country.*

This is an important point to remember. Many people seem to think that insurance is like Santa Claus—it comes out of thin air. It is none of these things. The ability of any country to pay insurance benefits depends on the total annual national income. Insurance is merely a way of collecting and spreading the funds. Moreover, if collections are extended too far—and authorities disagree on where this point occurs—they become so heavy a charge on private enterprise that the government might as well operate the economy itself, as in the case of Soviet Russia. Under that arrangement there is no distinction, except for bookkeeping purposes, between production, distribution, public assistance, and social insurance.

Old-Age and Survivors Insurance under the Social Security Board

The present tendency for the average age of the American population to increase has already been noted. The effect of the depression on old people was direct and catastrophic. Many saw their life's savings wiped out and thereafter had to live with relatives or become wards of the state.

Many relief plans for the aged sprang up. One of the most famous of all, the Townsend Plan, provided for a payment of $200 a month to all persons over 60 if they would stop work and spend their pensions as they received them. The backing that this scheme received from the older people of the country became a force to reckon with. They elected candidates, drafted legislation, and sometimes succeeded in getting it enacted. The old-age provisions of the Social Security Act of 1935 were extremely conservative compared with what many groups, such as the Townsendites, advocated.

The states had made a beginning in the field of old-age insurance. Montana, in 1923, was the first to enact this type of legislation, and by 1935, twenty-nine states had old-age provisions of one kind or another on their statute books. Generally speaking, however, these provisions were neither liberal nor effective, and the need for a national program became evident.

The two parts to this national old-age program should be kept distinctly in mind: the *assistance* part, a joint federal-state activity under the direction of the Bureau of Public Assistance; and the *insurance* part, which is a wholly federal program operated by the Bureau of Old-Age and Survivors Insurance.

Under the old-age assistance program, the federal government contributes funds, which are matched by the states, to aid the latter in this work. All beneficiaries must be over 65, without savings or income, and unable to rely on their children. The federal allowance per person may not exceed $20 a month. The system is noncontributory so far as the beneficiary is concerned. The states make their own administrative arrangements at that level. Some

2 million people were on this program in 1943, and almost $617 million had been spent on it in 1942.

The insurance program for the aged worked on a different basis. It is wholly administered by the federal government. Both employers and employees contribute, each in the amount of 1 per cent of the pay roll. These payments constitute a deferred wage, a compulsory savings plan, a means of paying during one's working years for the annuity received at retirement. Pensions are payable at the age of 65 on a graduated basis depending on length of service, amount of earnings, and so on, but no payment may exceed $85 a month. Each person has a separate account, and the federal government makes no contribution to it. The Bureau of Old-Age and Survivors Insurance collects the money, keeps the books, and pays out the benefits.

The original Social Security Act provided that the percentage to be deducted from pay rolls should be stepped up to 3 per cent by 1939, but Congress has thrice frozen the deduction at 1 per cent. There is still, and apparently will continue to be, a good deal of pressure to liberalize the payments under this program.

In 1939 Congress passed amendments to the old-age program, the principal one providing that monthly benefits be paid to the dependents and survivors of insured workers who died before 65. Another important change made the first benefits payable in 1940 instead of 1942, as originally provided. Moreover, the coverage was extended to some groups originally excluded from both the unemployment and the old-age provisions of the 1935 basic act.

Generally speaking, the classes of workers not covered by the old-age and survivor's program include agricultural workers, domestic employees, government employees, maritime workers, employees engaged by common carriers in interstate commerce (railways, buses, and so on), casual or migratory workers, and the employees of religious, charitable, educational, scientific, and literary institutions. In all, those not covered are estimated to include from 15 to 20 million persons.

The Unemployment Insurance Program

In contrast to the insurance portion of the old-age and survivor's program, the unemployment insurance plan is essentially state-administered under federal supervision.

In the field of unemployment insurance, the states had been slow to act. When the social security legislation was passed by Congress in 1935, for example, only Wisconsin had any such law in effect. But by 1940 the system was universal and included Alaska, Hawaii, and the District of Columbia as well.

Under the unemployment insurance program, a levy is made on all employers of more than 8 persons. Employees do not contribute. The original rate of 1 per cent on the annual pay roll had risen to 3 per cent by 1938. This pay-roll levy is collected by the federal government. Of the total collection, 10 per cent is held out for state administration and is paid to the states on the

basis of annual plans and estimates that must be approved in the central office in Washington; thus Washington has a good deal of control over the program.

Workers who become involuntarily unemployed receive benefits from the local office of the state unemployment compensation agency, which at this time must determine whether the individual has really exhausted the possibilities of securing employment. Within these limits, each state is free to determine how extensive the benefits shall be and the methods of organization used in executing the program. Actually, however, there is a high degree of uniformity on all essential points of administration.

Some question has arisen over the desirability of state responsibility for administration in the field of unemployment insurance. One argument in favor of a change to an outright federal program, for example, is the high degree of mobility among American workers—a mobility particularly marked in recent years because of the depression and wartime programs.

By 1943, more than 50 million workers were covered by unemployment insurance provisions. In a six-year period, $2 billion had been paid out in benefits. In a majority of states, the maximum permissible benefit payment is $15 a week, with a limit of fourteen to sixteen weeks. In June of 1940, almost 1,250,000 persons received benefits totaling $53,600,000. But by June of 1943, because of the effect of the war, the number had dropped to 100,000 a week and total payments amounted to only $6 million.

Public Assistance, Rehabilitation, and Other Social Security Programs

Although other interesting forms of welfare administration come under the jurisdiction of the Social Security Board, only a few will be mentioned here. The vocational rehabilitation program, inaugurated by the Vocational Rehabilitation Act of 1920 and later extended, has been placed on a permanent footing. This change takes on new importance as a result of the derangements caused by World War II.

Assistance to children has been greatly extended. Federal aid is provided for the care of dependent children under 16 and for those up to 18 if they remain in school. Expenditures for the year 1943 amounted to $150 million and affected some 750,000 dependent children. There are also child-welfare and medical programs that seem to overlap but which are coordinated with those of the Children's Bureau in the Department of Labor.

Federal aid to assist the blind has also become extensive, amounting to almost $25 million in 1943. In addition, wide areas of social service in the fields of health and education are a part of the Federal Security Agency and will be discussed later.

The Veterans Administration and the G.I. Bill of Rights

The Veterans Administration as it is today was created in 1930 by the consolidation of several formerly separate agencies, and since World War II has

become one of the largest and most important federal agencies. In addition to compensation, its functions include pensions, vocational rehabilitation and education, the guarantee of loans for the purchase or construction of homes, farms, and business property, readjustment allowances for veterans who are unemployed, government life insurance, death benefits, adjusted compensation, emergency and other officers' retirement pay, and physical examinations, hospital and outpatient treatment. A Board of Veterans Appeals in Washington hears and decides all disputed claims cases. Regional, area, branch, and contact offices are located in all of the states and in three of our insular possessions.

The return of millions of men and women from World War II created special welfare problems that the country wisely anticipated before the cessation of hostilities. The Servicemen's Readjustment Act—the so-called G.I. Bill of Rights—was passed by Congress in 1944, and has since been expanded. Its provisions parallel many of the programs operated by the Federal Security Agency, but actually most of the administrative responsibility is with the Veterans Administration.

Among the specific provisions of the 1944 legislation are insurance against unemployment up to a total of 52 weeks; federally guaranteed loans up to $2,000 for particular purposes; provision for university and other specialized education; and hospitalization and medical care. Broad as they are, these provisions will doubtless be extended even further.

The Future of Federal Welfare Activities

Everything points to the extension of federal welfare activities. What direction will they take? It seems clear that the coverage and benefits of social security will be broadened. In 1943, for example, President Roosevelt recommended to Congress "a liberal expansion of unemployment compensation in a uniform national system." In 1945, President Truman asked Congress to increase the amount of the benefits and to extend the duration of the payments and the coverage of the program. But Congress was not quick to agree. Such extensions, however, may be an essential part of any future plan.

President Roosevelt also recommended an increased coverage in old-age and survivor's insurance and added provisions relative to temporary or permanent disability, hospitalization, and the like. With from 15 to 20 million persons not subject to social security benefits, it seems safe to assume that these programs will be amended to cover additional classes.

Legislation introduced in Congress in 1943 (the Wagner-Murray-Dingell Bill) would extend public benefits "from the cradle to the grave." So broad a program seems to have been influenced by a section on "Security, Work, and Relief Policies" in the *National Resources Development Report for 1943*.[9] The bill referred to proposes to set up a unified federal unemployment insurance

[9] Published by the National Resources Planning Board.

program together with a comprehensive program of medical care that will include disability and sickness insurance.

Public welfare legislation and administration is an active field whose programs have expanded so rapidly in recent years that the number of broadly trained administrators is nowhere near sufficient to meet the need. Thus public welfare administration is an attractive opportunity for college graduates. Many Americans who react violently to the idea of governmental interference with business and economic matters hold a favorable view of governmental responsibility for welfare and social-service activities. In this climate of opinion, we may expect a broadening of the welfare state.

PUBLIC HEALTH PROGRAMS

Health, like education, is closely related to the prevention of dependency, because if we as a people were more healthy, we could pay less attention to social service. Similarly, if people were better educated they would be more able to take care of themselves. It is not by accident, therefore, that all of these programs at the federal level are linked together in the Federal Security Agency.

The United States Public Health Service is one of our oldest federal agencies, but its field was limited until recent times. Like social service generally, therefore, public health programs as such have been the traditional responsibility of state and local governments rather than of the federal government. And like many others, this relationship is in the process of change, with federal responsibility increasing.

Historically, the emphasis of government in the field of health has been on prevention rather than on cure. After Pasteur and others discovered that disease is carried by germs and that cleanliness stops their spread, governmental agencies immediately acquired an inescapable responsibility in this area. The supply of water and milk, the cleanliness of eating establishments, street cleaning and refuse disposal, and compulsory vaccination laws are all areas that governments now control. In the last third of the nineteenth century, therefore—when Pasteur and others made their discoveries—public health programs received an enormous impetus. The American Public Health Association was created in 1872. The heads of school systems were quick to realize that public health would grow rapidly in importance, and hence primary and secondary schools as well as colleges and medical schools began to give increasing attention to hygiene and, in the higher institutions, to the training of future public health personnel.

Local Health Administration

To the large cities falls the heaviest burden of preventive medicine and of providing for the poor and needy in matters of health. Concentrations of population always increase these problems, and as a result, medical social service, public health nursing, and municipal hospitals have all grown enormously

in recent years. Eminent doctors sometimes head these programs, which operate under large appropriations and have extensive jurisdictions. Although a great deal is done, there is more to do.

The counties also play a part in public health activities, although their programs are neither uniform nor extensive. About 500 of our 3,050 counties have set up full-time health units, including county nursing services. In other sections of the country, the township is the important governmental unit for health purposes—one of the few justifications for its continued existence as a separate unit of local government. Lay boards are the rule, full-time medical officers the exception.

Rural America, by and large, receives little in the way of public health service, being almost wholly dependent on private practitioners. The apparent assumption that our rural areas are virtually free from serious illness or contagious disease was strikingly disproved by the health records of the Selective Service during Warld War II, which revealed that one of the biggest health problems, including venereal diseases, lies in the rural sections.

State Health Programs

Massachusetts created a public health department in 1869. Other states were somewhat slow to follow, but all have now passed health laws and set up enforcement agencies. Their scope and expenditures, however, differ greatly. New York spends over $3 million annually, but the average for all states is only a quarter of a million, which means that several do little or nothing in the field of public health.

In the larger states the divisions of the state health department are concerned typically with vital statistics, sanitation, public health education, the control and treatment of communicable or preventable disease, maternal and child health, public health nursing, and laboratories and general administration—six or eight major divisions in all.

The states, like the federal government, do not generally have specific health provisions in their constitutions, but there is no question as to their authority to act under their police powers. All of the states have adopted health codes in varying degrees of completeness and enforceability. These, in turn, are supplemented by detailed regulations issued by the state boards or departments of health.

As might be expected in the state governments, the administrative organization of health departments is of two types. The older is the board of health, with administrative power and the authority to choose its own paid personnel. The newer type is the department under a single head, with an advisory board meeting for consultative purposes. In either case, board members are usually appointed by the governor, they are unpaid, and consist chiefly of medical doctors, pharmacists, chemists, engineers, and others similarly qualified. As a rule, the advisory board does not play a very active or prominent role.

The United States Public Health Service

The principal health agency of the federal government is the United States Public Health Service, which has had a long and colorful history. The service is becoming increasingly aggressive in calling attention to medical and hospital problems that require community action, and it is now the recognized leader in the public health field. State, county, city, and local health units look up to it for leadership and inspiration.

The Public Health Service, however, is not alone in the federal field. The Army and Navy have their own medical programs which in wartime become exceedingly large. The Veterans Administration also conducts an ambitious medical program. The Children's Bureau, as noted above, pays special attention to the medical care of mothers and infants. The total medical activities of the federal government are impressive.

The Public Health Service traces its origin to 1798, which makes it one of the oldest federal agencies. The agency was originally called the Marine Hospital Service, its activities being almost entirely for the benefit of seafarers. In fact, this still constitutes a large area of its operations. In 1878 the service was given the quarantine work of all ships entering American harbors; in 1902 it acquired broad public health functions; and finally, in 1912, its name was changed to the United States Public Health Service.

The Public Health Service is headed by the Surgeon General, who in wartime holds the rank of admiral. Its over-all purpose is "the protection and improvement of the public health." Specifically, its functions include research in the cause, prevention, and control of disease; control of biologic products; cooperation with state and other health agencies; prevention of the introduction of disease from abroad and the spread of disease in the United States; medical care for those entitled to it by law; and the dissemination of health information.

The Public Health Service furnishes hospital and outpatient facilities in 150 ports of the United States and its possessions. It operates 26 marine hospitals and 120 other relief stations, and affords facilities in 133 private hospitals under a contract system. In accordance with the Social Security Act of 1935, the service carries on research and assists state and local governments in the public health field. In 1940, it spent $2 million on research and turned over $11 million to the states for this purpose. In 1943, in cooperation with the states, it spent $12,500,000 on the control of venereal disease. This summary suggests the scope and magnitude of the Public Health Service programs. The officials of the service are highly respected in the medical profession, and it should be increasingly active and important in the future.

One of the sharpest issues of recent years in the field of health has centered around the term "socialized medicine," a question about which we may expect to hear a good deal more in coming years. Hospital care, it is said, is denied a large portion of the population. Those in the lowest income brackets may be

taken care of on a charity basis, and those in the higher brackets need no help. It is the large lower middle class that finds medical care so expensive as to constitute an economic burden. A serious illness may wreck the family finances for a long time. Furthermore, there are not enough doctors, not enough general practitioners, not enough clinics, not enough health information being disseminated.

In reply it is held that medicine, like social service, is best individualized. The relationship between doctor and patient is an intimate one, and people should be free to choose the doctor they please. The best doctors would become discontented with their profession, it is said, if their activities were "regimented" under a compulsory system of state medicine.

Between these two arguments is a middle course that has been making rapid progress in the past decade. This is the field of group health, operated on the insurance principle. According to this plan, groups of employees, either public or private, band themselves together, hire a number of doctors, and establish a clinic. Participants in the project pay an annual sum for medical and hospital care, and are then free to choose the services of any staff doctor they desire and to secure outside specialists if needed.

These are the general outlines of the controversy as it stands today. What the future development will be no one can say. What is needed, obviously, is a dispassionate approach to the problem in which both the common needs of society and the individual preferences of the medical fraternity are given every possible consideration. If legislation authorizing the so-called socialized medicine should ever be enacted, it would be administered primarily on a federal-aid basis, and the central agency in planning, allotment, and control, it need hardly be added, would be the United States Public Health Service.

Much has been accomplished in the public health field: longevity has been progressively extended; one disease after another has been brought under control; infant mortality, which was once high, has been steadily checked until now it is low even among charity cases taken by city and county hospitals. It is our private practitioners and public health officials working together who are responsible for this good record. Public programs have emphasized prevention and assistance to the poor. Private practice has provided most of the curative treatment. It would seem, therefore, that harmonious relationships could be maintained in which both private and public facilities perform their appointed tasks.

PUBLIC WELFARE MADE CONCRETE

The term "public welfare" is sufficiently comprehensive to include a large share of what government does. Anything that contributes to well-being is welfare. Such a statement today does not strike us as anything out of the ordinary, as it would have a few decades ago. Public welfare then meant care of the poor, the infirm, and the dependent. Today we have no such circumscribed view. Public welfare means the welfare of normal, healthy human beings. But public

welfare also means something specific in terms of programming: public welfare departments in state and local governments; the Federal Security Agency and the insurance programs of the Social Security Board; the United States Public Health Service and the state and local health services; and social service, economic security, and the protection of the health of the community.

These are all concrete, down-to-earth programs which affect our lives in a number of ways. But that is not all. Public welfare has been extended to numerous other fields: the areas of police and fire protection, for example, which are dealt with in the next chapter; and the whole area of education, which employs more people than any other peacetime function of government.

Welfare is comprehensive and it is vital. Welfare is designed for the masses of the people, but, as it has been extended, it has become of direct concern to every person living in the United States.

SUPPLEMENTARY READING

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CHAPTER 51

The Community's Safety and Social Environment

CITIZENS PROVIDE for the safety of the community in a number of ways. Protection against disease, which has just been discussed, is one of these. Good roads, good schools, good government, and peaceful relations among groups all contribute to the maintenance of peace and order. Indeed, almost every function of government bears directly or indirectly on this objective.

This chapter, however, will be chiefly concerned with law enforcement, fire protection, and recreation as being three responsibilities of government which have an especially direct relation to the safety and the social environment of the community. Police and fire departments protect our lives and property, and add to community welfare because everything that we consider important is based on ordered social growth. Recreational facilities help to improve the community environment and hence reduce the causes of crime.

All parts of the community environment are related. If government did more to clear slums, provide people with better homes and brighter and more sanitary surroundings, together with improved recreation facilities, citizens would be more law-abiding, more civic-minded, and more content. If the total environment were better, the number of socially maladjusted persons and outright criminals would be less.

LAW ENFORCEMENT A MAJOR RESPONSIBILITY

The field of law enforcement is interesting and important for several reasons. In the first place, law enforcement provides a cross-sectional view of the extent to which governments attempt to regulate our lives, and in the second place, it shows the degree of cultural unity or disunity existing at a given time. Law enforcement is also a barometer of people's confidence in and respect for their own government, and it indicates the extent to which lawmakers correctly interpret public opinion when they enact laws carrying criminal penalties.

Law enforcement machinery may be used—and at times has been used—to regulate the relations between capital and labor; hence it runs the danger of being brought into disrepute because of its alleged use for class purposes. Furthermore, a strong police system is usually associated with dictatorial rule; thus democratic peoples must be constantly on the alert to guard against that danger.

And finally, justice through law is one of the highest goals of civilized life. Through it we achieve order as well as growth, an essential combination in any

society. Law enforcement, therefore, is vitally associated with the central concerns of the welfare state.

Many governmental agencies are concerned with law enforcement. There are the civil and criminal laws passed by legislative bodies, numerous police establishments—federal, state, county, and city—and the agencies of prosecution including county, state, and district attorneys and departments of justice. In addition, there is the network of civil and criminal courts already discussed, and the prisons, reformatories, and parole systems that carry out the verdicts of the courts and attempt to reform lawbreakers and restore them as useful members of society. The police activity, broadly defined, is one of the oldest and most important in the field of government.

Definitions of Crime Constantly Expanding

A crime is any act that the law declares to be a crime. Certain forms of antisocial conduct have been considered criminal from the earliest times—premeditated murder is an example—but the number and variety of criminal acts constantly expand as society becomes more complex and as sanctions accompany the many kinds of regulatory and control legislation. Broadly defined, therefore, *crime is any form of conduct that is forbidden by law under pain of punishment.* According to Professor Thorsten Sellin, the principle which operates here is that a crime is any form of conduct "which is declared to be socially harmful by the group or groups in a state which are powerful enough to influence legislation."[1] Since the legislature is the means by which such influence is translated into law, here is additional confirmation of the fact that the legislature is and should remain the center of political gravity, democratically controlled and operating in the public interest.

Among the acts that have long been considered as criminal offenses—and hence as violating society's order and stability—are treason, murder, certain sexual offenses, and major violations of property rights. These offenses still form the nucleus of acts subject to the criminal law, but the number and variety of additional offenses are now as complex as society itself.

Referring to the increasing tendency to attach criminal penalties to regulatory laws, Professor Sellin has also observed that so far as the community is concerned, "the multiplication of legal prohibitions has made it difficult for any one of its members to lead a completely law abiding life." The truth of this statement will be better realized when the character of most criminal legislation of recent years is comprehended. Take traffic violations, for example—how easy it is to pass through a red light when it changes quickly, or to park double for just a few minutes. Or take the more serious widespread flouting of the prohibition laws during the dry era. Crime is now so comprehensive a category that violations—especially minor violations—are constantly more numerous.

[1] Thorsten Sellin, "Crime," *Encyclopedia of the Social Sciences,* IV, 564.

As modern law expands the category of criminal acts, property rights have received relatively more emphasis than life and bodily safety. This development is due to the increasing complexities of our social life and the resulting legal regulations that have followed. Summarizing the situation in their article on "Crime and Punishment" in *Recent Social Trends,* Sutherland and Gehlke have pointed out that crimes "against the person," constituted 11.1 per cent of all major offenses. This category included homicide, rape, and aggravated assault and battery. But crimes "against property" constituted 88.9 per cent or, if robbery is included, 95.1 per cent of all major offenses. In this group are found burglary, larceny, and automobile theft.

Trends in Criminal Law

Laws in the newer areas of legislation in the field of criminal law reveal the complexity of society, the enormous regulatory responsibilities of government, and the difficulties of enforcing compliance unless sanctions are attached to major regulatory legislation. These laws also help to explain the reputation we enjoy among ourselves and abroad as a lawbreaking people. What are the facts?

The major factors to be noted are these: First, the number of major crimes has steadily declined in the United States. Talk of "major crime waves" in this country has been exaggerated, and the charges are not borne out by the statistical facts. The attaching of criminal provisions to much new legislation, however, has resulted in an increase of minor violations of the criminal law. Criminal law constitutes one fourth to one fifth of the total law of representative states, a ratio that has remained fairly constant for fifty years.

Second, criminal provisions tend to apply to specified groups rather than to society as a whole. More specifically, about one sixth of the criminal law applies to public officials only. An additional half is aimed at specific occupational groups—such as business, labor, agriculture, and others—that violate a regulatory statute. Still others are confined to a particular area of a state or a section of the nation. The net result is that only one third of the criminal law of the country applies to the general public.

It also appears that recent legislation has dealt relatively less with felonies and increasingly with matters relating to health, safety, morals, and economic regulation. Thus criminal law has become an instrument of major social and economic regulation.

Consider the significance of these figures: in the case of federal criminal legislation, 91 per cent of the penal sections on commerce, 75 per cent of those on money and banking, 100 per cent of those on agriculture, and 69 per cent of those on food and drugs have originated since 1900. The largest single purpose of this legislation is the discouragement of dishonesty.

Trends in other fields are equally interesting: state legislation has been largely concerned with morals, including sex offenses, intoxicating liquors, and

gambling. In the cities, occupational regulations (licensing and so on) have formed a large part of municipal criminal legislation.

Criminal laws have multiplied at about the same rate as other forms of legislation. The rate of increase is from 1 to 2 per cent annually. Most of such laws have created misdemeanors (minor offenses) rather than felonies (major offenses). Major federal regulations have increased relatively more rapidly than those of the states.

The larger burden of traffic regulation is the most important single explanation for the fact that the number of police personnel has increased faster than the rate of population growth. State and federal police personnel have increased relatively more quickly than the municipal police.

Finally, during the past twenty years, America has become more law-abiding, judging by the relatively smaller number of serious crimes. Considerable significance attaches to the reduction of the gangsterism that accompanied the prohibition era. It is also interesting that, contrary to a popular assumption, criminality among the foreign born appears to be at about the same ratio as among the native-born population.

The Causes of Crime

We must discover the causes of crime before we can deal intelligently with the problem of law enforcement. For centuries, research into the causes of crime was slow, largely because it was customary to seek the single, all-inclusive explanation, so that crime has been at various times attributed to evil spirit, sin, disease, heredity, racial origins, and economic maladjustments. *The modern tendency is toward complex rather than "monogenetic" (single) explanations, emphasizes environment more than heredity, and concentrates on prevention rather than severe penalties and "revenge."*

Some of the causes of crime have already been suggested, including the increase in the number of regulatory provisions carrying criminal sanctions that widen the possibility of violation. So also do the growing complexity of social life and the resulting difficulty of knowing what the law is in every case. Attempts to regulate morals and business competition, measures designed to conserve natural resources, and the well-nigh universal character of licensing provisions are other developments that make our law more complex and harder to observe.

Additional factors in the crime rate are faulty home conditions, adverse community environments in large cities and our rural slums, the upsetting effect of major depressions and wars, plus the problem of channeling people's energies into constructive leisure-time activities. The adjustment of social groups to new cultural environments, and even weather and climate are also stressed by some students of the problem. And education receives its due share of attention.

Individual treatment, utilizing the methods of mental hygiene, has been employed in the attempt to analyze and remove these causes of crime. What

stands out most is the modern emphasis on the adjustment of the individual to the community, in place of the older assumption of some inborn moral weakness for which the individual must be punished.

Statistics on crime, unless carefully interpreted, are likely to prove misleading. In 1940, according to annual figures made available by the Federal Bureau of Investigation, the number of crimes in the United States amounted to 1,500,000. Superficially regarded, this figure would come to about one crime each year for every 90 persons in the country and might well be interpreted as a crime wave. But when it is realized that major crimes have been diminishing while minor offenses have been rapidly increased as a result of new and broader legislation, the total picture is more accurate.

As a nation we are inclined to belittle unduly our record of abiding by our laws. Actually, we have become more law-abiding rather than less so. Further improvement depends on increasing our knowledge of the causes of crime and on enacting constructive measures designed to bring about better individual and group adjustments to our rapidly changing social environment.

AMERICAN POLICE SYSTEMS DECENTRALIZED AND UNINTEGRATED

To what extent is a powerful, unified, and centralized police force a deterrent to law violations? Most analyses of the American problem are inclined to emphasize that our tradition is one of local, decentralized police administration topped by a system of multiple, unintegrated police agencies, in contrast to the systems of many other countries with a strong centralized police force and a better record of law enforcement.

The assumption, either express or implied, is that the United States could be made a more law-abiding nation if our police activities were nationalized and unified under a single federal agency. Unlike France, Germany, Russia, and many other Continental countries, we do not have a national ministry of justice that has jurisdiction over the state police. We do not even have such an all-inclusive agency in our state governments. The question arises, therefore, of whether we should change our tradition and establish a centralized type of police administration.

Pennsylvania created a state police force in 1905. Other states followed, especially as the problems of an expanding automobile traffic grew more acute. Although half of the states have now set up state police, in only half of these does the force have any authority beyond traffic control. Thus police organization in this country remains essentially a local matter, despite recent developments at the state and national levels. In accordance with our tradition, the county police officer is still the county sheriff, assisted by a number of deputies. The small towns rely on one or more constables. The police departments created by the cities are in the charge of a chief of police and include various divisions for particular enforcement purposes, depending on the size of the city. Sometimes a board or a committee of the city council supervises this function at the top. Until fairly recently the work of these departments was

primarily patrol duty on a regular beat, but traffic control is now a major responsibility and the department is highly specialized in this field and in various others.

At the federal level, the growth of our police agencies is an outstanding modern development. Federal criminal provisions have grown faster than state and local regulations, and hence federal enforcement machinery has had to keep pace. The federal system is multiple and unintegrated, however, since it includes a number of separate agencies.

The Federal Bureau of Investigation in the Department of Justice, the most familiar of these agencies and one having the broadest jurisdiction over criminal law, has general charge of the investigation of all violations of federal laws except with regard to currency, customs, internal revenue, postal, and other legislation the supervision of which Congress has vested elsewhere. Other important federal law enforcement agencies are the Immigration and Naturalization Service, also in the Department of Justice, which operates the Border Patrol and enforces the immigration laws. The Secret Service and the Customs Service are located in the Treasury Department. The Coast Guard helps to prevent smuggling. The Division of Postal Inspectors of the United States Post Office has a large force dealing with infractions of the postal laws and regulations. These half dozen agencies constitute the principal federal police, but they by no means complete the list of units charged with the enforcement of laws carrying criminal penalties. Indeed, such a list would include almost every bureau and independent establishment in Washington.

The various police organizations—local, county, state, and national—are almost wholly independent of each other. The United States has the most separatistic police enforcement system of any major power in the world. Rightly or wrongly, we have connected decentralization of police activities with the preservation of individual freedoms and popular safeguards against overweening governmental power.

The Tendency toward Integration

Nevertheless, the growth of state police forces and the expansion of the nation-wide record-keeping and identification facilities maintained by the FBI mark a tendency toward a better integration in dealing with the apprehension of criminals. When law violators can use speedy means of transportation such as the automobile or even the airplane, the police network must keep pace with this technological advance.

Even before 1900, nearly half of the states had enacted laws making it possible for peace officers to continue the chase of criminals into an adjoining jurisdiction when in "hot pursuit." Metropolitan police jurisdictions have been widely extended into adjacent towns. In fact, voluntary cooperation between the police at all levels has provided us with the essentials of an integrated system. The National Division of Identification of the FBI is a service agency for law enforcement officers in all parts of the country. Its fingerprint records

have grown rapidly from less than four million in 1933 to over three or four times that number ten years later.

Should fingerprinting be made universal and compulsory? Such speculation is by no means idle. In favor of such a plan is the argument that law-abiding citizens have nothing to fear. Those opposed to it charge "regimentation." Since other countries have found universal fingerprinting a valuable adjunct for many purposes, including the identification of missing persons, why should we object to its application in the United States?

Another useful integrative technique is the keeping of centralized criminal records. Prior to 1930, statistics were kept by the International Association of Chiefs of Police, but since then the maintenance of Uniform Crime Reports has been a function of the United States Department of Justice. Many invaluable data are supplied from this source, among them the much-needed information on the types and causes of criminal-law violation and the age, sex, geographic, and vocational incidence of crime.

Electrical communication has also tended to offset the inherent parochialism of police methods and to bring about a higher degree of integration. Radio communication is now standard equipment in many jurisdictions. By 1933 a hundred police forces in the United States were operating their own police broadcasting systems, and the number has increased rapidly since then. By telegraph, teletype, telephone, and radio the country is now linked in a single circuit whereby the fugitive may be rapidly apprehended despite the separate identity of the hundreds of individual police systems.

Problems of the Municipal Police

Not long ago the typical municipal police force consisted almost entirely of patrolmen who pounded a beat. Authorities on municipal police administration, such as Bruce Smith, now complain of "the vanishing patrolman." Traffic control today takes a larger percentage of the time of the force than any other function. But in addition, the city police department has become a Jack-of-all-trades for municipal activities of many kinds. The incursion of added duties on the personnel and time of the city police force is already so serious that people are complaining that their persons and property are not adequately protected.

Consider the range of activities of the modern municipal police force. Licensing, for example, constitutes a heavy responsibility. Various employments and enterprises such as private watchmen, vehicles plying for hire, barber shops and restaurants, many kinds of public entertainments, and the sale and possession of firearms must be controlled and regulated.

Other responsibilities include inspections to assure the payment of licensing, excise, and other forms of taxation; the endless problems connected with legalized gambling; the maintenance of fire lines at the scene of a conflagration, when the police and fire departments work closely together; emergency relief to the sick and the destitute; and the limited forms of censorship under-

taken by the police department. How are all these things to be done when traffic control, patrolling, and detective work presumably occupy the center of attention in the local police department?

The core of municipal police administration consists of uniformed patrol, criminal investigation and identification, crime prevention, criminal and departmental records, traffic regulation, and the maintenance and operation of an extensive plant and equipment consisting of automobiles, radio facilities, jails, and garages. Patrol activities are usually divided into three eight-hour shifts. The police call-box system and radio-equipped patrol cars have become common in all the larger cities.

Considering the range and importance of police activities, is it any wonder that problems of organization and personnel abound? "There is a distinct tendency," says police administration expert Bruce Smith, "toward the creation of small units and detachments, which are not easily articulated with the work of the police force as a whole." Traffic, vice control, licensing, and other areas are becoming separate specialties, resulting in a stratification and bureaucratization of police work and a consequent loss of over-all efficiency in apprehending criminals.

Police Administration as a Career

More than 16,000 American cities, towns, and villages have created police forces. The *Uniform Crime Reports* for 1941 reveal that 112,000 police were employed in 2,609 cities with a population totaling 70 million. The FBI alone has a specialized force of from 2,000 to 3,000 men, most of whom are trained in law and accounting. The personnel demands for police work, therefore, are extremely heavy. Administrative talent, as in other fields, is at a premium.

Police salaries in cities the size of New York, Chicago, Detroit, and San Francisco range from $2,500 to $3,000 a year. Top salaries are from $10,000 to $15,000. Police administration has made great strides, one reason being the excellent police training systems that have been devised and are now widely in use. Police work has become a profession without losing the common touch with the public so vital in a democracy. The wide application of the techniques of chemistry, physics, and other sciences to the police field makes it an interesting vocation for the technician as well as for the general administrator. An efficient police force, firmly grounded in popular attitudes, can be a great asset in a free government.

THE PROSECUTION AND PUNISHMENT OF CRIME

Once a criminal law has been violated, several officers and agencies of the government are likely to act.

Like the sheriff, the coroner is one of the oldest officers of the common law. The coroner is a local government official who is required to hold an inquest, assisted by a jury, over the body of every person meeting death under unusual and suspicious circumstances. In some states the law provides that the coroner

shall succeed to the sheriff's position if that office becomes vacant. The office, usually elective and for a short term, is a county position and frequently paid by fees. The coroner is presumably trained in law and medicine, but too often he is not qualified in either and in consequence the office has steadily lost prestige. Progressive governments, such as those of New York City and the state of Massachusetts, have replaced him with a medical examiner.

A crime, it will be recalled, is considered an offense against society; hence a public prosecuting attorney rather than a private attorney conducts the legal proceedings. The number of such positions is large. It is estimated that there are over 3,000 such officers in the states alone and some of them have large staffs. Many states have a state's attorney who heads all prosecutions for the state. Then there is a layer of county attorneys and sometimes, as in the case of the federal government, there are district attorneys who serve larger areas of the state. The top position is almost invariably elective for a term of four years. The prosecuting attorney's office holds a good deal of prestige and is often a steppingstone to the governorship or to Congress.

Criminal Division of the Department of Justice

All federal criminal cases are prosecuted by the Criminal Division of the United States Department of Justice, headed by an Assistant Attorney General.[2] Thus when the Departments of Agriculture, Labor, or Interior, for example, or the Maritime Commission or some other federal agency has a criminal case on hand, it is turned over to the Department of Justice for action. The solicitor of the agency in question, however, usually works closely with the Criminal Division of the Department of Justice.

The thousands of federal cases on the calendar every year could not be handled without decentralization. All of the routine cases, therefore, as well as many of the more important ones devolve on the United States district attorneys, who are found in the ninety judicial districts into which the country is divided. Large staffs of attorneys and other employees bring the total personnel up into the hundreds in many of these districts. They are appointive and are carried on the budget of the Department of Justice.

Nominally the district attorneys report directly to the Attorney General, but actually they are supervised by the Assistant to the Attorney General, next only to the Solicitor General in rank. The degree of supervision from the top depends on the importance of the case. Both civil and criminal matters are handled. Each year a conference of United States district attorneys is held in Washington at the call of the Attorney General—a practice analogous to that of the Annual Conference of Senior Circuit Judges.

In each district in which there is a district attorney there is also a United States marshal who is in charge of the enforcement of all federal laws that do not come under the special jurisdiction of the FBI, the postal inspectors, or

[2] See Carl B. Swisher, "Federal Organization of Legal Functions," *American Political Science Review*, XXX (Dec., 1939), 973–1000.

other specialized agencies. The United States marshal and the United States district attorney, therefore, supplement each other.

The Punishment of Crime

When a crime has been detected and successfully prosecuted, the next step is the determination of the punishment that shall be exacted. Three main tendencies may be noted in this area: increased severity, more humane treatment, and individualized consideration of particular cases.

One theory of criminology holds that the more severe the penalty, the greater its deterring effect on would-be violators. This idea was particularly prevalent in the United States during the years between 1917 and 1927—as in the case of kidnapping, for example. Prison sentences were increased, the death penalty was imposed more often, and opposition to probation and parole laws developed. Since then, however, the other two emphases—humane and individualized treatment—have steadily gained ground both in the thinking of criminologists and in the actual administration of the criminal law.

This modern approach has been sponsored by many progressive state institutions, such as those of New York. In the vanguard also is the Federal Bureau of Prisons of the United States Department of Justice, which operates such famous penitentiaries as Alcatraz, Atlanta, and Leavenworth, as well as four reformatories, eight correctional institutions, and a juvenile institution in Washington, D.C., called the National Training School for Boys.

Equally symptomatic of the modern approach are the emphases on improved prison conditions, the substitution of work for idleness, the use of the installment method of paying fines, the adjustment of treatment to the needs and characteristics of individual offenders, the use of parole, probation, and the indeterminate sentence, and the development of educational, recreational, and psychiatric facilities.

Trends in the Punishment of Crime

A quarter of the states have abolished the death penalty, fines have tended to replace corporal punishment, and the maximum penalty that may be imposed has tended to increase by statutory provision in the past thirty years. In addition, parole—meaning the supervision of persons whose sentences for crime have been suspended during good behavior—has been broadly extended. In federal cases alone, probation increased 500 per cent between 1930 and 1932. The use of the indeterminate sentence has also increased. This involves the fixing of the time of release by a parole board instead of by a court.

There are numerous other tendencies in the punishment of crime and the treatment of criminals: the parole system is now found in most of the states; the segregation of habitual criminals is becoming more widely adopted; although prison conditions are still objectionable in many cases even today, in general they have improved; the efficiency of prison organization and personnel has increased, and outlets for prison-made goods have diminished.

Despite undoubted progress, however, we have no reason to be complacent. We still know far too little about the causes and cures of crime. In appreciating that the causes are as complex as society itself, and emphasizing the social causation of crime along with the individual proclivity in that direction, we are probably on the right track. But knowledge is still very slight in many areas in the medical, psychiatric, economic, sociological, and governmental aspects of the problem.

The goal that society sets for itself in the realm of law enforcement should be broadened and heightened. It should be the same as that for medicine—prevention in advance of and in substantial substitution for cure. How, then, can crime be prevented? Chiefly by means of knowledge. "The ability to prevent crime," conclude Sutherland and Gehlke, "must rest on a knowledge of the processes by which crime originates and is developed."

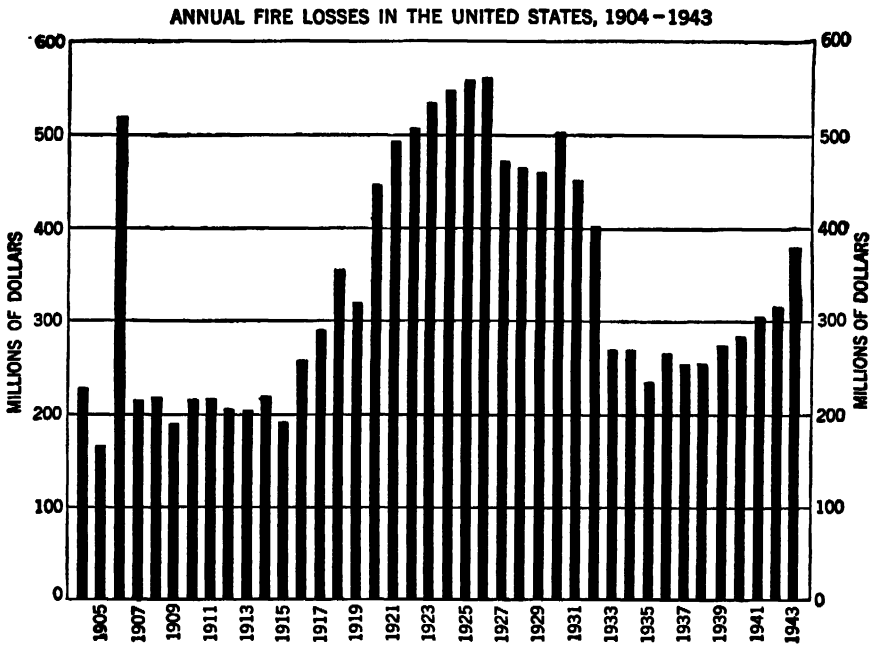
FIRE PROTECTION

Reference has been made to the close relationship between police and fire protection. Both are concerned with the safety of community life and property. The police department assists the fire department by enforcing the fire protection regulations through inspections and arrests. In case of a fire, the police also respond in order to control traffic and to permit the firemen to work uninterruptedly. And finally, in some of our cities police and fire activities are organizationally combined under a director of safety.

Fire protection is not as glamourous as police work—except, of course, when everyone for miles around turns out for a big fire. But important social aspects are present in this field as well. Fire losses in the United States, for example, greatly exceed those in Europe despite the fact that American fire-fighting equipment and methods are on the whole superior. In addition, fires in the United States annually cost some 10,000 lives. The explanation lies in the fact that we are less concerned with the prevention of fires than many European countries are. Our building codes, safety provisions and cleanup laws for refuse are not as rigidly enforced as theirs, nor has there been as much popular education in the methods of avoiding carelessness.

The economic aspect of fire protection is also important. We citizens have taken out billions of dollars worth of fire insurance and the fire-insurance companies annually pay out millions. The rates we are charged depend on the fire hazard involved. When that is reduced, the rates will be reduced. The improvement of fire protection and the adoption of preventive measures, therefore, could save us enormous sums of money if one of our greatest economic hazards could be controlled. The chart on page 852 shows the total losses due to fire in the past few decades.

Not a great deal need be said about municipal fire protection activities. These functions are chiefly on the city level, with fires in the rural areas controlled by the nearest municipal equipment, so far as possible. Where water is lacking there is little hope of saving more than personal belongings. Annually



Source: Up to 1916, *Journal of Commerce;* since, National Board of Fire Underwriters. Appears in the *World Almanac* for 1945.

since 1921, the United States has had a fire prevention week on a nation-wide basis as a means of calling attention to this peril and encouraging communities to clean up their inflammable debris. This educational program seems to have had a considerable success.

Organizationally, fire departments are headed either by a commissioner or by a board or committee of the city council, with a chief serving under it. The department under a single head found in the larger cities is usually preferable from the standpoint of encouraging professionalization. Enormous advances have been made in equipment and in fire-fighting techniques, many of which were improved during World War II.

Much intercommunity cooperation takes place in the fire-fighting field. Cooperation appears not only in serious fires requiring the services of adjoining communities but also in the purchase of equipment and the operation of training programs. This field of public safety is an interesting one to many able people. The Director of the Bureau of the Budget of the federal government during World War II, for example, first gained prominence by his cooperative purchasing of fire equipment for the Michigan League of Municipalities, of which he was once the head.

With the introduction of improved compensation measures, pension plans, and training programs, municipal fire administration has progressed considerably on the personnel front. In 1941 almost half of the forty-eight states had

provided in-service training programs for the members of their fire departments, and training is universal in all the larger cities.

Should fire departments be given the authority that the police now enjoy to enforce their own fire prevention regulations and municipal ordinances? It is a nice question. The fire department presumably knows more about such matters than the police, but on the other hand, unified enforcement of the law would suffer if the police authority were dispersed.

Another question difficult to answer categorically is whether fire departments should extend their first-aid equipment and facilities in an emergency. Their pulmotors annually save many lives and they are equipped to respond much more rapidly than the public health nurse or the interne at the municipal hospital. But on the other hand, doctoring is the physician's business and should be his responsibility.

Organizational problems such as these are constantly cropping up in municipal governments and point to the central role occupied by the fire protection activity. Its prestige has increased in recent years. Always a center of public interest and approbation when fire forces were on a volunteer basis, today's professionalized forces are now compared to preventive medicine in their social contribution to community security and well-being.

Another aspect of fire control that is becoming increasingly emphasized concerns the protection of our state and national forests. A single fire may cause widespread damage. Full-time lookouts, airplane patrols, and the most modern equipment available are now employed by the federal and state governments in this area. Here is another field offering attractive opportunities to those who are technically trained and who enjoy outdoor life.

A PROMISING NEW FIELD—RECREATION ADMINISTRATION

A field of governmental activity that may be expected to grow rapidly is that of recreation and the occupation of leisure time.[3] This is central to the main problems of our age. Juvenile delinquency increases when youthful energies have no outlet save "cops and robbers" which turn into the real thing. The congested populations of our cities cannot maintain their physical and mental health unless they secure normal outlets for their play instincts and escape from the monotony of the daily grind.

The progressive substitution of the machine for human labor can have no other effect in the long run than to reduce the working day to a few hours. What one does with the remainder—the leisure time—holds untold potentialities for social progress or retrogression. If the time is well used, people will improve in health, culture, and self-government. But if it is not well used, we may expect an increase of crime and a general weakening of the population.

The planning and administration of leisure-time activities under joint public-private auspices, therefore, is a main opportunity of the future.

[3] Eduard C. Lindeman, *Leisure—A National Issue* (New York, Association Press, 1939).

Government's Role in Leisure-Time Activity

It is only since 1900 that any concerted attention has been given to recreational programs. So long as our economy was predominantly agricultural—as it was up until around the turn of the century—the need for organized and planned leisure-time facilities was nowhere near so great as it is today. Moreover, the revolutionary social changes attributable to machine magic were not then so far advanced. The western frontier had been closed but a short time. Slums and congested populations had already emerged, but not in so intensified a form as has since developed. City planning and zoning had appeared but they were not nearly so universal as in the half century since then.

Organized recreation programs, therefore, are still in a formative stage and still far from adequate. Failure to provide recreation opportunities—especially of the unartificial kind—is one of the greatest evidences of social lag.

Nevertheless, some progress has been made in recent years. A comprehensive survey of 1932 published in *Recent Social Trends* reveals that local, municipal, county, state, and federal governments were spending almost $200 million a year on recreational activities. The total annual bill for public-private recreation was over $10 billion, but this figure covered commercial amusements such as motion pictures and the radio, travel of all kinds, clubs and other leisure-time associations, and games, sports, and outdoor life, including organized baseball and football. But even the $200 million spent by government was far less than was needed.

Governmental activities in the field of recreation have generally been concentrated on making it possible for people to get out in the open and enjoy exercise and play. For example, the park acreage for cities of 30,000 or more inhabitants increased almost 250 per cent between 1907 and 1930. The total municipal park area was estimated at 350,000 acres in 1930. National and state parks have increased in somewhat the same proportions. Good highways and camping facilities have made American scenic spots a mecca for tourists similar to the traditional pleasure and recreation spots of Europe.

Because they provide an emotional and physical catharsis essential to city dwellers, municipal playgrounds are particularly necessary from the standpoint of good health and the prevention of crime. The city playground movement did not start until 1910, and then it influenced only a few cities. During the decade from 1920 to 1930, however, municipal playgrounds increased 75 per cent, the total number being over 7,000 in 1930. As promising as this start has been, the deficit side of the balance should not be overlooked. Three fourths of our cities—mostly in the small-population categories—failed to report any available playground facilities at all, so that the average for urban children the country over was only 1 playground for every 3,000 children. Obviously this is far from satisfactory.

Much the same situation prevailed for public school recreational facilities. In 1932 a survey revealed that 20 per cent of the elementary schools in cities

having a population of from 30,000 to 100,000 inhabitants had no playgrounds, while half of the high schools of the country were not provided with either playgrounds or athletic fields. Nevertheless, a growing recognition of the importance of recreational activities as a municipal function is evidenced by the creation of separate city departments for that purpose. These agencies are responsible for planning and developing a well-rounded program. In addition, half of the states have created planning and development committees responsible for cooperating with local authorities. The state governments have also established state parks, forest preserves, and similar facilities, and lend their encouragement to the furtherance of municipal recreational activities. That the federal government also has become aware of the need of comprehensive recreation planning is indicated by the fact that in 1937–1938 a committee of representatives from twelve federal bureaus concerned in part with leisure-time activities met regularly and finally submitted a comprehensive plan, including a long-range program, to the President and Congress.[4]

In the decade of the 1930's, parks and playground construction and improvement were a popular type of WPA work. Such projects employed large numbers of men at a low cost for materials. Consequently these facilities at all levels received a marked attention. Park Commissioner Robert Moses of New York did a particularly outstanding job in that city with the help of WPA. State and national parks and camping grounds also benefited under the Works Program, especially through the use of the CCC.

The Changing Attitude toward Recreation

The reason why more has not been done in the field of public recreation is that the demand has increased more slowly than the need. A pronounced change has occurred in recent years, however, as the figures presented clearly indicate. For a long time, recreation was considered a luxury rather than a necessity. People were accustomed to providing their own outlets or contenting themselves with the motion pictures, the radio, or other forms of canned entertainment. This is not to minimize the importance of such devices or the prominent role they may be expected to play in the future, but it does recognize the inadequacy of spectator participation as a complete solution of the problem.

If the health, play, emotional, and mental requirements of our urban populations are to be satisfied, therefore, far greater opportunities for self-made recreation must be provided. These must include more recreational facilities in public parks and public schools, bigger and better playgrounds for the youth of America, and better facilities in forest preserves and state and national parks. Eduard C. Lindeman, in an article on recreational planning included in *Planning for America,* points out that a modern society should furnish its people with recreational opportunities which:

[4] *Ibid.,* pp. 54–55.

Allow for the exercise of the big-muscle system:	(strenuous games and vigorous trials of strength and endurance)
Bring into play the accessory muscles:	(less strenuous but more skillful sports and activities)
Call for a sharpening of the sense perceptions:	(seeing, hearing, smelling, tasting, and feeling)
Involve both the larger and smaller muscle-systems:	(games or activities demanding coordinated movements)
Involve neuro-muscular coordinations:	(movement in space plus attention to rhythm and design)
Furnish occasions for collaboration and cooperation with others:	(social recreation)
Require the manipulation of varieties of materials:	(arts and crafts)
Offer enjoyments of discovery:	(travel, nature study, hiking, camping, and amateur science)
Are intellectually and emotionally satisfying:	(reading, group discussion, learning)
Are conducive to quiet contemplation:	(avoidance of stimulations)[5]

America has come of age in many departments of our national life: the frontier is closed; the population is virtually stabilized; the get-rich-quick mania is dissipating; machines have made it possible for people to work less and still enjoy a higher standard of living; and as the average age of the population increases, older people will also have more time on their hands.

We have reached a stage in our national life, therefore, when we may well concentrate more than in the past on our cultural development—culture in a broad, comprehensive, human sense. There will be more time for physical fitness, more time for play, more time for improving our knowledge and our aesthetic appreciations. Our cities will have to be made more habitable. Our slums will have to be demolished. The community will have to take a more active role in making the plans and providing the facilities by which we can live the full and rich life that our total resources and creative intelligence make possible.

[5] Eduard C. Lindeman, "Recreational Planning," in George B. Galloway and Associates, *Planning for America* (New York, Henry Holt and Company, 1941), p. 456.

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CHAPTER 52

The Citizen's Concern for Education

A PUBLIC QUESTION on which all Americans agree is the need for adequate educational opportunities available to all, for today we demand more rather than less in the way of democratic educational facilities. We have come to believe that if enough people have enough knowledge, we may solve most of our difficult social problems. But if a substantial proportion of the population remains uneducated, then we must expect to lose many of our freedoms. These are the main alternatives.

In the United States we have emphasized free public education more than any country in the world because as a people we have realized from the outset that freedom, the opportunity to rise, and the development of civic attitudes depend on the kind of education we are willing to provide for all groups of the population.

In early America, two ideas dominated the thinking of the advocates of a national system of education: "faith in the perfectability of man, and belief that loyalty to republican ideals and democratic equality could be promoted only through a general and uniform system of education provided and maintained at public expense."[1] Indeed, popular government is as dependent on education as farmers are dependent on good growing weather.

While comprehending the necessary relationship between education and democracy, however, we must remember that education is an instrument that may be used to buttress any form of government. Plato, it will be recalled, sought to produce the ideal city-state through the careful education of the Guardians. Confucius, who lived at about the same time (551–478 B.C.) in China, developed an elaborate system of education that consisted of lower and higher schools, administered examinations through the state, and filled all offices from lowest functionary to emperor's cabinet on the basis of formal education and competitive examinations.

Aristotle expressed a view of education that has been widely held since his time when, in the *Politics,* he said, "Of all things that I have mentioned, that which contributes most to the permanence of constitutions is the adaptation of education to the form of government." Napoleon's statement in 1805 was in the same vein: "Of all political questions, that [of education] is perhaps the most important. There cannot be a firmly established political state unless there is a teaching body with definitely recognized principles." These statements underline the close relationship between politics and education and point to a

[1] Prof. I. L. Kandel, "Public Education," in the *Encyclopedia of the Social Sciences,* V, 414.

danger that besets education in a free society—the danger that education will be used to propagate and perpetuate the doctrinaire views of particular influential groups. When education is so used it may stifle free inquiry, fail to give objective consideration to competitive ideas, and thus undermine free government.

To be sure, as has been said many times in earlier chapters, a popular government inculcates certain beliefs and attitudes. In the United States, for example, we believe that human beings can be improved, that everyone should have an equal chance, and that freedom is the climate in which growth is best assured. If propaganda is defined broadly enough, then the American credo is propaganda. But so long as all are free to challenge our beliefs and show us where we are wrong, we have little to fear.

Because of the essentially local character of the control of education in this country, our schools have had a good chance of remaining democratic without becoming doctrinaire. *Generally speaking, the more decentralized the educational system, the broader and less defined is its aim and the greater emphasis is on individual development rather than on ideological regimentation.* This is our own situation. and it is a healthy one.

This is not to overlook the large number of isolated cases, however, in which reactionary school boards unfortunately attempt to stifle free inquiry and enforce conformity to fixed notions in violation of academic freedom. But these violations are more easily corrected by other means, as a rule, than by bringing about changes in a highly decentralized regime of school administration.

Steps in American Public School Development

As in other countries, education in the United States is both public and private. With private education we are not here concerned.

The story of our public education is one of the most remarkable ever recorded, justifying Professor George S. Counts' claim that "with the coming of the modern age, formal education assumed a significance far in excess of anything that the world has yet seen. The school, which had been a minor social agency in most of the societies of the past, directly affecting the lives of but a small fraction of the population, expanded horizontally and vertically until it took its place along with the state, the church, the family, and property as one of society's most powerful institutions." [2]

The progress of free public schooling has been more rapid in the United States than in other countries for several reasons. Two, however, are especially important. The first is that, unlike most countries, we have never had a state church, and hence it was not necessary to overcome the church's monopoly on education in order to establish secular responsibility. In most other countries this issue was hard fought and long drawn out, and in some it is still a subject of controversy.

[2] George S. Counts, "History of Education," in *Encyclopedia of the Social Sciences*, III, 403–414.

In the second place, we did not have to overcome class lines and the idea that education was the privilege of the few. Until fairly recently in England and in most other European countries, a sharp line was drawn between the minimum schooling accorded the masses and the very complete education provided for the privileged few.

The modern movement for free public education began at about the time of the French Revolution. To Prussia in 1794 goes the credit for first asserting the right of the state to enforce compulsory education. France moved more slowly. A Napoleonic decree in 1808 and the laws of 1833 and 1850 were culminated in Jules Ferry's compulsory education law of 1882. Since the Law of Associations in 1904, the French government has had the exclusive right to provide, maintain, and supervise education, and any other schools may be established only with governmental approval and subject to governmental inspection.

England lagged behind France and Germany. Compulsory education was not introduced there until 1876, and free public schools were not made universally available until 1902.

The United States, on the other hand, starting with advanced ideas imported from Europe and free from the encumbrances of tradition and established institutions, was able to make faster progress. Education was one of the first subjects of interest to the early colonists, although it was not immediately regarded as a public function except in Massachusetts. There, as early as 1647, every town having more than fifty families was required by law to provide an elementary school, and if it had one hundred families it had to build a secondary school as well. A fine was imposed for noncompliance.

Another stage in the evolution of our public school system was reached when, in 1821, Boston established the first public high school in the United States, and the idea of free secondary education rapidly spread. By the middle of the nineteenth century the Western states had taken the third step in the development of public education when many established state universities.

It is difficult to say at what time the American public school system came of age; possibly 1850 would be the date, for by then the three levels—elementary, high school, and university—had been established and attendance was being required of children under fourteen. Since then the expansion has been so rapid that the schools of 1850 are a far cry indeed from the opportunities provided by our modern public school system.

What are the essentials of a system of public school education? The ideas in this field have changed considerably from time to time, but in general the demand for more and wider opportunities seems to be constant. The public school system today is based on these principles: compulsory attendance, free tuition and books, and equality of educational opportunity.

THE PLACE OF EDUCATION IN GOVERNMENT

In terms of personnel, public education in peacetime is the largest single activity of state and local governments. In 1940, for example, 40 per cent of all state and local public personnel were employed in the public school system of the nation.[3] To measure the place of schools in another way, approximately one fourth of the population of the United States is directly engaged in education. According to Professor Charles H. Judd, in 1932 there were over a million teachers and school officials and approximately 29,500,000 students of all classes from kindergarten through graduate and professional school.[4] Since 1932 the population has increased, but so also has the school enrollment.

There are more than 108,000 organized school districts in the United States, excluding those which operate as school administrative areas of another government, such as a city or village. The majority of these school districts, or 65 per cent, are rural. The following table shows the number and distribution according to type.

NUMBER OF ORGANIZED SCHOOL DISTRICTS, BY AREA SERVED, 1942

Region	All districts	County districts		Urban districts	Rural districts of municipalities	Other districts, mostly rural
		County-wide	County-wide with exceptions			
United States, total..	108,579*	377	214	1,732	3,161	65,449
Northeast.....	9,369	†	†	398	20	8,951
North Central.....	70,297	†	†	621	1,752	34,966
South.....	17,061	352	179	436	880	10,813
West.....	11,852	25	35	277	509	10,719

* Includes only those districts which operate as separate governmental units and exclude those school districts which are school administrative areas of another government.

† Data not available or not compiled.

Source: U. S. Bureau of the Census, *Governmental Units in the United States, 1942.*

In 1928, public expenditures on education amounted to almost $3 billion. During the depression they dropped to $2 billion; they are now around $2.5 billion. Four fifths of this total was spent on public schools and of this, about 80 per cent was devoted to primary and secondary schools, with the remainder going for higher education. In comparison, expenditures by private schools were proportionately heavier at the college, university, and research level than at the primary and secondary school level.

Expenditures and enrollments have increased phenomenally since 1875.

[3] U. S. Bureau of the Census, *Government Employment*, July, 1944.

[4] Charles H. Judd, "Education," in *Recent Social Trends* (New York, 1933), pp. 325–381.

Consider the total expenditure on education by periods:

1900	$225,000,000
1910	445,000,000
1920	1,000,000,000
1930	2,750,000,000
1940	2,500,000,000

These figures do not allow for changes in the value of the dollar, which would make some adjustment necessary. At present the total expenditure seems to be leveling out, and the rate of increase may be slower in the future.

School enrollment figures are equally revealing. The greatest expansion has been in high school enrollments, with a 2,465 per cent increase between 1890 and 1924. Other percentage increases during the same period were 156 per cent for elementary attendance, and 352 per cent for colleges and universities. During this same period, from 1890 to 1924, the total population increased only 79 per cent. At the present time the most rapid rate of expansion in enrollments seems to be at the college and university level. "Never before in the history of the world," says Professor Judd, "has there been such a development at the upper levels of an educational system." In 1932, one out of every two persons of secondary school age was in high school and one out of seven of college age was attending an institution of higher learning. At this rate the time may come when the majority of American citizens will have availed themselves of a college education. This exciting possibility holds great potentialities for an enlightened citizenry and the safety of popular rule.

Compulsory school attendance and child labor laws are bringing education within the reach of all. The story is told in the following figures:

PERCENTAGE OF CHILDREN IN GAINFUL OCCUPATIONS, 10–15 YEARS OF AGE

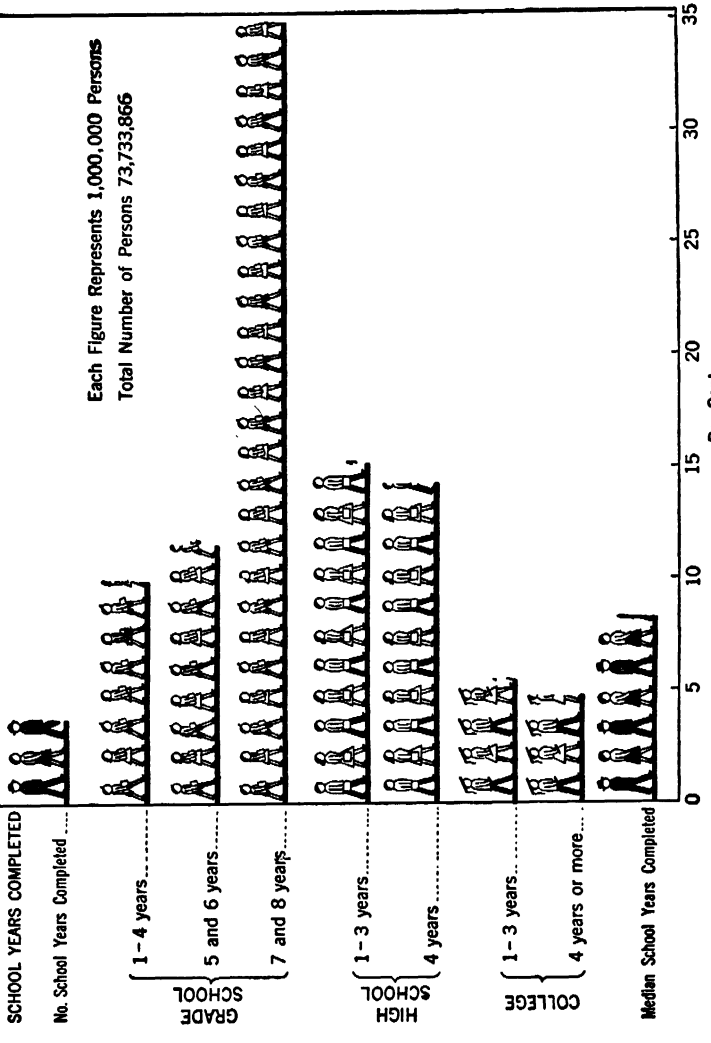
1870	13.2
1880	16.8
1890	18.1
1900	18.2
1910	18.4
1920	8.5
1930	4.7

Source: Recent Social Trends, p. 327.

The figures for 1940 are not available, but they would certainly show a downward trend. Four of the most populous states have now increased their compulsory school attendance age to eighteen years. The chart on page 863 shows the educational attainment of the population of the United States, twenty-five years and over, in 1940.

Education Essentially Local

With one fourth of the population of the United States directly concerned



EDUCATIONAL ATTAINMENT OF THE POPULATION OF THE UNITED STATES
25 YEARS OLD AND OVER, 1940

Source: U. S. Bureau of the Census.

in education and most of the remainder interested in education through family relationships, no function of American government receives so much attention. If the general population were to become as interested in good government as it now is in good education, our government institutions would be strengthened at many points. However, the independent status of educational administration has been so accentuated in the past that we citizens are scarcely aware that education is in fact a function of government. We have learned to think of education as something apart from government.

Only in fairly recent times have school administrators, parent-teacher associations, and all the good people interested in educational progress begun to realize that education is inevitably affected and limited by the conditions existing in the political situation of the city or state in which the school system is located.

Historically, free public education in the United States has been almost entirely the responsibility of local governments. Although this is still basically true, in recent years our state governments have begun to play a more prominent centralizing role in this field. The trend has proceeded so far in some states—such as Delaware, North Carolina, Virginia, and New Hampshire—that a uniform state-managed school system has come into existence.

The states increased their influence in local educational matters when the public schools were badly in need of financial aid during the depression years. To seek help from the federal government was strongly opposed by those who feared that federal influence in education might grow. The alternative was to secure financial aid from the state. In New York during the 1930's, for example, approximately $100 million a year was distributed by the state to the school districts.

The federal government directly contributes very little to our public schools. The states, however, have provided for as high as from 80 to 90 per cent of the total cost of education in local communities during the depression years, and it looks as though the trend would continue. A partial reason is the fact that public education has had to rely chiefly on the property tax, and—for various reasons discussed in earlier chapters—the property tax is no longer a sufficient source of revenue. Other forms of taxation, notably the income tax and the gasoline tax, have progressively superseded it.

Despite the reluctance of the schools to accept federal aid, it appears increasingly likely that such aid will be extended in large amounts to states that cannot provide educational facilities measuring up to the national average. *A clear trend in educational administration is toward greater dependence on state financial and administrative assistance; it also seems likely that federal financial resources will be increasingly relied on in coming years. Thus the local nature of education is undergoing an important change.* All the more reason, therefore, that those who are interested in our schools should take a more active interest in our government as a whole.

The Control of Education

In most of the countries of the world, a ministry of education in the national government is responsible for a unified administration of public education. The United States is the most prominent exception. We have an Office of Education in the Federal Security Agency, but it has little or no direct contact with local and state educational administration. Its main function is to collect and distribute information on education without any direct administrative authority over the uses to which its research is put. *Generally speaking, central control of education is much less developed in countries having a federal form of government, such as the United States, Canada, Switzerland, and Australia, than it is in countries having a unitary government such as France, Austria, or Italy.*

In the unitary type of government, the ministry of education has authority akin to that of other national programs of action, such as public works or public health. The ministry of education is responsible for the administration and organization of educational facilities, for drawing up budgets and securing funds from the national legislature, for inspection, consultation, and advice on educational matters, and for drafting curricula and examinations and establishing teaching methods.

So highly centralized a system runs the danger of controlling thought and of stifling experimentation and significant advance. At various times one or both of these charges have been laid at the door of certain countries having centralized systems. Usually, however, they were totalitarian dictatorships, such as those of the Nazis and Fascists, and under these circumstances the school system would have been used for indoctrination and party disciplinary purposes irrespective of what its previous tradition had been.

Many nations today are finding that their governments cannot avoid an increasing financial responsibility to their educational systems. It seems likely, therefore, that we may look for a similar development in this country, especially since the situation already prevails in many of our states. It is even possible that higher education may need such help. In England, for example, both Oxford and Cambridge receive something like a third of their financial support from the national exchequer.

An important problem of the future, running to the very roots of our national life, therefore, is whether a method can be devised whereby state and federal funds can be furnished to local educational systems without endangering local control over what is taught and how. Professor Kandel, Dean William Russell of Teachers College, and others have suggested a division in the field of education that might form the basis of a formula by which such aid could safely be provided. They make a distinction between the *externa* in education, which include buildings, grounds, equipment, compulsory attendance, length of the school year, qualifications and salaries of teachers, and so on; and the *interna,* which consist of the content of instruction, curricula,

courses of study and examinations, research, academic freedom, and the like. This division of responsibility sounds like a practical one that might provide a point of departure for working out a desirable balance between federal and local control of education.

We should never minimize the need for vigilance and sustained popular interest, however, because an age-old truth of government—as applicable to education—is that he who holds the purse strings ultimately influences the policies. But there are enough separate school districts in the United States and enough stalwart citizens willing to devote their time to the defense and improvement of the public schools to make this danger far less serious in education than in many other fields.

THE ADMINISTRATION OF THE PUBLIC SCHOOL SYSTEM

No reliable estimate has been made of the number of American citizens who serve on school boards and hence constitute the active element in the democratic control of education. The figure is easily a quarter of a million and probably nearer half a million. No general interest of society commands so many partisans.

There are more than 108,000 school districts in the nation. Except in a few isolated cases—some important but constituting a relatively small percentage of the total—*school administration is not under the direct control of the city council but enjoys a semiautonomous status with a citizen school board at the head.* These school board officials are usually elective for terms that range from one to seven years, the most common being two years. Men and women who show enough interest and ability are often re-elected for successive terms, so that the average length of tenure is longer than in most voluntary citizen activities.

In keeping with trends elsewhere in government, the present tendency is toward smaller school boards. During the nineteenth century it was not uncommon to find a school board with as many as 40 members. The current practice is illustrated in the school boards of our larger cities: Albany has a board of 3 members; in Chicago and Detroit it is 11; in St. Louis, 12; Pittsburgh and Philadelphia, 15; and Providence, 17. In a city of from 50,000 to 60,000 inhabitants it is usual to find a school board of from 8 to 12 members.

The total number of school board members, therefore, constitutes a sizable army of unremunerated citizens. And to this must be added the hundreds of thousands of members of parent-teacher associations, jealously guarding the welfare of their children and attempting to raise the standards of teaching and of the social services offered by the public schools.

The typical school board has a wide and complete authority: it appoints the superintendent of schools and can dismiss or reappoint him; it decides on building sites, new construction, and extensions; it approves school budgets and secures the funds from the city council or (which is more usual) determines the tax levy for school funds; it must approve the personnel appoint-

ments and actions of the chief school officials; and it exercises varying degrees of influence over the selection of textbooks and over teaching methods.

As in other fields of government, the relationship between the paid top official of the local public school system and the citizen school board that appoints him is of the utmost importance. If the superintendent's professional judgment can be trusted and if the school board confines itself to policies and decisions, as it should—rather than attempting to administer the educational system itself—then the teachers in the system may exercise a considerable influence in shaping educational policies. But if the superintendent is incompetent and spineless, then the school board may try to run things itself, often in such a highhanded manner that the teachers complain of regimentation and the loss of professional self-respect. They may even be forbidden to smoke, play cards, and dance in the privacy of their own homes. Like all legislative-administrative relationships, therefore, that found in school administration is highly sensitive and packed with potentialities for good or ill.

Types of Public School Systems

Elementary education is provided by the 108,000 county, city, village, town, and rural school districts. A majority of our children receive their elementary education in large city schools. Because of the extensive rural districts that must be covered, however, so far as numbers of schools are concerned, the American elementary institution is still predominantly a one-room establishment. In these schools one teacher is responsible for eight grades, meeting in a single room, and as a result in these districts there are more school board members (an average of three for each rural school) than there are teachers.

Above the elementary schools come the secondary or high schools, run by city, county, town and township, and consolidated rural districts. The majority of the rural school districts pool their resources in providing secondary education. Then there are normal schools and teachers' colleges in all of the states, financed by the state governments.

Junior colleges are a relatively new type of educational institution that has increased rapidly in recent years. In the field of public education these institutions are supported by municipalities, counties, and the states. Their number has grown from 132 in 1917 to well over 500, with a total enrollment exceeding 100,000 annually.

The state universities and agricultural colleges are comparatively old and were first established in the West. They are chiefly supported by state appropriations and also by endowments. Many are of the highest academic standing, carry on extensive research activities, and award the master's and doctor's degrees.

To these main levels in the public educational hierarchy should be added summer schools, extension courses, and adult education classes. It is truly a complex and thorough system of public education that we have in the United States.

So far as primary and secondary education are concerned, four principal types of organization may be distinguished at the local level:

The town and township system, found predominantly in New England (although the district system was also tried there), Indiana, West Virginia, Pennsylvania, and New Jersey. Under this plan the town or the township is the educational unit. It is independent and has no connection with any larger district.

The county school system is found chiefly in the Southeastern states, from Maryland to Louisiana. In these areas the county schools are administered as a single unit with one school board and one superintendent of schools for all.

The district school system is used in the largest number of states. The districts are small, including a single city, village, or special area incorporated as a separate school unit. Rural areas are divided into common school districts. Some twenty-five states from New York to California use this system, and they account for a majority of the school districts, with an average of five teachers in each district. Many of these units are smaller than those of the town or the township and are considerably smaller than the county school organization.

The consolidated school district system was created to deal with the multiplicity of rural schools and the problem of the one-room schoolhouse, as well as to provide sparsely settled areas with better educational facilities, especially at the secondary school level. The plan has gained ground in recent years.

A consolidated school is built at a central point, and daily transportation is provided for the children of the area. If too large an area is covered, the transportation costs mount, and the wear and tear of travel on the children is great. There seems to be a point, therefore, beyond which the consolidated school district is less desirable than separate schools. Educational authorities by no means agree on the point at which the law of diminishing returns sets in. Students will thrive in a one-room school, as thousands know from firsthand experience, if they are taught by a superior teacher, but if the teacher is inferior, then everyone suffers. There are offsetting advantages in both consolidation and independent units. The problem of educational statesmanship is to find the desirable blend.

State and Federal Organization

Like the local governments, the states have boards of education and superintendents of schools. In almost three fourths of the states the superintendent is elected by popular vote. The trend, however—as in many other areas—seems to be toward appointment and the short ballot. However, the school systems are one of the last areas over which the people are likely to relax their ballot box control.

The tendency toward state supervision and control of local educational activities has thus far been pretty largely in the realm of *externa*. The principal areas where the state has entered include the training, licensing and examina-

tion of teachers; the provision of funds and buildings; the requirement of compulsory school attendance; and the provision of textbooks, library, medical, and other welfare activities.

The United States Office of Education was created by act of Congress in 1867, shortly after the Civil War, "for the purpose of collecting such statistics and facts as shall show the condition and progress of education in the several States and Territories, and of diffusing such information respecting the organization and management of schools and school systems, and methods of teaching, as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the United States." This mandate of the Office of Education is so stated that it could be infinitely expanded. Actually, however, the main line of activities so far have included only statistical, research, and informational services; services of an advisory or consultative nature; reports on special problems requiring investigations; and dissemination of knowledge. In addition, the Office of Education has administered federal aid under programs enacted by Congress, such as the vocational education work initiated in 1917 by the Smith-Hughes Act.

The influence of the Office of Education with professional educators and the interested public has steadily increased. Around it may revolve hotly contested issues of the morrow. For example, should federal aid to the states be increased so as to overcome the gross inequalities in educational opportunities found in sections of the country where the assessed valuation of property is low and revenues for education are accordingly inadequate? Should there be a national university in Washington, D. C., supported by Congressional appropriations? Madison, Pinckney, Gouverneur Morris, and others advocated such an institution at the time that the Constitution was framed, and the issue is still a live one. How will the wealthy states react to such a suggestion? How much opposition to the growth of federal participation in education may be anticipated from private and parochial schools? A partial answer to these questions is found in legislation that has been pending in Congress for several years and that would appropriate millions of dollars in federal aid and outright grants to higher as well as to other forms of education. While the opposition is intense, support is increasing. The public will have to get the facts, maintain its objectivity, and seek a solution that will safeguard permanent values.

The Schools and Student Welfare

Our public schools no longer regard themselves as solely pedagogical institutions. Their function is to prepare young people for a richer, fuller kind of life. The Greek ideal of a balanced growth of body, mind, spirit, and aesthetic appreciation seems once more to be coming into its own. The school takes over at an early age—sometimes at four or five years—and develops the individual until he is ready to enter his vocation and establish a family. This being the case, if the public school is to discharge the total function that cir-

cumstances seem to have pressed on it, it must do for the individual what was formerly done by the family and what the family now often fails to accomplish.

In broadening its approach, therefore, the public school system must increase its facilities. That it is doing so is suggested by recent developments in public school administration, including medical examination and even medical treatment (legalized in England); hot lunches and attention to dietary matters; school libraries open at convenient hours and also to the public; adequate playgrounds and athletic fields; vacation schools and summer camps; vocational guidance, with each student having a counselor; employment facilities; and the use of school buildings by the entire community in the evenings as a center for civic, social, and other activities of a community nature. All of these are clear trends and will certainly become more prominent.

Education is increasingly recognized as a process that begins at birth and continues throughout life. Adult education programs and classes naturally stem from this theory. During the depression years they were widely developed, partly in order to provide jobs for unemployed teachers. But their results were so good that their programs will undoubtedly be expanded still further under the continued sponsorship of the Office of Education and our state and local school authorities. New methods of mass communication, such as the motion picture, radio, and television, will probably play an important part in programs of this kind.

PUBLIC EDUCATION AND THE FUTURE OF DEMOCRACY

Modern life is a race between education and the cracking-up of what we call civilization. We know vastly more about the production of new machinery than we do about the solution of the ensuing human difficulties. For example, we must solve the problem of international law and order and international justice, or the atom bomb will blow us all into eternity. We must learn how to do our collective work with the aid of technological advances without losing our individualities and our freedoms. We must acquire an increased sense of responsibility in community, national, and international affairs. But underlying all this is the fact that people cannot do what is necessary until they first see clearly why it needs to be done and what forms social action should take. The principal question of our age, therefore, is whether education can be made universal fast enough to save us from retrogression and even catastrophic destruction.

What should the goals of education be? Should they be vocational? Yes, by all means, if by vocational is meant the adjustment of the individual to his life's work. All of life is a series of adjustments. People develop and find happiness only when their interests and talents are channeled into appropriate activity. But if by the vocational goal of education is meant a narrow, circumscribed, specialized form of education for the masses, then this approach should be resisted by all who love humanity and the human spirit.

Should education emphasize culture? Yes, if by that is meant an apprecia-

tion of what is good, useful, and beautiful in life. If culture means the blending of the component parts of the individual and of society to produce a better balance and more normal outlets for men's interests and aspirations, then culture is a desirable social ideal. But if culture means an effete dilettantism, an escape from pressing realities, an incapacitation for useful work in behalf of society, then culture is a faulty ideal.

Should education emphasize truth and objective knowledge, a rigorous facing of the facts, freed so far as possible of preconceived prejudices and traditions? Yes, this is what the world needs. Only by means of a widespread understanding of conditions as they are can we expect to marshal enough public support and knowledge in order to solve the increasingly complex problems which beset us.

All of these emphases contribute to a larger synthesis that is the proper goal of education. The unifying factor in this compound is good citizenship. But citizenship, in turn, must be defined. Citizenship is preparation for a useful and happy life in which individual growth and one's contribution to society are successfully combined.

But it is important also to appreciate what citizenship does not mean: it does not mean the worship of the sovereign political state; it does not mean an exaggerated form of nationalism or local pride; it does not mean jingoism or militarism. These are contrary to the American tradition of government and the spirit of a free and democratic people.

Citizenship means judging our own acts by their effect on the interests of our fellow beings. Citizenship means the acquisition of a vocational skill through which we can contribute to social well-being as well as to our own individual growth and happiness. Citizenship involves the spirit of service that makes us builders rather than exploiters, altruistic instead of selfish. Citizenship means that every human being is worthy of help and encouragement. Citizenship is a blend of everything that is worth while in life and that contributes to human happiness.

Some would call this religion. Some would call it humanism. Still others would call it science or morality. The name does not matter. It is only the content that is important.

Citizenship is more than government, but government in the modern world is a necessary and an important part of citizenship. Our American ideal is to use government for cooperative purposes, but to be sure at all times that it is popularly controlled and that its ends are human and not merely power-impelled.

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CHAPTER 53

The Future of Popular Government in the United States

IN THE CENTURY and a half that the United States has enjoyed a democratic form of government the influence we have exerted on other peoples to govern themselves through democratic machinery and processes has been as great as, if not greater than, that of any other political system the world has ever known. And yet we should realize that in the entire course of known history the rule of the many has not yet prevailed as long—at any one time or in the aggregate—as its two principal rivals, monarchy and aristocracy. Some writers whose sympathy to popular government is unquestioned even go so far as to say that the rule of the many is still on trial.

If we are candid we must admit that there are many faults to be found with popular government. It is said, for example, that popular apathy is the worst enemy of popular rule, and that the general level of education, unselfishness, and give-and-take is not sufficient to assure the indefinite continuance of a people's government. Let us take stock of the situation.

THE REACTION AGAINST NINETEENTH-CENTURY LIBERALISM

The conservatives say popular government interferes too much with matters that they believe to be strictly nongovernmental. The left wing, on the other hand, says it should be strengthened by a more concentrated and efficient rule. How true it is that "of all the forms of government, democracy is by far the most difficult." The reason is that democracy expects more of human nature than any other form of government. But we must not overlook the fact that this very expectation brings out people's latent possibilities to a greater extent than any other form of government.

An early chapter showed how the unity that developed out of the Middle Ages stemmed from the growing confidence of the people in their ability to govern themselves. Progress was slow, and the effects of the trend did not mature until the eighteenth and nineteenth centuries, when it took the form of laissez faire in economics, and belief in popular rule in government. Since then, however, particularly in the present century, there has been a tendency to question the validity of these beliefs founded on liberalism. To what extent, for example, was the development of fascism in Italy, nazism in Germany, and communism in Russia following World War I due to the slowness or shortcomings of democracy? Or is there any connection? The experts are not agreed. World War I left these countries in a weakened and demoralized con-

dition so that people craved the security of strong leadership. Moreover, there were doubtless historical, economic, and other forces at work in each country tending toward the special solution of particular national difficulties.

Russia, for example, had never had a chance to learn whether her people could govern themselves. The Communists did not turn their backs on liberal democracy—which had never existed in their country—but on the absolute monarchy of the czars supported by a vast and ineffectual aristocracy. Germany's military tradition was not to be lightly shaken off by a country that also suffered from a national persecution complex. Italy was a poor country whose simple, peace-loving people were easy dupes for a showman like Mussolini. In short, there was much in the internal situation of these countries as a result of World War I that explains the governmental development in each.

We should do ourselves a disservice, however, if we were to overlook that which can be learned from these object lessons in political science. At least four areas constitute points of danger to popular rule. The first of these is major wars, which inevitably result in a concentration of political power at the top and the accumulation of disruptive social problems such as widespread unemployment and depression. If a country cannot successfully prevent or stay out of war, it must expect eventually to lose its popular government.

Second is the question of the reliability of the capitalistic system. Can the free enterprise system be depended on for steady employment, a just distribution of goods and services, and the provision of universal opportunities for individual and social advancement? If government cannot solve this problem in cooperation with the Big Three of business, labor, and agriculture within a reasonable time, then popular government is also likely to be undermined from this side. People say to themselves, "We would rather have economic security even if it means a restriction of democratic control. We would rather have a balance between production and distribution even if it results in lowered unit efficiency and restricted freedoms." The point arrives at which people are ruled by their stomachs rather than by their minds.

The third area in which liberal democracy must expect an undermining of stability involves class struggle. Prolonged class struggles result in a loss of liberal democracy, which is based on compromise and the finding of a common denominator. The class struggle moves to the center of the political arena and brushes everything else aside. The longer tensions are allowed to grow, the less is the likelihood of re-establishing the area of compromise that previously operated.

A fourth area is the threat of imperialism. If we want to keep our right of self-determination and our own freedoms, we must not restrict the equal rights of others. The principle here is the one mentioned in the Bible: he who takes up the sword may expect to die by the sword. We must not exploit the so-called backward peoples under the guise of carrying the white man's burden. If we want peace at home and abroad we must be willing that the Chinese, the Indians, the Africans and all the peoples of the world govern

themselves, even if they do not do so in the way that we think they should. Otherwise we must anticipate the growth of dangerous tensions that will eventually re-ignite the powder kegs of war.

Those who do not like popular government or who are honestly convinced of its institutional incapabilities contend that the multitude, acting through the machinery of popular election and representation, cannot possibly solve major problems quickly enough to ward off disaster. Those who are more optimistically inclined, however, believe that the people will respond to emergencies if, through education, they are made aware of the problems awaiting solution.

The moderate socialists say that we must socialize our credit structure and some of our key industries or we cannot solve the anomaly of productive capacity exceeding that of effective consumer demand. The Marxian socialists, on the other hand, are convinced that the capitalists will balk at peaceful change beyond a certain point, and that hence the workers must grasp political and economic power. Otherwise we may expect a totalitarian dictatorship from the conservative right. Only through the common ownership of modern machine production, they argue, can we look for economic well-being to match our political equality. In the meantime, under Marxism, political freedom goes out the window until some more propitious time, when its restoration is promised.

Under what circumstances may violence and force be justified? We used both at the time of the American Revolution. We use them in every war. But can force ever be allowed in the case of economic and social issues? Most of us are convinced that force never settles anything as satisfactorily as do peaceful persuasion and mutual education. A responsibility of citizenship is to decide when "give" is necessary in order to prevent violent social upheavals.

Unfortunately, we tend to incapacitate ourselves for peaceful solutions by substituting thoughtless clichés for objective analysis. And yet, as an earlier study of practical politics has shown, sloganizing and propaganda techniques are prominent characteristics of the age in which we live. But how can we expect to solve capital-labor and democratic-socialistic conflicts unless we adopt a higher degree of objectivity and rid ourselves of the stereotypes that prevent fresh thinking?

POPULAR GOVERNMENT AND THE DILEMMA OF OUR AGE

A major reason for holding that democracy is still on trial, therefore, is the difficult problems which government must play a large part in solving. War, unemployment, the class struggle, socialism, imperialism, and equality of opportunity at home present an array of complexities that is truly stupendous. And the more intricate our problems, the more effective must be the instruments of their solution.

Can the machinery of our American government find the answers to the three questions on the minds of every American college man and woman

today? Will there be another war in my lifetime? Can I look forward to steady employment and to an expanding standard of living? Are general community conditions suitable ones in which to rear a family? Viewed in the light of these larger considerations that bear on all of us, the machinery and minutiae of American government assume their real significance. We are naturally proud of our traditions and our democratic institutions. We are even more concerned that there should be a coincidence between social needs and the institutional methods of solving them.

As we look back over the range of subjects covered in this book, what are the vital areas that seem to require special consideration from us as citizens and as students of government? For one thing, the strength or weakness of any form of government may be tested in two ways: its efficiency in getting necessary things done, and its contribution to the general improvement of the citizens as self-respecting individuals. Judged by these standards, popular government is superior to either monarchy or aristocracy. *But the success of democracy depends on education, interest, and active participation in government.* The more we do for ourselves, the less danger there is of losing popular control.

For another thing, the spirit of a people ultimately determines its potentialities for self-government. We Americans have been fearless, outspoken, and lacking in social distinctions. Our political philosophy holds that government is created to serve man, not to dominate him; to improve his opportunities, not to exploit him. Government is primarily service, not power. Our nationalism has been a true internationalism. Can we keep it that way?

There is also the question of what is to happen to the concept of sovereignty. If we do not quickly solve the problems of world organization and world peace and order, we must expect the atomic bombs to do their work. International government is now one of the most vital concerns of American government—or indeed, of any national government.

The organized political state is only one of several forms of human association on which we rely for government and the necessities of life. There are many other social and economic groups to which we are loyal. But in understanding their relative areas of influence we must avoid the horns of a dilemma. On the one side, the organized political state must not be worshipped for itself and considered the only association deserving our patriotic affections. And on the other hand, we must shun the disintegrating excesses of interest-group selfishness that threaten to sever our unities, blur our collective planning, and cause intense class pressures. Therefore we must strengthen our comprehension of what constitutes the public interest. As Professor Walter J. Shepard has said, "The old antithesis between the state and the individual must give way to a recognition of the innumerable intermediate human groups which are organized for economic, social, religious, recreational, artistic, and other purposes." [1]

[1] Walter J. Shepard, "Government," in *Encyclopedia of the Social Sciences*, IV, 14.

Federal centralization in America grows apace. Ever larger units of governmental operation, both national and international, are in the making. How can we safeguard our opportunities for direct participation in representative government and at the same time make the federal government a more effective instrument for dealing with its staggering problems? Can size and participation be reconciled? Can we reverse the tendency toward federal centralization, make life more simple, and increase the opportunities of democratic control?

Our whole machinery of representation is in serious need of improvement. Can interest representation and geographical representation somehow be fused? Can the major political parties be made to present real alternatives, and to undertake responsible action on them? The representative assembly is the center of political gravity. Will the improvement of its over-all effectiveness restore popular respect for it? Judicial review of legislation and judicial administration constitute an important area of citizen interest. Law is an instrument of social engineering, not merely the lifeless mandate of the state. Public administration must be made more efficient and at the same time more accountable. If administration can be kept democratic we shall have done much to offset the dangers of concentrated power.

The functions of government are constantly growing and will doubtless continue to grow. The emphasis in government should be increasingly on service and diminishingly on power. The time has arrived when government is undertaking so much that it must pick its priorities with care and organize its processes to be sure that first things receive first treatment. Government's function as stabilizer and planner may be expected to expand. Its welfare functions will also continue to grow. Government will sponsor and plan more things but it will administer fewer of them directly.

THE STRENGTHS AND WEAKNESSES OF POPULAR RULE

Popular government is based on an optimistic view of human nature and human potentialities. It assumes that all should have the right to share in public affairs. As Jefferson once said, popular government is based on confidence in the self-governing ability of the great mass of the people, on the ability of average men and women to select officials who will govern in the interest of society.

Among the strong points of popular rule is the fact that the right of equal participation in government gives people a feeling of status, of having a dignified standing, of being able to help shape their own future. It is linked with Confucius' idea of individual self-development as the core of life.

One reason that democracy is likely to reappear even after temporary submergence has been suggested by Professor Harold Laski in *A Grammar of Politics* when he said that "democratic government is doubtless a final form of political organization in the sense that men who have once tasted power will not, without conflict, surrender it." Also in favor of popular government is the

fact that people can be assumed to know their own best interests—or at least to abide by the consequences of their own mistakes more equably—if they are equal partners in government rather than mere voteless wards. Here is a major issue with regard to democracy: Do the people in fact possess an instinct for right decisions and for able men, as Thomas Jefferson, Abraham Lincoln, Franklin D. Roosevelt, and other confirmed believers in the improvability of human nature have thought? Or is there more truth on the side of the man who said, "Your people, sir, are a great beast"?

Popular government calls forth more energy and devotion than other forms of government because the people feel that they are serving themselves rather than their masters. Perhaps this can be illustrated by comparing the highly disciplined regimentation of certain armies—such as the German, for example —as contrasted with the greater emphasis on self-reliance that has always been traditional in the armed forces of the United States. Popular goverment is also likely to be more decentralized; hence there is more room for experimentation, and mistakes are not so costly as in a highly centralized regime. Furthermore, there is less danger that concentrated power will be seized by a dictator or a militant minority.

A republican form of government is based on representation. Because popular government permits every group and every individual to be represented, competitions and clashes between groups are in the open. As a result, there is more visible controversy than in regimes controlled by the one or the few, but there is also less danger of violent upheaval. If allowed to let off steam, for example, we settle down quickly. But if we are forced to store our resentment up, its eventual explosion is upsetting for a longer period.

And finally, it is argued that in its over-all efficiency, popular government excels all other forms.[2] Here efficiency is defined in human rather than in merely mechanical terms. Popular government does not regiment or standardize to the extent that minority regimes may, but it enlists more voluntary cooperation and makes people more content with their lot. Thus where minority rule may possess greater technical efficiency in its detailed procedures, as government it is less satisfying to the people and to that extent less competent. As we learn especially in time of war, we must distinguish between the minute efficiency that comes from regimentation and the over-all efficiency in meeting the needs of the governed that comes from the self-propelling drives of the people. Because of our mechanical skill, in the United States we have a great deal of minute efficiency, but because of our popular form of government we have even more efficiency of the over-all type.

The attack on popular rule takes three principal forms: it is held that the people do not and never will have the ability to govern themselves, which is a pessimistic view of human nature; it is said that democracy does not respect

[2] See Charles E. Merriam, *What Is Democracy?* (Chicago, 1941), Chapter 5.

property rights, and that through legislation there is a leveling and debasing effect, in consequence of which superior ability and effort are discouraged; and finally, popular government is held to be so complex and slow moving that it cannot hope to deal with the complexities of the present age.

This general viewpoint has been many times presented. An example of it may be found in a statement of a professor of political science, the late Edward McChesney Sait, in his book on *Political Institutions*. "Unquestionably," said Sait, "the growing skepticism about democracy must be attributed in part to the excesses committed in its name. The franchise has been given to all adults, women as well as men; special privileges or immunities have been granted to organized labor and other interests; the rich have been taxed for the benefit of the poor." [3] A few pages later the author continued: "The doctrine of equality, which justifies the raising of the low and the leveling of the high, becomes a doctrine of inequality in practice, when the energetic and thrifty Few are called upon to provide housing, food, medical care, education, amusements, and much besides for the slothful and improvident Many, the very dregs of society. The worst specimens are coddled, and encouraged to breed, as if they were the best. They are even maintained at public expense without the necessity of working. From the standpoint of heritable qualities, the political competence of the people as a whole declines, while the complexity of the problems of government increases." [4]

Among the major institutional problems of American democracy, Professor Sait mentioned the fallen prestige of representative assemblies. He also pointed to that "typical product of popular rule," the professional politician; the placing of politics above economics; the deterioration of the masses in consequence of city life; the progressive decline of political interest; the collapse of consensus; and "experts as a menace." He italicized these words: *"The problems which face the rulers of mankind are such that no ordinary layman can understand them. . . . The interest in politics has declined because they have become unintelligible."*

How are the alleged disadvantages of popular rule to be summarized? Popular rule is said to produce government by the irresponsible multitude; to emphasize quantity rather than quality; and to assume that every man, irrespective of his true worth, is the equal of every other man, thus producing a leveling effect. It is said further that, unlike aristocracy, democracy fails to give sufficient attention to special training and aptitudes; that the diffusion of responsibility under popular rule makes it difficult to enforce responsibility; that democracy is wasteful and extravagant; that it prefers demagogues and agitators to real statesmen; and that, compared to monarchy and aristocracy, it is unsympathetic to culture and the arts.

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[3] Edward M. Sait, *Political Institutions* (New York, D. Appleton-Century Company, 1938), p. 444.

[4] *Ibid.*, pp. 453–454.

THE ALTERNATIVES TO POPULAR RULE

The Rule of the One

One reason that historical perspective is so useful in the study of government is that it teaches us to laugh at our own complacent assumptions. The only way we keep good things is by eternal vigilance. As late as the middle of the eighteenth century, as Professor Sidgwick has pointed out, absolute monarchy was commonly considered the "final form of government to which the long process of formation of orderly country-states had led up, and by which the task of establishing and maintaining a civilized political order had been, on the whole, successfully accomplished, after other modes of political construction had failed to realize it." [5]

There is an enormous literature dealing with the justification of both absolute and limited monarchy. Among the principal arguments, it is said that monarchy is the *natural* form of government because in it the ruler bears to his people the same relation as the father to his family. It is held that monarchy is the form of government ordained by God for mankind, that it is the oldest kind of rule and therefore must be the best, and that, instead of setting them apart, it emphasizes the identity of the interests of all elements of the population.

It is said, furthermore, that monarchy has strength, simplicity of organization, the ability to act quickly, unity of counsel, consistency and continuity of policy and prestige, and dignity in the field of international relations; that it elevates more able men and holds them accountable for their acts to a greater extent than other forms of government; that it places the ruler above warring factions and hence enables him to find the common interest through compromise; and that it emphasizes dignity, culture, and manners. This is but a thumbnail sketch, but it will serve to give some idea of the thinking of those who support monarchy.

Many eminent men have favored monarchy. David Hume, for example, believed that under monarchy "property is there secure; industry is encouraged; the arts flourish; and the prince lives among his subjects like a father among his children." [6] Even Jean Jacques Rousseau, radical that he was, saw merits in monarchy: "Where such a system prevails," he said in *The Social Contract,* "the will of the people and the will of the prince, the public force of the state and the individual force of the government all respond to the same motive power; all the springs of the machine are in the same hand, all look to the same end. There are no opposing movements which destroy each other and no sort of constitution can be imagined in which a slight effort produces greater action."

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[5] H. Sidgwick, *The Development of European Polity* (London, 1893), p. 318.

[6] David Hume, *Essays Moral and Political* (Edinburgh, 1741–1742), No. 12 entitled "Of Civil Liberty."

James Bryce, in *Modern Democracies,* apparently regarded monarchy as a necessary step in the evolution of popular participation and control: "The seventeenth and eighteenth centuries," said Bryce, "saw many reforms in European countries which no force less than that of a monarchy could have carried through."

There have been more defenders of absolute monarchy than of limited monarchy, but most of the encomiums have been applied to both. An absolute monarchy is one in which the king governs and reigns—his is the sole source of authority in the state. In the limited monarchy, on the other hand—such as that of Great Britain since 1688—the monarch reigns only. He is merely the titular head, the symbol of unity, while the actual power of decision and action is vested in the sovereign legislative assembly and its cabinet. As Walter Bagehot said of England's titular king, he has the right to be consulted, the right to encourage, and the right to warn—which may give him real influence in the government—but he does not have the right to govern. In this kind of situation, however, the king performs two functions that have not thus far been mentioned: he is the continuing executive element when there is a change of cabinet, and, in a far-flung empire, he is the symbol of unity that helps to hold the empire together.

On closer examination, many of the arguments on the side of monarchy turn out to be idealized. Does the king really act in the interest of all? In practice most monarchs seem to have acted chiefly in their own interest—often from sheer vanity and caprice. Some of the drawbacks in monarchy, which the American colonists understood far better than we, are that too much power is given to one man whose sense of right and wrong controls the fate of the masses; and that hereditary title does not by any means assure ability. Furthermore, the king is likely to favor the aristocracy rather than the people. There is no assurance that he will secure the best talent to govern the realm because in practice such choices are so often made on the basis of personal friendship, hereditary considerations, or sheer whim. In addition, power vested in one person is ultimately subject to abuse—the king develops illusions of grandeur or plunges the country into war to quell popular unrest. Monarchy results in class and social cleavages that are the antithesis of democracy. Nor are the people likely to associate themselves wholeheartedly with a regime that makes them subjects of rather than partners in the government. France did not become a nation of patriots until the French Revolution placed the government in the hands of the people.

So long as the monarch was regarded with reverence and awe, the crown had a unifying and lulling effect on the people. But this time is past in most countries. As Professor James W. Garner has said in his *Political Science and Government,* "The masses have lost much of their reverential spirit toward the wearer of the crown and consequently the value of the monarchy as a loyalty-inculcating institution has largely declined."

The Rule of the Few

Monarchy and aristocracy are interrelated because it is hard to imagine a monarchy without aristocratic support. The two systems have often been rivals, however, as illustrated during the long period of feudalism. An aristocracy in the sense in which the word is used here is the control of the government by the few, by a small proportion of the population of whatever social rank, by an elite. By derivation, aristocracy means "the best," but actually it has often been far from that.

There are many forms and varieties of aristocracy: by birth and family, by wealth and social position, by education and ability, or by membership in a military, ecclesiastical, or landed group. According to one theory, each group—aristocratic or otherwise—constitutes an elite. Social scientists of one school—with which Pareto's name is associated—refer to the "circulation of the elites" and make this the center of their political assumptions. Their idea is that an organized group holds power today and is replaced by another tomorrow. Hence the study of politics, as Machiavelli long ago suggested, should concentrate on the techniques whereby one's group may prolong its control.

The champions of aristocratic rule argue that aristocracy emphasizes ability rather than mediocrity, quality instead of quantity. Aristocracy trains itself assiduously for positions of responsibility and hence produces more competence than any other form of government. The very soul of aristocracy, said Montesquieu, is found in moderation—it is conservative, traditional, and curbs the hasty passions of the mob. And, finally, it is said that aristocracy has a driving force and a sense of social purpose unknown to other groups and that it sets up a standard of excellence which raises the tone of society as a whole, providing the less gifted with an incentive to improve themselves.

Aristocracy is peculiarly interesting to the student of government because in recent years we have heard so much about the so-called aristocracy of learning and the aristocracy of the public service. England's government and particularly her civil service—as Professor Laski and others have pointed out—is based on an aristocracy that recruits talented individuals from the ranks of the greengrocer and the Limehouse district as well as from the hereditary peerage. John Stuart Mill, a true friend of democracy, once said that "the governments which have been remarkable in history for sustained mental ability and vigor in the conduct of affairs have generally been aristocracies," undoubtedly thinking of his own country in particular. To this Mill added, however, that such aristocracies have been "without exception aristocracies of public functionaries—that is, of men who have made public business an active profession and the principal occupation of their lives." If this definition is accepted, then aristocracy and the public service are virtually indistinguishable.

It is not hard to view government by aristocracy through rose-colored glasses. But sooner or later the glasses come off and the faults of aristocracy become plainly visible. Thus the *aristoi* tend to become narrow, out of touch

with common sentiments and opinions, offensively arrogant, self-centered, and conservative. The worst fault of aristocracy is that it infuriates the people by a haughtiness that undermines the democracy and equality which the people espouse. If anything is hated more than exploitation it is an attitude of superiority. Morever, if the aristocracy is an hereditary one—and often it has been—it has the same defect that is found in monarchy: in the long run it is likely to produce weak rather than superior men, rascals rather than staunch defenders of the public welfare. Privilege seems to produce a weakening of the human strain, while struggle strengthens it.

That exceedingly wise person, Benjamin Franklin, once said that there is no more reason to favor hereditary legislators than to favor hereditary professors of mathematics. Moreover, said the author of *Poor Richard,* it is absurd to expect that the eldest son should display exceptional or even average capacity and hence be in line for hereditary privileges.

It has long been recognized that there are various kinds of aristocracy and that some are of quite a different order from others. The aristocracy that derives from effort is preferable to that which owes its place solely to birth. The aristocracy of the public service is better than a social aristocracy. The aristocracy of brains and ability is more useful than that which has no social function save ornamentation. In the period when men and women had reason to think deeply about the alternative merits of monarchy, aristocracy, and democracy, champions of the common man such as Jefferson and Rousseau were willing to grant a distinction between natural aristocracies resulting from proved excellence, and artificial or sham aristocracies resulting from birth or wealth. Said Thomas Jefferson, "There is a natural aristocracy founded on talent and virtue which seems destined to govern all societies and all political forms, and the best government is that which provides most efficiently for the purity of the choosing of these natural aristocracies and their introduction into the government." Jefferson added that *in a democracy, as in other forms of government, the ablest and the most virtuous should be entrusted with governmental authority by the citizens, but he also emphasized that these opportunities should be available to all in a democratic competition.* Jefferson's solution was free public schooling. Like every believer in the common people, he realized that the poorest families sometimes produce the most gifted sons and daughters, and that if the public schools were available to all and were effective, they would draw out this talent and make it available to society's service.

Intellectual snobbery can be as obnoxious as social snobbery. College-trained men and women going into the public service should guard against it. The deepest roots of democracy are found in the recognition of social equality, which has characterized the American people since the beginning of our nation and which is commonly regarded as a principal source of our strength. Knowledge does not really ripen until it turns into humility. It is this attitude that should be carried over into the aristocracy of the public service.

TOWARD A PHILOSOPHY OF HISTORY

Aristotle believed in the cyclical theory of history, that any form of government is constantly undergoing a metamorphosis and shading off into something else. Every form of government, according to him, has its weak and its strong points, and if any form is carried to excess it changes into a different phase. Moreover, Aristotle went beyond this major assumption to suggest the course that this swing of the pendulum normally takes: that when monarchy is perverted it becomes tyranny, aristocracy becomes oligarchy, and the polity or popular rule becomes democracy. Aristotle's own words were, "Now a tyranny is a monarchy in which the good of one man is the object of government; and oligarchy considers only the rich; and a democracy only the poor. None of them has the common good in view."

Does Aristotle's classification still suffice? How does it apply to fascism, nazism, communism, and the numerous kinds of socialism such as state socialism, guild socialism, and Christian socialism? Because of the complexity of modern governmental forms, some writers have discarded Aristotle's threefold classification in favor of something less simple and rigid. And yet, by and large, the designation of the one, the few, and the many still serves a useful purpose.

The question of current usefulness also arises with regard to Aristotle's theory of history. Does one form of government inevitably change into another? Does history go around in spirals, always evolving upward toward the greater control of man's environment by all the people? Is there a general trend toward retrogression, or is the outcome within the grasp of the people and dependent on their volitions? *The modern tendency is to believe that the change from one form of government to another is not predetermined, but depends rather on the extent to which the people succeed in mastering their environment and in developing a spirit and a purpose that will assure stability and well-being.*

Another widely held view is that irrespective of what external form the government takes, history shows that the great masses of the people are being gradually emancipated and are slowly exerting a greater degree of influence. The government may be called a republic, a limited monarchy, a cooperative commonwealth, or a socialist republic, but as a general rule—despite occasional setbacks when dictators arise—the people are left with more power to determine their own common destinies than they had in previous periods.

If we keep our heads, therefore; if we concentrate on our human values and objectives, adopting a pragmatic view toward what government does and playing a more active role in running it, then our traditions and institutions will thrive and the time may come at last when popular government is no longer said to be on trial.

SUPPLEMENTARY READING

1. Alternative forms of government: James W. Garner, *Political Science and Government* (New York, 1928), Chapter 15, "Elements of Strength and Weakness in Different Forms and Types of Government"; Edward M. Sait, *Political Institutions* (New York, 1938), Chapter 19, "Monarchy, Aristocracy, and Democracy"; and Francis G. Wilson, *The Elements of Modern Politics* (New York, 1936), Part 7, "The Evaluation of the Democratic State," and Part 8, "The Authoritarian State." See also Michael Oakeshott, *Social and Political Doctrines of Contemporary Europe* (New York, 1942); G. S. Ford, *Dictatorship in the Modern World* (Minneapolis, 1935); Sidney and Beatrice Webb, *Soviet Communism: A New Civilization?* 2 vols. (New York, 1936); N. Lenin, *The State and Revolution* (London, 1919); H. W. Schneider, *Making the Fascist State* (New York, 1928); Carlo Sforza, *European Dictatorship* (New York, 1931); G. Sorel, *Reflections on Violence* (New York, 1914); John Strachey, *The Coming Struggle for Power* (New York, 1933); José Ortega y Gassett, *The Revolt of the Masses* (New York, 1932); Oswald Spengler, *The Decline of the West* (New York, 1926–1928); and A. B. Wolf, *Conservatism, Radicalism, and Scientific Method* (New York, 1923).

2. The strength and weakness of popular rule: Max Lerner, *It Is Later Than You Think* (New York, 1938); Arthur N. Holcombe, *Government in a Planned Democracy* (New York, 1935); Ernest M. Patterson (ed.), *Defending America's Future, The Annals,* Vol. 216 (Philadelphia, 1941); W. Y. Elliott, *The Need of Constitutional Reform* (New York, 1935); James Bryce, *Modern Democracies* (New York, 1921), Part 1, Chapters 6–7; Charles E. Merriam, *What Is Democracy?* (Chicago, 1941); and Carl Becker, *Modern Democracy* (New Haven, 1941).

APPENDIX



THE CONSTITUTION OF THE UNITED STATES

THE UNITED NATIONS CHARTER

The Constitution of the United States

OUTLINE

PREAMBLE

ARTICLE I. The legislative branch
- Organization of Congress and terms, qualifications, apportionment, and election of Senators and Representatives
- Procedure in impeachment
- Privileges of the two houses and of their members
- Procedure in lawmaking
- Powers of Congress
- Limitations on Congress and on the States

ARTICLE II. The executive branch
- Election of the President and the Vice President
- Powers and duties of the President
- Ratification of appointments and treaties
- Liability of officers to impeachment

ARTICLE III. The judicial branch
- Independence of the judiciary
- Jurisdiction of national courts
- Guarantee of jury trial
- Definition of treason

ARTICLE IV. Intergovernmental relationships
- Full faith and credit to acts and judicial proceedings
- Privileges and immunities of citizens of the several States
- Rendition of fugitives from justice
- Control of territories by Congress
- Guarantees to the States

ARTICLE V. Methods of amendment

ARTICLE VI. Supremacy of the Constitution, laws and treaties of the United States
- Oath of office—prohibition of a religious test

ARTICLE VII. Method of ratification of the Constitution.

AMENDMENTS

I. Freedom of religion, speech, press, and assembly; right to petition
II. Right to keep and bear arms
III. Limitations concerning quartering of soldiers
IV. Protection against unreasonable searches and seizures

V. Due process of law; judicial procedure; eminent domain
VI. Trial by jury in criminal cases and related safeguards
VII. Trial by jury in common law cases
VIII. Prohibitions against excessive bail or cruel and unusual punishments
IX. Retention of rights by the people
X. Powers reserved to the States or to the people, respectively
XI. Nonsuability of States by individuals
XII. Election of President and Vice President
XIII. Civil War amendment: abolition of slavery
XIV. Civil War amendment: citizenship; due process of law and equal protection; sanction concerning representation in Congress; validity of public debt
XV. Civil War amendment: Negro suffrage
XVI. Income taxes
XVII. Popular election of Senators
XVIII. Prohibition of intoxicating liquors
XIX. Woman suffrage
XX. Abolition of "Lame Duck" Session of Congress; change in presidential and Congressional terms
XXI. Repeal of the 18th Amendment

Constitution of the United States

Adopted September 17, 1787.
Effective March 4, 1789.

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.

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

[1] See the 16th Amendment.
[2] Partly superseded by the 14th Amendment.
[3] Changed by the 17th Amendment.

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 the 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 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

[4] Changed by the 17th Amendment.

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 becomes a law, be presented to the President of the United States; if he approves 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 the 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. The Congress shall have the power

1. 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 a 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 of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

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[5] See the 16th Amendment.

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* law, 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 the 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 representative, 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 the 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

[6] The following paragraph was in force only from 1788 to 1803.

[7] Superseded by the 12th Amendment.

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."

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. 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.

[8] See the 20th Amendment.

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.[10]

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

[9] See the 11th Amendment.

[10] See the 14th Amendment, Sec. 1.

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.[11]

SECTION 3. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.[12]

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

[11] See the 13th Amendment.

[12] See the 14th Amendment, Sec. 4.

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.

AMENDMENTS

First Ten Amendments passed by Congress September 25, 1789.
Ratified by three fourths of the States December 15, 1791.

ARTICLE I

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.

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 reexamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI

Passed by Congress March 5, 1794. Ratified January 8, 1798.

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

Passed by Congress December 12, 1803. Ratified September 25, 1804.

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they

shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ARTICLE XIII

Passed by Congress February 1, 1865. Ratified December 18, 1865.

SECTION 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV

Passed by Congress June 16, 1866. Ratified July 23, 1868.

SECTION 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 person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 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.

SECTION 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.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV

Passed by Congress February 27, 1869. Ratified March 30, 1870.

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

Passed by Congress July 12, 1909. Ratified February 25, 1913.

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

Passed by Congress May 16, 1912. Ratified May 31, 1913.

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

Passed by Congress December 17, 1917. Ratified January 29, 1919.

After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by Congress.

ARTICLE XIX

Passed by Congress June 5, 1919. Ratified August 26, 1920.

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

Passed by Congress March 3, 1932. Ratified January 23, 1933.

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several States within seven years from the date of its submission.

ARTICLE XXI

Passed by Congress February 20, 1933. Ratified December 5, 1933.

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 intoxicatnig liquors in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission thereof to the States by the Congress.

The United Nations Charter [1]

WE, the peoples of the United Nations

Determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

To reaffirm faith in fundamental human rights, in dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

To promote social progress and better standards of life in larger freedom, and for these ends

To practice tolerance and live together in peace with one another as good neighbors, and

To unite our strength to maintain international peace and security, and

To insure, by the acceptance of the principles and the institution of methods, that armed force shall not be used, save in the common interest, and

To employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

Purposes

(Art. 1) 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression . . . , and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes . . . which might lead to a breach of the peace;

2. To develop friendly relations among nations . . . .

3. To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and . . . encouraging respect for human rights [irrespective of] . . . race, sex, language or religion; . . .

[1] This condensed text is found in *Facts on File*, Vol. V, No. 271 (Dec. 23–31, 1945), pp. 416–418.

Principles

(Art. 2) 1. The organization is based on the principle of the sovereign equality of all its members. 2. . . . [they] shall fulfill in good faith [their] obligations. . . . 3. . . . settle their . . . disputes by peaceful means. . . . 4. . . . refrain . . . from threat or use of force . . . 5. . . . give the United Nations every assistance in any action. . . . 6. The Organization shall ensure that states not members act in accordance with these principles. . . . 7. [Restrains jurisdiction from domestic matters.]

CHAPTER II

Membership

(Art. 3) [Original members defined.]

(Art. 4) [Opens membership to all other peace-loving nations which accept obligations and by decision of the General Assembly on recommendation of Security Council.]

(Art. 5) A member . . . against which preventive or enforcement action has been taken . . . may be suspended from the exercise of [its] rights and privileges . . . by the General Assembly upon the recommendation of the Security Council. . . .

(Art. 6) A member . . . which has persistently violated [Charter] principles . . . may be expelled . . . by the General Assembly upon the recommendation of the Security Council.

CHAPTER III

Organs

(Art. 7) [There are established as principal organs: General Assembly, Security Council, Economic and Social Council, International Court of Justice, Trusteeship Council, Secretariat and such subsidiaries as necessary.]

(Art. 8) [No restrictions on eligibility of men and women to participate in any capacity in the above agencies.]

CHAPTER IV

The General Assembly

Composition

(Art. 9) [Shall consist of all the members with not more than five representatives each.]

Functions and Powers

(Art. 10) . . . may discuss any questions . . . within the scope of the charter or relating to the powers and functions of any organ provided in the Charter, and, except as provided in Art. 12, may make recommendations to the members . . . or to the Security Council, or [to] both. . . .

(Art. 11) 1. . . . may consider the general principles of cooperation in the maintenance of peace . . . and may make recommendations . . . to members or to the Security Council or both. 2. . . . may discuss any questions relating to the maintenance of . . . peace. . . . [See Arts. 12, 35.] . . . A question on which action

is necessary shall be referred to the Security Council. . . . 3. . . . may call the attention of the Security Council to situations which are likely to endanger . . . peace. . . .

(Art. 12) 1. While the Security Council is exercising [jurisdiction] in respect of any dispute . . . the General Assembly shall not make any recommendation with regard to that dispute . . . unless the Security Council so requests. . . .

(Art. 13) [Authorizes study and recommendations in international law and economic, social, cultural, educational and health progress.]

(Art. 14) [Authorizes recommendations to solve threatening situations regardless of origin.]

(Art. 15) [Authorizes reports.]

(Art. 16) [Authorizes trusteeships—see Chaps. XII, XIII.]

(Art. 17) [Places responsibility for budgets.]

Voting

(Art. 18) 1. [Each member shall have one vote.] 2. Decisions . . . shall be made by a two-thirds majority of those present and voting. [Subjects specified such as keeping peace, election of members to organs, admission of new members, expulsions, suspensions.]

(Art. 19) [Suspends votes of members behind in payments.]

Procedure

(Art. 20) . . . shall meet in regular annual sessions and in . . . special sessions . . . convoked by the Secretary General at the request of the Security Council or of a majority of the members. . . .

(Art. 21) . . . shall adopt its own rules of procedure. It shall elect its president for each session.

(Art. 22) [May establish necessary subsidiaries.]

CHAPTER V

The Security Council

Composition

(Art. 23) 1. . . . shall consist of 11 members. . . . [The U.S., the U.K., the U.S.S.R., China and France shall be permanent members.] The General Assembly shall elect six other members. . . . 2. [Nonpermanent members shall serve two years.] 3. Each member . . . shall have one representative.

Primary Responsibility

(Art. 24) 1. In order to insure prompt and effective action . . . its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties . . . the Security Council acts in their behalf. 2. [Powers specified in Chaps. VI, VII, VIII, and XII.]

(Art. 25) The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the provisions of the present Charter.

(Art. 26) [To promote peace] the Security Council shall be responsible for formulating . . . a system for the regulation of armaments.

Voting

(Art. 27) 1. Each member . . . shall have one vote. 2. Decisions . . . on procedural matters shall be made by an affirmative vote of seven members. . . . 3. Decisions . . . on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members. . . .

Procedure

(Art. 28) 1. . . . shall be so organized as to be able to function continuously. Each member . . . shall for this purpose be represented at all times. . . .

(Art. 29) [May establish subsidiary organs.]

(Art. 30) [Shall adopt own rules of procedure.]

(Art. 31) Any member of the United Nations which is not a member of the Security Council may participate without a vote in the discussion of any question. . . .

(Art. 32) Any member [see Art. 31] . . . or any State not a member of the United Nations, if it is party to a dispute . . . , shall be invited to participate in the discussion. . . .

CHAPTER VI

Pacific Settlement of Disputes

(Art. 33) 1. The parties to any dispute . . . shall . . . seek a solution by negotiation. . . . 2. The Security Council shall . . . call upon the parties to settle their dispute. . . .

(Art. 34) The Security Council may investigate any dispute . . . which might lead to international friction. . . .

(Art. 35) 1. Any member of the United Nations may bring any dispute . . . [under Art. 34] to the attention of the Security Council or of the General Assembly. 2. A State . . . not a member of the United Nations may bring to the attention of the . . . Council or . . . Assembly any dispute to which it is a party, if it accepts in advance . . . obligations of pacific settlement . . .

(Art. 36) 1. The Security Council may, at any stage of the dispute . . . [under Art. 33] . . . recommend . . . adjustment. 2. The . . . Council should [consider] . . . any procedures . . . already . . . adopted by the parties. 3. In making recommendations . . . the . . . Council should [consider] . . . that legal disputes should . . . be referred to the International Court of Justice. . . .

(Art. 37) 1. Should the parties to a dispute . . . [see Art. 33] fail to settle . . . they shall refer it to the Security Council . . . [to] decide whether to take action under Art. 36. . . .

(Art. 38) Without prejudice to . . . Arts. 33–37 . . . the . . . Council may, if all the parties to any dispute so request, make recommendations to the parties. . . .

CHAPTER VII

Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression

(Art. 39) The Council shall determine the existence of any threat to the peace . . . and decide . . . measures. . . .

(Art. 40) [Council may call upon parties to comply with provisional measures.]

(Art. 41) . . . may decide what measures not involving . . . force are to be employed to give effect to its decisions. . . .

(Art. 42) Should . . . measures [in Art. 41] be inadequate . . . it may take action by . . . [force].

(Art. 43) All members . . . undertake to make available . . . armed forces, assistance and facilities, including rights of passage. . . .

(Art. 44) When . . . Council has decided to use force, it shall, before calling upon a member not represented on it to provide forces . . . invite that member, if . . . [he desires] to participate in the decisions. . . .

(Art. 45) . . . members shall hold immediately available national air force contingents . . . for enforcement. . . .

(Art. 46) Plans for . . . force shall be made by . . . Council. . . .

(Art. 47) [A Military Staff shall advise.]

(Art. 48) 1. The action . . . shall be . . . by all members, or by some . . . as [determined].

(Art. 49) [Members shall offer mutual assistance in carrying out measures.]

(Art. 50) [If enforcement creates special economic problems States may consult the Security Council.]

(Art. 51) Nothing . . . shall impair the inherent right of . . . self-defense. . . .

CHAPTER VIII

Regional Arrangements

(Art. 52) 1. [Nothing in the Charter precludes regional arrangements for peace.] 2. [Parties to such shall seek peaceful settlement of local disputes before referring them to the Security Council.]

(Art. 53) 1. The . . . Council shall . . . utilize such arrangements . . . for enforcement. . . . But no . . . action will be taken . . . without authorization . . . except . . . against any enemy state. . . . 2. . . . "enemy state" . . . applies to any state which during the second World War has been an enemy of any signatory of the present Charter.

(Art. 54) The Security Council shall . . . be kept fully informed of activities undertaken or in contemplation. . . .

CHAPTER IX

International Economic and Social Cooperation

(Art. 55) . . . the United Nations shall promote (A) Higher standards of living. . . . (B) Solutions of . . . problems . . . (C) . . . respect for . . . human rights and . . . freedoms. . . .

(Art. 56) [All members pledge action to achieve Art. 55.]

(Art. 57) [Relations with specialized agencies.]

(Art. 58) [Coordinates special agencies.]

(Art. 59) [Initiates new agencies.]

(Art. 60) [Fixes responsibility under Assembly.]

CHAPTER X

Economic and Social Council

Composition

(Art. 61) [Shall consist of 18 members.]

Functions and Powers

(Art. 62) [May make studies, recommendations, prepare draft conventions, call conferences.]

(Art. 63) [May enter into an agreement with special agencies and coordinate their activities.]

(Art. 64) [May obtain reports from them and make reports.]

(Art. 65) [May furnish information to the Council.]

(Art. 66) [May carry out Assembly recommendations.]

Voting

(Art. 67) 1. Each member . . . shall have one vote. 2. Decisions . . . by a majority present and voting.

Procedure

(Art. 68) [It] . . . shall set up commissions. . . .

(Art. 69) . . . any member [invited] . . . to participate. . . .

(Art. 70) [Agencies may participate in deliberations.]

(Art. 71) [Consultations permitted sometimes.]

(Art. 72) [It shall adopt its own rules of procedure.]

CHAPTER XI

Declaration Regarding Non-Self-Governing Territories

(Art. 73) Members . . . recognize . . . interests of the inhabitants of these territories are paramount. . . .

(Art. 74) [Their policy must be based on good neighborliness.]

CHAPTER XII

International Trusteeship System

(Art. 75) . . . established for the . . . supervision of such territories as may be placed thereunder. . . .

(Art. 76) . . . objectives [are] in accordance with . . . Art. 1.

(Art. 77) . . . shall apply to (a) Territories not . . . under mandate; (b) . . . which may be detached from enemy states . . . ; (c) . . . voluntarily placed under system by [administrators]. . . .

(Art. 78) . . . shall not apply to members. . . .

(Art. 79) [Terms shall be agreed upon by parties concerned.]

(Art. 80) [Except as agreed upon nothing shall alter rights of states or peoples or agreements.]

(Art. 81) [Agreement shall include terms and designate the authority, which may be a member.]

(Art. 82) There may be designated . . . a strategic area . . . which may include part or all of the trust territory. . . .

(Art. 83) 1. All functions . . . relating to the strategic area . . . shall be exercised by the Security Council. 2. . . . objectives . . . in Art. 76 shall be applicable. . . .

(Art. 84) . . . the trust territory shall play its part in the maintenance of international peace and security. . . .

(Art. 85) [Functions of trusteeship agreements for all areas not strategic come under the Assembly.]

CHAPTER XIII

The Trusteeship Council Composition

(Art. 86) . . . shall consist of (A) Those members administering trust territories; (B) Such . . . mentioned by name in Art. 23 as are not administering [trusts]; and (C) As . . . elected. . . .

Functions and Powers

(Art. 87) The General Assembly and . . . the Trusteeship Council . . . may: Consider reports . . . accept petitions . . . provide for periodic visits. . . .

(Art. 88) . . . shall formulate a questionnaire on . . . each trust territory, and the administering authority [shall report annually].

Voting

(Art. 89) [Members have one vote each. Decisions by a majority present and voting.]

Procedure

(Art. 90) . . . shall adopt own rules of procedure. . . .

(Art. 91) . . . shall avail itself of assistance. . . .

CHAPTER XIV

The International Court of Justice

(Art. 92) . . . shall be the judicial organ. . . .

(Art. 93) All members of the United Nations are ipso facto parties to the statute of the . . . Court of Justice. . . . A State . . . not a member . . . may become a party. . . .

(Art. 94) Each member . . . undertakes to comply with the decision of the . . . Court. . . . If any party to a case fails to perform . . . under judgment . . . the other . . . [has] recourse to the Security Council. . . .

(Art. 95) [Nothing herein prevents use of other tribunals.]

(Art. 96) [Advisory opinion may be requested.]

CHAPTER XV

The Secretariat

(Art. 97) There shall be a secretariat . . . a secretary general and . . . staff . . . appointed by the General Assembly. . . .

(Art. 98) [Duties.]

(Art. 99) . . . [He] may bring to the attention of the Security Council any matter . . . [threatening peace].

(Art. 100) [He and his staff] . . . shall not seek or receive instructions from any government . . . [and] shall refrain from any action . . . [compromising internationality]. Each nation undertakes to respect [their internationality]. . . .

(Art. 101) [The Secretary General shall appoint the staff.]

CHAPTER XVI

Miscellaneous Provisions

(Art. 102) Every treaty . . . shall be registered. . . .

(Art. 103) [Charter obligations take precedence over others.]

(Art. 104) [The Organization is promised legal freedom.]

(Art. 105) [The Organization is guaranteed privileges and immunities.]

CHAPTER XVII

Transitional Security Arrangements

(Art. 106) [Until special agreements in Art. 43 are completed, the five permanent members shall consult and take necessary action to maintain peace.]

(Art. 107) [The Charter shall not hinder the prosecution of the war still going on.]

CHAPTER XVIII

Amendments

(Art. 108) [Charter may be amended by two-thirds vote and ratification by two thirds of members, including all permanent Council members.]

(Art. 109) [A conference to review the Charter may be called by two-thirds vote of the Assembly and by seven Council members. If not held within 10 years, it may then be called by majority vote of Assembly and by seven Council members.]

CHAPTER XIX

Ratification and Signature

(Art. 110) [Charter shall be ratified and deposited with the United States Government by members and shall take effect upon deposit of ratifications by the five permanent members and a majority of the others.]

(Art. 111) The present Charter, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall remain deposited in [United States Government archives] . . . [Done in San Francisco, June 26, 1945.]

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(1632-1704)
CCOLO MACHIAVELLI
(1469-1527)
JEAN JACQUES ROUSSEAU
(1712-1778)
CHARLES de MONTESQUIEU
(1689-1755)
EORGE WASHINGTON
(1732-1799)
THOMAS PAINE
THOMAS JEFFERSON
(1743-1826)
JOHN MARSHALL
(1755-1835)
ALEXANDER HAMILTON
(1757-1804)
ANDREW JACKSON
(1767-1845)
JOHN STUART MILL
(1806-1873)
ABRAHAM LINCOLN
(1809-1865)
OLIVER WENDELL HOLMES
(1841-1935)
THEODORE ROOSEVELT
(1858-1919)
GEORGE NORRIS
(1861-1945)
FRANKLIN DELANO ROOSEVELT