

THE
AMERICAN
FEDERAL
GOVERNMENT

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MAX BELOFF

THE *American Federal Government* represents an attempt to describe and analyse the American system of government as it functions under the stresses and strains of America's new position in world affairs. The analysis is based on the assumption that the principal task of modern government, particularly in a great power, concerns decisions about allocation of the national income and about relations with the rest of the world, whether friendly or hostile. After an Introduction on the general nature of the political system and an examination of the extent to which the Americans still work within the confines of a written Constitution, Professor Beloff analyses successively the present position of the President, the Administration, Congress, and the political parties. In a concluding chapter there is some examination of the way in which the activities of government impinge on the life of the ordinary citizen and the difference made in the American case by the fact that the system is a federal one.

Max Beloff's well-informed, well-written, illuminating and independent book, though not in form a general study of the American constitution, has claims to be considered the best short study now available of the whole institutional framework of the United States. Professor Beloff is Gladstone Professor of Government and Public Administration in the University of Oxford.

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The American Federal Government

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Administration in the University of Oxford*

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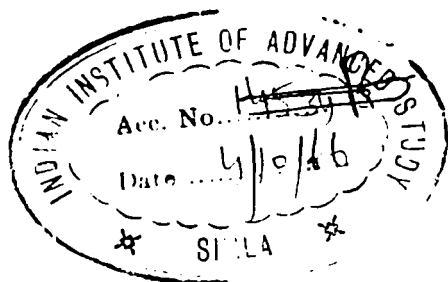
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PREFACE

I HAVE set myself in this book only a limited task: to give an account of the general principles of American government and of the manner in which it functions from the point of view of non-Americans, whose main concern is naturally with those aspects of American institutions and policies that affect the outside world. I have therefore limited myself to the federal government and omitted any description of those state and local institutions that bulk large in the daily life of the ordinary citizen; and within the federal government, I have concentrated on those features that most directly influence the United States' conduct in international relations. In the brief bibliography, I have had the needs of British students in mind and given British editions for preference.

I am deeply indebted to Sir George Clark for suggesting that I undertake this book and for kindly encouragement and help at various stages. I must thank my research assistant at Nuffield College, Miss Yoma Crosfield, for help with the proofs and for compiling the index.

MAX BELOFF

*All Souls' College,
October, 1958.*

Chapter One

THE AMERICAN POLITICAL SYSTEM

“‘WHAT do you think of our institutions?’ is the question addressed to the European traveller in the United States by every chance acquaintance.’ When Bryce published his *American Commonwealth* in 1888, this remark, with which it opens, was truer than it would be today. Americans still appear to be concerned with foreigners’ opinions about their ways of conducting their affairs, but the concern has altered in tune with the change in America’s position in the world. When Bryce wrote, ‘thoughtful Europeans’ had ‘begun to realize, whether with satisfaction or regret, the enormous and daily-increasing influence of the United States, and the splendour of the part reserved for them in the development of civilisation’. Today there is no need to scan the future; the American century has arrived. There are more than a hundred million more American citizens now than when Bryce contrasted the sixty millions of whom he wrote with the fifteen millions who formed the subject of Tocqueville’s enquiries in 1831. The European, thoughtful or not, cannot but be aware of the importance of the United States, nor fail to realize the utility of accurate knowledge about its government and policies.

Whether the accumulation of books on the subject which Bryce noted and which has since proceeded at an

increasing rate has meant that Europeans are less guilty of citing the 'social and political experiment America without 'due knowledge of the facts 'comprehension of what they teach' is an interesting subject for speculation; certainly if it is the facts are lacking, the present wealth of American literature on the subject removes the most obvious excuse. The foreigner now seeking to justify himself for attempting a general description of American institutions can hope to do so by saying that no native American has undertaken the task.

The reasons that now lead Europeans to come to grips with Americans on their own native ground are three in number. Of dwindling importance is the fact that much of the American literature is not readily comprehensible; though this is probably less true in Britain than in the Continental countries, where problems of language supervene. Much more important is the fact that the growing sophistication of government generally, and of the American government in particular, produces difficulties for anyone seeking to analyse or describe it, and that these problems will not present themselves in the same way to those who have a quite different background. We feel we want to see America in the light in which we ourselves choose to do so, and do not want our view to be in some sense imposed upon us from the outside. But the most important reason of all is the one already alluded to—the dramatic growth in the power of the United States and in the scale of its involvement in our own lives and fortunes.

For Europeans now require knowledge of the Un

States for quite different reasons from those which moved their predecessors. Bryce rightly refused to take Tocqueville as his model because Tocqueville's interest in America was not an interest in America for its own sake; for him 'America was primarily a democracy, the ideal democracy, fraught with lessons for Europe'. Indeed, Tocqueville himself had stated the matter still more baldly when he wrote to John Stuart Mill that America only provided the frame: his subject was Democracy. But even for Bryce what is most interesting is what American institutions reveal concerning 'the laws of political biology' and 'the new illustrations and enforcements' they supply of 'general truths in social and political science'; and he finds it necessary to warn Europeans against the view that American institutions could easily be imported piecemeal into Europe or that it would be easy to foretell what the result of such an attempt would be.

Tocqueville, then, regarded the institutions of the United States as prefiguring a state of affairs which the inexorable march of democracy would one day bring in Europe, and as indicating methods by which this process might be rendered as benign as possible; Bryce regards the United States as an independent social organism developing on different lines to those that Europe seemed to be following, and worthy of study precisely because of the contrasts it afforded with experience at home. In our own day the differences seem greater than ever before. It is true that Tocqueville has been proved a major prophet; indeed, few other works of the kind can ever have shown the

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staying power of *Democracy in America*. But although democracy, in the political sense, has indeed made vast strides in Europe that he expected, and although the patterns of social life pioneered in America, so intimately linked to the industrial civilization of which the United States is now the greatest representative, are widely copied wherever their material prerequisites are available, the actual institutions seem more than ever unlike those of the free Europe of the West, alone the communist Europe controlled by Russia that power which Tocqueville in yet another prophetic passage saw as America's chief future rival for the mastery of the world.

Bryce was writing at the beginning of the period in which the institutions of the European states were being remoulded in order to cope with the problems arising out of the impact of modern industrialism upon a social order whose individualist tenets seemed incapable of preventing great injustices and vast suffering. Although some similar developments were observable in the United States—and had been for some time—the peculiarities of the American situation kept them in check. The Europeans, not the Americans, were the pioneer of the Welfare State and for the first forty years after Bryce's book appeared there seemed to be a decreasingly little reason why European reformers should look to the United States for models. It is true that with the Great Depression the shape of things changed, and for a short period the America of President Roosevelt and the New Deal presented something in the nature of a challenge and an inspiration to Europeans, who

on the other side of the Atlantic the President himself was under fire for his alleged importation of 'un-American' ideas and practices. But since the Second World War the two streams seem to have diverged once more. Europeans are still preoccupied with problems arising out of the scarcity of material resources, and are indeed increasingly aware of the precarious basis of the relative advantages which they enjoy over other parts of the Old World. In the United States there seems to be (except in marginal areas) no such sense of need. The economic system appears capable of almost indefinite expansion, and the problems that government contemplates are more likely to be the problems of abundance than those of scarcity.

Indeed, a contemporary American historian, David Potter, in his study of 'economic abundance and the American character' which he entitles *People of Plenty*, has urged that the real American commitment is to the realization of abundance itself, rather than to any particular formula for its attainment. Individualism only seemed to be the principal theme of American social development because it was thought of as the best way of attaining this abundance; if it failed to deliver the goods, individualism would be scrapped as it was in part of Roosevelt's New Deal legislation. Few Americans hitherto have followed Potter's argument as far as he does when he roundly asserts that it is because other countries do not enjoy this abundance that the American democratic message does not convey to them the meaning it is meant to have. If it is true, as

Professor Potter believes, that 'no other part of American activity has been so consistently and so completely a failure' as the attempt to 'export democracy'. It may also be right that it is because what the world admired in America has been its abundance, rather than such things as individual and political freedom, which Americans believe to be its prerequisites, which to other less fortunate people may, on the contrary, seem to be merely its consequences. 'The message to the world', writes Professor Potter, 'is to become involved in a dilemma; to other people democracy has seemed attainable but not especially desirable; our abundance has seemed infinitely capable but quite unattainable.'

For our present purpose—the study of American institutions—another of Professor Potter's arguments is still more directly relevant. He believes one must distinguish the egalitarianism of the New World from that of the Old. In the latter the amount of wealth has tended to be thought of as more or less fixed; the advancement of one class can only be at the direct expense of another. In America, where resources are thought of as infinitely expansive, there is no reason why this should be so. It is merely a question of properly channelling the inevitable increment. One may, of course, answer that as a matter of economic fact Americans have arrived in the matter of the redistribution of incomes through progressive taxation and social services at very much the same stage as the advanced countries of Western Europe. But the political instruments through which this is effected, and the admin-

adduced to justify it, go a good way towards illustrating the nature of the difference between the two points of view.

In these circumstances the idea of being able to draw directly on American experience is not very likely to commend itself. We get instead a somewhat paradoxical situation. What impresses Europeans and others is the seeming efficiency of the American economic system, its apparent capacity to produce ever higher living standards for the masses; while they tend to regard American political institutions as old-fashioned and even perhaps inadequate. But Americans not only accept the continued validity of their political practices, but even ascribe much of their economic success directly to them.

We need not inquire here as to which of the participants in this debate is nearer the truth, for the whole debate is now a secondary one. What Europeans are concerned with is not why America is a success, but what it is going to do with the wealth and power it has acquired; not how America makes money so much as how it is going to spend it. Will the Americans expand or decrease their contribution to the defence of Western Europe against communism? Will they spend an important part of their annual increment of wealth upon programmes of foreign aid, and if so, what will be their reasons for this, and which of the various possible methods of carrying out such programmes are they likely to adopt? Even when we are looking at what seem to be domestic problems of the American economy—plans to meet a possible recession, for instance—

what is chiefly in our own minds is the vulnerability of our economies to such a recession. As in Tocqueville's day, but for quite different reasons, and in a different sense, it is our own fate we are worried about when we study the American scene. Though we discuss institutions and the ideas that inspire them, the conventions by which they function, what are the policies that these institutions are going to adumbrate, and their capacities for seeing them *into practice*.

And these primary interests of ours will necessarily determine the form of any but the most naive academic inquiry. What we shall have in the forefront of our minds are the facts of America's military and economic power, and the issues confronting America in foreign and economic policy. The focus of our interest will be the executive branch of government in so far as it gives a lead in these matters, the department responsible for action, and within this branch particularly those departments that deal with foreign affairs, with fiscal and commercial policy and military preparedness. The pattern laid down by James Bryce, and on the whole followed by his successors, is very far removed from such contemporary preoccupations.

Indeed, so little importance did Bryce attach to the world role of the United States that his work is almost uninformative, even on those institutions which actually existed when he wrote. A ten-page chapter suffices for the whole Cabinet and there is no discussion at all of the Secretary of State or of his department.

the existence of a military establishment of any kind and the whole problem of civil-military relations, is passed over in complete silence, and this in treating a country which a mere quarter of a century earlier had been the scene of what was in many respects the first 'modern' war and of years of large-scale fighting.

As far as the making of foreign policy is concerned, Bryce was conscious that the domination of party in the allocation of administrative posts might present certain particular difficulties. It would, he admits, be even more serious were it not that 'in foreign policy where the need for continuity is greater, the United States *have little to do*'. And this, together with a reference to the role of the Senate in preventing too great a discontinuity of ideas between one President and another, is all he found it needful to say.

Bryce's omissions were, of course, justified on the facts of the case. The Federal Government bulked smaller then on the national scene, and within the Federal Government those elements connected with defence and with foreign relations also represented a smaller proportion of the whole. In 1889, the year of Bryce's book, the United States government spent about 299 million dollars in all, of which about 65 million, only a little more than one fifth, represented the cost of the two defence departments. In 1954 the Federal Government spent about 67,772 million dollars, of which over 45,000 million dollars, or just two-thirds, could be classified as having been devoted to the purposes of national security. This meant an expenditure

national income. The budget presented by President Eisenhower in January 1957 for the fiscal year beginning July 1957—called for an expenditure of 71,800 million dollars, of which 63 per cent. was for defence and mutual aid. If the cost of past wars in form of pensions and interest on debt is added, the figure of nearer three-quarters than two-thirds of total federal expenditure is now spent on the consequences of the United States being involved in the affairs of the rest of the world.

A statistical note will hardly drive home the point so easily where foreign relations in the case of negotiations is concerned. The number of Federal Government civilian employees rose from 166,189 in 1891 to 2,397,000 in 1955, and the State Department with all the other agencies now connected with the administration of foreign affairs could not account for more than a fraction of the manpower involved. It is perhaps easier to put it by pointing out that the Department of State when Bryce was written about was substantially that reorganized by Hamilton Fish in 1870, when it was articulated in sixteen separate units. On the eve of another major reorganization in 1947, it had 113 separate units. But by this date nineteen agencies of the Federal Government were wholly concerned with foreign affairs, and many other important agencies were partially so involved.

We do not need to recapitulate here the successive events by which the scope of American international activities abroad has been broadened, nor to characterize the

wars and in the fluctuating struggle against communist expansion that grew almost without a break out of the latter conflict. Our concern is with the impact of these events upon a series of institutions which still rest upon a Constitution drawn up in 1787, almost on the morrow of independence, for the straggling line of Atlantic seaboard settlements that formed the United States of that day. And only secondary—if secondary at all—to this concern must be the strain which such developments must inevitably imply for the basic political philosophy, and habits of political action, which provide the motive force and element of lubrication for the political system itself.

We cannot dismiss the history of American institutions from our minds when considering the present; first, because the mere existence of a written instrument of government with the power of amendment preponderantly in the hands of the judiciary forces a continual recourse to precedent in every major argument; and, second, because of the persistence in American political thinking and public attitudes of ideas that are explicable only in terms of the past, or of the past as mediated through popular legend. Not only has the position of the United States with regard to the rest of the world changed; but almost everything else about it has changed too. Its area is not the same; by the time Tocqueville wrote, the imaginative genius of Jefferson and the restless spirit of the pioneers had added the great Mississippi Valley, the heartland of the New World, to the original Atlantic states. By the time

Pacific, and if some still saw in Canada the ultimate gift of 'manifest destiny', the continental unity was a sense complete. In 1958 Alaska was admitted as the 49th state—the first whose boundaries are now contiguous with those of the rest of the country.

Not only the land, but the people are different. The originally overwhelmingly English character of the American stock was already being modified by German and other Continental strains at the time of independence. When Tocqueville wrote, the ethnic ratio had already altered substantially; but by Bryce's time the position was very different, with the massive mid-century influx of Irish, Germans, and Scandinavians. But still further important changes lay ahead, with the great outpouring of people from eastern and southern Europe in the years between the time Bryce wrote and the shutting of the gates—never, of course, complete during and after the First World War. And the changes relate only to 'white' Americans. The Negro Man has never, except very partially and locally, affected the development of American institutions; but the same cannot be said of the African. The slaves, who at the time of independence represented what was widely felt to be an anomalous blot on the face of the free Republic, had by Tocqueville's time become numerous and so vital to an important section of the country's economy that the future relations of the two races seemed to him to represent the major question mark against a future otherwise full of promise. When Bryce wrote, the great crisis had come and passed. The slaves were now free in the sense that no man

the United States now owned another; but neither economic nor social equality had followed upon the change in legal status, and American institutions are still wrestling in our own day with the residual effects of this ancient wrong upon the situation of one-tenth of the country's population. The presence or absence of Negro slavery in earlier times is the most important, but not the only criterion for establishing the bounds of the geographical groups of states, or sections, into which the country has been divided throughout its history, and whose divergencies have been a central theme of its political life.

With the growth in territory and in population there came about an economic revolution which shifted the country's economy from its original dependence on subsistence farming and the exports of staples to a fundamentally industrial basis. But here the question of scale comes in once more; for although the United States as a whole is not only an industrial country, but the industrial country *par excellence*, industry—as in other continental units—is not equally distributed throughout the area, and the older agrarian America is still present over enough of the country to make the pro-agrarian bias of some American political institutions something with which the American statesman must always reckon.

What is extraordinary is not the changes that have taken place; Russia, the country which Tocqueville rightly saw as providing the only real parallel to North America, has seen changes almost as great in some respects and greater in others. And indeed little of

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the world remains much what it was when George Washington was alive. It is the element of continuity in the American story—despite the Civil War—above all the survival of so much of the institutional structure and of the ideas that go with it, that must surely strike the mid-twentieth century observer of the American scene.

One has only to reflect what kind of government system Britain would be trying to live under if our political practices of 1787 had been distilled into a written constitution, and if that constitution had still to be applied with as little alteration as has been made in the formal structure of American Federal Government. And while it is true that state constitutions have been much more frequently amended, even the structure still reflects both the eighteenth-century faith in the separation of powers and the eighteenth-century practices of British colonial government. There, after all, are the Governors, still so styled.

The makers of the Constitution—the Founding Fathers—might not have been as surprised as some of their successors to learn that foreign affairs and defence would bulk so large in the affairs of the national government as they do today. For they had not yet moved into the era in which the United States, with no serious dangers to fear and no vital overseas interests to defend, could afford to treat both defence and diplomacy as expendable luxuries. They had come through difficult times, and understood the role of power. The loose agglomeration of separate sovereignties, into which the rebellious colonies had relapsed

when the control of the imperial government was cast off, had barely sufficed to win the war, and was dubiously capable either of preserving the unity of the nascent nation or of successfully defending its political and commercial independence. Under the shadow of Charles Beard's celebrated tract, *An Economic Interpretation of the Constitution of the United States*, historians have in recent decades tended to overlook this central factor in the movement towards replacing the Articles of Confederation by an instrument capable of being used to make decisions and give direction from the centre. Beard suggested that such motives were secondary as compared with the primary one of promoting such economic and fiscal policies as would redound to the benefit of holders of government stock and commercial men with whose interests those of the constitution-makers themselves were (in his view) identified. Recent research has shown the weakness of the evidence upon which Beard's thesis rested, and the insubstantiality of much of his argument; real, not personal, property was the dominant element in the fortunes of the Founding Fathers, as of the society from which they sprang. This makes it possible to return to the explanation of these events that more naturally emerges from the discussions of the time, and to restore to its proper place the primacy of political motives.

In an age when government's functions were very limited, and among a people who were convinced that those closest to the matters to be dealt with best knew what ought to be done, the internal power of the state

governments and of local government which had been preserved from imperial encroachment was not to be impinged upon by the Constitution. Such limitations upon the states as were obvious in the new instrument, as compared with the earlier one, were directed primarily at preventing the states from developing self-contained or autonomous economies out of which political conflicts might arise, and from pursuing other policies which would harm the direct interests of their people in the Union. The result of the limitations upon the states' freedom to act in the economic field was not mainly to preserve the United States as a single national and single currency area, with ultimate consequences of greater significance than could have been foreseen before the full development of mass-production in the United States; nor, indeed, was the economic argument in favor of these restrictions the one that was most strongly advanced at the time.

Whatever ambiguities may have been contained within the text of the Constitution for later generations of lawyers to expound, its essential object was apparently clear. It was that the states should be autonomous with regard to the outside world, but separate and independent in their internal concerns. The powers were expressly granted to the Federal Government, and not essentially the powers of war and peace; and the precise allocation of functions between the Federal Government and the states was largely determined by the considerations arising out of this primary criterion. For the Federal Government adequately to represent

the states abroad it must be able to tax directly, to enforce its own laws and the execution of its treaty obligations, to regulate inter-state commerce, and to have the full treaty-making power; the states must be deprived only of those powers that could encroach upon this monopoly. Americans might be permitted to think of themselves primarily as citizens of Virginia or of Massachusetts; foreigners must be obliged to treat them all as citizens of the United States.

Even so, some critics feared at the time—and history was to prove them right—that too much had been given away if the states were to remain sovereign in any sense, and that the United States had been set firmly on the path towards becoming a single national entity. The free movement of men and goods, the common inheritance of social customs and ideas, an early commitment to universal literacy in a common tongue—all these social factors exerted a strong pull in favour of unity and ran counter to the sectional divisions indicated by geography. It is interesting to speculate on what would have been the consequent course of political and constitutional development had there not existed, as we have seen, in the slave-holding society of her South, a section of the country which on one vital issue was desperately concerned to see what constitutional barriers could be found and made use of against the predominant tendency towards consolidation.

It is to the existence of the slavery controversy, and to it almost alone, that we owe the fact that the implications of the federal structure were tested to the fullest extent—to the extent of total breakdown. The defense

of States Rights, which naturally tended (as it must all federations) to mean the defence of interests dominant in particular states, could be maintained at two levels. As the exponents of a States Rights view of the Constitution were quick to point out, the fact that issues of constitutional interpretation were ultimately decided by a judicial tribunal that was itself part of the federal machinery gave the system an inevitable bias towards consolidation, whenever issues concerning the boundaries between the respective spheres of competence of the states and the Federal Government came before it for decision. Indeed, one school of constitutional interpretation still represented in our own day has treated the history of this subject as that of a continuous process of usurpation on the part of the Court; although there can be little doubt in the light of contemporary evidence that the Court's necessary functions in this respect were fully understood by the makers of the Constitution.

The second line of defence was the political. The Federal Government was not something apart from the states, which were in fact associated with it in almost every phase of its construction. The Senate, which became from a fairly early period the more important chamber despite the concession to the British political tradition and to numerical representation involved in giving the financial initiative to the House of Representatives, was composed in a way which made it inevitable that its members should regard themselves first and foremost as their states' ambassadors at Washington, and only secondarily as members of a

corporate political body. And even when the Senate acquired the rather striking corporate feeling which is so marked today, individual Senators continued to exploit this corporate sense itself in the defence of essentially local or regional interests.

The attempt by the South in the pre-Civil War period to maintain a numerical balance in the Senate was only the extreme example of the use of this inter-penetration of the two sets of institutions, federal and state, for purposes of protecting minority interests, but so important was it that out of it we get Calhoun's idea of the 'concurrent majority', the basis of a whole system of political thought. In other words, there were political limits to what a simple majority could safely do, and it was argued that the constitutional consequence of this was that nothing should be done without a majority in each section of the country. Southerners have never really abandoned this view.

The Presidency itself was submitted to a mode of election by state electors which if adhered to would have made the result the product of inter-state or inter-sectional bargaining. The electors were expected to cast their votes on personal grounds, and if no decisive majority among these was attained, the election would be transferred to the House of Representatives, where the states would vote singly. The development of political parties wiped out the original meaning of the so-called electoral college, and the vestigial effect of its organization by states was simply to introduce the risk that a President, duly elected by the votes of the electoral college, would not

command a popular majority, and to make it virtually certain that the electoral vote would never correspond to the popular one. Nevertheless, although the President became and remained the one elected figure who could claim a national mandate, the required concurrence of the Senate with appointments, and the two-thirds majority of that body demanded for treaties, meant that in some of his most important functions the chief Executive would be dependent upon bargains struck with men whose chief concern was local or sectional rather than national.

The necessities of combining to elect a President and to a lesser extent those of securing some kind of organization within Congress for the purposes of legislation, rapidly brought about the growth of what appeared to be a national party system such as became familiar in Europe with the general growth of parliamentary government. But this apparent similarity was largely illusory. Except for the quadrennial Presidential elections, and the less important mid-term Congressional elections, political life in the party sense did not normally rise above the state level. The general significance of the fact that it was in the states and not in Washington that the real parallel to European political parties is to be found will have to be stressed in more than one connexion. At the moment the point of issue is that it was in the coming together of the state party organizations for national purposes, whether in selecting the national standard-bearer or in framing a party platform, that local interests found their ultimate political safeguard.

In order to function at all, the system requires at least one party with a sufficiently wide appeal to command votes from states in more than one geographical section of the nation; in order to function well, it needs at least two such parties. For reasons inherent both in the structure of the government and in the electoral system of straight majority voting inherited from the British one, the existence of more than two parties on the national level was, as we shall see, ruled out except in transitional periods. Between the retirement of Washington and the advent of Lincoln, the United States had two periods of classical two-party warfare separated by a period of virtually single-party control. But in the 1850s, for reasons still in dispute among historians, one national party—the Whig—wholly disintegrated, and the other—the Democracy—split into irreconcilable sectional wings. A purely sectional party was able to achieve power at the federal level, and with this event the federal system, perhaps inevitably, collapsed.

It is sometimes assumed that the outcome of the Civil War determined the correctness of the Northern interpretation of the Constitution and marked the decisive shift away from States Rights towards greater centralization. This is an over-simplification. The attempt to secede had indeed failed, and was unlikely to be renewed for that very reason among others. But even more important was the fact that the abolition of slavery had removed the most distinctive obstacle to an attempted integration of the South into the nation, and had made possible, in particular, the creation of a

single economic system. It was the creation of system, or, if one prefers it, the incorporation of Southern economy into that of the victors, that it is inconceivable that national unity would once be put to so severe a test. The fact that slavery was abolished by constitutional amendment, even though only with the help of some political fictions rather than to defend, meant that in the last resort the majority could act within the framework of the Constitution itself.

But, as we have seen, the change in the situation was incomplete. Slavery might be outlawed, but its legal and the continued existence of two races of which the South proposed to continue dominant—was not something which could be done away with from outside. The South could still make use of the constitutional guarantees, and in particular of the role in domestic affairs allotted to the governments of the states. The continuing fight over educational segregation has given abundant evidence of this.

It is significant that once again it is the interworking of the informal agencies of political action that is most revealing of the survival of sectionalism. The Republican Party has not yet become a national party, in that in part at least of the South its existence is largely a fiction. The Democratic Party has formerly restored the unity that broke when the opponent Douglas walked out of the party convention of 1860 but its northern and southern wings are still further apart than would be possible in the case of a party which had to provide support for a government in

a system of responsible government on the British model. Geographical lines are still lines of political demarcation to a greater extent than is healthy. Whether this is likely to be a permanent feature of the American scene, and what its other consequences are, will concern us when we come to examine the contemporary state of the parties themselves.

The role of federalism in the United States soon ceased to be that of protecting the states as such, and became instead a defence of sectionalism. Since sectional differences, once the continental expansion had been completed, were not of major importance in the sphere of foreign affairs, as they had been when it was still a question of whether to expand northwards or southwards, we can perhaps afford from our special point of view not to insist too much upon its contemporary role. Recent studies suggest that diversity of national origins outweighs geographical location as the main source of regional attitudes to particular problems of foreign policy. Nevertheless, we should not exaggerate: the eastern seaboard and California still look out over different oceans. It is important, therefore, even from the point of view of America's external relations that the organization of Congress and of the parties should both reflect what is their major role in internal affairs—formal in one case and informal in the other—namely their role in inter-sectional bargaining.

Congress is important because the makers of the Constitution intended that it should be, but it is important largely for its negative powers. The makers of the Constitution were clear enough that authority in

foreign affairs and defence was by its nature executive but they wished to make sure that nothing would be done that would prejudice any section. In legislation Congress could originate and the President, if disapproved, veto at his discretion; though subject to the power to override him by a two-thirds majority. In foreign affairs Congress could not easily innovate or frame particular policies, since this is something only an executive can do, but it had a powerful check over them from the very beginning. It was intended that this should be the case with the Senate, and the provisions for ratifying appointments—which is but a mere formality in this field—and for ratifying treaties were inserted for this purpose. The latter procedure, somewhat ambiguously phrased in a way which would have permitted the association of the Senate with the actual negotiating process—though this was early abandoned as unworkable in practice—also incorporates the requirement of a two-thirds majority.

This means giving the veto to a minority of the Senate, and, as has so often been pointed out, a minority of the Senate can represent only a very small minority of the electorate. Much eloquence has been spent on deploring the effect of this constitutional provision in preventing the ratification of the Treaty of Versailles, and in keeping the United States out of the League of Nations. But the original purpose should not be overlooked; it was to preserve the interests of the different states which at the time were clearly not necessarily identical in foreign affairs.

commercial and the planting states, those that looked to the Atlantic seaboard and those concerned with the traffic on the Mississippi, might view treaties with the several European powers with very different eyes. The constitutional proviso could be got round, and this was done, for instance, when Texas was annexed not by treaty, but by a joint resolution of the two Houses; but it remained in being.

The House of Representatives was given no special role in relation to foreign affairs; its importance arose from the fact of its financial powers. When President Polk asked for a money appropriation in order to smooth the path of the negotiations for the annexation from Mexico of California and other territories, the House responded by tacking on a rider that the whole area to be acquired should be closed to slavery. Polk could not see what this had to do with making peace with Mexico. But as later American Presidents have also discovered, anything that has to do with money involves accepting the decision of the House as to what is or is not relevant.

The powers of the Senate were a necessary concession in return for the abandonment by the states of any claim for direct participation in foreign affairs; as far as foreign countries are concerned, their governments have no international status and cannot be negotiated with. Nor, of course, may the states arm themselves for the pursuit of any objectives of their own. In recent years, however, the interest in their constitutional role has shifted the other way. Con-

into international agreements that involve a modification of internal law, since treaties under the Constitution form part of the supreme law of the land. Can they directly affect the states in the areas allotted to them by the Constitution? Or can the Federal Government by entering into an international agreement, increase the scope of its own legislative powers? This controversy, which affects all federal systems to some degree, has assumed a particular intensity in the United States.

This controversy has only been to the fore in very recent years. But the ultimate substance of the dispute can be traced well before the arrival of international conventions of the I.L.O. or U.N.O. type. Indeed, it was there at the very beginning, when certain provisions of the original peace treaty at the end of the War of Independence were frustrated by the refusal of the state governments to take the necessary action.

Again, in the question of the treatment of alien immigrants, which is for foreign countries a vital part of United States foreign policy, but which from the constitutional point of view is clearly a domestic matter, the intentions of the Executive may be hampered by the conduct of state governments. The dispute between President Theodore Roosevelt and the state of California over the latter's discrimination against her Japanese residents provides an excellent example of this feature of the American system. The Supreme Court can invalidate state laws by declaring them unconstitutional when a case involving them falls to be decided, but this is not the same as it would be to prevent the Federal Government from invalidating them.

them as contrary to national policy—an idea that was strongly supported by some of the makers of the Constitution. And the federal executive has no authority to issue orders of any kind to the states directing that positive action should be taken. Over by far the greater area of foreign relations this is not of any great importance, but one cannot say that the Constitutional safeguards for the states are of no significance at all.

In matters of defence, the role of the states was limited from the first to their responsibilities for the creation and training of a militia. In the war of 1812 (and again in the Southern Confederacy) the notion was advanced and even to some extent acted upon that troops so raised had a primary duty to their own state—the very claim that had so plagued George Washington in the War of Independence. The Northern effort in the Civil War also involved a set of complicated and often difficult relationships between Lincoln and the state governors. The modern tendency is necessarily towards consolidation in a single national system: though even here the traces of the older ideas can be seen in the handling of the draft at the local level.

Operations, and by now training too, come under the President as Commander-in-Chief; and his prerogatives under this head are far from nominal. As Commander-in-Chief he is, as it were, both George Washington and George III. But Congress frames the basic legislation under which he operates, and is, of course, the sole repository of financial power.

For most of the nineteenth century—if we exclude the Civil War period and the attempts of Congress

then, or of its radical element, to intervene in operations and in every other aspect of military affairs; these Congressional powers did not matter because there was a total lack of interest in military affairs: a tiny professional army scattered in small garrisons, the protection of the frontiers of settlement, and an insignificant navy, offered little out of which political capital could be made. The growth in American military strength, and above all in military expenditure, whether direct or as foreign aid, has altered all that. Since the shape as well as the size of the budget can be altered by Congress, service elements with particular views as to what the country most needs tend to behave as pressure-groups on the Congressional scene in much the same way as protagonists of private interests are driven to do. State, or even local, intervention may come in marginally when it is a matter of deciding where camps are to be sited and so on; but the basic controversies arise from different conceptions of defence policy in the broadest sense.

The role of Congress as the scene where private interests are reconciled or protected merges at some point, then, into its role as a competitor with the President for the representation of the general will of the American people. The clearest evidence of this is in connexion with the greatest of all political issues, the question of peace and war. The Constitutional provisions amply expressed the will of the makers of the Constitution. The power lay with Congress. It placed such a power in the hands of a legislature made up of representatives that are elected for a definite time, that are expected that due time for deliberation will

always be available, and that situations would never arise in which the element of choice was lacking. Since even a state is empowered to engage in war if actually invaded or in such imminent danger as will not admit of delay, one must suppose that the United States as a whole would not be inhibited from action in such circumstances even without a formal declaration of war. In other words, so long as the problem was one of defence against the possible encroachments of rival powers in the Western Hemisphere there was no serious problem. It was different when the United States began to be involved in political responsibilities outside its own continental borders. The opponents of the expansionists of 1898 who based their opposition upon warnings about the inevitable consequences of expansion in the form of increased military responsibilities, and upon the alleged incompatibility of these with what they regarded as a fully democratic form of government, were, given their own assumptions, perfectly right.

In pondering the lessons of American involvement in the First World War, the conclusion was reached that the constitutional process formally adhered to had in fact been breached through the President having permitted the United States' interests to get inextricably mixed up with those of the Allies. The neutrality legislation of the 1930s was directed to two ends; first, to prevent the kind of actions which it was thought were likely to lead to a renewal of such involvement, and, second, to cut down the President's discretion in the whole field by making certain policies mandatory.

have gone still further by altering the Constitution that the declaration of war would have to await result of a popular referendum.

The failure to prevent the United States be involved in war again, and the widespread acceptance of opposition to the spread of communism as a nationally endorsed policy, made this particular form attempting to limit the Presidential discretion altogether obsolete after the Second World War. The United States was now a principal in world affairs would hardly get involved again as a reluctant second

But this did not mean that Congress was simply prepared to see the President using his powers as Commander-in-Chief to dispose at will of the United States forces and to send them wherever he thought fit, or to commit them to action in defence of overseas positions in such a way as to make Congressional power over war and peace something that it would never be able freely to exercise. President Truman took a more expansive view of his own powers than President Eisenhower was to do of his; but neither has the area of uncertainty been much diminished. The plain fact is that realistic as were the Founding Fathers, they did not conceive of a world in which intercontinental ballistics would become part of the stuff with which political leaders had to deal. The remarkable thing is that the basic structure of the Constitution should still supply an adequate framework for the 'great debate', or at least a framework adequate that no sizeable demand for fundamental revision seems necessary to exist.

Chapter Two

THE CONSTITUTION

THE Constitution is perhaps a more suitable instrument for meeting contemporary needs than one has the right to expect, because the late eighteenth century was a period when even a newly enfranchised nation could not altogether ignore the realities of politics. Even so vigorous a democrat as Benjamin Franklin, being a believer in what a later generation was to call 'manifest destiny', was clear about the need for American foreign policy to serve the cause of American territorial expansion, and saw that this would not be successful unless national strength were maintained. Military exercises and the provision of arms could not safely be neglected by a newly independent nation.

It was only later on that the original hard-headed pessimism about human nature and the consequent need for strong government gave way to the optimism of the Jeffersonians and their successors which culminated in the view that government is itself almost the only evil. It was the combination of this belief with the Jacksonian notion that government is an unspecialized occupation needing no training, and one whose functions any ordinary citizen can undertake, that produced the characteristic American resistance to building up a professional class of government servants who should look on the public service as a career. Such

beliefs had an important influence upon the subsequent pattern of the American bureaucracy, and help explain its special relationship to party politics.

For the nineteenth-century theorists of the Constitution, the source of authority at both the state and federal levels was the people, whether through the legislative representatives or through directly elected Executive officers. This fact is clearest at the state and local levels, where the holders of particular offices were (and still are) directly elected—even to the judiciary.

At the federal level it was less obvious because on the President was so elected—the Vice-President only a part of the executive to the extent that the President is willing to use him—and because all other officers derive their appointments from him. But even the combination of being both head of the State and head of the government cannot confer upon the American President that area of ultimate discretion that the British Cabinet derives from its being clothed in the panoply of the old royal prerogative. If the American President seeks to claim greater powers than the Constitution delegates to him, or than Congress had conferred upon him by legislation, he can only do it by exploiting such elements in the Constitution as can seemingly be stretched to meet his needs. One of these—his authority as Commander-in-Chief—has already been referred to; another, which Lincoln made much of, is his oath of office, which can be interpreted to mean special responsibilities for preserving the State. But ultimately he must come back to the

document, and ultimately the Courts will decide, though the Courts may not be able—as Chief Justice Taney found in regard to the suspension of *habeas corpus* during the Civil War—to do more than make their views known.

American lawyers have not been unaware of the fact that this denial of an inherent prerogative in the President goes to the very heart of the question as to the nature of the Constitution, and so of the American State. In the 'steel seizure' case of 1952 counsel specifically compared President Truman's action to the claim of James I to be able to make law by proclamation, and pointed out that the President's claim was that for which Charles I lost his life and James II his throne. The judgement of the Court specifically denied that any grant in bulk of executive power could be derived from Article II of the Constitution. With the evidence of the evils arising from the use of his prerogative by George III, the Founders could not have intended to create their new executive in his image.

We thus confront a seemingly paradoxical situation. In Britain the seventeenth-century constitutional struggle over the relations between King and Parliament seemed to have ended in the conquest of all powers by a majority of the House of Commons, so that in the middle of the nineteenth century it was possible, though incorrect, to talk of the Cabinet—the executive branch—as essentially a committee of the House. But in fact the traces of the executive's original independence and the formal position of ministers as servants of the Crown reveal themselves at every point

of the operations of government, and even in the handling of business by Parliament itself. Parliamentary business is still one of bartering the redress of grievances against supply; though the executive is now in a position to decide which grievances shall be redressed and how much supply there should be.

In the United States there exists a formal independence of the executive from the legislature, but because of the President's being confined within the bounds of the Constitution, and because he does not control Congress, he may be obliged to seek its approval for what a British government would do on its own authority. The difficulty about discussing the American position is that once again history and the accident of personality have played so great a part in the development of the system. Designed to be a government of laws and not of men, the American political system has more scope to personal decision where the President is concerned than normally falls to the lot of a governmental leader in any but a country under a dictatorship. Monroe pronounced his 'doctrine' even though he did not invent it; Eisenhower sought Congress approval for his.

The separation of powers, particularly as between the legislature and the Executive, remains then the most characteristic feature of the American constitutional system. Its working today necessitates more executive leadership than at earlier times, and the forces which in other countries have enhanced the position of the executive branch are not, of course, absent in the United States. But it would be a

wrong to say that the distinction between the American system and a system of responsible parliamentary government is of no importance.

One must be clear to begin with as to what is essential to the system, and what is the product of convention. It has often been said that the original separation was due to a misunderstanding of the nature of the British system, or to codifying a British situation which was already obsolete. But this is most improbable. The men who made the Constitution were, some of them, extremely familiar with British practice; all of them had some knowledge of it. The agents for the colonies before the Revolution—of whom Franklin was one—were in an excellent position to get to know not merely the formal position of the organs of government in Britain, but even how they actually operated. Success in their representative mission depended upon it. Furthermore, as we have seen, there was in the colonial structure, as the Americans knew it, a genuine separation of powers, and one that had been the cause of considerable conflict when royally appointed governors found themselves confronted by hostile assemblies upon whom they depended for supplies. And since there were colonies where the colonists had the right of electing a governor as well as the legislature—Connecticut and Rhode Island—they were familiar with the possibility that both might derive authority from an electorate.

If the Constitution-makers followed the colonial pattern—the state pattern as it had become—rather

In doing so they were more concerned, no doubt, to preserve the independence of Congress than the Executive—to sustain the independence of the Executive—the latter fared pretty well as far as freedom from pressure was concerned. After all, they could not be aware of the feeling in England that the Executive was always likely to get too much influence in the Government through government servants—the Act of 1789 almost set Britain on a false track in this respect. The key clause of the Constitution in this respect seems to be that which declares that ‘No Senator or Representative shall, during the Time for which he is 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.’

This did not in any way limit the possibility of the development of close relations between the departmental heads whose creation was implied in the Constitution though not provided for. The Constitution specified that the President might ‘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’, but it did not say that Congress might not make demands upon them also. When the Congress came to set up by statute the first three departments, State, Treasury, War—a significant trio—it distinguished between

he only, was obliged to 'give information to either branch of the legislature, in person or in writing (as may be required), respecting all matters referred to him by the Senate or House of Representatives, or which shall appertain to his office; and generally to perform all such services relative to the finances as he shall be directed to perform'.

It has been observed that we have in this what could well have formed the germ of a system of responsible government within the four walls of the Constitution. Congress might have required the Secretary to report, and have refused supply unless they were satisfied. In such an eventuality, the President would have had to dispense with his services and gradually, like the British monarch, have found himself pushed into the background and forced to accept as the real leader of the administration someone who owed his position to the confidence of a Congressional majority. The power of giving or withholding consent to appointments could have had the same effect if used for political ends, and this would have been even more the case if the Senate had established its claim to deal with dismissals as well as with appointments.

In fact things worked out quite differently. The growth of the party system, bound together by Presidential patronage and the hope of it, enhanced instead of diminishing the power of the executive head. The same development that finally removed all but the most marginal initiative from the British monarch enormously enhanced the authority of the American

executive officers, remained dependent upon the President, not upon Congress; it is the strength of these within the party organization or their influence the electorate or a section of it that gives them claim to office and at times may make the President change or removing them.

But, of course, the failure to enforce responsibility and one wonders how important the fact of having two coequal chambers is in this respect—does it imply a complete separation. Proposals that call for officers should appear before the two Houses and submit to questioning or defend legislation—proposals which nothing in the Constitution renders impossible have not been accepted. The constitution of the Southern Confederacy permitted the Congress of that union to make a law granting 'to the principal officer of each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any matter appertaining to his department'. The advantage was taken of this permissive clause, but the fact that it was included suggests that it was thought to contravene the separation of powers as understood. The Confederates were not in their eyes revolutionaries.

Instead, with the development of the committee system, there grew up a new form of Congressional control which is one of the outstanding features of the whole system. It is, of course, true that the way in which the committees work tends to blur the extent to which they imply executive responsibility, since the evidence they take in 'hearings' upon a Bill, resolution

or appropriation includes not only that of the head of the relevant department or departments, but also that of their subordinates and of private persons. Again, jurisdictional conflicts between committees may have the same kind of effect as the equality of the two Houses—the line of responsibility even in this limited sense is not clear.

Similarly, there is, of course, an element of encroachment on the other side when legislation arrives ready made from the executive department instead of being the work of individual Congressmen or the final products of committee deliberation. But since such legislation is by no means assured of passage and cannot be made a matter of confidence in the Executive, the derogation from the full rigour of the doctrine is altogether incomplete.

What we have, then, in the American system is a set of provisions which could on the face of it have produced not perhaps the British system—since the absence of any power of dissolving the legislature and the regular and fixed terms for both President and members of Congress would anyhow make an enormous difference—but something a little nearer what might have been the case under the Third French Republic if France had provided a more congenial soil for the growth of a two-party system. They did not produce anything like it; and the reasons for this are historical ones; but that they could have is worth remembering, when one considers the pleas that are made from time to time in favour of reforms which—it is claimed—would bring about something closer to responsible

40 THE AMERICAN FEDERAL GOVERNMENT
government. One could put it another way
that when the President's party controls Co
to the extent, for instance, that Franklin Roos
triumphant Democrats did during the 'hundred
of the early New Deal, no change is necessary
has practically the equivalent of British parliam
government. When the President has no contro
Congress because the opposing party is in a ma
nothing that stopped short of his own removal
office could really make the difference. For the
dents who have deplored the lack of leadership
the system tends to produce have certainly look
revival in their own persons, and not throug
elevation to *de facto* authority of the Secretary
Treasury or any other subordinate officer.

President Eisenhower has come nearer, perha
what may have been at the back of the minds
Constitution-makers than most of his predec
since he has shown a clear preference for emph
his functions as Head of State at the expense of p
leadership. The Cabinet officers, Congress and
the states are all to remain in their constiti
orbits with the President as a sort of constiti
monarch.

But this would seem to be less the result of an
researches into constitutional theory than of a p
preference for the delegation of responsibilities
ing in part from the experience of military cor
and in part from the President's own work-hab

One other product of the Constitutional pro
about the departmental heads was the specific

of the American cabinet. The Constitution, as we have noted, enjoins upon departmental heads the duty of giving the President their individual advice; it says nothing about collective advice; and indeed the Constitution knows nothing of any cabinet. Executive Councils, normally appointed, but elected in the case of Massachusetts, had existed in the colonial constitutions. In Britain the Cabinet, though not a feature of the formal constitution, was in the last analysis an offshoot of the Privy Council, and so went back to the earliest days of the English monarchy. The idea of an organ for tendering collective advice was a familiar one. If no such organ found its place in the federal structure it may have been partly due to the fact that the Senate was at its beginnings so small a body that it could function as such; and what advice could be more useful than that of a body representing all those local interests whose reconciliation was essential for any successful political action? But the Senate, as Washington discovered, was altogether too independent and too conscious of its own role to behave in the required way. And so, very rapidly, the device of using the heads of departments for the purpose became accepted. But their giving advice collectively did not mean that the cabinet members thereby acquired any authority they did not possess individually. The President decides upon the composition of his Cabinet—though the holders of some posts will always be there—he decides upon how often it shall meet and what it shall discuss. All these things are, of course,

is the collective responsibility of the cabinet as whole for decisions taken. This means that a Prime Minister cannot for long exclude his cabinet from any major government business and cannot override it. His theoretical right to choose whom he wishes and dismiss members at pleasure is diminished by the fact that most of the candidates for office will command sizeable party support which he may not be able to ignore. Only on rare occasions can a member reach high office without long political apprenticeship and the political influence which this gives. If the circumstances are such as to require unusual dispatch—in time of war, for instance—the solution is to reduce the number of the cabinet rather than to ignore it—though cabinets may be patient where operational matters are concerned.

The President is, and always has been, in quite a different position. His cabinet members are not mighty feudatories with their own vassals who may covet the throne and cannot be allowed to sulk in the tents. They are private citizens often wholly without political experience; and they are the President's servants—like the courtiers of an absolute monarch they may be consulted or not as the President please. If he prefers the advice of other persons, even of persons without office—as absolutist monarchs have been known to turn to their barber or astrologer—there can be no complaints. They gain a certain amount on their side to offset all this. They are less hampered in the expression of personal opinions than a British cabinet minister is likely to be, though President

Truman was forced to choose between Secretary of State Byrnes and Henry Wallace when the latter's public expression of views contrary to the administration's policy was found by his colleague to be making his position intolerable. They may even—if they keep to their own sphere—be given very considerable latitude of action. But all this cannot make up for their exclusion from the determination of general policy except when the President wills otherwise.

Perhaps the case of Cordell Hull's tenure of the Secretaryship of State under President Franklin Roosevelt provides the best illustration of the position. Cordell Hull, being an important and influential political figure thanks to his background in Congress, was a source of strength to the President; yet his outlook on world affairs was very limited and in many important aspects of policy the President kept him at arm's length—framing and even executing his own foreign policy. Lloyd George, perhaps, at the height of his power, came somewhere near exercising the authority of an American President, but he could not maintain it; and the institutional legacy was a cabinet, not a Prime Minister's secretariat.

The attempt to modify the position of lonely eminence which the President perforce occupies was made when Congress set up by statute in 1947 a new advisory body, the National Security Council. But, as we shall see, this body remained purely advisory and could not therefore function as a cabinet; nor, though set up by statute, was it in any sense responsible to Congress.

Less important—but even now not altogether

unimportant—is the separation of powers which give independence to the judiciary. The power of judicial review is not unusual in written constitutions, especially where these are of a federal nature. And the emphasis that used to be placed upon it by British students may arise from a naïve belief in the ubiquity and as it were naturalness of legislative sovereignty. The President and Congress together do not equal the King in Parliament. There is the Constitution which they must obey, and do not themselves in the least resort interpret.

The Constitution drawn up in 1787 was the work of an able group of men, conscious on the one hand of the inadequacies of the authority that the central government already possessed for the work it had to do, and aware on the other hand that state sovereignty was too strong for a consolidated government to operate within the bounds of possibility. Remedies were sought along two lines. In the first place, the central government was to have its own direct relationship with the citizens wherever the scope of its own authority was concerned. It was not, as it had done hitherto, to rely upon the states acting for it. This may be taken as the prime distinguishing mark of a genuinely federal, as opposed to a merely confederal, system. Subsequent history seemed to show that this was as essential a point as the Founders had thought.

The Courts, in interpreting the Constitution, developed the view that state officials were not necessarily bound to act as agents of federal law. This, like many other things, was illustrated in the great slave

controversy. The Constitution undoubtedly provided that slaves who had run away, even to states where slavery was not practised, should be returned to their masters. As anti-slavery sentiment grew in such states they refused to allow their officials to be used as slave-catchers, and the Courts upheld them. But there was a second stage after the Federal Government had provided its own machinery for enforcing the law. The states now used their legal powers to obstruct federal action, and though this was condemned by the Courts, the Federal Government was not strong enough to act where local sentiment was fairly solid on the other side. The franchise may not be in theory, but still is in a number of states in fact, restricted on grounds of race. The modern decisions of the Court on the race question, particularly the recent ones banning educational segregation, have come up, as we shall see, against essentially the same difficulty.

The second main change was a redistribution of powers between the states and the Federal Government. Federal constitutions may do this in various ways. In the American one, no formal pattern was actually determined on beforehand. Instead, certain things were allotted to the Federal Government, others prohibited to the states though not specifically allotted to the Federal Government, and others again prohibited to both. For the rest, the rule of interpretation was that laid down in the last of the first ten amendments, added to the federal Constitution as the promised price of ratification by the states, and collectively known as the Bill of Rights. This states baldly 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', meaning by the latter the power of the people to alter the Constitution by the amending process laid down in the document itself.

This sounds as though the division of powers was a threefold one between Federal Government, state and people. It is in fact a fivefold one, since some of the powers of government are exercised by both the Federal Government and the states and are thus what we would call concurrent, while there are, of course, a number of actions prohibited both to the Federal Government and to the states.

The American Constitution has two features especially worth noting. It is a very short document which complete with amendments, takes up some dozen pages of an average-sized book. The latest major federal Constitution—that of the Republic of India—fills a volume of 250 pages. It is also in practice very difficult to amend. The American state constitutions afford a striking contrast: 7,500 words suffice for the United States; Oklahoma's constitution contains 34,000, Louisiana's 63,000, and California's 72,000. They are also relatively easy to amend, though many amendments are really statutes in disguise. In the federal Constitution the formal process of amendment has only intervened twice in such a way as to alter in an important fashion the distribution of powers between the Federal Government and the states, if we leave aside the outlawry of slavery after the Civil War and

the consequential amendments, and the attempted outlawry of drink by the prohibition amendment, added in 1919 and repealed in 1933.

One of these amendments of general scope diminished the area of State activity without thereby increasing federal power; the other set the Federal Government on the road to ever greater accretions of power—a road on which it has since hardly looked back.

The latter was of course the income-tax amendment of 1913 which by reversing the Courts' decision in the 'income-tax' case of 1895 finally did away with the restrictions upon direct taxation inherent in the unworkable method of raising it through apportionment among the States, which had itself been a legacy to the federal Constitution from the old Articles of Confederation. Once the power of the Federal Government to tax was freed from constitutional limitation there was little that it would not find a way of doing if it wished; though the Courts could still advance the theory of a limited choice of objects for expenditure, as they did in the New Deal period.

The other amendment referred to was the fourteenth, which in 1868 extended as against the governments of the states the prohibition imposed upon the Federal Government by the Bill of Rights, that of depriving 'any person of life, liberty or property, without due process of law'. There has been a long controversy as to whether this clause, like the rest of the amendment in which it figures, was only concerned with the rights of the recently emancipated Negroes or whether it was

foreseen that the Courts would interpret 'person' mean 'corporation' and thus use it as they did as method of disallowing state legislation on economic matters. What happened was that for a period the area banned to both the Federal Government and the states was much enlarged, and the Constitution became a bulwark of *laissez-faire*.

This was only an example of one result of the brevity of the original document—the presence in it of a number of very broadly-phrased grants or denials of power which formed the basis of most subsequent controversy about its interpretation. Apart from 'due process of law' which was transformed from an apparently procedural limitation into one of substance—that is to say, from a statement that some things should be done only in a particular way to a statement that some things could not be done at all even by legislative action—the most important of these phrases was that which conferred upon the Federal Government the regulation of commerce not only with foreign nations, but also 'among the several states'. Indeed, it could be argued that, with the development of modern industry and communications and the problems they pose for government, the necessary adaptation of the Federal Government could not have taken place at all without a major constitutional upheaval if the question of what constitutes 'commerce' and what is 'inter-state' had not been one that could be resolved in different ways at different times. A recent attempt by Professor W. W. Crosskey of Chicago to prove that 'among the several states' included commerce within them as well as

between them, and that commerce itself was used in the broadest possible sense, has not found favour among other American legal scholars. If he were right, there would have been no constitutional limitation at all upon Congress's authority over the national economy, and subsequent constitutional history would have been largely the story of a series of judicial usurpations.

Or, again, there was the question of how far further powers could be thought of as existing in the Federal Government because Congress was empowered to make all laws which should be 'necessary and proper' for carrying into execution its allotted powers. What does 'necessary and proper' mean?

The interpretation of the Constitution might also be affected by the grammatical construction of certain clauses in this laconic document. One of great importance in the pre-Civil War controversies was that empowering Congress to 'dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States'. Did this mean that for those areas not part of any state, Congress had the right of enacting domestic legislation? Or was territory in this sense just an example of property, so that Congress could only act under this clause in so far as was necessary to provide for orderly sale and settlement, and was in all other respects an agent of the states themselves, bound not to 'prejudice the claims' of 'any particular state', as the clause also provided, and so unable to make regulations which would have the effect of keeping slave-holders out of the

territories? In a period of rapid territorial expansion this was not an academic question. Indeed, when the Supreme Court decided in 1857 that the slave Scott had not won his freedom by being moved to 'free' territory, since Congress had never had the right to do what it had done from the beginning—to exclude slavery from territories—it did much to precipitate the Civil War.

Of more lasting significance even than this was the question whether, when it was said that 'The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence, and general Welfare of the United States', this was to be taken simply as a statement of what taxes were for or could mean that Congress had the right simply 'to provide for the general welfare', in which case no restrictions would have existed at all. The latter extreme has been consistently rejected, but it is the conjunction of taxing power and general welfare that has been, since the income tax amendment, the great fount of federal authority.

Finally, it may be thought most remarkable that there were some things of tremendous importance that the Constitution was quite silent about. The United States for which the Constitution was written consisted of the original states together with a number of territories, originally belonging to or claimed by independent states as a legacy of the former colonies from which they sprang. It is laid down that 'New States may be admitted by the Congress into this Union', and this meant a repudiation of keeping any part of the

in a permanently inferior or 'colonial' situation. But it was not said whether Congress could make conditions for the admission of a state, or whether, if these conditions referred to matters which the Constitution left to the states, they could be held binding once the new state had been admitted. If they were binding, would one not get two classes of state—superior and inferior? Most of the controversy here was again over slavery. But in the case of Utah the abolition of polygamy was involved: and other theoretical examples could be suggested. Current opinion would be that the power to govern territories arises from the power to acquire them, conceived of as inherent in Government itself. The question of the extension of the principles of the Constitution through the incorporation of foreign territory in the United States is a separate one.

Again, there is no indication as to whether the new states could be shaped only out of the territories within the United States in 1789 (or out of existing states with their consent, as was also provided), or whether the United States could acquire territory by purchase or conquest and use such accretions of area to make new states. This ambiguity was solved by political action, and the question answered in the affirmative. But it would not be solved by consulting the document itself.

Within the Constitutional framework itself no distinction was made—with two exceptions—between the several articles from the point of view of distinguishing between more and less fundamental provi-

concession to a local claim—the power of Congress to legislate against the external slave trade (not slave trade within the states) was put into abeyance for twenty years. The second was permanent: ‘No State without its equal shall be deprived of its equal Suffrage in the Senate.’ This alone among the clauses of the Constitution is not subject to the ordinary process of amendment, but with the powerful safeguard that exists in the Senate and the need for ratification by three-quarters of the States.

In fact, however, as might be expected, prior to the Civil War given in people’s minds to particular provisions of the Constitution they tend to think of the Constitution not as a mere sum of its several articles and clauses, but as an organic whole dominated by certain ideas and even directed towards certain ideal ends. It is essential to grasp this point in order to understand the nature of judicial interpretation upon which, as we have seen, the life and development of the system has depended. It is this which leads one to dismiss as irrelevant the comparison of the Supreme Court’s disallowing of an act of Congress as unconstitutional with the act of a municipal court in declaring a railway by-law or some other instrument *ultra vires*. It is not only because the matter of Congressional (or even state) legislation is likely to be so much more important, that the canons of interpretation are inapplicable: it is because that the Court will approach its task in a different spirit.

In other words, the Supreme Court judges, a majority of them at any one time, will tend to

Constitution the United States was intended to have, or now should have, and will tackle particular problems in the light of the effect their decisions are likely to have in this context. There are limits to this, in that part of their general doctrine will be about the role of the Court itself, both from the point of view of what they think it entitled to do and what they think it can do without placing an unbearable strain on the constitutional structure itself. The more difficult a constitution of this type is to amend, the more vital the part played by judicial review. In this connexion it is fortunate for the United States that the Supreme Court has never had the English respect for the principle of *stare decisis*. If it had never been able to reverse itself, the rigidity of the constitutional system might have become unbearable without radical changes in the procedure for amendment. Reversals of previously held positions have been facilitated by the fact that the Court has so often been divided, even narrowly divided, on constitutional points. Thus all that is necessary for a change is for the minority to become a majority. On the other hand, the narrowness of Court votes encourages the view that decisions on constitutional matters are not completely objective.

From very early on, the Court in effect contracted out of what were called political questions. By this was meant that class of questions affecting the respective roles of the President and Congress, the entire field of foreign affairs, and a rather indefinite area where what is involved are the actions of properly constituted

... of the Court has held that

any injustice to particular classes of citizens remedied by the electorate. The Courts have in instance, refused to intervene in cases where boundaries enacted by states produce such Congressional districts as to involve unfair distinction against the inhabitants of the under-represented ones who have claimed to be denied 'the equal protection of the laws' guaranteed to them by the Fourteenth Amendment.

As we have already noted, the idea of judicial review though not explicit in the Constitution, was present in the minds of its makers. It formally rests upon the clause in the Constitution which declares that 'all Laws of the United States, and all Orders, Regulations, and Proclamations, that may have force of Law, shall be made in Pursuance thereof: and all executive Orders, Regulations, and Proclamations, shall be 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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding'. The Supreme Court having the appellate power where cases in which the Constitution or federal law are concerned, is authorized under the second half of this clause to give its decisions precedence over state laws—that is to say, to declare void and of no effect a state law infringing the Constitution. This was first done in *M'Culloch v. Maryland* in 1819. The position then taken up has never been abandoned.

With regard to Congress's own legislation, the position runs rather differently. If laws made in pursuance of the Constitution are part of the supreme law of the Land, those not made in pursuance of it are

other words, a law made by Congress must be such as can be construed to come within the powers conferred upon that body and is no law at all if it does not: such was the argument of the Court first in *Marbury v. Madison* in 1803, and then again in the Dred Scott case in 1857, already referred to, when legislation dating from 1820, and excluding slavery from a large part of the great inland area acquired by Jefferson from France, was declared to have been void from the outset.

On the other hand, the Court for a long time acted upon the assumption that there was set out in the Constitution a general pattern for the relationships between the Federal Government and the states—a pattern of which the Court was in some sense the guardian. This is what is sometimes described as the idea of ‘dual federalism’. It means that ideally all the powers of government are divided between the two kinds of authority—state and federal, and that the demarcation line between them is visible and can be maintained. Some of the factors that make the situation in reality much more complicated than this have already been referred to. There is the further point that on the whole the powers of the Federal Government are defined by the subject-matter upon which it is permitted to operate, while the powers of the states are defined, often implicitly, only by the purposes for which governmental power is required. We may see a parallel here to the problems that have in the past confronted the British Privy Council in its capacity as the constitutional court for Canada, where it has been a

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'property and civil rights' against the Federal Government's power to make 'laws for the peace, order and good government of Canada' in relation to all subjects not assigned to the provinces.

In addition, there has been the question, already touched upon, of the extent to which the two authorities were bound to totally independent action or permitted to co-operate. There is evidence which made weighty authorities take the view that the Founding Fathers themselves intended co-operation. But the development of States Rights doctrines and the domination of the opposite conception, which on the whole the dominant one in the century preceding the crisis of the New Deal. We have here an illuminating parallel with Canada, where the Courts have disallowed the delegation to the national government by the provinces of powers which the provinces cannot exercise in isolation.

The actual use of the doctrine of dual federalism by the Courts in the post-Civil War period was not to prevent the Federal Government extending its jurisdiction over the field of economic regulation, while at the same time the states were hampered in their attempts to enter the field by the use of the 'veto process' to mean a veto on legislation interfering with what could be construed as the rights of property. By asserting that such regulation involved interference with inter-state commerce. The actions of the Courts

were attacked as being those of men consciously or unconsciously biased in favour of capital and industry.

doctrine of *laissez-faire*, just as the Court had been attacked as dominated by slave-holders in reaction to the judgement in the Dred Scott case.

The critics developed two different lines of attack. The first, which is usually connected with the name of Justice Brandeis, went to the substance of the issues at stake, and took the line that the Court should be influenced by its own views of what kinds of economic regulation were justifiable on general social grounds. This meant that it should concern itself with the actual evidence about the concrete evils with which the challenged legislation sought to deal. The ultimate conclusion of such reasoning was, however, to elevate the Court into a kind of third legislative chamber, and could be criticized on the ground that this was a role for which the Constitution did not provide and for which its composition made it quite unfitted.

What proved in the end to be a more fruitful line of dissent was provided by Justice Holmes, who took the view that this was another field where the Court should exercise self-restraint, that, generally speaking, legislatures were as likely to be right on such subjects as courts of law, and that the bias of the Court should be heavily in favour of accepting the decisions of Congress when anything short of a flagrant violation of an express provision of the Constitution was concerned.

The strength of the doctrine of 'dual federalism' was still so strong where a majority of the Court was concerned that there was a possibility at the beginning of Franklin Roosevelt's presidency that he would have to

agreements rather than through federal legislation. The emergency did in fact lead to a burst of legislative activity in which the bounds of federal authority were widely stretched, both in direct action and through co-operative action, where it was found that the legal authority of the state governments could be matched with the financial powers of the Federal Government. The legal challenge was slow to develop—one must not forget that the Courts can only act on a case, and the Supreme Court has for the most part only appellate jurisdiction—but when it did it sent the whole edifice of government intervention toppling.

The President's attempt to meet this was through the one factor which the political side of the American government has in reserve—namely, the fact that there is no upper limit to the membership of the Court. The proposed legislation was ingeniously buttressed with the idea of facilitating resignation for senescent justices and with lightening the work-load on the federal courts; but for much of the public and for many of the President's own supporters, the scheme was simply one for 'packing' the Court. In the end, neither side won. The scheme was dropped, but meanwhile the Court's majorities, which had been narrow, won most of the points, began to switch the other way. And a series of resignations and deaths completed the transformation.

The result was a complete capitulation to the Holman thesis as far as economic and social legislation was concerned. The Court in effect abandoned 'dual federalism' as a principle of interpretation in this field and

allowed the Federal Government to embark upon a new period which can be described as one of 'co-operative federalism'. The new legal and administrative structure that this produced has become too deeply entrenched for there to be any question of going back upon the Court's self-abnegation in this respect. Where the authority of the Federal Government appears to be weak—as in the handling by President Eisenhower of the Texan oil-producers in the oil crisis of 1956-57—the reason is not to be found in the likelihood of judicial intervention, but in the unwillingness of an administration committed to States Rights as a bulwark of economic non-intervention to ask for the necessary legislation, or to venture action under the wide range of the defence powers for fear of party and Congressional disapproval.

The last episode leads one to a further point which is often misunderstood. There is, as we shall see, no necessary connexion between the principal political parties and views on States Rights. During the pre-Civil War period, the Democratic Party, strong, in the South, became the advocate of a States Rights' view of the Constitution as a bulwark of slavery; though Northern states were equally prepared to use the States Rights' argument when, for instance, federal action under the fugitive slave law seemed objectionable to them. In the post-Civil War period, the States Rights' views of the Democrats were further strengthened by the Southern opposition to federal attempts to enforce the equality of the races now guaranteed by the Constitution.

With *laissez-faire* dominant at Washington, the attempts at the regulation of industry and transport were largely the affair of individual states, not a national Democratic. But in both periods when a reforming Democratic administration was in power at Washington—under President Wilson and again in the Roosevelt-Truman era—it was a Democratic intention (with natural Southern reservations) to magnify federal power, while the Republican party took an equally understandable States Rights' point of view. When, as in the Harding-Coolidge-Hoover (1921-33) and again under Eisenhower, an administration which is unwilling to extend federal activity actually controls the Federal Government, the pace of centralization slackens; though the tide can hardly be reversed.

The position in the states is rather different. For the difficulty that confronts reforming administration in control in particular states is that they are relatively powerless, since with an economy national in character and economic regions that cut across state lines, the practical possibilities of action are limited—even if the Courts are friendly.

In trying to discover the reason why the states do not conform to Bryce's idea of them as experimental laboratories—an idea which Roosevelt still had in mind on the eve of the New Deal as a result of some of his successful efforts on behalf of the people of New York in his capacity as Governor—the contradiction between a near-unitary economy and a federal structure of government looms largest. But this is not to say that

the states are institutionally well equipped for a more active role.

There are, as we have seen, the over-detailed constitutions that hamper government. State legislatures often meet only once every two years and for periods limited by constitutional provisions. Their calendars are thus overcrowded and legislation often hasty and ill-considered. State legislators have only a part-time status and negligible emoluments, so that they have to depend on special interests, often of a local kind. There is also the fact that in the vast majority of states the principal officers are separately elected and do not therefore form a proper executive team. Some work is dealt with by independent boards and commissions, and the lack of auditing and other services for the Legislature makes it difficult for it to exercise proper control.

The legislatures themselves suffer from inadequate apportionment as between districts. Seats are allotted to counties as though they were units in a federation in disregard of their populations. As a result, the rural areas are even more heavily over-represented within them than in Congress, and carry a veto on constitutional reform. It has been reckoned that 60 per cent. of Americans live in cities and pay 90 per cent. of all federal, state and local taxes, but return only 25 per cent. of the members of state legislatures.

All this leads to a low degree of public interest in state issues, and this situation is made worse by the fact that state elections are held simultaneously with Congressional and Presidential elections. State political

machines can thus get an almost permanent grip on some states; and there are a large number in which opposition party is so poorly represented that they almost be called one-party states. The swing of pendulum in national elections leave them virtually unaffected. Oregon, which voted on every occasion for Franklin Roosevelt, retained a state legislature obstinately Republican as it had been since 1878. In 1952, Florida deserted the Democratic column and voted for Eisenhower, but elected a state House of Representatives consisting of ninety-five Democrats and five Republicans.

It can therefore be taken for granted that in so far as new initiatives in government are likely within the existing constitutional structure, they will come from Washington and not from the states. And given the financial weakness, and the Supreme Court's present attitude towards the powers of Congress, it can be argued that only Congress's self-restraint saves the states from still further federal encroachment.

Chapter Three

THE PRESIDENT

As has already been pointed out, the President of the United States derives his unique position from the fact that he is at once Head of State, Commander-in-Chief, and head of the executive branch of government. In each respect he is subject to the provisions of the Constitution, though he may at times be inclined to claim that there are some responsibilities that are inherent in the office itself.

The combination of the formal headship of the State with the exercise of governmental responsibilities is one which is unusual in democratic constitutions, and which, outside the United States, is found almost exclusively in those constitutions directly derived from the American model. As compared with constitutional monarchy, or with those constitutions which separate presidency from premiership, and under which the president is a species of elected constitutional monarch, two obvious disadvantages suggest themselves. From the political point of view, it is difficult for a head of State to embody the sentiments of a whole people and adequately to represent the national personality when he has reached this office by means of a political campaign, often of great virulence. From the administrative point of view, it means that the President is loaded with a large number of formal functions—it has been

reckoned that his signature is required 600 times a day—which prevent him from concentrating his full energies upon the urgent and responsible tasks of political leadership. Since American institutional conservatism, sheltering behind the alleged mandates of the Constitution, acts as a barrier against removing any of the President's traditional functions, the history of the office consists largely of the addition of new duties without a corresponding lightening of the burden in other directions. The successive Presidents will do what their temperaments dictate to make life possible under such circumstances—sometimes they fail.

Within the constitutional requirements of the system and the successive conventions that have been devised for making it work, the nature of the Presidency has indeed varied very considerably not only as between one period and another, but also as between one holder of the office and his successor. In part, the situation of the President has been different according to the general political situation with which he has been faced; times of crisis call for a greater exercise of executive leadership than more placid eras. Where the demand has been met—as by Abraham Lincoln in war, by Theodore Roosevelt in peacetime, or by Franklin Roosevelt in peace and war—the prestige and influence of the office has increased. Where the challenge has not been met, as when Pierce and Buchanan in the 1850s failed to prevent the exacerbation of sectional conflict, or when Herbert Hoover failed to stem the Great Depression, the office has naturally declined in public esteem. The record of success and failure is

be attributed to personal qualities or to fortune is another matter. No President came to the office with greater personal qualities than Woodrow Wilson; nor had any President a higher conception of his own office. Whether he is to be regarded as a success or a failure is something over which disagreement would be legitimate. Indeed, in many ways his tenure of the office presents a curious analogy to that of another and even greater Virginian, Thomas Jefferson.

On the whole the consensus of opinion was—at least until the advent of Eisenhower—that modern conditions being those of almost perpetual crisis were distinctly favourable to the growth of Presidential power. The fact that the President is the natural beneficiary of such a situation demands an explanation in the light of the clear intentions of the makers of the Constitution to produce an office of a very different kind. The reason is undoubtedly to be found in the rise of national political parties.

The clue to the intentions of the Constitution-makers is to be seen in their original provisions for the election of the President. The Presidential electors, chosen in each state, were to cast their votes for two men, one of whom at least should not be native to their state. The one with most votes was to be President, and the one with second-most votes to be Vice-President. In the event of a tie between two candidates, the House of Representatives (each state having one vote) should choose between them, after which, if there were a tie between the next two on the list, the Senate should choose. While it was certain that, if

Washington wished it, he would be the first ch under this or any other system, it was clearly expected that thereafter local preferences would begin operate, and that more often than not the issue would fall to be resolved by bargaining within Congress. The number of Presidential electors for each state was to equal to its total representation in Congress, which gave a slight advantage to the smaller states with two senators each, though that would decline as population grew and with it the membership of House.

What happened was that Washington's period of office and that of his immediate successor saw strong development of parties that in each state electors would now normally vote for two national party nominees. The result was inevitably a tie between the two candidates put forward by the victorious party giving the minority party in the House of Representatives the decisive voice in the ensuing deadlock.

The situation was not allowed to repeat itself in form, since by the Twelfth Amendment (1804) the elections were separated. But otherwise the form of position remained as it had been before. Since a two party system was now established, it looked as though the electoral college machinery could be relied upon to give a definite result, making the provisions for action by the House (or the Senate in the case of the Vice President) otiose. So it has indeed proved, with exceptions, when in a period of party realignment necessary majority was not forthcoming. In 1824 election of the President fell to the House, and in 1

the election of Vice-President fell to the Senate. In 1876 there was a rather different situation, when the validity of the elections in certain states was challenged and the dispute was settled in the House, the Democrats being compensated for the fact that the Presidency was almost certainly fraudulently withheld from them by the promise of an evacuation of the remaining federal troops from the South. This meant the end of 'reconstruction', the attempt to refashion the pattern of race-relations and political power in the South by federal action.

The possibility of a deadlock is, of course, always present when there are more than two candidates. In 1948 the Southern secessionists from the Democratic Party came very near achieving their objective of preventing President Truman from getting an overall majority in the electoral college. A switch in the right places of less than 50,000 votes between Truman and his Republican rival, Dewey, would have brought about this result. In these conditions there might have been a deadlock in the House (where all three of the top candidates would still have been eligible). The Senate might, on the other hand, have completed its election for the Vice-Presidency, and the new Vice-President might have had to act as President after the end of President Truman's term on 20 January 1949 until such time as the deadlock was resolved.

Another weakness of the system which was an unexpected consequence of later developments is that the successful Presidential candidate (as has twice happened) may receive fewer popular votes than his rival

although obtaining a clear majority in the electoral college. This does not affect the constitutional validity of the election, but is bound to weaken the President's authority. The explanation for this peculiarity lies in the fact that the choice of electors is left to other parts of the federal electoral machinery, which is left to the states by the Constitution. The states in the early period normally had them chosen by the legislature. But the system was gradually altered into one of a popular election in which the winning candidate in each state takes all that state's electoral votes. This tends to give decisive importance to the urban vote in the larger states, and there is an urban bias in the electoral election which helps to compensate for the rural bias in the Congress.

A more technical weakness was corrected by the Twentieth Amendment of 1933, which put forward the dates of the Presidential and Vice-Presidential terms from 4 March to 20 January. It could be argued that even this gap from the popular election in November to the inauguration in the second half of January might well be too long under modern conditions, especially since the precedents are against any very substantial measure of collaboration before the inauguration. On the other hand, with no 'shadow cabinet' ready to take over into the vacated positions, and with a far greater number of posts to fill, it might be difficult to run the government during the gap. President Truman was the first incumbent to take orderly measures to hand over affairs to a successor.

Before 1947 a fairly easy way of bringing forward the date of change existed. The Secretary of State stood third in the line of Presidential succession in the event of the death or disability of the President or Vice-President. By nominating his successful rival as Secretary of State and then resigning (along with the Vice-President, if any), the President could bring him into office at any time after the declaration of the popular vote. This was altered at the urging of President Truman, and the names of the Speaker of the House of Representatives and the President *pro tempore* of the Senate were inserted in the order of succession, as had been the case between 1792 and 1886. Even if the succession now falls to a cabinet officer, the Secretary of State or someone even lower in the list, he serves only until one of the two elected offices is filled: these, like the Vice-President, serve out the remainder of the President's term. This method of speeding up the take-over had thus been removed.¹

Once the choice of Presidential electors had passed from the state legislatures to the electorate, the character of the office itself was altered. The President

¹ The President *pro tempore* of the Senate is a Senator elected by the Senate to preside over its deliberations in the absence of the Vice-President. The Constitution does not state whether the Vice-President, in taking over the President's duties for the remainder of an unexpired term, does or does not thereby become President. John Tyler, the first of the seven who have come to the office in this way, insisted on being regarded and addressed as President, and this position has not subsequently been challenged. The 1947 Act makes it clear that anyone lower in the order of succes-

became potentially a tribune of the people, and the President who clearly thought of himself as having a mandate of this kind—Andrew Jackson—made claim for the office which went as far as challenging the Court's right to be the final arbiter of the constitutionality of legislation on the one hand, and involving direct appeal to the people to help him override opposition of the Senate on the other. The former claim was bound up with the development of the Presidential veto on legislation, which under the Constitution can only be overridden by a two-thirds majority in each House of Congress. It was generally assumed in the early constitutional period that no power was given to the President in order to prevent encroachments by Congress upon his own allocated functions. What Jackson was claiming in the matter of re-chartering a National Bank—an institution which the Court had held to be allowable under the implied powers of the Constitution—was that his own view that it was unconstitutional justified him in vetoing the measure. Thus he claimed only the right of vetoing legislation which the Court held to be constitutional and not the power of enforcing laws held to be unconstitutional by that body. Subsequently the veto power was used, as it had been once by Washington and twice by Jackson, without any specific relationship to constitutionality or unconstitutionality of legislation but simply according to the President's own view of what was opportune. The veto is, statistically speaking, not very important, although it is a fact for Congress to reckon with. One weakness is that, unlike most s

governors, the President cannot veto individual items in a Bill. 'Tacking' is thus always possible.

The appeal to the people to uphold his views against those of Congress implied the assertion that the President is more truly representative of the national will, an assertion that Congress will always find disturbing. It did not, however, for long periods play much part in American political life, for with federal legislation scanty and the President relatively free within his own administrative sphere, the occasion did not often arise.

Nor, of course, did the nature of the party system necessarily assist the President in the extension of his authority, since, although the nominal leader of his party, he could not rely on controlling it. The federal patronage at the President's disposal was naturally a powerful weapon, but it had to compete against the local political influence of influential Governors or Senators. The President has never established control over the nominating process where Congressional candidates are concerned; indeed, President Franklin Roosevelt received one of his major rebuffs when he tried to strengthen the New Deal element in his party in this way; and where Congress itself is concerned he lacks the powerful, if dangerous, weapon of the dissolution. He may be able to appeal to the people, but he cannot choose his own time for it.

If the majority of Congress differ violently on some important matter from the President, the deadlock is not easily resolved except on the purely legislative plane, and if the President's opponents lack a two-thirds majority it may not be possible to resolve it there

either. After the Civil War and Lincoln's assassination the irritation that had been growing in Congress against what was held to be a too lenient treatment of Southern rebels flared up in hot opposition to Lincoln's successor, Andrew Johnson. It was sought to restrict his powers by limiting his right to dismiss Presidential appointees, including Cabinet officers, and then to remove him altogether by the use of constitutional provisions for impeachment, and to make the House of Representatives into the accusatory and the Senate—presided over by the Chief Justice—into the tribunal. But Johnson's opponents' inability to get the necessary two-thirds majority probably reflected the conviction that impeachment was a clumsy and indeed unworkable political sanction. A similar discovery in Britain had been a part of the process towards responsible government; in the United States it had no such consequence. The issue of what happens when President and a Congressional majority are opposed to each other remains unsolved.

It is not clear that the American electorate is in this situation as necessarily disquieting. It does seem to restrain the tendency in the mid-term Congressional elections, when the Presidency is not involved, to swing away from the ruling party. As Wilson did in 1918, the President himself tries not to intervene and ask the electorate to see to it that his supporters are favoured, it may well prefer to ignore his request. Again, even when the President is involved, it seems that the voters may decide, despite the length and complexity of the ballot, that

wish to see a particular candidate elected to the highest office need not involve voting for the other candidates of his party. The landslide victory for Mr Eisenhower in 1956, when he had a popular margin of some 10,000,000 votes and won all but seven of the States (457 electoral votes to 74), was not reflected in the Congressional vote. The Democrats retained their narrow majority in the Senate and actually increased their majority in the House. This was the first time that a victorious President had not come in without a majority in Congress for his own party, in at least one House; though Hayes in 1876 failed to carry the House of Representatives for the Republicans, and Cleveland in 1884 failed to get a Democratic Senate. It is, of course, harder to bring about a swing in the Senate, since only one-third of its membership comes up for renewal in each election.

The cry of Presidential dictatorship is therefore something which a party out of office may sound from time to time with the certainty of finding an echo in Congress, if not among the public at large. One obvious fear when the office was designed was that its holders might choose to perpetuate themselves in office by submitting themselves to re-election on each occasion to the end of their natural lives. Against the idea of limiting their tenure to a single term or to a fixed number of terms, it was argued that republican institutions might themselves be endangered if a powerful and ambitious man who had already held the highest office found himself constitutionally excluded from it

Presidents was the lesser one, and the problem apparently solved when Washington's refusal to stand for a third term was regarded by his successor as setting a binding precedent. Theodore Roosevelt's bid as an independent in the 1912 election could be thought of as not really a departure from ordinary practice, since his first term had come to him by succession from the Vice-Presidency, and since a whole term had now elapsed since the end of his second. Franklin Roosevelt's justification for breaking away from the Washington tradition and accepting a third and even fourth term was, in his view, the exigency of the international situation, and his success suggested that the electorate accepted the argument. But Republicans took the view that, once the thing had been done, excuses for doing it again would not be hard to find in the troubled modern world, and so by the Twenty-second Amendment (1951) all Presidents elected to the office after the then President (Truman) would be entitled to no more than two terms, whether directly after one another or not; and no one who became President after being Vice-President with more than half the current term to go would be allowed to have more than one term in his own right. Had the amendment been in force earlier in the century it would have prevented Theodore Roosevelt's attempt to become President in 1912, and Franklin Roosevelt from remaining in office after January 1941.

When Eisenhower was re-elected to the Presidency in 1956 he was thus the first incumbent of the office ever to be precluded by the Constitution (as dis-

from convention) from seeking re-election. It seemed probable, therefore, that he would, like second-term Presidents in the earlier period, tend to lose his authority as his term ran on, since people would be turning to discover who his successor as the party's standard-bearer was likely to be so as to hitch their fortunes to a rising rather than to a falling star.

The American political system does not easily reveal the likely successor to a party's Presidential nominee in advance of his actual nomination. If a President dies in office, the succession, as we have seen, falls automatically to the Vice-President. A case of succession through impeachment, resignation, or incapacity has never yet arisen. Since the Constitution is silent as to whose right it is to certify the President's 'inability to discharge the powers and duties' of his office, it is difficult to imagine how this eventuality could arise in fact. It is clear that President Wilson was completely incapacitated for a considerable period after the stroke he suffered while on his speaking tour in support of the ratification of the Peace Treaty in October 1919—indeed, he remained a sick man for the whole year and a half until the end of his term of office. But since no resignation was forthcoming, it appeared that there was nothing that could constitutionally be done, and for the worst period of his illness it would hardly be too much to say that supreme authority in the United States lay with two non-elected persons—the President's wife and his private secretary—through whom all communication with him had perforce to pass.

But the Constitution of the United States provides that

there is a vacancy during a term does not mean he has had any special claim to being his party's candidate on the next occasion; in this sense, the separation of the election of the two offices by the twelfth amendment involved a permanent diminution in the pre-eminence and authority of the office. And even the Vice-President's single constitutional duty—that of presiding over the Senate—meant less when the Senate became a larger body, more assembly than Council of State, and when party organization within it became more important. There is nothing to stop a President from continuing a Vice-President's services in the cabinet or elsewhere, and if with no hope of re-election he wishes to gain an acceptable successor he may try his hand with it, as has been the case with regard to Vice-President Nixon; but once again it all depends on the man on the office. The office of Vice-President remains an outstanding anomaly in the entire structure.

The Presidency of the United States cannot, however, be defined by reference only to the constitutional provisions that govern it. Indeed, no part of the system lends itself less well to a purely legal analysis. The Supreme Court and Congress change slowly over decades; their membership preserves continuity through the overlap of terms—obviously in the Congress and Senate, and to a lesser but not inconsiderable extent in the House. Only the Presidency, as we have seen, gets a fresh start with each new incumbent. It may be that long-term trends can be discerned, in this sense that the strengthening of the Federal Government is against the states, and the growth in the duties

responsibilities of the executive branch as a whole, must contribute towards inflating what is done in the President's name if not what he himself does; but the personal factor remains. It is hard to expound the nature of the Presidency without writing the history of the Presidents.

The predominance of the personal factor is unaffected by the institutionalization of many of the Presidential functions, and by the growth of what has now come to be the Executive Office of the President in all its ramifications, of which the White House staff proper now forms only a relatively small part. Personal decisions have had their impact upon the development of certain ideas only to be found in the Constitution at an embryonic stage. Of these ideas, the most important is the provision that the President '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'. Under modern conditions, the first of these requirements was the earliest to be formalized in the annual 'State of the Union' Message, which has acquired a status a little akin to that of the Gracious Speech from the Throne in British practice. Indeed, the kinship was emphasized when Woodrow Wilson restored the device, in abeyance since Jefferson's time, of delivering the speech in person. The second has been the foundation for the modern practice by which Bills in fact emanate from the executive departments or are hammered out in close consultation with them.

here it was Wilson who was the innovator. Where Franklin Roosevelt, like Wilson, preferred to send messages to Congress as occasion for action by it arose, Truman preferred to include a comprehensive list of legislative proposals at the beginning of each session. Eisenhower seems to have favoured special messages.

Even more important has been the gradual emergence of the Budget as the principal annual event in the American, as in the British, governmental system. The Budget cannot be in its American setting altogether what it is in its British one, since Congress, unlike Parliament, has—as we shall see—genuine powers to amend the Administration's proposals. But the ability of the President to present as a whole both the needs which call for expenditure and the resources available for meeting them gives him the power of directing the whole trend of public action and discussion.

The importance of budgeting makes itself felt in two ways which would not have been true of the position a quarter of a century ago. The widespread acceptance of the broad principles of Keynesian economics, and of the State's responsibility for employment and economic growth, has made the budget much more than the mere sum of departmental estimates and separate fiscal proposals. It is recognized that the whole shape and pace of the economy may be decided by the scale and character of the President's proposals. Secondly, as we have seen, the all-important questions of defence and foreign policy are largely the product of Congress's decisions in matters of finance. Defence expenditure and foreign aid are matters of which

Congress in the end will decide the nature and amounts; but it is the President who will have to explain their relevance to the national situation as he sees it.

The reason why these far-reaching developments have not affected the personal character of the office derives partly from the fact that the President's constitutional responsibility cannot be delegated. In the end he must decide, and decide in a highly personal sense. If he chooses to delegate, he must be prepared to pay the penalty for delegation to persons with no similar constitutional rights—that is to say, he must be ready to come in and shield them whenever they, politically speaking, put a foot wrong. This feature of the Presidency has been particularly notable in the case of President Eisenhower, whose military habits of work, and later growing ill-health, impelled him towards a greater delegation of authority than any of his recent predecessors. When, therefore, accusations of exploiting his office for gain were made against the Assistant to the President, Sherman Adams, who was virtually a chief of staff, Eisenhower was faced with an agonizing choice as between the political expediency and moral propriety of requesting his resignation, and the blunt administrative fact that, as he himself said, he 'needed' Adams. But the personal element arises partly from the fact that the President's power depends so much on his ability to play the role of the people's tribune. Here undoubtedly the modern developments in publicity have been of great advantage to him. There were in an older America limits to the power which even an Andrew Jackson or an Abraham Lincoln

possessed of impressing his own personality on the electorate. Newspapers, the only mass media of communication of the day, were as, despite syndicated columnists, they have largely remained—essentially local. Public-speaking campaigns were regarded as improper for a President, and until the present century even for a candidate for the office. Such inhibitions have been swept away; but this is already far less important than the impact of radio and television. Franklin Roosevelt came upon the scene too soon to take advantage of television; but he was the greatest innovator in every other respect. Not only did he master the difficult technique of the radio ‘fireside chat’, but through his development of the press conference in a kind of parliamentary question time, in which the advantages lay with the questioned and not the questioner, he rendered even the press, which was for the most part politically hostile to him, an instrument of his purposes. Regular presidential press conferences were inaugurated by Wilson, but abandoned by him after America entered the war. Harding gave few, but the number jumped sharply under Coolidge, who gave an average of nearly two a week—though the interest was limited. The number had dropped very sharply under Hoover before their revival under Roosevelt. Truman’s average number of press conferences a month was only about half Roosevelt’s, as they further declined under Eisenhower, whose previous experience and natural temperament did not endear repartee to him.

The fear of executive dictatorship through the

President's ability to by-pass all intermediaries and to talk directly to the people is not an unnatural one; and it is hard to deny that a genuine demagogue in the Presidential office might profoundly alter the political balance. The President has not only the advantage of being able at will to reach an audience far wider than any competing political figure; he also has more interesting and important things to say. This is again a facet of the increasing international involvement of the United States. It is understood and accepted that it is the President who represents the United States in the eyes of the world, and who, with the regrettable modern taste for personal diplomacy, will normally be its spokesman on the really great occasions. Senators or others may from time to time claim that he is misinformed about what is going on abroad, but generally speaking it is natural that the people should look for guidance to him rather than to them. And, despite the formal rights of Congress in the matter, the people rightly suspect that it is upon what the President does or chooses not to do that the chances of war and peace depend. All this must concentrate the limelight upon the White House; and in a community so convinced that public life should be carried out in the open this is something of an additional burden as well as of an asset. It also enhances the status of those members of the President's staff who are most concerned with public relations—notably the Press Secretary. It has been suggested that during President Eisenhower's grave illnesses the powers of the American Government were largely in the hands of two men—Sherman

Adams and the Press Secretary, James C. Hager.

One must not, of course, assume that the normal handling of the President's policies demands an all-out conflict with Congress and a series of appeals to the people. A President will naturally try to work with Congress wherever possible, and various informal techniques for keeping Congress in line have been developed and are exploited according to the temperaments of the different holders of the office. Furthermore, of course, besides the President's general responsibilities as head of the executive and as Commander-in-Chief, he has an increasing number laid upon him by delegation under legislative Acts which give him rule-making or other forms of discretionary power. How far Congress wishes to and can proceed in this direction will vary from time to time. But on certain topics where political pressure is likely to be heard from individual Congressmen, Congress may even prefer to let the President take the responsibility. On other occasions a President, even if he could get or presume delegated powers, might prefer to force Congress into sharing the responsibilities. Most of the emergency powers used by Wilson during the First World War were delegated to him by statute, in contradistinction to Lincoln's reliance on the inherent powers of the office. Powers to enable the President to deal with the economic emergency were included in some of the early New Deal legislation, such as the Emergency Banking Act of 1933.

Where the constitutional role of commander-in-chief is concerned, the extent of direct President

intervention will be even more dependent upon personality. Lincoln, with little military expertise, was mainly concerned to find the right men to wage the war, and intervened principally to change them when things seemed to be going worse than they need. He tried at the centre to secure the best professional advice and to regard his personal authority as only a last resort. Wilson was not a warrior, and had few major strategic decisions to make. The pattern of the war was largely set by the time America entered it, and the important thing was the speed with which its resources could be mobilized. The main decision was the one that American troops should be kept as a single army and not used in small groups to reinforce the weakened Allies.

On Roosevelt as a wartime leader, it is perhaps too soon to make a final judgement. Despite his previous experience as Under-Secretary for the Navy in the Wilson administration and his lifelong interest in ships and the sea, Roosevelt had none of the strategic interests or claims of a Churchill. Nor, indeed, did he have at the outset the machinery to make his views effective. Against the streamlined British system, with the Chairman of the Chiefs of Staff Committee acting as adviser to the Prime Minister—Defence Minister with the Military Secretary to the War Cabinet as a link between them—there was on the American side a very considerable area of improvisation and doubt, with Harry Hopkins a very imperfect substitute for General Ismay. Roosevelt had no military secretary. In the circumstances the separate services

were a great deal less firmly co-ordinated, and major decisions come to by the President were hard to follow up in detailed planning. Here the necessity of Allied co-operation helped to bring about a change. The American joint chiefs, working with their British counterparts through the Combined Chiefs of Staff Committee, developed a somewhat similar organization, with Admiral Leahy as their chairman called to act as the channel linking them with the President. But the American servicemen's reluctance to accept the inevitable interlocking of political and military considerations, and Roosevelt's preference for keeping clear of technical issues, still allowed a fairly considerable gap in the actual handling of the issues that arose. On the other hand, Roosevelt had to face none of the restrictions that the conventions of cabinet government—even under wartime conditions—imposed on the British Prime Minister. When Roosevelt and his principal commanders met Churchill, or Churchill and Stalin, at the great wartime conferences, it was possible to say that the American Government was for the moment at Casablanca or Teheran or Yalta in a way which the British Government, however strongly represented, was not.

Of the attitudes of the two subsequent American Presidents to their role as commander-in-chief we have spoken in another connexion. But their experiences also illustrate the flexibility of the institution and the impact upon it of personality. It is, of course, relevant that so many American Presidents have

Commanders, Washington and Eisenhower, to fighting officers like General Jackson and Captain Truman, down to that 'military hero' of the Black Hawk War—as Captain Abraham Lincoln once mockingly referred to himself.

Indeed, for a long period after the Civil War, to have held military rank in the Union army was a *sine qua non* of nomination. The fact that General Grant's career in office revealed that military distinction and a feeling for political facts do not necessarily go together was no impediment. It has been regarded as somewhat paradoxical that Americans, who have been so essentially pacific a people, should so often choose a soldier as the head of their Government. But if one considers the matter more closely, is it really so strange? Once again, one must remember that the President is not only head of the Government where one would expect political experience to count; he is also head of the State. And it is a State which deliberately excludes religion from its sanction. The Constitution forbids the establishment of any religion by law. So that although convention now demands that the President be an observing Christian—the deism of the Founding Fathers would go down badly in modern America—and although it has been demonstrated so far that he must be a Protestant Christian, his is not the role of the Christian monarch of the European tradition. Since, then, the head of the State cannot be any sort of a priest, there are perhaps understandable and traditional reasons why he should so often be a

Nothing in the Presidency is harder than to discover what avenues lead to that office. Nor did Bryce answer the question when he turned it round, and asked himself to explain 'Why Great Men are not our Presidents'. One obvious reason for Bryce handling the matter in that way is the fact that he was writing it at the nadir of the Presidency, at the very time when Wilson was complaining that the United States, contrary to the Fathers' intentions, come to be under the régime of 'Congressional Government'. The President's book under that title actually appeared in 1885.

The present century has seen not only a growth in the power and prestige of the Presidency, but also the coming into office of some remarkable Presidents. Of the two Roosevelts and Wilson would presume to meet the normal definition of 'great men'. It might be a little harder to decide on the average capacity of those thrown up by the system as compared with the British Prime Ministers of the period. It is obvious, however, that the American system of selecting Presidents does so in such a way that it renders it quite uncertain whether the outcome will be satisfactory or not, quite apart from the complications caused by the possible succession of the Vice-President. Indeed, the 'convention' system which has been the method of choosing the candidates as early as the Jacksonian period is the most remarkable of all American political devices.

Presidential primaries has, as was intended, made the voice of the people a little louder by comparison with that of the professional politicians who formerly dominated the scene. But in the last resort it is what happens in and around the convention itself that decides the issue. The importance of the office and the likely consequences of a particular selection for the national political scene, or for individuals, are so profound that the selection process has an element of drama which is totally lacking for the most part in the proceedings of Congress, where an observer with a British or European background would expect to find it.

In a sense, the convention is a perfectly rational institution—democracies which lack the splendour of traditional ceremonies must fill the gap with their own colourful if vulgar substitutes. It is also on a more practical level an appropriate place for carrying out the bargaining between sections within the party—which often correspond to sections within the nation. A candidate who can get selected under these circumstances will probably be one whom the party as a whole feels it can follow and work for. Under any other system the existence of caves of dissidence would be more likely.

The difficulty is that not only the issues to be resolved, but the candidates themselves, will for the most part have only local reputations to throw into the scales, and these may or may not correspond to qualities which would seem admirable if put to the far

the state governorship—where the larger state concerned—is a closer approximation to the President in the qualities it demands of its holders than, for instance, an eminent position in Congress. The selection of office-holders and personal advisers, the relations with the legislature, the establishment of factory relations with public opinion—all these tasks with which a successful state governor is presumably well acquainted and which will fall to him again if elected President. Indeed, the continuity between the methods of Franklin Roosevelt as Governor of New York and later as President is obvious. One might be regarded as a training-ground for the President.

But under modern conditions it could be argued that the nature of the preoccupations of a President become increasingly far removed from those of a state governor, and demand a quite different background of knowledge and even theory. The state governorship is sufficiently important and all-absorbing that it leaves its holder little time to familiarize himself with issues of general economic policy, to say nothing of defence and foreign affairs, with which a President must mainly be concerned. In so far as any American institution provides an apprenticeship in these matters it is the Senate. But although thirteen Presidents have come from the Senate, Senatorial eminence is not attained by way of qualities not essentially executive.

A front-bench debater in a European parliament, say nothing of a Cabinet Minister, will normally be more familiar with the framework within which

Presidential candidate need be. Nor, once the convention's decision has been taken, is the subsequent conduct of the campaign likely to encourage him to fill these gaps or provide opportunities for doing so. It will, of course, be necessary in the course of campaigning to fill out some of the outlines of the party's platform; but the method adopted since Franklin Roosevelt's time at any rate seems to be one of employing experts to write the speeches and do the research, leaving the candidate's task to be that of modifying the language or supplying the occasional illustration in order that each speech should fit into the total picture of the man which the campaign is attempting to project before the national audience. This may make it difficult to decide whether the personality so projected is a real one at all, or merely the synthetic product of the efforts of a large number of intellectual hangers-on or even professional publicity men. One suspects that in the more homespun campaigns of an earlier age it was easier to get some idea of what the contestants were really like than it is today, when they have the same techniques applied to them as to film-stars. And certainly when the original choice is so wide a one, electoral appeal will have greater weight than innate ability or even political experience when the professionals come to make up their minds. With discussion of possible candidates beginning for the next occasion almost as soon as the ballots have been counted for the last, it is unlikely that we shall ever see any more real 'dark horses', since a candidate would

been canvassed fairly fully at some stage. The greater danger is that a President may be elected whose real personality is altogether remote from the image that has secured his election. Nor is it true that the electorate will have a chance to judge him if a President himself is a candidate for a further term. If he wishes to, it is almost unthinkable nowadays that he should not be renominated. But the electorate will not, in fact, have relevant material for judging his success or failure, since the mood will be determined by events which may be wholly outside the President's control. It is particularly unlikely that the American depression of 1929 onwards would have followed a very different course under a President other than Hoover; his views on economic policy and on the possible range of federal action were really all untypical. But it is hard to see how anyone in the position could have hoped for re-election. On the other hand, in a world where insecurity in the midst of plenty is so characteristic, peace and full employment whether or not their existence is the product of a President's decisions—will be almost certain to ensure him the chances of a second term.

Of course, all this will be much affected by the current party situation, and the American party system is not in any sense a static one. Even the most powerful father figure will find he has millions and millions of votes cast against him, and the personal element can only be measured, if at all, in terms of the difference between votes for Presidential candidates and for other sections of the party ticket—Congress-

for instance. A victorious candidate may run ahead of or behind his party. But once the issue is decided, the limelight again settles on the person of the incoming President. The great area of discretion open to him—if he is a newcomer to the office—will be sufficient to ensure this even if the situation is less dramatic than in 1860-1 or 1932-3. On each new occasion the whole problem of Presidential authority is necessarily re-opened.

How it will be solved will differ in each case not least according to the individual temperament of the President concerned, and his own conception of his office. The differences within the same historical period may run all the way from a President like Franklin Roosevelt, a politician to his finger-tips, essentially engaged in seeking advice and manipulating opinion so as to be sure of the maximum consensus behind his leadership, to, at the other extreme, a Dwight Eisenhower, regarding himself as more of a constitutional monarch than a popular leader, concerned with the orderly conduct of business rather than with inaugurating or presiding over great social changes or major legislative adventures. The distance in personality and outlook may be no greater than between, say, a Churchill and an Attlee, but because there is so much less institutional rigidity than in the British system its impact upon the way government is conducted will be considerably greater in the American case.

For the rest of the world, the importance of this fact is to be found largely in the extraordinarily powerful position in which the President finds himself in regard to foreign affairs. It is true that, as we shall see

Congress plays a greater part than is customary legislative bodies; but in so far as the greater part of the conduct of foreign relations is executive in character, the American constitutional structure places initiative almost exclusively in the hands of the President. While the heads of government in other countries have had to accept an increasing share of responsibility for foreign relations, the nature of the structure of the American administration makes the President's role an exceptional one in that all major decisions for decision can only be solved at the Presidential level, whether these be diplomatic or military.

The elaborate American governmental machine and the military hierarchy are both affected by the constitutional lack of any corporate institution for decision making such as is provided under the British system by the Cabinet and its underpinning of Cabinet committees. The Constitutional provisions which make the Secretary of State and other high officials mere advisers to the President within their respective fields mean that foreign statesmen may be unable to know, unless they are dealing with the President himself, what the policy of the United States is likely to be. If, as in the case of Franklin Roosevelt, the President is someone who prefers to keep his own counsel, to make use of different private agents with different views of the situation, and to test home and foreign public opinion by himself by trial balloons of various kinds, it may be difficult for contemporaries to be certain of his views and for later historians to agree on his intentions at different stages of his period in office.

The domination of a Presidential policy based on a number of relatively simple if often rather daring principles of action is very apparent in the history of the Truman Presidency; and when President Truman found in Secretary of State Dean Acheson an adviser and executant after his own heart, there was a period in which the formal and actual relationships on this side of American government coincided almost to the full extent possible. The subsequent partnership between President Eisenhower and Secretary of State John Foster Dulles is different again, because the preference of the President for delegating authority wherever possible and the indefatigable assiduity of the Secretary of State made the latter a much more important figure internationally than any of his recent predecessors. Nevertheless, it was never possible to forget that he held this position because of the trust placed in him by the President, and that on some aspects of policy—particularly anything that concerned the possibility of military action—the President's responsibility could not be shed.

It can thus be argued that the tendency in recent times for international relations to be carried on by direct contacts between heads of governments is due not only to the peculiarly vital nature of the problems to be solved, but also to the fact that, given the paramount role of the United States, such relations have to take account of its peculiar governmental structure. The nature of the American Presidency is thus a matter in which it is not the Americans alone who are concerned.

Chapter Four

THE ADMINISTRATION

ONE would expect in any modern State to find (ever novel or unusual its constitutional arrangements) that its administrative structure would follow conventional familiar lines. All modern States of any size have (and growing bureaucracies, military and civil, grow) in departments or other subdivisions of the central administration, and operating outwards, both internally and abroad, from headquarters situated in the national capital and in contact with the national legislature. The problems of how to divide labour between different departments, of how to recruit, train, and remunerate officials, and the relations of these men to their political chief or chiefs, vary everywhere but betray a family likeness.

While all this is by now true also of the United States, there are certain specific features of the American scene which set it off fairly sharply when contrasted with British or Continental European models. The most obvious of these arises from the original division of powers between the Federal Government and the states. Many of those aspects of modern government which most concern the citizen and which have contributed most to the elaboration of the administrative machine and to the multiplication of

when we come to deal with the state and citizen in our concluding chapter, the Federal Government has been forced by circumstances over the last quarter of a century and more to take over much of the responsibility for financing and for setting standards over the whole field of the social services, and this has led to the creation of new machinery at the centre, working ordinarily in close and indissoluble partnership with the states. But this still means, in administrative terms, a considerable difference when compared with systems where the locally-stationed official with whom the citizen has to deal is directly appointed by, and controlled from, a central department. It also means that the nature and size of the different departments in Washington will differ very considerably from that of their counterparts in London and Paris. It is significant in this connexion that the Secretaryship of Health, Education, and Welfare was created as recently as 1953.

Almost as obvious in their origin, and even more complicated in their effects, are those specific characteristics of American administration that arise from the American version of the separation of powers, and from the peculiar position of the President in his capacity as head of the executive branch of government. The original departments of the American government, State, Treasury, War, and Post Office, were created by the first Congress under the Constitution out of the administrative machinery that had been bequeathed to it by the Continental Congress. The Secretaries who headed these departments were available, together with

to the President, and rapidly came to form his Cabinet. But since the members of the Cabinet drew their individual authority from precise legislative instruments and since they were subject to dismissal by the President and were to that extent merely his servants, the Cabinet never acquired the corporate sense natural to a body collectively responsible to a legislature or an electorate.

Although no prescriptive right to membership has ever laid down, the heads of the original departments and most of the Secretaries subsequently created provided its essential element. The Attorney-General was given a department, that of Justice, in 1870. Additional Secretaries were needed as heads of departments newly created to match the growth of federal responsibilities. These were Navy (1798), Interior (1849), Agriculture (1889), Commerce and Labor (1903), divided into two secretaryships in 1913, War (1947), Defense (1947) and, as we have seen, Health, Education, and Welfare, bringing together a number of previously separate federal activities in 1953. The creation of a Department of Defense means, as in Britain, the demotion of the service ministers from membership of the Cabinet. On the other hand, the Cabinet now includes for practical purposes persons who are not heads of the ten Executive Departments. Vice-Presidents have often regularly attended. Under President Eisenhower, it has been attended by the American representative at the United Nations, the Director of the Office of Civilian Defense Mobilization, the Director of the Bureau of the Budget, Chairman of the Civil Service Commission, and others.

But however composed, the Cabinet was always thought of as a collection of individuals whose right to advise the President was inherent in their several offices rather than in their membership of a Cabinet. The President could, and in one celebrated case at least did, ask for their opinions severally and in writing. The extent of the influence of each of them upon him was the result of a personal equation in which the particular office held was only one factor. In the case of President Roosevelt, for instance, when important questions were submitted to the cabinet for a formal expression of opinion, it was rather to ascertain the likely effect outside than for the sake of getting advice upon the general merits of a particular line of policy. Nor was the President precluded from seeking the advice directly of one of his Secretary's nominal subordinates. It is clear, for instance, that in regard to foreign policy, more than one President has been virtually his own Secretary of State. At one time, the Under-Secretary of State, Sumner Welles, was much closer to some of Roosevelt's principal activities in the foreign field than his Secretary of State, Cordell Hull.

The excuse, if excuse is needed for such cavalier treatment of the nominally responsible officials, may be found in the fact that the choice of cabinet officers is rarely as wide in practice as it is in theory. Cabinet offices may have to go to satisfy a regional or sectional interest, to pay a party or campaign debt, to gratify a personal ambition, that it might be politically dangerous to thwart. Or again, there may be a want of eagerness on the part of the kind of man whose services the

President requires, to sacrifice the prospects of business or professional preferment for the rigours and dangers to which any public figure in America is inevitably exposed. President Eisenhower was clearly determined that his cabinet should in the main be made up of businessmen; not every first-rate businessman would be a cabinet minister, nor is it easy to know in advance how an apparently first-rate businessman would stand the test. Although there have been many in American history who have at different times both held cabinet offices and been prominent in Congress, the absence of a ladder of advancement through service in Congress to cabinet positions has its undoubted effect both upon Congress and upon the cabinet. The British system of parliamentary apprenticeship would seem to serve a useful purpose, and the frequent failures of the President when it is short-circuited (for instance, in wartime) may help to explain the difficulties of American Presidents in this respect.

The rather haphazard system of selection, which has been the result that few cabinet members will have had the kind of experience that leads them to take a broad view of the government's problems, helps to reinforce the tendency of several, at least, of the departments to take a rather sectional view of their role, so that they come rather to represent those elements in the community whose affairs concern them, than to seek to control them for the general weal. The Department of Agriculture comes to be the spearhead of the farmers, and its head is likely to prove a major political rival if he rejects the role of the Department of Commerce.

represents business; the Department of Labor the organized workers, and so on; and the case is even clearer where we come to the specialized bureaux between whom the work of the main departments is normally divided.

The narrowness of the outlook of members of the cabinet, or alternatively the lack of harmony between themselves and the President, may well lead the latter to prefer to seek advice elsewhere; nor does American political tradition preclude him from doing so. From Andrew Jackson's 'Kitchen Cabinet' to Franklin Roosevelt's 'Brains Trust', Presidents have taken what advantage they can from the desire of able men to patrol the corridors of power; and some of these advisers, acting also as presidential agents, like Colonel House and Harry Hopkins, have succeeded in inscribing their names fairly large in the records of their times.

The personal element upon which we have laid so much stress in our account of the Presidency itself would lead one to expect that the relations between a President and his Cabinet would differ markedly from one administration to another. President Truman reversed to a marked degree the untidy administrative habits of his predecessor and, at least in major aspects of government, took care that real and nominal responsibility should coincide. His relations with his Secretary of State, Dean Acheson, were, as indicated, among the closest that have been achieved between a President and a holder of this most vulnerable office. An innovation of the Truman era, the National Security Council

... has been set up in order to formalize the links

that had of necessity grown up in wartime between service departments and those concerned with foreign policy and industrial preparedness, seemed at the time to show signs of supplanting the Cabinet as a real collective organ of decision-making on the vital of contemporary issues.

But although the National Security Council continued to play an important role under President Eisenhower, his régime was soon made remarkable by the importance newly attached to the Cabinet as a collective body. A formal Cabinet secretariat was instituted to organize the Cabinet's work, keep its records, and to follow up the execution of its decisions. Detailed work was delegated to a sub-cabinet of Secretaries' principal subordinates; and cabinet- and sub-cabinet level committees were set up to handle special problems. This organization of the executive of government produced what looked almost like a system of two Cabinets: one, the old Cabinet for domestic administration and 'political affairs', the other the N.S.C. for foreign policy and defence.

The President's job as the head of the whole executive machine has been made still more difficult by other features of recent American administrative history. The first of these has been Congress's preference for handing over relatively new functions of government and even some older ones—tariffs, for instance—to the classic departments, but to specialized board commissions, whose compositions and competence were laid down in the Acts creating them. The 'independent regulatory commissions', the Interstate Comm-

Commission, or the Federal Communications Commission, for instance, and such intrinsically executive authorities as the Tennessee Valley Authority and the Atomic Energy Commission, which have only remote parallels, for instance, with nationalized industries, in more tightly-knit systems, are not easy to fit into a general programme of governmental action. The law may require them to be 'bipartisan' in composition; an incoming President may find them dominated by men whose cast of mind is different from his own, and by the decision in the *Humphrey case* (1935), the Supreme Court held that because of their quasi-judicial functions, members of these bodies were not subject to the President's ordinary powers of dismissal.

The bias in Congress will tend to be towards creating new instruments for new functions, rather than allowing an existing department to extend the range of its authority. It is obvious in this connexion that the vast extension of the activities of the United States government outside its own borders has presented peculiarly difficult problems in organization which have not yet been solved completely. It was not entirely unreasonable to take the view that many of these novel activities, which are operational rather than diplomatic in nature, could not usefully be treated as mere extensions of the ordinary work of the State Department. Military and technical assistance, economic aid, propaganda (or information)—all these sides of American policy have had to be given an organizational framework, and the multiplication of international organizations, universal and regional, has

created still further problems. On the other hand policies are not to be dangerously self-contradictory; some form of co-ordination is clearly necessary; the question has been whether the State Department the source of advice to the President on foreign policy generally, can perform this task, or whether it is another problem for the President and his own staff. The fluctuations in the position of the State Department may (as so often in administrative history) reflect in great part the personality of its successive incumbents and the extent of the trust placed in them by the President and Congress.

The contemporary problem was foreshadowed by the question of whether Departments other than the State Department, with interests abroad, should have their own independent representation or work through specialists in the various missions. The concept of a unified foreign service which dominated the reorganization Acts of 1939 and 1946, meant that Commerce, Labor, and Agriculture worked through the foreign service, while the Treasury representatives abroad retained their independence. In 1954 the Department of Agriculture, with the support of Congress, primarily interested in selling agricultural surplus abroad, broke away and established its own attaché overseas.

More important still was the experience of the occupation of enemy territories in the post-war period and of the gradual transfer from military authority to civilian diplomatic means as peace was restored.

But essentially the problem of the last decade has been that created by the use of American financial and military power in the 'cold war' against communism, through the granting of aid, either direct to individual countries or through regional organizations which might or might not have the United States among their members.

The Economic Co-operation Act of 1948, which gave body to the Marshall Plan, established an independent Economic Co-operation Administration with an administrator of Cabinet rank having direct access to the President, who had therefore to co-ordinate its operations with those of the State Department. The original programme of military assistance was managed, however, through co-ordinating machinery between the Departments concerned, while the legislation for technical assistance overseas, passed in 1950 to implement President Truman's 'Point Four', placed operational responsibility within the Department of State itself.

The organizational problems were further debated when, with the outbreak of the Korean War, interest shifted from economic to military aid. In the upshot, the Defense Department was given primacy in military assistance, with the Mutual Security Agency (set up in 1951 as the successor to the Economic Co-operation Administration) running economic aid, and the State Department retaining its responsibilities for technical assistance. The difficulties of disentangling the two latter led to a *de facto* geographical separation of duties

programme was placed a Director for Mutual Security within the President's office. For a period, however, the position was further complicated in that co-ordination in Europe (the part of the world most in view) largely handled by a special regional office in Paris. In 1953 the incoming Republican administration altered this arrangement by abolishing the regional organisation, and by attempting to arrange things in Washington in such a way that the State Department took responsibility for policy, while operations were handled by a separate body, the Foreign Operations Administration, which took over the work of M.S.A. and of the State Department's Technical Co-operation Administration as well as the co-ordinating responsibilities of the office of the Director of Mutual Security.

Hitherto it had been plausible to justify the improvisations as administrative reactions to temporary emergencies, but as it became clear that American aid in one form or another would be needed indefinitely in many parts of the world if communism were to be 'contained', a further tidying up became possible, and in June 1955 the F.O.A. came to an end and was succeeded by an International Co-operation Administration working semi-autonomously within the Department of State.

The history of the information services also followed a different path. In the immediate post-war period, information services were regarded with suspicion and the State Department was allowed to concentrate on a programme of cultural exchange

which were thought to represent the most correct method by which a democracy might win friends and influence people. But the exigencies of the 'cold war' and the extensive use of propaganda by the communist world caused a revision of this attitude. It was felt, however, that work of this kind was not suitable for the State Department, and on 1 August 1953 all such activities other than purely cultural ones were removed from it and conferred upon a new agency, the United States Information Agency, which was to secure guidance on policy questions from the State Department, the National Security Council, and other departments concerned.

Corresponding to Congress's preference for new agencies is its insistence upon maintaining through its committees some kind of direct supervision, not only over the separate departments, but over their bureaux and other subdivisions. It is not satisfied with what the secretary or his immediate subordinates may say in defence of a department's estimates; nor can they in administrative matters advance any doctrine of ministerial responsibility to shield their subordinates. It is the 'responsible official' with whom a committee will wish to be confronted. The effect of this is not so much to secure a greater measure of control on the part of the legislature—what modern legislature can hope seriously to control the vast proliferation of a modern administration?—as to assist in the fragmentation of administration itself, to help the creation of minor administrative empires secure, through their direct access to the source of law and the source of funds, against

interference or control on the part of nominal superiors. The task of the Executive is to impose a single will and a single impulse upon the whole of the vast machinery of government; the prejudices and practice of Congress work in precisely the contrary direction.

No issue in the field of administration better illustrates the perplexities caused by the extent of Congressional influence, and even control, than that presented by the post-war attempts to find a permanent structure through which the President can adequately fulfil his responsibilities for national defence. It is a problem upon which nothing in previous American history threw very much light, since in the past America only had large armed forces in times of war.

From this fact, and from the peripheral nature of America's previous wars except the Civil War, there had sprung a curious ambivalence on the subject of civil-military relations. On the one hand, there was the revolutionary ideology of the supremacy of civil power and of defence as the responsibility of the armed citizen; on the other hand, there was the fact that the armed forces were organized on professional lines, and lived a life of their own outside the mainstream of national affairs. Americans, and especially American politicians, tended to be more receptive to the idea that military matters should be left to experts than they were to the notion that expertise is unnecessary to successful civil administration. In the Second World War, Roosevelt was, as we have seen, much readier to leave decisions in the military sphere to be made by the service chiefs than was Wins-

Churchill, and even if this fact is in part a reflection of the very different personalities concerned, it also displays differences of national attitude as to the proper nature and limits of civilian control.

But the war and its results created a new situation in which the old principles received a severe testing, since the claims of efficiency in defence and those of ultimate civilian control might be held to conflict. It was also the case that the whole question involved far more of the nation's resources in men and money. In 1939, the regular army consisted of 187,000 men, and the navy of 151,000 men; there was no separate air force. In 1954, a relatively quiet year, there were three and a half million Americans under arms, not counting the reserves and National Guard (territorials). But the problem was not one of mere size. As in other countries, the development of military technology is already making obsolete the threefold division between land, sea, and air forces that served as a pattern of thinking for the military chiefs in the Second World War. In order to fulfil their respective missions, each of the three branches (and the Marines who almost ranked as a fourth), could claim control over nearly all kinds of weapons, both existing and potential. The pressure for unification in the name of efficiency and economy was very strong; it had a wartime prehistory beginning with the establishment of the Joint Chiefs of Staff in 1942. As in other countries, service loyalties and service rivalries were an important obstacle. In the United States the difficulty in arriving at a more rational structure was reinforced by the ability of

dissident elements in the forces to obtain the Congress and by the general fear in Congress that a streamlined military machine might weaken the hold of civilian control. The period since the war has seen a succession of steps by the Presidents to get a greater measure of unification, and their partial frustration by service elements in alliance with powerful sections of Congress.

The basic structure was laid down by the National Security Act of 1947. This created for the first time an independent air force, and gave it, as we have seen, a civilian Secretary on a par with the Secretaries of War, Army and Navy. It created a National Military Establishment, with a Secretary of Defense having 'general authority, direction and control' over the three service departments, and gave statutory authority to the reorganization of the Joint Chiefs of Staff which had grown up during the war as the central directing body on the military side. Finally, it created certain inter-service supply and research organizations within the National Military Establishment, and a Central Intelligence Agency. It also created two new co-ordinating bodies, the National Security Council, already referred to in the preceding chapter, and the National Security Resources Board, which was placed within the Executive Office of the President in 1949.

The National Security Council was supposed to act as the main source of advice to the President on all matters relating to national security were concerned, but its efficiency was hampered by the fact that the three service secretaries were all on it, as well as

Secretary for Defense, and by the fact that Chiefs of Staff also had independent access to it. As a result, the military advice available for consideration along with that given by the Secretary of State and other civilian advisers, might itself be discordant. It was indeed a period of open and vigorous inter-service controversy.

In 1949 a new National Security Act made certain changes intended to strengthen the authority of the Secretary of Defense. The word 'general' was omitted from the phrase 'general direction, authority, and control'. The 'National Military Establishment' was renamed the Department of Defense, an executive department, while the three service departments ceased to be executive departments and became military departments only. The Secretary of Defense now became the sole representative of the military establishment on the National Security Council (which became part of the Executive Office of the President) and the military departments were not permitted to appeal over his head to the President, or to the Bureau of the Budget. On the other hand, any service Secretary or member of the Joint Chiefs of Staff could make recommendations to Congress after informing the Secretary of Defense. The armed services were required to be separately administered; the Secretary of Defense could not transfer or consolidate any combatant functions.

A further impetus towards change arose from the deficiencies in the military machine, revealed by the Korean War and by the growing realization that since

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from all three forces, the existing structure was adapted to give a clear line of command and responsibility. A new organization was introduced by Reorganization Plan No. 6, which went into effect 30 June 1953. This Plan still further enhanced authority of the Secretary of Defense, and placed under Assistant Secretaries in his department many of functions of existing inter-service agencies. Authority over a unified command would now run from President to the Secretary of Defense and then through one of the civilian secretaries of the three military departments. By the spring of 1958 there were five 'unified' commands and three other commands including the Strategic Air Command (an *imperium imperio* if ever there was one) and N.O.R.A.D., a joint command (with Canada) for North American defence. The Joint Chiefs of Staff were eliminated from the command structure and given what were largely planning functions. Their Chairman (holding an office first created in 1949) was given authority over a joint staff which was intended to be a body capable of thinking out defence problems without too much concern for the role of the separate services. Earlier in 1953 the National Security Resources Board was placed by the Office of Defense Mobilization.

The new structure which was accepted by Congress seemed fairly clear-cut. At the top there was the President, advised by the National Security Council and the Office of Defense Mobilization; under him the Secretary of Defense, advised by the Joint Chiefs of Staff. The Chairman has ready access to the President.

himself) and working through a Deputy Secretary and ten assistant secretaries in charge of particular departments. These assistant secretaries are of considerable importance. One of them, the Assistant Secretary (International Security Affairs), is responsible for relations with all international bodies, including the U.N. and N.A.T.O., that affect American security and for liaison with other government agencies dealing with defence and international affairs. By 1958 there were four Assistants to the Secretary of Defense and eight assistant secretaries. Under the Secretary of Defense came the three service secretaries.

But during the next five years there were signs that some of the problems had not yet been solved. The Department of Defense itself lacks full efficiency, partly because of the great difficulty in getting the right men for the forty-odd senior posts that have to be filled by civilians brought in from outside on conditions that do not make a wide appeal compared with major posts outside the government service. There has been a rapid turnover among the holders of such posts, and too many of their holders leave by the time they have learned their jobs and are really useful. The same difficulties of recruitment apply to technical specialists drawn from civilian life. This increases the likelihood of friction between civilian officials and their military counterparts, who are likely to be better qualified, and the whole system of maintaining civilian control by having civilian and military officers checking on each other at a number of different levels comes in for criticism and is held responsible for that criticism.

channels of communication which is said to mark a turning point in the history of the Defense Department's handling of its business.

From the point of view of the professional military man confronted with the need to give advice to Congress, there was the question as to the demands for loyalty that may be made upon him by his civil superiors—the President, the Secretary of Defense and his own service Secretary, as well as by his service chiefs. Most serious of all, the demands of the service still reached Congress and the public in an uncoordinated and, indeed, competitive fashion.

All this might have been less dangerous had the National Security Council worked as a kind of defense and foreign affairs cabinet, as some people originally hoped that it might. The composition of this body as it stood by 1958 was a powerful one: the President and the Vice-President (the latter presiding in the President's absence); the Secretary of State; the Secretary of Defense and the Director of the Office of Civilian Defense; the Director of Mobilization were statutory members. The Secretary of the Treasury, the Director of the Bureau of the Budget, and the Special Assistant to the President for Disarmament (while that post existed) were there by permanent invitation. Other officials, such as the Chairman of the Atomic Energy Commission, could at any time be called upon when matters of interest to them were on the agenda. The Chairman of the Joint Chiefs of Staff and the Director of the Central Intelligence Agency served the Council as advisers. Two boards at a lower level, dealing with planning, and the other with the fol-

the Defense and other relevant departments. Nevertheless, there was evidence to suggest that this impressive body had been less powerful in practice. The prime reason lay in the fact that there was little possibility of co-ordinating its general decisions on such matters as the level of forces and general objectives of strategy with the budgetary process which was the decisive thing. Congress intervened directly by laying down specific programmes in the course of making appropriations and by using its powers of investigation to make sure that its preferences were given the maximum effect.

This situation was responsible for yet another attempt at defence reorganization made by President Eisenhower in 1958. The President's wishes were made known in a special message to Congress on 3 April. The Armed Forces were to be organized into fully unified commands with the service departments losing authority over their components and ceasing to provide channels for transmitting orders to them. These were to come from the President through the Secretary of Defense. The Joint Chiefs of Staff were to serve as a staff assisting the Secretary of Defense and issuing orders under his authority. For this purpose, the Joint Staff was to be strengthened and an effort made to integrate it still further and free it from service influences. The Joint Chiefs were to delegate most of their individual service responsibilities to deputies. The powers of the Secretary of Defense were to be further increased by such means as the centraliz-

sphere of weapons; by asking Congress to appropriate funds in such a way as to give him greater flexibility in deciding upon their allocation; by eliminating of the statutory restrictions on his intervening in *internal affairs* of the service departments; and, *perhaps most important*, by centralizing in his office responsibilities for liaison with Congress and for relations generally. At the same time there was to be effort at minimizing the services' feeling of separation by facilitating inter-service transfers of officers, and putting into the hands of the Secretary of Defense the right to advise the President on promotions at the highest ranks, so as to encourage officers who shown a broader vision.

Congress showed itself willing to go along with the President and his advisers as far as the construction of the forces was concerned, but balked at centralization of planning. The Secretary of Defense was not to get the full authority over the service departments that the President had asked for on his first plan, and the services were to remain separately organized. Any abolition or transfer of a major combatant function could be overruled by a simple majority in the House. Finally, the right of the civilian secretary of any member of the Joint Chiefs to deal directly with Congress was upheld. In terms of immediate issues, the changes made by Congress represented victories for the Navy and Marines against the supporters of the plan in the Air Force and Army. If a student of American government, the main interest of this period is the fact that the main

even in the nightmare world of H-bombs and guided missiles, Congress still insisted on its old relationship to the forces and on the safeguards for civilian control (meaning its own control) inherent in preserving their traditional divisions.

If the President had remained with as small a private staff to assist him as was the case before the First World War, any possibility of bringing order into the administration and its doings would have been ruled out; to do anything at all in this direction once government began to grow, it was necessary to institutionalize the President himself. This process began with the creation of the Bureau of the Budget in 1921. As in all modern States, budgeting is at the heart of the whole governmental process, and although Congress's freedom to reshape the President's budgetary proposals is not infringed, Congress does at least begin with a general picture of the financial situation as a whole. Furthermore, as the example of the much more powerful British Treasury shows, any agency that reviews budgetary proposals acquires a very considerable measure of control over administration and even policy. The Bureau not only handles the budget, but also acts as a clearing-house for legislative proposals and delegated legislation of various kinds; advises the President on possible improvements in administrative arrangements or on plans for reorganization, and acts as a co-ordinator of services used by a number of agencies: statistics and governmental publications, for instance.

The Bureau of the Budget, like most other agencies

1939 into the Executive Office of the President. A part of the Executive Office, the Bureau of the Budget, the Executive Office included from 1953, the powerful Office of Defense Mobilization. The President also has here an assistant for personnel matters, who under Eisenhower also served as Chairman of the Civil Service Commission. To the Executive Office, finally, are attached the National Security Council and its subordinate organizations, including the Central Intelligence Agency, the Council of Economic Advisors created by the Employment Act of 1946, and the President's Advisory Committee on Government Organization established in 1953.

More in the public eye than such relatively humdrum bodies as the Bureau of the Budget is that component of the Executive Office known as the White House staff. These are the men directly round the President himself—his Assistant, his Press and Appointment Secretaries, other administrative assistants and advisers and his service aides. Since he and they keep another 250 subordinate federal employees busy, it is easy to see that the 'Kitchen Cabinet' has also been institutionalized to some purpose and that we are far removed from the small households and republican informality of the Jeffersonian or Jacksonian eras.

It is, of course, widely recognized in the United States, particularly by those closely concerned with the operations of government, that the problems of rational distribution of duties and of co-ordination of policy have by no means been solved. The tidying up in the Act of 1939 followed upon a series of inquiries

proliferation of new departments and agencies as a result of the war and its aftermath. The two commissions on the Organization of the Executive Branch of Government that have since investigated these problems—both under the chairmanship of ex-President Herbert Hoover—have made further recommendations both as regards the internal arrangements of individual departments and on wider issues. It is unlikely that a stable equilibrium has been reached, if it ever can be, and anyone attempting to map out the Washington jungle must resign himself to the fact that the work will shortly need to be done again.

From looking at the articulation of the federal administration, one must turn to a consideration of the men and women who serve in it. American administrative history, both state and federal, is coloured by the persistence of certain traditional attitudes usually associated with the period of Jacksonian democracy, but to be found already in some of the political literature of the Revolution itself. Although the Revolutionary government of the Continental Congress and the early departments had available the services of a number of officials who spent in government a large part of their working lives, American tradition has tended to reject the idea that administrative competence of a high order is a rarity in the general population, and that a part of the business of government is to select and train its possessors with a view to their employment in public affairs. The filling of as many offices as possible by popular election and of the [unclear] by short-term appointments, the principle

of rotation in office—were among the primary objectives of many of the makers of American democracy. The notion of an administrative élite was, and has to the whole remained, a supremely un-American one.

A general outlook of this kind was fortified in impact by the growth of political parties of the American kind, which relied, as will be seen, for their recruitment of militants on the possibilities they had of bestowing upon them paid posts in the service of the government.

The connexion of official appointments with party machines and the links which the latter developed with business of both a legitimate and an illegitimate kind (particularly at the state and municipal level) were the phenomena that most excited would-be reformers at home, as well as foreign observers of the American scene. As far as the Federal Government was concerned, this indignation produced in the last decades of the nineteenth century, a movement for civil service reform which took a fairly simple view of what was necessary to eliminate the abuses which it saw in existing practice and which achieved its first victory in the Civil Service Act of 1883. The solution was a fairly elaborate machinery for giving appointments according to merit—examinations enjoying at that age in America, as elsewhere, the heyday of their reputation as a guide to merit—and of bringing as many appointments as possible under these rules, or, in American parlance, under 'civil service'. There are three main contrasts when this is compared to the British system. In the first place, the civil servi-

regulations have been applied mainly to the middle of the official hierarchy; humble posts in the field, local postmasterships, for instance, tended to be left outside it for the sake of retaining a cadre of party faithful, and the top positions where 'policy' was involved, were left for incoming heads of department to fill. In the second place, the selection by merit has been made with a view to seeking out specialist qualifications, rather than persons of general ability at a certain level. The posts available were not grouped into broad grades, but minutely specified, and the examinations have been tailored to these specifications. Since anything corresponding to the British administrative class has been rejected and since, anyhow, the kinds of posts for which it supplies the men are largely occupied by temporary political appointees from business or the professions, this system, rigid and costly though it is on the whole, has managed to maintain itself. Finally, the Civil Service Commission and its procedures give heads of departments much less of a free hand in selecting persons who fall under civil service rules, and in recent times their freedom has been still further curtailed by the extent of 'veterans' preference'.

It may seem curious that the latter factor bulks so large in current American administrative affairs. In a number of Continental European countries where large regular armies were maintained, many routine civil service posts were early reserved for those who had completed their period in the forces as a substitute for, or a supplement to, a pension. In the United States, it has been rather a question of feeling that

military service is something unusual, and even extraordinary, so that those who are obliged to undertake owing to wars, or the threat of wars, deserve maximum of compensation, whether financial, educational, or in the assurance of employment. It is not paradoxical to say that the extent of veterans' presence is a measure of the essentially pacific and antimilitarist nature of American society.

It would be a dangerous over-simplification to picture the history of American federal administration since the onset of the reform movement as a straight line progress away from a 'spoils system' to one based on 'merit'. For the whole picture has been vitally affected by the very irregular pace at which the Federal Government has extended its ordinary activities, not to mention the emergency arrangements necessitated by the two world wars. It has also been affected by the fact that any party coming into power after a long period of exclusion will be under pressure to make jobs available, and that whatever new posts it has the opportunity of creating will tend in the first instance to be filled by nomination, though they may later be absorbed into the merit system. Or such an administration may resort to taking out of the merit system posts that have been handled in precisely this way by its predecessor.

At the end of 1953 there were some 2,300,000 federal civil servants, constituting 1.4 per cent. of the total population. Three-quarters of the positions they held had been created in the preceding twenty years. Of these positions, less than 9 per cent. were tenable

Washington itself—nevertheless, it is there that policy is made and the tone of government set.

The proportion of federal employees under the merit system of the Civil Service Commission was about 86 per cent. in 1953; but since some agencies—the Foreign Service, the Atomic Energy Commission, and the Tennessee Valley Authority—administer merit systems of their own, only about 10 per cent. of posts were open to political appointment. The figure of 80 per cent. of posts under civil service rules had been reached by 1924, but the enormous expansion of the federal agencies in the New Deal period brought the figure to below 61 per cent. in 1936. It is not surprising that Republican critics of Roosevelt tended to treat the whole New Deal machine as a vast enterprise for employing deserving Democrats. As the American version of the Welfare State settled down, the proportion of posts under the merit system rapidly grew again and had almost reached 84 per cent. when the war brought about a new period of expansion and contraction, in which the balance was once more upset. The Republicans in 1952, finding little patronage to dispense, resorted to the characteristic devices for increasing the pool and also created a new category of policy-making posts and of jobs connected with them, to be held at the President's pleasure. This move was justified by the argument that otherwise the Republican heads of departments would find themselves completely surrounded by Democratic appointees who were by now protected under the merit system.

This move was justified by the argument that otherwise the Republican heads of departments would find themselves completely surrounded by Democratic appointees who were by now protected under the merit system.

departmental head now feels that he requires is something like the *cabinet* of the French minister, including persons with a more formal status and responsibilities. It indicates that the main assumption behind the British system—namely, that members of the administrative class can be trusted to give advice and execute the policies of political chiefs of whatever party—is still unacceptable in the United States; and for those who are accustomed to think of American political parties as being very close to each other in outlook, this fact is worth considering. Is it really the case that it is easier for an official to serve Conservatives and Socialists with impartial eagerness than for his counterpart to serve Republicans and Democrats?

Quite apart from the political aspect of this question there is the very real issue of how far it is still possible to find in private life the right kind of people ready to devote themselves for periods of reasonable length to public tasks at salaries often far below what they could obtain in industry or commerce and under conditions that now demand a severance of ties with their old businesses? Can the success of the New Deal period in bringing to Washington numbers of young professional men inspired with a wish to take part in a great adventure in public service be paralleled in the case of each new administration with more humdrum and possibly more repugnant tasks to perform, and have to compete for men with better prospects of employment outside government? The high turnover in secretarial departments in posts at the under-secretary and assistant-secretary level suggests that the answer

often in the negative. Where such temporary appointments can be made successfully, both the government and the individual may be the gainers. Certainly American academic life has been much enriched by the wider opportunities of practical experience available, for instance, to teachers in law and in many branches of the social sciences. But failures are costly, and especially to the department's efficiency.

From the point of view of recruiting the best available talent in this situation, departments are also handicapped perhaps by the twofold external interest in the nature of their appointments to policy-making and other responsible posts. There is the interest of Congress as manifest in its committees, and there is even more significantly the interest of the pressure groups, whose fortunes are affected by particular aspects of a department's operations and who are concerned to use every device they have at their disposal to see that those who make the decisions are such persons as are likely to look with favour upon their own claims.

But the problem is not merely of these temporary political appointees themselves; there is also the question of the general effect of their existence upon recruitment lower down. Under the British and many Continental systems, a high level of quality in initial recruitment to the permanent service is obtained by the virtual certainty that is offered of promotion at a fairly early age to interesting and relatively well-paid posts. Such selection *ab initio* is as foreign to American ideas of administration as it is to the American educational system, and though there are signs that these

prejudices are breaking down (just at the time when the British system in both is under fire for its all-undemocratic characteristics), they are breaking slowly enough for the problem of recruitment of civil service to be the subject of a good deal of talk on the part of public-spirited citizens.

The relation of civil service recruitment in this country to entry into other professions and occupations is not, however, determined altogether by its own merits or by the prospects that it offers. It will depend at least equally upon the general ranking that government service has in its society. It is probably true to say that the values of American society are still determined by the apparatus of production. Monetary standards remain more important than in the Old World and by these standards government employment usually falls short. The image of government employment in the American public mind, like the image of business itself, harks back to the Jacksonian period. It is an inadequate reflection of contemporary reality. In fact, the independent entrepreneur of Jacksonian theory is even more dead than the greedy politician or spoilsman whose emergence in the Jacksonian period has had a permanent effect on American thinking about the relations between government and private enterprise. Nevertheless, despite the fact that business in the United States is taking on more and more the characteristics of a vast interlocking bureaucracy, the country is probably still less firmly guided by the leadership of a self-perpetuating bureaucratic élite than either England or its principal ally or its principal competitor.

As in all countries, the diplomatic service has been recognized as a specialist one; but there has always been a tendency to seek to economize on it, with a result that, despite professionalization lower down, the top posts have necessarily been awarded through patronage to those party supporters who coveted them and could afford to hold them. The professional service was created in its modern form by the Rogers Act of 1924, which amalgamated the existing diplomatic and consular services, and was expanded to include more types of specialist talent by the Acts of 1939 and 1946, already referred to. It was distinct, however, from the staff of the State Department itself, which was regarded as part of the domestic civil service. In mid-1954 the Secretary of State's Public Committee on Personnel (the Wriston Committee) recommended *inter alia* that this situation should be altered and that a single service should be created of men who could be appointed either to Washington or to missions abroad as the needs of the moment might dictate. The necessary steps to implementing this recommendation have by now been taken.

But there remain important problems for the foreign service to face. More than any other branch of government service it is vulnerable to the suspicions that Congressmen entertain about intellectuals, and is forced in its recruitment to accept Congress's prejudices in favour of a spread of intake by region, which may not necessarily correspond to the distribution of the universities and colleges most likely to turn out the best candidates. Even here, the fact that

highest posts are barred to the career man might be regarded as a serious disincentive.

Some students of American government, concerned to keep a modicum of party patronage in the hands of party leaders, argue that foreign embassies (and smaller posts abroad) are admirably qualified to fill the bill. But where the ambassadors are concerned it could only be the case if the posts were properly treated as dignified sinecures. It is sometimes pointed out that they are, since each ambassador has immediately below him a minister or minister-counselor who is always a career man. Can the work be done by him? Two possible arguments against this point of view suggest themselves. In the first place, the process of trial and error has led the American government to view that in every country the manifold activities pursued on its behalf must in the first instance be coordinated by its ambassador there. This is formally laid down in Executive Order 10575 of 6 November 1954, which further expressly forbids him to delegate such responsibilities—a concession, no doubt, to the susceptibilities of other departments who fear that the career man would tend always to take the State Department point of view in any dispute. In the second place, the citizens of a foreign country and its people cannot help regarding the man who holds the title of American ambassador as the proper representative of the United States. If he fails to impress the public mind with the sincerity and benevolence of American intentions, the best efforts of his backroom boys will

A very special problem of recent years has been that of 'security'. Its wider aspects concern the ordinary citizen as much as the government service. In the case of the employees of the separate states, the problem is mainly treated as that of the possible dissemination of revolutionary or 'un-American' doctrines from the teacher's desk or professorial chair. But as regards the Federal Government, there are, of course, departments which have genuine secrets, vital to the nation's safety and which must be preserved. Except in the purely military sphere, such security has presented especial difficulties in the case of the United States because of the country's excessive devotion to publicity—the belief that the ability to penetrate into the arcana of government by Congress, or by the press, is an essential part of American democracy. Indeed, when President Eisenhower suggested that it would be desirable for the United States to have an 'official secrets Act', he was warned by a prominent Senator that this would be regarded as an interference with the freedom of the press. It is indeed paradoxical that the Congressional investigations by Senator McCarthy and others, which did so much to focus public attention on this subject, and which forced the executive branch to take additional and often ill-advised steps to enforce 'security', themselves involved continual pressure on government departments to reveal matters which the departments themselves thought should be kept secret.

No government can avoid making regulations that limit the activities of government employees in a way that makes their freedom less absolute than that of the

ordinary citizen, and the development of commun espionage and subversion has made for more caution to who may safely be employed in certain 'sensitive' fields. What has happened to give these developments in the United States a sinister twist is the identification of the necessity of action in this field with the general suspicions of the bureaucracy held by many Congressmen, and with their particular suspicions of the new, rather markedly intellectual and articulate type of government servant, brought in to handle the new expanded government agencies of the New Deal era.

These suspicions have been given a sociological explanation. Congressmen discover on coming to Washington, often from backgrounds of a very provincial kind, that they have to deal with civil servants who are better educated, more sophisticated, and who largely come from those classes and regions that are most suspect to the interior of the country. The awareness of these social and intellectual differences and of the contrast in the outlook and aspirations of the two sides of government is enhanced by the artificial nature of the capital city itself. From the earliest times when sessions of Congress brought men from all over the country to room for brief periods in boarding-houses and hotels, Washington has been a camp rather than a city. Even the vast growth it has undergone in order to keep pace with the expansion of the bureaucracy has still failed to make it a capital in any but the governmental sense. Its life is dominated by the 200,000 resident civil servants, and it is thus, despite its size, much more like Ottawa or even

Canberra than London or Paris, and it is characteristic that Congress still governs its municipal affairs. Neither business, nor the professions, nor the press look to the capital as a centre; still less does it play an important cultural role. These features of Washington life add to the tensions that would be there in any case, and in so far as these show themselves in attacks by Congressmen on bureaucrats, the Congressmen may expect a measure of support, or at least attention, from their constituents, and that, as we shall see, is something after which they must always be striving.

To trace the beginning of Congress's concern about loyalty among government servants, one has to go back to the activities in the late 1930s of the Dies Committee on Un-American Activities. In 1938, the Committee alleged that eight federal employees were members of a communist-controlled organization, and by 1941 the number had swollen to over 1,200. Meanwhile, Congress had in 1939 provided in a floor amendment to the Hatch Act that it should be unlawful for any employee of the Federal Government to belong to any group advocating the overthrow of the constitutional form of government in the United States; and since 1941 all appropriation Acts have carried a provision forbidding the use of any part of the money voted in paying salaries to such persons.

The attempt to deal with individuals by naming three employees, branded as subversive by a Congressional Committee, as persons to whom salaries could not be paid out of an appropriation Act, was nullified when in 1946 the Court declared in *United States v. Lovett* that

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this provision violated the constitutional ban on
of Attainder'. This is, incidentally, the only case
1937 in which the Court has declared an act of
gress unconstitutional.

By this time the wartime preoccupation with
immediate dangers had given way to another pha
intense concern with security matters—with Con
pushing and prodding the Executive into st
measures.

For the enforcement of general legislative p
sions, as well as for the fulfilment of its own res
sibilities, action in respect of the loyalty of fe
employees must, however, be a matter for the Ex
tive, and it has, in fact, been dealt with in a seri
provisions, beginning with the regulations issued by
Civil Service Commission in 1942, and contin
with President Truman's Executive Order No.
of 1947, and President Eisenhower's Executive C
No. 10450 of 27 April 1953. President Eisenhov
modification of the arrangements made by Presi
Truman and claimed by Republicans to be inadeq
was to broaden the definition of a security ris
include non-political weaknesses and to abolish
appeal to a central board in the system of admini
tive procedures devised to test the reliability of
servants. This left the ultimate decision on dismi
in the hands of the individual agencies concerned
constitutionality was, however, clearly covered by
decision rendered in the *Bailey case* of 1951, wh
was held that since government service is a privi
and not a right, the government has absolute discre

as to whom it should employ, and that no legal, as opposed to administrative, process is needed to justify dismissal for whatever cause.

If the morale of government service was to be maintained, it was essential that the criteria of security should be administered by people in whom full confidence could be felt. Since it was not, it can hardly be doubted but that the whole security drive and the publicity which it generated were added disincentives to entering upon government service and that the quality of recruitment must have suffered in consequence.

The most notorious example of the impact of Congressional committees upon the administration in this sphere was the forcing upon the State Department as the principal officer in charge of security matters (and at first of personnel as well) of a former employee of the Federal Bureau of Investigation who had more recently been active as an agent in Congressional enquiries and whose other qualifications for the post were far from obvious.

It was natural that the State Department should suffer most at the hands of McCarthyism. It was the traditional target of those elements in society from which McCarthyism drew its strength, and suspicion of the quality of Americanism of its employees was fortified by the nostalgia, for a period in which America needed no foreign contacts and hence, presumably, no diplomats. On the other hand, there was the fact that what State Department employees have as their particular task the proffering of advice about developments

abroad and about the correct handling of them, one in which honest error is particularly likely in which it is easy for the malevolent to confound with bad intentions. Nor need such pressure come exclusively from the political 'reactionaries'. It has been said on good authority that in 1937-8 the elements in the President's entourage most determined on good relations with the Soviet Union and naïve about all things Russian, insisted on breaking the highly competent group of Russian specialists then working in the State Department whose advice was likely to be on the side of caution.

It is also fair to say that although some major injustices were done to members of the foreign service during the McCarthy period, and although on occasion much folly and malignity was shown—the attempt to block the nomination of Charles Bohlen as Ambassador to Moscow—there were some of the past reporting and advice on Far Eastern matters examples of distinctly poor judgement. Still, however, much government policy was made, particularly under Roosevelt, by persons who were inclined to take professional advice anyhow, the blarney of the professionals when things went wrong only to be explained in the light of the particular aversion for the State Department felt in certain Congressional circles and echoed in part of the press. Once again, and even more obviously, the inevitable result was to turn against a career in foreign service precisely those persons whose knowledge

to it. After the discrediting of Senator McCarthy at the hands of his Senatorial colleagues and after the working off of the first flush of the victorious Republicans' revenge against the alleged 'twenty years of treason' of the Democratic Party, there was a decided falling-off in the excitement on this score; but the morale of a service is probably easier to undermine than to restore.

Vulnerable though the American federal administration may be in many respects, the ordinary citizen cannot but be aware of how large a role it has come to play in many of his daily concerns. As in other governmental systems, there is a wide scope for delegated legislation of various kinds, and after attempts early in the New Deal period to limit rule-making under statutory authorization, the Courts have conceded to the relevant agencies very broad powers under this head. In addition, there are large numbers of individual decisions that have to be made by government departments or individual officials acting on their behalf. In this respect, the American reaction of recognizing and controlling such activity has been more prompt and conceivably more realistic than our own. In Great Britain the authority of A. V. Dicey's *Law of the Constitution* and his condemnation there of Continental systems of administrative law have made people reluctant to seek for methods of protecting the citizen against administrative errors or arbitrariness except through the machinery of the ordinary courts of law. Since Dicey's shadow is less pronounced in the United States, the reformer has fewer institutional fears to contend with

By the Administrative Procedure Act of 1946, Congress attempted to prescribe requirements for administration's judicative activities modelled upon the protection afforded to the citizen by the formalities of a court of law. If development along these lines mitigate for Americans the profound helplessness with which the private citizen almost everywhere views the vast and impersonal operations of modern government, it may turn out to be something of genuine political as well as administrative significance.

Chapter Five

THE CONGRESS

THE Congress of the United States is in function and structure the fruit of compromise. The name itself indicates its origin in the meetings of representatives first of the rebellious colonies and later of the newly independent states that made the Revolution. The Continental Congress of the Revolutionary period that was given its formal basis by the Articles of Confederation was not a sovereign body, although empowered to determine by vote the action of the United States on the range of subjects entrusted to it. It was not sovereign because this range was limited, and because no amendments in the Articles themselves could be of effect unless ratified by all the states. Furthermore, the states had one vote each in Congress, irrespective of their size; and for many important decisions nine affirmative votes (out of the thirteen possible ones) were required.

Although the Congress could legislate on certain topics of common concern—and the North-west Ordinance of 1787 prohibiting slavery in most of the vast territories ceded by the states to the Confederation is one of the most important pieces of legislation in American history—it was not primarily a legislature, since most spheres of potential legislation remained with the states. It was indeed both in its handling of

its own business and through the committee appointed, quite as much of an executive body as legislature. It can best be thought of as a body of ambassadors exercising certain allotted functions necessitated by the existence of a perpetual league of alliance between the states they represented than as a parliament. And since the state delegations were small, rarely complete and not always all present, their behaviour and procedure were more analogous to that of a council than to those of any kind of parliament.

The question of turning this rather primitive structure into a federal legislature, and the principles which should guide the remodelling, took up a great deal of the time of the Constitutional Convention of 1787. The main argument revolved round the question whether the states should continue to have an equal voice or whether, by a proportional distribution of membership, the weight of population should be given its recognition. Two principles were at war—that of the sovereign equality of the constituent members of the Union, and that of the democratic sovereignty of the majority of the nation. The result was the celebrated compromise of a bicameral legislature with one house, the Senate, continuing to represent the equality of states as units, and the other, the House of Representatives, based upon population.

Much of the argument against representation on the basis of population only revolved round the rather unreal argument that the small states would as a result have important conflicts of interest with the large states. No issue of this kind has in fact ever arisen.

On the other hand, the Congress is an even more unrepresentative body—in the strict mathematical sense—than its makers intended it to be. The larger industrial states are given no more weight in the Senate, now the more important chamber, than states with an infinitely smaller population. The divergences are not quite as considerable as in the United Nations Assembly—but they are almost. The House of Representatives is not based upon strict equality either. Before the Civil War it was based upon the principle of population, with slaves each counting as three-fifths of a free man. Since then it has been based directly upon population; but since the provision in the Fourteenth Amendment that representation may be reduced in the case of states that deny the franchise to any class of adult males has never been put into effect, those states where through various provisions the Negro population is largely disfranchised are over-represented in Congress in relation to their effective electorate. Furthermore, even where no bias as between states enters in, there is bias as between the Congressional districts, the actual constituencies. The state legislatures which are responsible for dividing the states up into Congressional districts have not taken it as axiomatic that these should be as nearly equal as possible, and tend to reproduce in them their own heavy bias in favour of underpopulated rural counties. The city dweller in the United States is thus doubly discriminated against at the federal level, as he is at the state level. Non-industrial states get more Senators than they should, and more members of the House of

Representatives come from rural constituencies the democratic equity would dictate. This has the important effect of giving to the farm vote an influence proportionate to the real weight of agriculture in the nation's economy; and makes more plausible the method according to which the healthiest and best elements of American society come from the rural areas despite the steady flow from farm to city which has been a characteristic part of American life—and never more perhaps, than recently. Since the electoral college system does not reproduce this discrepancy, Congress to some extent is more rural or small-town minded than the executive branch.

The two Houses are co-ordinate, yet as we have seen there is no question but that the Senate is today more important. This was not so in the first years of the Constitution, when the House of Representatives seems to have been the more vital part of the political scene. But the senatorial ascendancy rapidly asserted itself. The fact that (as we have seen) the Senators regarded themselves, and were regarded, as envoys almost as ambassadors—of their states, is part of the reason. Their longer term—six years—and the fact that their body, unlike the House, had a continuous existence, with only one-third of its membership coming up for renewal at the biennial elections, also played an important part. Nor did the introduction in the twentieth century of direct election instead of election by the state legislatures affect their position adversely; indeed, it may have strengthened it by removing the non-democratic taint.

It could, indeed, be argued that the Senate is too stable a body in that it mirrors so successfully the important fact that over much of the Union the two-party system is not a reality. In much of the South, nomination as a Democratic candidate for the Senate has meant a prospect of service for life—certainly defeat at the polls has been a contingency too unlikely to be reckoned with. In parts of rural America, in post-Civil War times, the Republican hold was almost equally strong. The regions where the Senate seats most often change hands are in the great industrial states, where the real party battles are fought out. Senators from these states are unlikely to have the same seniority as Senators from party pocket boroughs. And in an institution where seniority counts for so much, this gives an important clue to the likely nature of Senate leadership. The effect of its domination by the holders of safe seats is more marked during periods when the Senate has a Democratic majority, since the South is more 'solid' than any Republican area. Although the Democratic majority elected along with President Truman in 1948 was predominantly made up of members of the left or centre of the party, seniority enabled anti-Truman Southerners to claim the chairmanship of three-quarters of the Committees. In the 84th Congress elected in 1956, seven of the nine most powerful committees had chairmen from the Deep South and the other two were also dominated by Southern Senators.

The nature of this leadership reflects the way in which Congress has developed in order to fulfil the

functions assigned to it under the Constitution—is to say, under a system in which the heads of executive departments are outside the legislature and are responsible to it. This does not mean that the Executive plays no role in the legislative process. Its first Secretary, Alexander Hamilton, in his capacity as Washington's Secretary of the Treasury, was responsible for some of the most important of the early enactments which were based directly upon the recommendations and reports from his department; and the bulk of modern legislation also, and of necessity, originates with the Executive. Furthermore, a great deal of modern legislation in the United States, as elsewhere, consists of laying down general principles and leaving it to the body that will administer it (that is, either existing government departments or new instruments specifically created) to fill in the details. The collapse of the Supreme Court's resistance to delegated legislation after the early New Deal days has made this trend irreversible, and this makes even less real the separation of powers when legislation is concerned. But neither in debating legislation nor in voting upon general resolutions referring to other aspects of national policy can the tenure of the President or of his Cabinet officers be affected. Although there have been occasions when floor debate in one or the other House has served as a method of focusing public attention upon a national issue, or of making clear where fundamental lines of division have run, this is the exception rather than the rule.

The American Congress is thus less often the scene of the real drama of politics than is the case with so

other famous legislative bodies, and this has an effect upon its own habits and upon the outlook of its members, as well as upon the way in which they are regarded by the public. Congress cannot compete with the President as a focus of attention, and since the public mind can normally only take in political events when they are reduced to terms of straightforward conflict—a battle or a game, according to circumstance—this is a serious handicap. It may help to explain the (to the foreigner) shocking exploitation sometimes made of the possibilities of drama inherent in Congress's very wide powers of investigation. The introduction first of radio and then of television has made this competition for attention more obvious without fundamentally altering its nature.

Between the constitutional role of Congress as a partner in the legislative power (and where the Senate is concerned as a partner in some aspects of the Executive power as well) and its political role as a vehicle of political leadership, there is an obvious conflict. The former demands collaboration with the President and his subordinates if it is to be effective; the latter tends to produce a spirit of rivalry with the executive branch. This conflict is easier to resolve for members of Congress who are members of the President's party than for the Opposition. But it exists for both, and is resolved at different times as a result of the pressures of particular political situations on individual temperaments. On the one hand, there was in Roosevelt's third term of office the revolt against his legislative programme of the Democratic leader in the Senate, Alben Barkley;

on the other hand, there was the invaluable service of the Republican Senator, Arthur Vandenberg, rendered to President Truman's programme for strengthening Europe against the threat of Soviet communism.

The internal structure of Congressional leadership is also a matter that depends upon accidents of personality as well as upon the holding of particular positions. In the House, where the structure is more formalized, the Speaker has in the past been a major political figure, a presiding officer who is in addition an active leader in getting business done. His control was curtailed after the celebrated revolt against Speaker Joseph Cannon in 1910-11, and has since been shared to a greater extent with the floor leader of the majority party and the chairmen of the principal committees. The Vice-President has never occupied the same position in relation to the Senate, over which he presides since he is in it rather than of it, though even his personality counts for a good deal. His deputy, the President *pro tem.* of the Senate, the majority leader, and again, the chairmen of the committees form a group of leaders between whom formal power is largely shared. But it is of the essence of the Senate that it is a club of equals, and the respect paid to seniority and to some undefined quality of personal distinction and the individual prestige of its members all make the rules as opposed to the formal structure of power both harder to analyse and more important.

Characteristic of the Senate, and differentiating it from the House, which works to a very severe timetable (largely determined by the powerful Committee

on Rules), as well as from European legislatures, is its tradition of unlimited debate. From 1806 to 1917 there was in the Senate no closure rule at all, except on war measures during the Civil War period. A change in 1917 was so worded as to render it nugatory. What had been a matter of courtesy to individuals and to the states they represented had become the entrenchment of minorities, and in particular, as it seemed, of those Southern Senators opposed to any legislation designed to alter the pattern of race relations in the South. The 'filibuster', or right to make speeches of infinite duration and of irrelevant content, could be used to talk-out unwanted measures. In 1949 there was a renewed attempt to get the rules altered in the belief that this would make it possible to pass President Truman's Civil Rights programme for which there appeared to be a clear majority in the Senate. In fact, it has been argued that this was not the case and that many of the professed supporters of the Civil Rights programme hoped that they would not be called upon to show their hand. In the event, what happened was that the rule of 1917 enabling two-thirds of the Senators to put on the closure was made effective by making it applicable to 'motions' as well as to 'measures'. But the two-thirds was now to be two-thirds of the whole Senate and not just of those voting; while on any proposal to alter the rules of debate the closure was not to be applied at all. For all practical purposes the Senate's basic practice of unlimited debate survived the crisis unscathed.

Since party discipline is by European standards very close indeed, and considerably looser today than

in the nineteenth century, one might expect the influence of debate to be greater; the whips are not supplied with the same degree of authority as their British counterparts, lacking as they do the ultimate threat of dissolution, and the Speaker is no longer in a position to penalize dissentients from the party line. In fact, we have seen, this is not the case. Participants in floor debates, as in other legislatures, are more concerned with impressing the general public or their own constituents than with trying to change the minds of their colleagues; though upon occasion a speech may be important in canalizing opinion.

In all such bodies there must be a balance between the work done by the Houses functioning as a whole and that assigned to committees. The growth of standing committees covering the principal fields of governmental activity was an early feature of Congress, and their role soon became a pre-eminent one. Procedure under the American system refers Bills to committees first, to decide whether they should come before the legislature at all, and if so when. It also leaves specialized standing committees the bulk of the work of considering and amending them, and of bringing them before the House, whether the initiative in proposing such measure be from the executive branch or from individual members of Congress itself, acting perhaps on behalf of some external pressure group. Formally, of course, all Bills are sponsored by some individual member of each House, and the President's proposals enjoy no distinct status. Hence the naming of statutes after their sponsor or sponsors.

Three distinct advantages for a committee system of this kind can reasonably be claimed. In the first place, the work done is real and the Bills can actually be discussed and revised in a way that would not be possible in larger bodies. Through participation in committee work all members of Congress can be employed in the task of legislation itself, and on subjects where they have some hope of acquiring sufficient expertise for their activities to be useful; though there is the weakness here that some committees come to be the preserve of members with particular interests to serve. In the second place, there is the device of 'hearings', sometimes publicized, sometimes private, by which the committee may possess itself of, and submit to scrutiny, the views not only of the department which is advancing the Bill in question but also of other departments and of the representatives of interests concerned and of the public at large. Such hearings are not only a substitute for the direct participation of the heads of the executive departments in the work of the legislature; they also serve to educate members of Congress, and, through the agencies of publicity, the electorate at large. They are, of course, supplemented by a variety of informal contacts between interested Congressmen and members of the departments, especially bureau chiefs, a circumstance which helps to weaken the control of the departments by their official heads. If we place alongside this the analogous procedure of the Senate alone in its executive capacity—in dealing, that is, with treaties and major government appointments—one is bound to conclude that certain

questions get much better ventilation under American system than under the British parliamentary one. In the third place, the committees, particularly when they take full advantage of their possibilities of having an adequate professional staff to canalize and make available the expertise of government servants and of private groups, are in a reasonably good position to find out about and exercise influence over the executive departments. Although there were no precedents, it may be safe to say that the provision of professional staff for Congressional Committees of the Legislative Reference Service to assist Congress as a whole was the most important legacy of the Legislative Reorganization Act of 1949 (the Follette-Monroney Act).

On the other hand, the system has its administrative disadvantages. It is, for instance, difficult to assign with precision some important functions of government to one or other committee in the two Houses; their spheres of operations necessarily overlap, competition is frequent between them, and efforts to tidy things up since the Legislative Reorganization Act tend to be ineffective, particularly because of the failure to check the proliferation of sub-committees. In matters requiring expert advice, the separation between authorization and appropriation means that two different sets of committees have to be convinced of the expediency of particular policies, while the raising of the revenue needed to meet them is again the concern of another committee in each House. Questions of the public debt and currency which are an essential part of

fiscal policy, are matters for two further committees.

From the point of view of those concerned with legislation involving important additional expenditure—foreign aid, for instance—the lesson has to be learned that the authorization Act merely sets a ceiling which the Appropriation Committees can reduce even where this means jeopardizing the objectives of the Act itself. Even more striking from a non-American point of view is the ability of a committee to increase any appropriation to a figure higher than that required by the relevant department—for instance, to give more for the development of a particular weapon.

The complications of the committee system and the large number of hurdles that have to be jumped before a particular piece of national policy becomes law means that the education of legislators by officials in the course of hearings and discussion is partly at the expense of the energy and time of the officials themselves. The importance that 'Whitehall' attaches to the parliamentary question and the priority given to questions within departments is a commonplace of British government; but even so, the effect upon the departments of this device is much less than the effect upon American departments of their continuous and unremitting labour of convincing successive Congressional committees of the need for action.

Mr Dean Acheson has given us some statistics on this point based upon his experience as Secretary of State under President Truman. During those four years he met groups of Congressmen on 214 occasions,

prolonged and demanding considerable preparation. Mr. Acheson reckoned that about one-sixth of his working time was taken up with matters concerning Congress, and when a major issue arose—such as hearings on the dismissal of General MacArthur by President Truman during the Korean War—or when a major piece of foreign aid legislation needed passage, these might occupy virtually his whole time. It looks as though this should now be regarded as the normal thing.

The committees themselves have features that make for delay and for difficulty in coming to decisions. There is the habit of devolution to sub-committees that increases the complication of the whole structure. Still more important is the fact that the committees themselves, in their party composition, reflect more closely the balance of parties within their respective Houses. On the scale of a committee, this may mean only the narrowest of majorities for the nominally more powerful party, and this in turn means an effort to solve disagreements by bargaining and compromise rather than by straight voting. Such techniques enhance the tendency of committees to regard themselves as corporate bodies with collective opinions and wills rather than as instruments of the respective part of Congress as a whole. The respect paid to seniority, especially though not exclusively in the Senate, which we have already drawn attention to, and in particular the weight given to it in respect of committee chairmanships, adds to this feeling of independence and strongly accentuates the claims of seniority felt that

Democratic Party in the 84th Congress was forced to accept the claim for chairmanship of the important Committee on the Judiciary of the extremely reactionary Senator Eastland of Mississippi.

To some extent, of course, an element of order is introduced into this seeming chaos by the existence of a budget for which, as in other countries, the Executive is responsible. The principles governing the federal budgetary process were laid down in the important Budget and Accounting Act of 1921, and there have been important subsequent developments on both the Executive and the Congressional side. The President's budget message submitted in January of each year includes both an account of the existing financial position and the estimates of income and expenditure for the ensuing fiscal year, which starts on July 1 (although individual incomes are calculated and taxes payable by the calendar year). Congress does not, however, deal with the estimates in one finance Bill, but in ten or more regular appropriation Bills as well as special and supplementary ones to deal with new requests for funds or to make up deficiencies. Where expenditure is not covered by an existing statute, an authorization Act is required before the appropriation can be made. Both steps may involve full debate in Congress as well as action by the committees concerned. All this means that Congressional action in the field of finance is a very long drawn out affair, and is not always completed as it should be before the beginning of the fiscal year. (The Budget for the fiscal year 1960 should be through by 30 June 1959.)

It is obvious that since, as we have seen, the House of Congress can cut or indeed increase appropriations at any stage, the Budget as originally offered does not have the compelling unity of the British budget, where the governmental majority will ensure that the whole thing goes through pretty well as originally presented. Congress is an active and not a passive partner in finance as in legislation.

The possibility of committees arriving at conclusions out of harmony not only with the opinions of the Administration, but with those of the House or Senate as a whole should be guarded against by the fact that in the end an affirmative vote of the whole body is required. This might be the case were the system one of two Houses of equal constitutional authority. For this means that they may end up by producing different versions of the same measure. In such cases the adjustments are left to 'conference committees' whose members are invariably drawn from the relative committees concerned with the Bill in the two Houses, who have almost unlimited freedom of action and whose reports are not subject to amendment and are normally accepted almost automatically; so that in the last analysis a very small number of individuals will have the deciding voice.

The separation of powers in legislation produces a situation of which the clearest symptom is the diminished role of pressure groups or interest groups under the American system as compared with their role under the system of responsible government on the European model.

many important interests are directly represented in the legislature through members either personally concerned with the interests in question or dependent on them to a large degree in view of the specialization of their particular constituencies. But the main operations of pressure groups in both countries are not handled in this way. Their representatives seek out where power lies: in Britain with the ministry, in the United States with the Congressional committees. Much of the evidence heard by committees and much of the pressure exerted upon individual Congressmen comes from private interests—and so much is the latter a feature of the American political scene that federal legislation for the control of ‘lobbyists’ has been found necessary.

We have seen that some American government departments and bureaux within them are both instruments for the control of particular activities by the State and instruments through which these activities assure themselves of a fair share of government attention and expenditure. Similarly, certain committees will not only seek to probe into the affairs of such departments, but become identified themselves with the interests these departments represent. This is particularly true where the armed services are concerned; and here the service chiefs have an opportunity, which the British system scarcely provides, of by-passing their civilian chiefs and going straight to the source of funds. The record of the engineer corps of the Department of the Army in maintaining its independence and

In addition to the powers that Congressional committees have arising directly from their functions regard to legislation, there are their claims as investigating bodies. Most modern governments have developed some form of investigation as a prelude to legislation or administrative reform. In the United States, inquiries may be set on foot by the Executive directly, or jointly with Congress, as in the case of the recent Hoover Commissions on the Organization of the Executive Branch of Government, or the establishment of the Temporary National Economic Committee. But the most important investigations are directly sponsored by Congress. These may be conducted either by standing committees, normally acting through special subcommittees, or by *ad hoc* committees set up by Congress for the purpose. Of recent years there has also been an increasing tendency of Congress to stress its responsibilities for general oversight of the administrative process, of which its concern with 'security' is a part. Here there is a field within which both standing and special committees may do valuable work by digging up instances of waste or even corruption, especially in periods when governmental activity is rapidly expanding, but where this work may be overshadowed by the harm done by investigations in which the importance of the results to be achieved may be secondary to the desire for the limelight of individual Congressmen or Senators.

Two separate issues of great constitutional importance arise from the development of the investigative functions of committees as opposed to the legislative work of committees.

the administration's point of view there is the question (quite apart from the further wear and tear imposed upon its servants) of how far there can be limits imposed upon the power to investigate in the name of the necessity for secrecy inherent in some important operations of government, and rightly cherished by certain of its departments. A *subpoena* directing the production of documents cannot be enforced upon government officials; but it is possible for a committee or sub-committee to go a long way in rendering their lives intolerable. It was the conflict with the Army Department that marked the turning-point in the career of Senator McCarthy, who had built himself up into a major national figure by exploiting popular fears of subversion in the public services. There is also the question as to how far some of the proceedings carried on under the title of investigation, and supported by Congress's power to cite for contempt, may not amount to an infringement of the civil liberties of the individual.

The latter issue may be said to concern the citizen rather than Congress, and will be better treated when we come to the citizen's own place in the system; but it helps to explain why the investigatory powers of Congress have upon occasion been challenged in the Courts. It is true that this has on the whole been unsuccessful; the Supreme Court is traditionally wary of attempting to set limits to the powers of the two co-ordinate branches of government. As far as subject-matter is concerned, the Courts have been very liberal towards Congress, upholding its right to investigate

subjects as diverse as old age pensions, the sal surplus government property, inter-state crime campaign expenditures. But the possibility that may intervene to protect the individual against some the excesses of the investigatory power may help explain certain recent Congressional moves toward placing new limits on the role of the Courts.

In addition to its share in legislation and in supervision the Senate has functions of its own which represent what is left of the other role which it was originally intended to have, that of Executive Council. To concern its virtually obsolete role as a court for trying impeachments—a relic of the Founding Fathers' successful attempt to grapple with the problem of separating legal from political responsibility—and far from obsolete powers over appointments and the ratification of treaties.

Major appointments both in the administration at home and among American representatives abroad are made by the President, but subject to the Senate approval. These are considered in 'Executive Sessions' which were held in private until 1929. In important cases, the relevant committee may hold hearings before recommending confirmation of an appointment; these may range beyond the candidate's immediate qualifications or lack of them, as when the question of the Yalta Agreements was brought into the hearings on the nomination of Charles E. Bohlen as Ambassador to the Soviet Union a number of years later. In the thousands of minor appointments also subject to Senate consent, the practice soon developed of making

mean the consent of the Senator or Senators from the state in which the appointee was to function, provided they were of the President's own party. 'Senatorial courtesy', as this practice is called, thus enables a Senator to prevent, on the grounds that someone is personally disagreeable to him, the nomination of anyone who is likely to help strengthen a rival faction to his own within the state party machine. In its exercise, the Senate will invariably uphold the dissenting Senator. In fact, consent is not often refused where high-level appointments are concerned, though previously unsuspected opposition may cause a nomination to be withdrawn. By and large, the President's right to choose his own cabinet is accepted as the ordinary rule, though there have been exceptions; and this would seem to be implicit in the idea of the separation of powers. But Congress may remove by legislation some of a department's powers and transfer them elsewhere before confirming an unpopular nomination.

Even more important is the constitutional provision with regard to the treaty-making power—namely that the President 'shall have power, by and with the Advice and Consent of the Senate, to make Treaties, provided that two-thirds of the Senators present concur'. As we have seen, the Senate, which originally consisted of only twenty-six members, was intended to behave as a kind of Council of State, and it was only after Washington's failure to establish with it a relationship of this kind that it became accepted that the negotiating of treaties would be a matter for the President and that 'Advice and Consent' would be taken

as meaning ratification only. From very early times, then, the Senate interpreted this power in the widest possible sense, not merely debating treaties as a whole but dealing with them clause by clause, often striking out all the concessions made by the American negotiators and leaving in only the provisions of advantage to the United States. This innovation in international conduct proved most unwelcome to other nations, who found that American emissaries were never truly plenipotentiaries, and that a power dealing with the United States might lay all its diplomatic cards on the table as to get an agreement, and then find it of no effect.

The requirement of a two-thirds majority was also an obstacle to ratification, placing as it did a significant opportunity for obstruction in the hands of what might be, given the unrepresentative nature of the Senate, a relatively small sectional minority. On the other hand, after 1868 amendments to treaties could be inserted by simple majorities. It is worth noting that since 1868 the President's own party has held only two-thirds of the Senate seats in the brief period 1937-43. In this field also the committee system has operated; as early as 1816 the Senate Committee on Foreign Relations became a permanent institution, and its Chairman wielded real powers, since the Committee could kill a treaty by simply not reporting it back to the Senate. The opportunity for the public to follow the process, and for sectional interests to intervene, was diminished by the fact that until early in the present century treaties were considered in 'executive'—that is, private—session. Beginning with the celebrated 'h

ings' on the Versailles Treaty, committee hearings were also often held in public, and in consequence the process of treaty-ratification became yet another arena in which the capacity of the President for evoking popular support was matched against that of important groups among the Senators.

Statistics do not give the full measure of the sense of frustration felt by Secretaries of State from the time when America became increasingly involved in world affairs—that is to say, from the 1880s. From John Hay to Dean Acheson they have given utterance to a whole series of expressions of dissatisfaction with this situation. For although it is true that no treaty was rejected outright until 1824, and that between then and 1935 (the date of the rejection of the last important treaty) only sixty-two were rejected, there were about 100 cases before 1935 where the Senate failed to act or where its amendments or reservations caused the abandonment of the treaty by one side or the other. In face of this, the fact that 900 treaties—more than four-fifths of the whole—were accepted unconditionally was an inadequate consolation, especially in view of the minor importance of many in this group.

It is argued that the President may, in some respects, get round this provision by handling matters through 'executive agreements', either in his political capacity as Head of State or as Commander-in-Chief, and these may follow on an advance agreement by Congress, be submitted to both Houses for approval by simple majorities, or be allowed to rest simply on the President's own authority. Such agreements, even if we

limit ourselves to the published ones, are more numerous than treaties, and must necessarily become more numerous still as the participation of the United States in the affairs of other countries becomes more consistent and more complicated. Even by 1941 it had been reckoned that 1,250 executive agreements had been entered into.

In view of the rapidity with which the transformation of the United States' international position has come about, and in view of the problem for conducting foreign affairs which the present system involves, it is not surprising to find that it has come under fire from both the executive branch and the legislature. The President has tried to acquire the certainty of Congressional support for his policies by associating members of the Congress with the State Department in the actual process of negotiation or in American representation on international bodies. He has tried in such fields as tariffs to get a general authorization to negotiate agreements over a number of years.

By contrast with the executive branch, which has been the quicker to sense the passing of American isolation, the efforts made by Congress have on the whole been directed at preventing action in the foreign field rather than facilitating it. But there has been a second and almost equally important motive governing Congress's policies, and those of the Senate in particular, and that is the avoidance of any action that would limit for the future the scope of Congressional control over the country's international relations. This latter motive was perhaps the predominant one in

opposition put up by the Senate to the proposed general arbitration treaties of the period before the First World War, since an arbitration convention of this kind would deprive the Senate of its final say on any particular issue. In the rejection of American membership in the League of Nations and in the neutrality legislation of the 1930s, the driving force came from the fear that a more active foreign policy might mean that the United States would go to war for objectives other than the defence of her own territories or immediate interests.

In the agitation of the post-war period, which reached its climax in the Senatorial support for the 'Bricker Amendment' in the early 1950s, both elements were seemingly involved. It was feared that executive agreements entered into without Congressional approval might be of so far-reaching a kind as to put the United States into a position in which the decision on peace and war, placed by the Constitution in the hands of Congress, might become meaningless. It was therefore desired that executive agreements should be placed on the same footing and subjected to the same procedures as treaties. In the second place, the coming into being of a new kind of international institution with economic and social objectives, appeared to give new meaning to the constitutional proviso that treaties form part of the supreme law of the land. This could mean—and had already meant—that the Federal Government could by treaty give itself legislative powers which would otherwise belong to the states; and although so many other ways round the reserved

powers of the states had been found during the reshaping of the governmental system from the Deal days onwards, the cry of States Rights was one that Senators were likely to leave unexploited. There was therefore a demand that the Constitution be amended so that nothing that was not law without treaty should become law in consequence of one. put another way, it meant that all international conventions involving legislation on matters normally within the sphere of the state governments would require legislation by each of the then forty-eight states before it became effective.

It is notable that although the attempt to limit President's power in foreign affairs—and there was a parallel one to set bounds to his authority as Commander-in-Chief where the movement of troops overseas was concerned—was the product largely of a reaction against the very positive foreign policies of two Democratic Presidents, Franklin Roosevelt and Truman, the successful resistance to it was the work of the Republicans, President Eisenhower and Secretary of State Dulles, though with the powerful aid of a Democratic Senator, Hennings of Missouri.

The conflict has thus been one between rival institutions rather than between rival parties, and to a larger extent than previously it is between the executive branch and Congress as a whole rather than between Secretary of State and Senate. On the other hand, the dominating importance of the critical international situation, and of the needs of defence and industrial preparedness springing from it, means

decisions on foreign policy are at the very heart of the President's task and no longer on its periphery; on the other hand, the growing burden of defence costs, whether for weapons at home or in the various forms of foreign aid, means that the House of Representatives, with the initiative in financial matters, has acquired a new role in the foreign field. Its committees also play a part in hammering out the relevant legislation, and Congressmen as well as Senators flock abroad during the Congressional vacations in order to see at first hand the strange new world into which they have been landed.

In addition to those aspects of foreign policy that require appropriations or even legislation, as when a new branch of the administration is set up, Congress or either House may indicate its wishes by the passage of resolutions. In 1943 Congress passed resolutions in favour of a post-war international organization, and that helped the Administration to pursue the negotiations looking towards the creation of what became the United Nations Organization. The passing by the Senate in 1948 of the 'Vandenberg Resolution', advocating the creation of regional and other collective agreements, paved the way for the North Atlantic Treaty Organization. Other resolutions may be designed to prevent the Executive from taking some action which Congress suspects it may be tempted to do: recognizing the Communist Government in China has been a case in point. Others, such as those in favour of the unity of Ireland, may be simply expressions of hopes in fields where no American

action is possible. Many proposals for resolution of this kind are introduced by individual Congressmen with no expectation that they will come up for debate or be voted upon, but simply in order to placate some section of their constituents.

In this respect, such resolutions resemble Ives-Quinn resolutions, which great numbers are also introduced at each session of Congress, and for much the same reason. Even though even an unsuccessful Bill may serve a purpose in focusing opinion upon some important issue. This, of course, refers to public Bills: there are also a very large number of private Bills, many of which—perhaps too many—are actually passed.

If in the question of the control of foreign affairs there is not a conflict of parties, but of institutions, and often of personalities, this is not to say that it is devoid of substance; if the President and Congress are agreed, as they were agreed on 'isolationism' in the 1920s, potential antagonism is only latent. In fact, as we have seen, the President's position ineluctably drives him into the position of being aware of problems which require positive solutions, whereas Congress can to a greater extent afford to ignore them or postpone them. The solutions of a less drastic and expensive kind which the modern position was foreshadowed under Theodore Roosevelt and in Wilson's later years. And even Franklin Roosevelt's rather belated awakening to the international aspects of the world crisis we have just witnessed is the spectacle of the President and his aides engaged in the almost constant task of cajoling or bullying Congress into accepting what they believe to be the best

responsibilities. Their success will partly depend upon the nature of the current Congressional leadership; it is not often that a Truman finds a Vandenberg, but without him the history of the post-war years might have been very different.

While the President and the Secretary of State are to some extent vulnerable to sectional pressures, whether of ethnic groups in the population at large or from large business interests, the fact that the President is elected by the whole people means that he is not so dependent on particular elements as the individual Senator, not to speak of the individual Congressman. The latter therefore tend to look at questions of foreign policy in the light of their effect upon particular issues rather than as part of a general national posture in world affairs. Indeed, one of the principal arguments for a negative or isolationist foreign policy even since the time of George Washington has been its likely divisive effects upon a nation still far from homogeneous in its composition and outlook.

If Congressmen take such partial views there is nothing sinister about it and nothing except the extra variety of the country that differentiates them in this from parliamentarians elsewhere. It is natural that the two Jewish Senators and ten Jewish Representatives in the 85th Congress (the number, though not the persons, being unchanged from its predecessor) should show a benevolent interest in the affairs of Israel, and that they should be joined in this by other Congressmen representing constituencies with a large

need accept the legend so popular in certain circles in Britain that Britain's Middle Eastern difficulties in the immediate post-war period arose from the sinister influence of the 'Jewish vote' in the United States: no sectional group is large enough to affect policy on any major issue in which important national interests are at stake. Even the biggest single grouping for this purpose—the Roman Catholics—though able to exert considerable influence on relatively marginal issues such as American policy towards the Spanish Civil War, could not hope to get their way in a matter in which national sentiment was clearly enrolled on the other side. And the same is true of major economic groupings—Wall Street or the oil companies.

But this does not mean that sectional influence exerted through Congress may not have important and occasionally detrimental effects upon the conduct of the country's foreign policy, more particularly with regard to those aspects of it where domestic and foreign considerations are most difficult to distinguish: tariffs and other protective measures; immigration controls; the 'strings' attached to foreign aid, particularly of an economic kind; the status of American servants of international organizations. In all these issues there is an inevitable tendency for Congress and for Congress as a whole to take the narrower

Although this tendency of Congress to concentrate on important issues of national policy in relation to the immediate and local repercussions is easiest to illustrate (and from the outsider's point of view at its most important) in connexion with foreign policy, this

fact only part of a larger question. For if the President has to seek election and function upon the basis of the largest possible consensus of opinion, the Congressman and even the Senator depends for his success upon much more limited support. His period in Washington will normally follow a period of political apprenticeship at the state level, and if he is ambitious to become Governor of his State he may treat it as only an interlude in a state career. But in any event, it is the constituency—Congressional, district, or state that will concern him. The 'grass roots' he cares about are the roots of the grass that grows at home. How far this will prevent the individual ever rising above the parochial standpoint may depend to some extent upon the security of his home base—remembering always that there are rivals within his own party to be considered as well as (or in the South even more than) the rival party. It will also depend on the degree to which a variety of interests are important in his state or district. If a state produces nothing much but silver, you will get 'silver Senators'. The states of the eastern seaboard north of Virginia owe their relative political sophistication as much to the multiplicity of economic interests represented within them as to their closeness to Europe; and California is probably going the same way and for the same reasons.

Since, with the penetration of industry into an increasingly large number of areas hitherto almost exclusively dominated by the production of staple crops or of minerals, the tendency everywhere in the country is towards more variety in the economy, one

would expect the tendency to be towards the nationalization of political attitudes. But some qualified members of the Senate appear to believe that this is the case and that the Senate at least is more concerned ever with the protection of local and sectional interests.

If this be true, the reason will not lie in Congress itself. What has happened is that while the country has been becoming more and more a highly diversified national one, and less and less a series of local economies linked by 'inter-state commerce', the role of Congress, and particularly the role of the Federal Government, has been increasing quite as rapidly. The repercussions upon local interests of decisions taken in Washington, whether through legislation or through government departments or by regulatory commissions, are great and growing. This makes the whole situation quite different from that of those far-off days when work on rivers and harbours, or the building of a post office or federal fort, made up the substance of the 'pork-barrel' over which Congressmen wage petty battles.

Where so much is done there is always the possibility of injustice, of making one interest or section more than its fair share of the national income. Bureaucrats will tend to develop their own technique of private decision-making and Congressmen will upon prying open their secrets. It may seem to some that the need for protection against government interference of such mammoths as the great companies or public utility corporations, and the operations carried on for their benefit, is

more like a continuation of the old game of withdrawing for private exploitation those decreasing reserves of natural resources that the Federal Government has for half a century been trying to protect. But one must not too easily end up with charges of cynicism against Congressmen as a whole. When government enters the world of business, business will enter the world of government: Congress, as we have seen, is only one way in.

The problems presented by the activities of pressure groups are, of course, fully recognized. The Rules Committee may help Representatives by refusing to allow a measure to come before the House lest members be embarrassed by the conflict between external pressures and their own consciences. The main concern that one is entitled to have about members of Congress is not that they will not for the most part do their best according to their own lights, but that what is demanded of them is now beyond the capacities of the most energetic and selfless of men. In the straightforward problem of getting through their daily tasks their position is not very different from that of the members of legislatures in other important democracies. While it is true that American legislators are much more lavishly treated in the matter of paid assistance and office-room, the complications of the governmental system increases the amount of time taken up with promoting the advantage of constituents; their constituencies are likely to be more remote from the capital, involving more correspondence and more visitors, and in the case of members of the House there is also the greater frequency of elections.

The nature of the problem presented by the work of the two Houses can perhaps be suggested statistically: during the 81st Congress (1949-50) 1,103 public and 1,103 private Acts were passed. Referred to the Senate 455 in the Senate and 455 in the House. Even if we admit that Congressmen are hardly likely to study in detail legislation that does not come within the purview of their own committees, the task is formidable enough; yet it is clearly a minor part of their daily burden as their constituents' emissary and seat of power. Much is done to make them aware of national issues—the educative value of 'hearings'—but this must be set against the lack of a 'question-time'—but it is a wonder is that they are left in a fit state to make use of their knowledge. Certainly, they have to be professionals and to have a professional skill in knowing what is and what is not important enough to deal with themselves. It is hard to see that this activity can normally be combined with earning a living; lawyers predominate—in the 79th Congress they reckoned that they accounted for 55 per cent. of the House and 65 per cent. of the Senate—it is not so much that their knowledge of the law helps them in legislating as that for obvious reasons it is a profession where membership may be a help rather than a handicap in one's career. Congress may and perhaps does reflect the views and prejudices of most sections of the community, but it is in no sense a cross-section of the community and is less of one even than most European legislatures. It can only be judged by what it does in terms of any theory of representation.

Chapter Six

THE PARTIES

THE foreign student of Congress is struck by the laxity of party discipline, and by the relative weakness of the party ties in determining support for, or opposition to, particular measures. Although third parties have proved evanescent and independents rare—all the members of both houses in the 85th Congress were enrolled as Republicans or Democrats—and although the organization of Congress is based on the fact of party, so that the committees, for instance, mirror the party strengths on the floor, members do not vote on strict party lines, and, as we have seen, the committees tend to develop individual corporate attitudes of their own. Both in the committees and in the House and Senate themselves each new measure will have to have a majority found for it, and much of the Administration's effort will be directed towards securing one where its own legislative or financial proposals are concerned, and the opposition will be more likely to move amendments than to oppose outright. It has, indeed, been reckoned that in most legislative struggles, the two parties do their best to avoid getting wholly embroiled on one side or the other and prefer to maintain official neutrality as long as possible. It should be added that in view of the decisive importance of the committees in the operation of Congress.

statistics of party behaviour in voting on the floor of the two houses may be misleading as to where the parties actually stand on the issues in question.

It could be argued that this situation is not innocuous, but even essential given the constitutional separation of powers, combined with elections to the whole House and to one-third of the Senate in which when the Presidency itself is not at stake. For even an incoming President usually brings in Congressional majorities 'on his coat-tails', as the saying is, though this does not always work, while a reaction against an incumbent administration is an almost invariable feature in mid-term elections.

American Congresses are numbered consecutively according to the two-year terms of the House of Representatives. In the twenty-nine Congresses from the beginning of the present century, the President's party has been in a minority in both Houses on four occasions, and in one House during two occasions. In such periods even the necessary minimum of legislation and financial business is only possible because of the opposition's willingness to afford the President some measure of collaboration. This alone would seem to offer an important obstacle to the belief, often expressed by American critics of the existing institutions, that they would benefit by more compactly defined and more severely disciplined parties. In such situations an irremovable executive would create a kind of difficulty that led to the impeachment of President Andrew Johnson.

It is not only that the polls may produce a Con-

dominated by the party opposed to that which is providing the President; it is the case also that the President himself cannot automatically rely, except for short periods of acknowledged crisis—the ‘hundred days’ of the Roosevelt New Deal, for instance—upon the automatic acquiescence in his measures of his nominal supporters. In most European countries members of the legislatures are elected as members of a particular political party, subscribing to its basic ideology, committed to its announced programme, and prepared to follow its accredited leaders. While it is true that nearly all Congressmen are elected on a party ‘ticket’, the corollaries do not necessarily follow.

It is equally puzzling for someone with a European background to understand why the United States, alone among democratic countries that have undergone an industrial revolution, has not witnessed its customary effects upon the party system, why in particular it remains without a major party wholly or even mainly directed towards maintaining the interests of the urban working-class. Even a student of American institutions so well informed and so sympathetic as the late Harold Laski could never reconcile himself to the failure of the American left to engender a proper ‘Labour’ party.

It would be possible to approach this problem through a consideration of the peculiarities in structure and outlook of the American trade-union movement, and in particular by investigating the reasons which have led it to concentrate overwhelmingly on direct benefits for its membership within the existing economic order.

pressure for appropriate governmental action—rather than on trying to transform society in a socialist direction. But for the student of politics, the question should be treated as only part of the wider one, that of the necessary nature of all American political parties. Four things have contributed to making American political parties what they are: the size of the country; its federal institutions; the practice of electing administrative (and even judicial) officers as well as representatives; and, finally, the prevalence of a system of straight plurality voting in single-member constituencies. For although, as we have seen, the system for electing the President is on paper a direct one, with the states as the units that produce the electoral college, there is only the one office to fill for the elector, both the decision he makes and the campaign that precedes it treat the United States as though it were a single constituency electing a single individual.

All the four elements in the situation were present at the beginnings of independence, and it is not surprising that many of the characteristic features of the American party system originated either within the lifetime of the Founding Fathers themselves or during the democratization of the original institutions that took place in the 1820s and 1830s, which sometimes goes by the name of the Jacksonian Revolution. In the states themselves—the former colonies—differences of interest were exploited by different groups of political leaders, even during the colonial period. The Revolution was carried out by a revolutionary party organized on a contin-

basis, and itself helped to consolidate the grip of that party on the country's nascent institutions.

Party, in the modern sense, did not figure in the political theory of the early rulers of the new country, though they were well aware of the tendency for all societies to engender interest groups and of the likelihood that such groups would endeavour to use the political process for their own ends. The creation of the state constitutions, based on a separation of powers, which meant that their principal executive officers had now to be elected as well as the legislatures, would in itself have promoted the growth of organized parties concerned to secure the election of particular kinds of persons to local and state positions. But as national questions remained to be resolved, and as the interlocking of national and state interests became more obvious, it was impossible for the state and the national political issues to be kept separate.

The struggle to secure and to ratify a new Federal Constitution meant a division within the national leadership that had made the Revolution, as between those who for various reasons wished to see more power concentrated at the centre, and those who preferred the loose arrangement of the Article of Confederation. The first real electoral struggle of the modern kind was that over the election of the state conventions called for the purpose of ratifying the new Constitution.

The struggle did not directly lead to the beginning of party history, since the first Congress was principally composed of the partisans of the new Constitution, and

since Washington's leadership was based upon the union of all but the irreconcilables. It was the policy of that administration, and in particular the economic programme advanced by Hamilton with its necessary corollary of further centralization, that injected the divisive ingredient by forcing into opposition a part of the original leadership of the coalition itself. John Adams was already a party rather than a national leader when with his defeat by Jefferson in 1800 the United States had the first instance of an administration representing one of a different political complexion as a result of action at the polls.

Like other parties, the Jeffersonians had to pay the price of victory by accommodating a highly heterogeneous following; they were themselves a coalition of regional groupings, and particular economic and social interests, and the rather paradoxical quality of some of their actions when in power must be ascribed to this dilution in their ranks, as well as to the tendency of all American parties, once they have captured the citadel of power, to find its armaments less diverse than they had looked during their period of opposition. Generally speaking, there will always be a tendency for the party in power in Washington to exalt its authority and for the minority party to cling to its Rights.

For a victorious coalition there are always many possible futures. It may find it impossible to hold together within its ranks for long all those whom it brought into opposition to its predecessors, or the attractive offices after victory have brought into its ranks

split up and help to create or fortify an opposition party; or it may have such impetus that it destroys and absorbs its rivals and becomes virtually a single party. These processes could be illustrated many times over in the history of parties within the American states. On the national scene, the Jeffersonians did indeed absorb their defeated rivals the Federalists, at the price of accepting something of the federalist outlook, and the result was the so-called 'era of good feelings' under President Monroe, when at the national level Jeffersonian Republicanism was all-powerful and all-embracing.

But with the territorial expansion and economic differentiation of the country during and after the Napoleonic Wars, the unity of such a party was difficult to maintain. In the states, democratization—the enlargement of the suffrage, for instance—proceeded apace, and there was a challenge not only to the dominance of the 'Virginia dynasty' within the Jeffersonian Republican Party, but also to the control of the party's affairs by its Congressional caucus. The capture of the party by its Jacksonian wing—the Democracy—involved the transfer of initiative from Congress to the country, and the establishment of the national nominating convention as the authority for selecting the Presidential candidate, and for drawing up the party platform—which involved deciding what groups the party could afford to cater for—was the symbol of this transfer.

Jacksonian democracy did not manage to find room for all the interests that clamoured for national recogni-

and those most recalcitrant found their outlet in the new Whig Party. Named though it was as a party of its opposition to the one-man rule, as it was to be, of 'King Andrew the First', the Whig was, at any rate nationally, a new party of the 'right', of the Hamiltonian tradition in American politics, seeking to secure the support of government for the development of some major economic interests through protective measures and a national transport and credit system. The Jacksonian combination of relatively small and localized entrepreneurship with a largely individualistic ideology was better suited to the immediate business needs between classes and sections, and in the pre-Civil War decades, the Democracy was the normal majority.

American politics did not, however, polarize into a right-left alignment as seemed likely in the 1820s because of the emergence of slavery as the central political issue—an emergence precipitated by further territorial expansion, and by a further spread of the area of settlement. The impact of this upon the Whig Party, which had already suffered from the competition of 'nativist' or anti-immigrant parties in various sections, was a fatal one. In its place there appeared the Free Soil Republican Party, which took over most of the former Whig support in the North, and many of its former mental attitudes, but allied them with a policy of resisting the further spread of Negro slavery, and in doing so provided a home for those Democrats who resented that Party's domination by its Southern pro-Southern wing.

Instead of two national parties, there were the

the close of the 1850s, two parties, only one of which—the Democratic Party—had any claim to be national, while the other—the Republican—was purely sectional in its allegiance and outlook. In such circumstances, the Democracy itself split as between its sterner and its more conciliatory elements, thus assisting the election of Abraham Lincoln as a minority President; though, given the nature of the electoral college, the Republican lead in the heavily populated northern states would probably have produced the same result, even if the Democrats had been able to compose their differences. The accepted leaders of the South could not accept an electoral verdict that placed the national administration in the hands of men whom they believed to be hostile to their most vital interests, and the result was secession and civil war.

It has been suggested that this dire outcome of the breakdown of a proper two-party system was sufficient to prove the danger in a system, such as that of the United States, of parties based upon distinctive ideologies, and especially if there is the further likelihood that adherence to them will be dictated largely by geographical circumstance. And some have gone further, and suggested that so far from European critics of the Laski type being right, what suits the United States best is a situation where both major parties have to appeal to almost every group in the population, and where, therefore, the difference in content between their avowed programmes is at the minimum. Both parties, it is argued, should mirror the entire electorate and it is certainly true that the privi-

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and group interests which seek to influence the political process prefer to have a say in the affairs of both of them.

However this may be, civil war and its aftermath the so-called 'reconstruction era' when the Southern states were governed by Republican régimes more or less directly imposed by the occupying northern —were together responsible for certain characteristic features of the modern American party system. Democracy, despite the effort to brand it permanently as the party of Southern treason, remained the truly national party, uniting, once Reconstruction was over, a virtually single-party South where it stood for the re-established supremacy of the white race with the important elements in the North, particularly in the great urban centres. The Republicans, after their victory over slavery, lost the radical part of their original appeal and became the properly conservative party, uniting business interests with important Western agrarian forces, but being in the South more, in ordinary times, than an organization of federal office-holders with few local roots, except in the South which had not fully assimilated the pro-slavery ideology of the defunct Confederacy. Each party was a federation of interests; neither could afford a very precise ideology on many important issues; and each had influential elements of instability, as a glance at the distribution of votes in successive presidential elections shows clearly enough.

The Republicans, despite their inability to secure serious and reliable Southern backing, were, at

until the Second World War, the normal majority party. Their control of certain heavily populated regions made up for their exclusion from one section of the country. But in times of agricultural depression a part of their majority was liable to fall away either into third-party experiments—'populism' or the various farmer-labour parties—or directly into the camp of the Democracy. Some groups which appeared safe might be so only so long as there was nowhere else for them to go. The emancipated American Negro, drawn by the suction of economic expansion out of the South and into northern industrial areas, would find his problems there more similar to those of his fellow-workers of whiter complexion than to those of such of his fellows as had remained behind and been subjected to renewed disfranchisement and other forms of discrimination in the South. The New Deal brought the northern Negro into the Democratic camp, and this was no mean thing.

The hold of the Democratic Party on its following has also been shaken from time to time by particular events or policies. The entry of the United States into the First World War made German and some Scandinavian groups recalcitrant to Democratic leadership, and it has been argued that since intervention in world affairs has hitherto in effect meant intervention on the side of Britain and her allies, American isolationism has an ethnic rather than a geographical base. The industrial working class upon which the party has relied so heavily outside the South has been largely composed of relatively recent ethnic strains, often Catholic,

like the Irish, another traditionally Democratic element in the population. But the attempt to run a Catholic for President in 1928 cost the Democrats a number of normally safe seats in the South, where Protestantism and doctrines of white supremacy have gone hand in hand.

It is not necessarily the case, however, that even this underlying pattern is immutable. Because of the absence of serious controversy over capitalism as such it is often assumed by Europeans that the parties do not differ in any fundamental respect and that it is a matter of chance or of ancestral loyalties whether a particular elector is a Republican or a Democrat. This has never been altogether true—not since Jefferson Davis's future bride described him as a gentleman tho' a democrat—and has been quite untrue since the New Deal. For, despite the conservatism of the later Roosevelt terms, President Truman gave the Democratic Party a further impulse in a broadly leftward direction. If we take the simple view that there is, other things being equal, likely to be one party of the rich and one party of the poor, Republicans fit the bill for the former, and outside the South the Democrats fill it for the latter. The former accept roughly the justice of the present distribution of worldly goods between classes and regions; the latter by and large welcome government intervention to alter it. The Republicans, even in office, will not want to extend very much the present sphere of Social action, especially federal action; the Democrats even in the South demand that government do more.

It is not on the whole a false generalization to say that the less money and the more needs a man (or a community) may have, the more likely he (or it) is to vote Democratic. Similarly, it is not just a coincidence that the bulk of the press, whose proprietors obviously form part of the upper business class, has remained Republican even during the periods of the greatest Democratic successes.

The Congress of Industrial Organizations—the industrial union movement which split away from the craft-union-dominated American Federation of Labor in 1935-6—was less committed to a non-partisan attitude than the parent body, and largely identified itself with the Democratic cause in many areas. The belief that the Republican Congress of 1946 was anti-labour helped to bring the A.F. of L. over from its attitude of neutrality, and although it remains formally the case that American labour is prepared to work with or through either party, union support is an all-important element in Democratic strength in many industrial areas. Because of the inequalities in the delimitation of electoral districts, organized labour's influence in the House of Representatives is weaker than it ought to be—its strength lies in the Senate.

It can therefore be argued that social change in the United States may be affecting the party structure in ways ultimately threatening to the Democratic Party's prospects. On the one hand, the industrialization of the South may be making its problems so much more like those of the rest of the nation that Southern Republicanism may become a reality, in that the right-wing

Southerners may come to feel more at home in Republican Party, particularly if that party is prepared to go slow on the 'civil rights' issue, at a time when northern Democrats face pressures which make them wish to go faster. A two-party South might be good for the South—most people have regarded it as an essential precondition for healthier politics there—it would also affect the national balance. On the other hand, there is the increased prosperity of and greater social recognition afforded to certain groups in the northern population whose previous Democratic allegiance has been to some degree a result of their partial ostracism by their social betters. If with their complete assimilation to the prevailing American pattern of life, and with their shift from defined urban areas into a new suburbia, these people come to absorb the behaviour patterns of their neighbours, they may cross the line between the natural Republican and the natural Democrat. If all America is going to become middle-class, will not all America become Republican?

There are, of course, many reasons why this may happen; such transfers of voting allegiance may require a particular kind of political leadership to evoke them, and this may not be forthcoming. Meanwhile, both parties in Congress reflect these divergencies in their electoral appeal. The line-up between Southern Democrats and most Republicans on social issues has become an accepted feature of the Congressional scene; and there are Republicans, though not numerous, whose own opinions, or the nature of whom

constituency support, renders co-operation with northern Democrats easier than with the old guard of their own party.

Foreign policy also provides possibilities of important divisions within as well as between parties. Before the Civil War, the Democracy was the party of territorial expansion; thereafter, and on the whole until the First World War, it drew support very largely from isolationist elements—though this was modified by the fact that the South, depending as it did so largely upon foreign markets for its staples, was anti-protectionist, and to that extent internationally-minded. The Republicans of the Theodore Roosevelt vintage were the patrons of overseas commercial expansion, the pioneers of an active American interest in the Far East and of the little flurry of American imperialism at the turn of the century.

In the period after the end of the First World War, for entering which the Democrats had later to take the blame, both major parties were convinced of the necessity for non-involvement in Europe's affairs, but it was the Democrats as the party in office that made the headway in revising this attitude as the world situation worsened in the later 1930s. With memories of the tragedy of Woodrow Wilson to stimulate them, considerable efforts were made after the Second World War to secure 'bipartisanship' in foreign affairs—the use of 'bipartisan' rather than 'non-party' is significant of the American assumption that there are two parties and two only—in the post-war settlement. But these largely collapsed owing to the fiasco of

American policies in the Far East. The leadership of both major parties has continued to stress the importance of the United States playing an active role in world affairs, with the Democrats tending on the whole to give the priority to Europe, and the Republicans rather more concerned with Far Eastern questions. But there has always been a core of isolationism in both, and the alternative policy to that of N.A.T.O. and the other alliances, the policy of 'hemispheric defence', has had some influential spokesmen among Republicans. The South, meanwhile, with a changing economic role, is no longer the prime exponent of internationalism within the Democratic ranks.

In view of the impossibility nowadays of detaching any aspect of foreign policy from important internal questions—there is the cost of defence and of foreign aid; there is the role of tariff and immigration policy; there is the domestic struggle against 'communism' and 'subversion', and the race for technological supremacy with its consequences for educational policy—it is unlikely that foreign policy can be kept out of the party struggle. But this does not mean that it is likely to be the decisive element in determining party allegiance.

So far we have been treating political parties as a convenient shorthand for the fundamental groupings of the American electorate at different periods. But in many respects the voter plays only a secondary role in the party picture. For American parties are organizations of mass-membership, whose leaders exist in order to fulfil the objectives set by that membership. When political leadership passed from

oligarchies of the colonial and early national period, it passed not into the hands of representative citizens, but into the hands of professionals. Ever since the Jacksonian period, American parties have been organizations manned by professionals and working for most of the time for strictly limited professional ends. On the one hand, there were offices to be filled for which nominations had to be arranged. The parties were thus largely parties of office-holders who paid a proportion of their emoluments to party funds, or would-be office-holders; these attracted around them other elements who could expect direct advantage from having their friends in office, and who could be expected to contribute funds to bring this about. Obviously it was not sufficient to get the right men nominated; they also had to be elected; and at elections the voters had to be wooed and won. But the campaign was to win over the undecided, or to make sure of the votes of the already committed. It was better to tie the voters beforehand by the normal human ties of gratitude and expectation. It was thus expected that, in urban areas at any rate, the local organization of the party would make itself available as a bridge between the citizen and the public powers, would act where necessary as a provider of employment, and even of direct relief. Open though the system was to corruption, and foundation though it was of the power of political 'bosses' which often had an ugly and even criminal side to it, it was on the whole an emollient in a situation that, but for it, would have been harsh indeed, at least for some elements in the population—

notably the newly-arrived and the inadequately assimilated.

Pioneered by the Democracy, the system inevitably copied by its opponents, and has continued to play a part in American political life that is not quite exhausted. The development of social services has, of course, lessened the need for some of the services that the old-time party organization gave; the number of the unassimilated has fallen with limitations on immigration since the First World War. The Civil Service Act of 1883 began the process of depoliticizing the federal civil service by providing that no public employee should be obliged to contribute to party funds or partake in any political activities. The nature of the new governmental institutions can only be fully understood without taking into account the widespread conviction that anything that increases the number of persons on a government payroll, or the number of those dependent on government aid, is bound to increase the strength of the party in power. As part of the price of the vast expansion of federal activity in the New Deal period, the administration had to accept the (Hatch) Political Activities Act of 1939, which made it unlawful for federal employees to take an active role in party politics, even outside working hours. By a second Act in 1940, this was extended to state and local government employees whose salaries come from various federal program grants.

It remains the case that with so many important state and local offices filled by election, preferment

certain careers—the law, for example—demands much more attention to questions of party alignment and party influence than under other political systems. Finally, there is the fact that although the system operates for most of the time at the state and local level, its repercussions are felt in Congress and in the Presidency.

The Senators and the Congressmen are expected by their constituents to fulfil with regard to the agencies of the Federal Government those functions which lesser party eminences are expected to fulfil at the local level, and the keeping of the party together depends to some extent upon the satisfaction aroused by the performance of this part of the politician's Washington task. It is true, of course, that in all modern legislatures the legislator is expected to act as the forwarder of individual and private causes—the English M.P. and the French Deputy no less than the American Senator or Congressman—but the role of party in this may well be stronger in the American case.

The explanation for this is not hard to find. Not being parties of mass membership, the American parties do not as such command large funds for electoral purposes. The great sums raised for the Presidential contests from business (and probably largely disguised as business expenses) only indirectly assist the individual candidate for Congress, whose expenses rise as campaigning becomes more and more equated with large-scale advertising campaigns, and is indeed done largely by the same people. There is in particular the high cost of television time. The candidate must

therefore rely on the local party, and on his own frie to raise the money he needs to make a congressic career possible, and in the process further obligati are inevitably incurred; nor in this must one overl the large size of the Congressional constituencies, to mention the states. A House of Representatives over two-thirds the size of the British House Commons has to suffice for an electorate over th times as large. In 1950, the average constituency a Congressman was of about 340,000 voters; fo Senator, over 3,000,000.

Inevitable as is this professionalization of poli under American conditions, and inescapable as is interpenetration of financial and political consid tions, reformers have always been eager to restore thi to some imagined purity of an earlier age. The u to reform takes different aspects. At the local le especially in city government, where corruption been most rife since pickings have been juiciest, th have been attempts to limit the importance of elec officials by the professionalization of city managem At the state level, and by a natural transfer at federal level too, there has been the effort to take nominating process out of the hands of the prof sionals by substituting for the system of nominat conventions, normally attended by professionals or some system of primaries, preliminary elections en ling members of a party to express their preference a particular candidate. Finally, as in other countr there has been some attempt to limit electoral exper ture. and to prohibit some kinds of contribution to i

by business corporations and trade unions. The first of these attempts has had some notable successes; the last has been almost wholly ineffective. The second is the most distinctively American.

Any provision of this kind which involves legislation means that the State is regulating the internal affairs of the parties, and by so doing recognizing and legitimizing their existence. It is true that the American states can hardly help doing this even where primaries are not used. For once the voter is confronted not with one or two, but a large number of offices to fill at a single go, he can only act to his own satisfaction if at least provided with the opportunity of voting the straight party ticket. If an American 'long ballot', or voting machine, were as bare of party indications as a British ballot paper, the mere effort of memory demanded of the voter would be an intolerable one. If parties are recognized, why not try to impose upon them the same general principles as underlie the representative system as a whole?

This is also, of course, not the only way in which the existence of political parties is legally recognized in the United States. The statutes setting up the independent regulatory commissions commonly provide as we have seen for 'bipartisan' membership.

The system of primary elections has not fulfilled the hopes placed in it. It has proved no more difficult for professional politicians to dominate campaigns in primaries than those of the elections proper. Since the primaries add to the ultimate cost of being elected, candidates are more than ever driven to seek important

financial contributions from private individuals and organizations, thus increasing their dependence on such support which is one of the besetting weaknesses of Congress (and of state legislatures). Furthermore the primaries provide yet another obstacle to the development of national party leadership, since this means that there can be no central control over national nominations; and as Franklin Roosevelt found on a celebrated occasion in 1938, an effort to influence primaries on the part of the President is most unlikely to be fruitful. In other words, the primary system helps to preserve the loose and localized character of American parties, and to emphasize the President's necessary reliance on patronage and other forms of indirect pressure to secure that his legislative wishes be taken into account.

Against this may be set the fact that in the virtue of one-party states where the primary is the election for all practical purposes—and has been so recognized by the Courts in outlawing colour discrimination in primaries in the South—there is at least an opportunity of preventing some particular individual or group of politicians from perpetuating a hold over the representation of the state that might otherwise become dangerous. The struggle may be a severe one, especially where there is rivalry between the state Governor and the Senator or Senators of his own party—a not uncommon situation. The fact that renomination is not automatic, as it tends to be for 'sitting members' under the British system, helps to keep politics alive within the parties, which may perhaps be desirable even

though the uncertainty helps to make the Senator or Congressman even more attentive to the wishes of his constituents and therefore even less prone to look at issues in terms of the 'national interest'.

The same general ideas as to the desirability of breaking the hold of the professionals were behind the moves earlier this century to adapt the primary system to the purpose of nominating candidates for the Presidency itself. From the Jacksonian period onwards, this important function had been performed, as we have seen, by the national conventions of the parties themselves, composed of delegates selected by the state party machines; this replaced the earlier procedure of leaving the choice to the members of the party caucus in Congress, which was regarded as undemocratic. The new system was, however, still unrepresentative from the point of view of the ordinary voter, especially since the number of delegates for each state was calculated on the basis of its population and not on the basis of the party's actual voting strength within it. This meant considerable overrepresentation for the Southern Republicans, who were virtually an organization of federal office-holders.

Even leaving this aside, what one had and has at a national nominating convention are the representatives of a series of state party machines, concerned to find by a process of bargaining a candidate likely to be acceptable to the electorate as a whole as well as to the persons or interests they represent. The successive ballots in what tended to be a long-drawn process (especially in the Democratic Party at a time when it

demanding a two-thirds majority for the chosen candidate) merely mark the various stages in the behind-the-scenes negotiation between the state delegations and the managers of the campaigns of rival contestants. This kind of thing, with the periodic rumours about the promises of the Vice-Presidential nomination, the cabinet office reputedly made to clinch doubtful states, was thought to bring democracy into contempt, and the remedy once more was to be the bringing in of rank and file of the party's followers in the country.

For this purpose a number of states developed rather wide variety of provisions for selecting convention delegates in primary elections, or for indicating in them a preference as between declared Presidential aspirants, or for a combination of the two. But since in fact a majority has to be collected in the convention itself, and since it is often impossible to foresee in advance what actual choices this will involve, there can be no real binding limitation on the delegates' freedom of action in the later stages of the balloting. The general acceptance of this state of affairs may be indicated by the fact that the movement for Presidential primaries stopped short after something like one-third of the delegates were affected, and that it has shown no signs of reviving. What is left is what amounts to a rather formalized version of a public opinion poll in a number of states, which may serve to show up the strength or weakness of particular candidates, but which cannot directly affect the conventions themselves. The most tangible result hitherto has been the killing of certain candidatures that looked plausible until the

were tried out on the party voters in this way; and it is difficult to see that more than this is reasonably to be expected.

Party politics in the United States is still a professional affair and is likely to remain so. One important feature is the highly intermittent nature of all this activity at the federal level. At the state levels—and this includes elections to Congress—party activity is necessarily continuous; someone is always having to vote about something, and jobs as well as policies depend on the result. At the federal level there is virtually nothing in between the four-yearly political orgies that begin with the preliminary battling for position, continue with the primaries, reach a climax in the summer at the conventions with their choice of candidates and drawing-up of platforms, and then somehow contrive after the let-up of the holidays to build up to a second climax with the election in November. Once a President is elected he is both the leader of the party and normally the custodian of its machine (traditionally through the Postmaster-Generalship); but this continues to exist only in the most tenuous fashion. Even more tenuous a life is sustained by the defeated party machine. The 'titular leadership' held by the defeated candidate is virtually meaningless, since opposition—such as it is—must be waged in Congress rather than outside; attempts to restate party policies and to issue statements about the party's attitude to passing events, somewhat on the British model, are vitiated by the quite different situation in which a 'shadow cabinet' would have no meaning. The party's available energies

will largely be those of opposing aspirants groom themselves for the next run, and the professionals must restrict themselves to building up their depleted war chest and to keeping up their communications with leaders in the states.

Since it is difficult to see how parties organized and conducted in a different fashion could fulfil either the requirements of the constitutional system or the function of canalizing particular interests and pressures so as to make possible a national programme in legislation and government, we must assume that the attributes of the existing parties will continue to be those of their successors. Short of changes in the economic and social structure so fundamental as to amount to a revolution, the emergence of parties on a strictly class basis, or influenced by irreconcilable ideological preferences, would seem to be ruled out. The same set of facts explain why third parties cannot hope to survive for long periods unless they do so well so quickly as to replace one of the existing major parties—as the Republicans stepped into the vacancy left by the demise of the Whigs—or become little more than loose affiliates of one or other of them—a situation that has usually led to their being absorbed by it.

Indeed, the obstacles in the way of third parties are probably greater now than in the past. It is not simply that the discouragement of an electoral system of the simple majority vote in single-member constituencies has been fortified by regulations for the conduct of elections in some states which make it hard for a third party to secure a place on the ballot. It is also that with

the increasing role of the Federal Government, a party that cannot hope to win the Presidency and thus enjoy federal patronage is at an even greater disadvantage at the state level. Unless they can offer this hope to their followers, a third party must inevitably see them desert *en masse* to where brighter prospects beckon. In 1912 Theodore Roosevelt, as the candidate of the Progressives, who had broken away from the official Republican machine after Roosevelt's defeat in the Republican Convention, secured 27.45 per cent. of the popular vote against the official Republican candidate, President Taft's 23.17 per cent. and eighty-eight electoral votes to his eight. Yet four years later, the Progressives were too weak to nominate a candidate at all, and either followed Roosevelt back into the Republican fold or went over to Wilson and the Democrats.

If we take the period since the Civil War, there have been two main sources from which third-party movements have drawn their strength. The more important has been the agrarian belt of the Mid-West, affected by climatic cycles and afflicted in consequence by periods of severe distress, particularly in the time before massive federal intervention was inaugurated by the New Deal. A series of parties arose to give voice to the farmers' views that their misfortunes were the result of the misdeeds of the banks (Wall Street and the City), the railways and the processing industries which could only be dealt with by legislation. For brief periods such parties controlled one or more state legislatures; but in the end their failure to make headway at the federal

level brought them down. The Populists and the various Farmer-Labour parties all met with the same fate and since agricultural interests have been so much more successful recently in working through the main parties it might be guessed that they will not again seek independent political expression.

From quite another quarter, the largely foreign-born and not wholly assimilated urban populations of the East, has come the support for the different Social 'Labour', and 'Liberal' parties. Here also the trend of the times has been against them. State intervention has limited many of the evils against which the original protest was made; the limitation on immigration and the pressure towards rapid assimilation exercised on the children and grandchildren of the foreign-born has reduced their available support. Such parties have rarely been significant above the state level; some have been virtually limited to the city of New York. Twice only in this century has this kind of activity and outlook produced a serious candidate for the Presidency; there were the nearly 900,000 votes who preferred Eugene Debs, the Socialist, for President in 1912, and the rather more than 1½ million votes received by Henry Wallace as 'Progressive' candidate in 1948, despite the Socialists maintaining an independent candidate. Wallace, though receiving no electoral votes, might have affected the ultimate result by his intervention, since the loss of votes that would otherwise presumably have been Democratic cost Truman both New York and Maryland. His candidature was however, more than just an opportunity to focus the

votes of the permanent dissentients from the American main-stream; the campaign owed much of its impetus to the communist element in Wallace's following and was above all a protest against the anti-Soviet line which the Administration had adopted in foreign affairs as a result of the developments in the international situation in 1947-8. Wallace's vote was in part a vote against the 'cold war'.

But the Communist Party itself scarcely calls for extended treatment. Its history has shown the same vicissitudes owing to the twists and turns of Soviet policy as has been the case with other communist parties outside the area of direct Soviet control. Its appeal has been severely limited and largely directed to racial minorities. The legal limitations that have been put upon its activities since the Second World War have made its strength harder to measure, but it is clear that any significance it has had has been rather through its threat to 'security' than as a political party in the ordinary sense. Communists in 'sensitive' positions in the governmental service, and to some extent in trade unions, have presented a real problem; but Communists as an element in the American electorate can almost be ignored.

Finally, there is the question of those political parties that have been the expression of some regional interest concerned with exercising a veto power on the actions of the Federal Government rather than with the clearly impossible task of getting into a position from which to control it. For practical purposes, this amounts to the question of whether the South regards

its important voice in the Democratic Party, and now not inconsiderable hopes of securing proper representation in the Republican ranks as sufficient guarantee against federal action designed to destroy what is left of the Southern pattern of racial segregation. What is meant by a third party in this case is merely the running of a Presidential candidate who would draw off enough Southern electoral votes to throw the election outright to the Republicans, or (by creating a deadlock in the electoral college) to transfer the election to the House of Representatives. In 1964 the latter objective was almost achieved, since Governor Strom Thurmond, the States Rights candidate, although polling only about 100,000 more popular votes than Henry Wallace, actually drew away thirty-nine electoral votes from the Democratic column. The threat of producing such a candidature again is, however, more important as an element in the trading of votes in a Democratic National Convention than as evidence for the possibilities of a multi-party system.

The discussion on the possibilities of a more effective two-party system that has so preoccupied academic students and would-be reformers of the American system may overlook the fact that at the federal level (and to some extent independently of it at the state level) much more importance is to be attached to the fact that one Party is at any time the 'ins' and the other the 'outs'. Opposition as it is known under the British system of responsible Cabinet government makes very little sense under American conditions. For the reasons already given, the 'out' party at the federal

level cannot easily offer a clear-cut alternative set of policies, nor, indeed, an alternative team of executive heads. What matters is whether the party in power can be used as the instrument of a coherent policy, and this in turn depends to a very large extent on how far the President can select and turn to his use those elements in the Party's platform that are relevant to the situation he has to face. And although the ability of a President to do this will depend to a very great extent upon the immediate state of affairs in the country and upon the nature and strength of the interest—groups who are seeking their advantage through his action and are prepared to give him their support in getting his way, it will depend almost as much upon the extent to which he himself possesses a real capacity for party leadership. Not all Presidents have this; and when the President has not got it, it is hard to see how the party can be effective in any real sense. Once again, behind the institution we find the individual; a government of laws turns out again to be a government of men.

Chapter Seven

GOVERNMENT AND THE CITIZEN

THE main difference between government in twentieth-century style and government in previous periods lies as much in the expectations of the citizen as in the performance of the rulers. In particular, the citizen in every advanced country has come to expect that the State will come to his aid in the event of personal misfortune or need, whether brought about through ill-health, unemployment, or old age; and even more recently he has come to assume that the general health of the economy, by which he means both full employment and a steadily rising standard of living, should be assured by governmental action. In both these respects the United States has not been exempt from the general trend. Its acceptance of the two types of responsibility may best be symbolized perhaps in two Acts of Congress, the Social Security Act of 1935 and the Full Employment Act of 1946. The mandatory provision of the latter, according to which the President has to present an Economic Report in addition to the governmental Budget at the beginning of each year, has been an important element in conditioning the public mind to an acceptance of a thesis that would have been considered dangerously radical only a quarter of a century ago—namely, that the American economy is not a self-adjusting mechanism as immu-

from governmental regulation as the vagaries of the climate, but that it is both possible and necessary that government should exercise in this field a continuous supervision, and at times a determining influence.

The importance of the developments by which the United States has acquired the full apparatus of a Welfare State and the machinery for the central control of such determining factors in the economy as the supply of credit has been obscured where foreign observers are concerned by the rather limited role of public ownership. Because the United States is obviously not a socialist country, it is held that it must be a capitalist country; and so of course it is, but not in the sense in which this was true of nineteenth-century America. On the other hand, the particular set of assumptions that governed American thinking on social and political matters in the formative period of the country's history has given a particular cast to the modern handling of some of its problems, and so too has the fact that the system is a federal one.

The latter circumstance is of less importance where economic regulation is concerned than in the field of social services, for the fact that the economy is a national one, and that attempts to build up protective barriers between the states have on the whole been frustrated according to the intentions of the Constitution means that only the Federal Government can exercise any real degree of control. The rearguard action against federal controls, fought as we have seen with the aid of the Courts until their acceptance of the body of New Deal legislation in the late 1930s and

subsequently, was not so much a campaign in favour of the rights of the states as a way of opposing any kind of controls at all.

Nevertheless, the shape which governmental institutions have had to take is, of course, partly a result of such facts as the location of the power of charter corporations in the states, and the collapse of the first two attempts to set up a national banking system, with the result that it was not until the presidency of Woodrow Wilson that a beginning was made with a modern system for the national control of credit, in the Federal Reserve Act of 1913.

The characteristic American mistrust of governmental action and the preference for leaving what is to be done to the smallest units of government, linked with an almost equal mistrust of 'bigness' when private enterprise itself was concerned. The American conception of a free-enterprise system insisted upon a genuine element of competition and the maximum spread of the individual ownership of business enterprises. It was in one sense an application to industry and commerce of the agrarian ideal of the independent yeoman farmer or planter. From almost the beginning of American political life there was thus one school of thought that believed that government's role should be to encourage, and where necessary to enforce, the rules of competition against all tendencies towards consolidation and monopoly. As the development of American economic and social life ran increasingly contrary to this view of the ideal, the pressure for state action became correspondingly important.

The result was that from the end of the nineteenth century—the Sherman Anti-trust Act of 1890 is again more important as a symbol than for what it effected—there were two separate and often opposing trends in American thought and action upon this subject, both in political circles and among the justices of the Supreme Court.

On the one hand there were those who believed that all movement in the economy towards larger units of production and distribution was in itself harmful and who pinned their hopes upon legislation designed to outlaw various forms of monopoly and measures designed to restrict competition by private arrangements between competing firms; on the other hand, there were those who believed that the trend towards consolidation was inevitable and that its consequences could only be met by greater governmental controls to see that the power so acquired was not abused to the detriment of the citizen and the community. The New Nationalism of Theodore Roosevelt was inspired on the whole by the latter view; Wilson's New Freedom by the former. Franklin Roosevelt's New Deal was in this, as in so much else, an amalgam of conflicting ideas and experiments. It is probably true, however, that, despite the enormous consolidation of American economic power into the hands of a few large firms, it is still the case that the legal restrictions upon some forms of combination are a more important factor in shaping business activity in America than in other important industrial countries.

The same basic individualism of the American creed

has been important also in the field of labour organization. Trade unionism was at first denounced as a particularly dangerous form of combination, and it was only gradually that it acquired an acceptable legal status, and freed itself from the limitations imposed by the application to it of the anti-trust laws. The legislation of the New Deal was of particular importance in this respect and the Wagner Labor Relations Act of 1935 which followed upon the Norris-Guardia Act of 1932 and the celebrated Section 7 of the National Recovery Act of 1933 may be said finally to have brought organized labour within the pale of the Constitution. By setting up the National Labor Relations Board with permanent powers of enforcement, the Federal Government undertook to secure that labour was in fact given the right to organize, a fact which reflected a new and not yet fully formulated conviction on the part of many Americans that a society of competing groups had replaced the old society of competing individuals, and that it was the business of the government to uphold the weaker ones so as to secure social justice without direct government intervention in the market-place.

From another point of view, the Court's acceptance of the Wagner Act as constitutional (in 1937) was justified, like previous decisions validating federal intervention in limited fields of labour regulation, by the principle that labour relations were an important factor in inter-state commerce, and thus fell within Congress's admitted powers in this field.

One need not here go into the reasons which have

made labour organization in the United States particularly difficult, nor trace the long period of inter-union conflict which was by no means terminated when in 1955 the two main rival organizations, the A.F. of L. and the C.I.O., came together again. Nor is it necessary to inquire into the extent to which labour unions have been dogged by various forms of corruption and racketeering. These features have made it possible to secure support for a much greater measure of governmental control over union activities than would be considered tolerable in some other welfare democracies. The Labor-Management Relations Act of 1947 (the Taft-Hartley Act), passed by a Republican Congress over President Truman's veto, altered the structure of the National Labor Relations Board by turning it into a quasi-judicial body and placing elsewhere the responsibility for investigation and prosecutions, and also made changes in the substantive law of what constituted fair trade union practices. In addition, some kinds of strikes are prohibited by law and others subjected to an elaborate process of executive intervention during a cooling-off period. Finally, the withdrawal of access to this machinery from communist-controlled unions was both an extension to this field of the current drive against communism and a manifestation of the belief that, if unionism were to be a permanent part of the American scene, government had a right to see that it was basically loyal to the values of the American system as a whole.

The Taft-Hartley Act also extended the restriction placed by an Act of 1943 upon the use of union funds

for political purposes; but methods of circumventing this restriction, like other limitations on campaign expenditures, have been found. And union activity on behalf of approved candidates—particularly Democratic candidates—is now, as we have seen, of very considerable importance, even though it may evoke opposition in some quarters.

The reliance upon the countervailing powers of social groups, subject to governmental regulation of the terms of conflict, is clearly not applicable to certain sections of society whose needs can only be satisfied by direct assistance. But at this point the federal nature of the Constitution introduces further problems.

The reason for this is a financial one. The needy require assistance locally; so far as they can be organized politically—and this applies mainly to the aged—they are more likely to be effective at the state level, but the states do not possess the financial strength to meet the burden.

Until the onset of the Great Depression at the end of the 1920s, the American states were financially independent of the Federal Government, and the latter relying on the whole on different sources of revenue was independent of them. The problem as it had presented itself in the pre-Civil War decades was one of disposing of a federal surplus that threatened from time to time. It was then argued by the dominant Jacksonians that to use this for local purposes or for any form of assistance to the needy would undermine both native American self-reliance and the independence of the states. During and after the Civil War

certain minor departures from the general principle were made and in a number of specific fields—agricultural and technical education, forestry protection, and highways, for example—federal grants were made to the states, involving some degree of federal supervision and some degree of co-operation between the federal and the state bureaucracies.

It would still have been possible for the states in 1930 to balance their own budgets even if federal aid had been withdrawn, by curtailing those activities for which grant-aid was received. In the prevailing atmosphere of the time it is not surprising that it was upon the localities and the states that there fell the first burden of meeting the destitution caused by the depression and of providing public works and other palliatives. It soon became clear, however, that their tax structures would not allow them to carry the weight of the obligations now imposed upon them, and even before the end of President Hoover's term the Federal Government was having to intervene with additional finance.

Federal intervention rapidly increased during the New Deal period and with certain permanent results. A recasting of the tax system through federal action, by agreement with the states, and to some extent by agreement among them, has brought about a situation where the old financial independence of the different levels of government is a thing of the past. Overlapping still causes difficulties, but by and large it is the federal taxing power that is now the dominant element in the situation. In 1931 federal grants-in-aid to the states accounted for rather over 200 million

dollars, of which 71 per cent. was for roads; in 1951 the figure was ten times as great, and 68 per cent. of the sum was for social services.

All this has brought about a much more radical change in the administrative relations between the federal and the state governments. As before, federal aid to the states involves different kinds of supervision over their use of it. Their officials have to co-operate in a variety of ways and for many different purposes, and although jealousies and frictions still intervene, they do not seem to be much greater at the official level than those which exist between local and central officials in many non-federal forms of government. It seems to have been true of the more recent periods as well as the earlier one that co-operation is easiest at the official and expert level. The governors and the state legislatures still present from time to time something of a façade of embattled sovereignties, but the essential running of the complicated machinery of a Welfare State goes on in spite of it. At the beginning of the New Deal, Roosevelt thought in terms of direct co-operation between the President and the Governors, but he soon learned that it was not politically possible to by-pass the Senators as the channels of state-federal communication. Since the Federal Government pays so high a proportion of the cost, it would have been theoretically possible for it to run new social services directly; but the general tendency has been to use the machinery of the states wherever the problem itself is not of such a nature as to make a more centralized administration essential. In the basic Soc

Security Act of 1935 different solutions were applied to different categories of those to be aided. The relatively immobile—dependant children and the blind—were to be aided by the states with federal matching grants to enable them to step up benefits. For the old a contributory pension system on a state basis would have been complicated to administer in view of the extent of internal migration; and a national system was set up, supplemented by additional state action on a relief basis, again aided by federal grants.

Finally, mass unemployment could only be tackled nationally, but assistance had to be administered locally, since it had to be dovetailed with local relief provisions. The conditional grant system had disadvantages in that some states might prefer not to accept it, and to throw their burden directly on to the shoulders of the Federal Government. The tax-offset device avoided this dilemma. A federal pay-roll tax was introduced, but it was provided that the employer could credit against it all but 10 per cent. of his contributions to an approved state unemployment insurance scheme. The states were thus induced to accept a general scheme of unemployment insurance under federal supervision on terms which did not raise the costs of their industries as against their competitors in other states.

One might here hazard the conjecture that the fact that federal aid to the states has always been accompanied by a measure of federal supervision makes it natural for Congressmen to take the view that if they vote money to foreign countries they might also have a say in its utilization. Why 'aid without strings'

abroad, when aid with strings is the accepted thing home?

At any rate, with the subsequent additions and improvements along the same general lines, the American citizen today can look to a combination of state and federal action to deal with most of the recognized hazards of a modern industrial community. The obvious gap is health insurance, and there have been several attempts to provide for a national scheme of health insurance along the general co-operative lines of the existing social security legislation. But this has come against strenuous opposition, notably from the organized medical profession—one of the most effective pressure groups—and their success in branding public health insurance as ‘socialized medicine’ has hitherto been sufficient to prevent the passage of such a measure. On the other hand, there have been a series of grants to states for work in particular fields of public health and for hospital construction.

Education presents a problem of a rather different kind. While no country gives as much education as does America at different levels to its citizens, there has been much feeling recently that the education that is given, which at the school level is a matter for local rather than the state, falls short in quality, and in particular that the low salaries paid to teachers and the low social esteem in which the teaching profession is held—the two things are not entirely separate—mean that the recruitment to it is inadequate. To this has been added, with the rapid increase in native-born population, a persistent shortage of school buildings

Some of the difficulties in remedying this by federal action in the form of large-scale grants are familiar in other countries facing roughly the same problems. On the one hand, there is the pressure for aid, when given, to go to parochial as well as to the public schools; on the other, the opposition of those to whom the constitutional separation of Church and State is the very ark of the covenant and any derogation from it, whether by a state or by the Federal Government, a halfway house to an America dominated by the Vatican. More particularly American is the question of the impact of federal aid upon educational segregation in the South. Federal money cannot be voted for segregated schools nor accepted by Southern states at the price of abandoning segregation. Finally, quite apart from the general resistance of taxpayers to a new and major field for government expenditure, there is the fact that the prospect of federal aid to education raises a further important aspect of the federal problem, the surviving economic inequalities of the states. The greatest need is not to be found where the greatest taxable revenues exist; a scheme which would meet the needs of the schools and the children would involve taxing richer states for the benefit of poorer ones.

To some extent this must happen in all federal systems; income and expenditure cannot precisely balance state by state. But the basic social security legislation with its system of matching grants did not recognize this fact and the states got according to what they could spend, even at the price of some distortion

of the pattern of social services in poorer states, and there was a natural tendency to concentrate on services which qualified for federal grants at the expense of others which they had to sustain themselves. Post-war legislation recognized the need of a factor which should take this into account; this was done by the National School Lunch Act and the Housing Construction Act, both passed in 1946; and attempts have been made to extend the principle to other aspects of social security. But America is a long way yet from accepting such regional redistribution of income as the proper function of the Federal Government, and it must guard against the influence of local and particular interests, of course, which directly result from existing regional disparities in the standard of living, in wage rates, and in tax burdens.

It is obvious then that to our original definition of the American citizen in his relation to the Federal Government, primarily a taxpayer and potential soldier, we must add his role as the ultimate beneficiary of various forms of federal aid. But since these are so largely channeled through state and local administration, the distinction between the state and the Federal Government must to some extent be blurred. Under what is generally known as 'co-operative federalism', we have an extremely complex governmental machine in which action is shaped as much by administrative convenience and popular or group pressures as by constitutional interpretation. Federal-state relations now include the operation of such organs as the Council of State Governments, which provide the machinery for the co-operation of state governments with each other. At one time

appeared possible that yet another type of governmental authority would have to be taken into account—a regional one for special purposes, deriving its authority from federal legislation, but undertaking some functions which might otherwise fall to states or localities. But the Tennessee Valley Authority has remained substantially unique, and although a possible extension of its principles to other areas has been envisaged, opposition to what are regarded as its socialistic aspects, particularly in the provision of publicly owned electric power, has been too strong. It remains as a monument to the empirical spirit of the New Deal, rather than as a pointer to a new form of American government. What is clear is that in this field of federal-state relations, the Courts have ceased to have the deciding voice in what may be done.

The fact that the Courts have thus removed themselves from what had been the main field of judicial review has induced some writers to regard the judiciary as permanently relegated to a subordinate position in the American system. When Professor D. W. Brogan came in 1954 to replace with a new book, *An Introduction to American Politics*, his former standard treatment, *The American Political System*, published twenty-one years before and written during the Presidency of Herbert Hoover, one conspicuous change was that whereas the earlier work had begun with a discussion of the Constitution and of judicial review, the subject was now relegated to a concluding chapter. Nevertheless, there are at least two good reasons for not forgetting that the United States government is

still one of limited powers, and of powers defined by court of law.

In the first place, there is the general consideration that the individual liberties of the United States citizen, his rights as against the State, depend upon constitutional guarantees. 'Due process of law' may no longer be a cover under which corporations can escape regulation; it remains, or should remain, the bulwark of personal freedom. In an age when the peculiar nature of the external threat to free societies and the additional significance given to espionage and subversion by modern technical developments tend to make 'security' issues a matter of more importance than has hitherto been normal in democracies, this issue cannot be neglected as unimportant. In the United States it has obtained additional importance because of a tendency to disregard the differences between subversion and mere nonconformity, and the relatively slight importance attached by the public mind to the social value of nonconformity itself.

It is perhaps natural for the outside observer to overestimate the extent to which civil liberties have been in jeopardy in the United States even during the height of the 'McCarthy period'. The people, a foreign academic visitor or journalist is most likely to meet, are those most concerned about freedom of speech, since they are professionally those with most to say. Furthermore, it is in the interest of the enemies of the United States to exaggerate any derogations there from personal freedom; though those who most loudly denounce such instances are often full of admiration

for régimes where personal freedom and political liberties are altogether absent. But even when all allowances are made for the ignorance and malevolence of many European intellectuals of the 'left', there are certain aspects of the American scene which clearly disquiet thinking Americans themselves, and which are inseparable from any consideration of the American citizen's relation to his government.

We can pass over, as of restricted political interest, the question of freedom in literature and the arts, only pausing to remark that the vulnerability of the political system to pressure groups is shown in the partial success of Roman Catholics in imposing their own views of morality on the printed word or the moving picture, of Southerners in suppressing the discussion of themes not in accordance with their own view of race relations, and in the use of the notion of 'group-libel' in reducing frankness about certain aspects of the American scene. In matters of this kind, the role of the Courts has been to try to interpret the very wide language of the First Amendment of the Constitution, with a reasonable respect for contemporary opinion on such matters.

On the Court's interpretation of the meaning of the constitutional principle of the separation of Church and State, differences of view are almost inevitable. The principle was, of course, only meant to apply to the Federal Government itself; most states had established Churches dating from the colonial period and disestablishment was not complete everywhere until well into the nineteenth century. The fact that it is now

a living issue is due to three developments of later date. In the first place, the beginnings of federal intervention in education and in aspects of health and welfare have brought it into an arena in which some important religious bodies are already active or have very pronounced views of their own. In the second place, there is the much greater importance of religious bodies, notably the Roman Catholic Church, who have beliefs about the boundaries between Church and State which do not coincide with those of the Founding Fathers. Finally, there are small but active sects whose tenets lead them to reject some of the duties of citizenship which the State defines them or who object on religious grounds to some of the symbolic observances of American nationalism—the saluting of the flag by schoolchildren, for instance.

In so far as the Court has supported the claims of the states in cases arising under the last head, its attitude has arisen from the general principle under which it now functions—namely, that legislatures, whether state or federal, must normally be assumed to embody the common sense of the majority. In other words, what has happened is that the Court has carried out a retreat from acting in such a way as to impede certain kinds of economic and social legislation over into a more general retreat from attempting to insist upon its own interpretation of constitutionality as against the interpretation held by legislators. And it is understandable that some of those who most firmly opposed its intervention in the former field should now accuse it of cowardice in hesitating about intervention

questions of civil liberties. It has become clear that an unreserved trust in the elected representatives of the people at a time of great popular feeling against certain causes or beliefs may have dangers unforeseen by theorists of democracy.

The direct political issues involved in civil liberties cases in the last few decades, and particularly since the Second World War, arise from situations in which the United States does not find itself alone. Even before the Russian Revolution, there was in all democratic countries a question as to how far democratic liberties could be claimed by those who were prepared, if the occasion arose, to use violence to overthrow the existing order of things, and perhaps thereafter, to deny those liberties to others. And certain American reactions to earlier movements on the extreme left suggested that the Jeffersonian cult of revolution was not held to apply to conditions in the United States. Since the establishment of Bolshevik power in Russia, and the creation under its auspices of a network of communist parties and other affiliated organizations covering the entire globe, Americans have had to reckon with the presence in their midst of a body of citizens who did not (and could not honestly) accept the rejection of revolution as a means of altering the American political and social system, and whose primary allegiance was to a foreign power.

After the passing of the wave of red-baiting during the war and immediately post-war periods, the United States in the 1920s and 1930s went along on the whole with most other countries in the Western political

tradition, in believing that although these dangers existed, the attempt to deal with them by government action would not be worth the implied departure from the general rules of political liberty that prevailed. When as a new world conflict cast its shadow, this confidence weakened.

After the Second World War there was a decided change in the atmosphere in that new revelations about the penetration of communist sympathizers into governmental and intellectual circles in the New Deal era, the mistaken belief that this was a cause of recent failures in American foreign policy, notably in China, the correct belief that communist sympathies were an instrument through which recruits were obtained for Soviet espionage, and finally the new importance attached to such espionage at a time when the military power of the Soviet Union was far greater than ever before, and the sense of security behind the ocean barriers consequently much weaker, all brought about a renewed concern in public opinion, and in Congress as to the role of communists in American society. Its consequences for the government service have already been discussed.

Because these doubts about loyalty were obvious and brutally exploited for personal or party political purposes, liberals who had been fully conscious of a similar threat from such organizations as the German American Bund in the days of Hitler's power had tended to object to all discussions of what was in itself a genuine problem. They tended to confuse the different aspects of the measures taken to deal with

and made it harder to discover what positive principles could now be devised to distinguish between legitimate and illegitimate measures of defence against a threat of subversion that was itself perfectly real. Nor were they helped in this by Congress itself or by the Department of Justice, which for a time was much influenced by Congress, since neither produced a consistent or workable jurisprudence of security.

The most striking of the measures taken from the non-American point of view was the attempt to deal with the problem by direct legislation. The basic piece of legislation itself—the Smith Act—was actually passed in 1940 at a time when Nazi sympathizers rather than Communists were likely to provide the immediate problem but when the two groups were agitating in the same direction. By this Act, the advocacy of force or violence as a means for overthrowing the government of the United States, and the organization of any body which taught such doctrine, were formally made illegal. It was under this Act that eleven of the principal leaders of the American Communist Party were convicted in 1948. This meant that the American Communist Party was recognized by the Courts as being, among other things, a conspiracy to overthrow the United States government by force. The Supreme Court held on appeal that the Act did not infringe ordinary freedom of discussion even where the ideas of Marxism-Leninism were concerned, but only their use to promote violent revolutionary action, and that the illegality of this intention was unaffected by the slender prospects of such action being attempted

in the near future. Since the American Constitution embodied methods for peaceful amendment, there could be no right of revolution in the United States.

It can hardly be denied that the Court was correct in its view as to the nature of the Communist Party that all Communist Parties have a revolutionary as well as (where permitted) a legal apparatus is a matter of common knowledge. Nor could Congress easily have denied the right to legislate against revolutionary subversive activities. What the arguments against the result in the *Dennis case* come to is the contention that Congress was unwise to invoke against a danger so remote (because of the small size and lack of appeal of the American Communist Party) legal sanctions of such a kind as to risk authorizing a general encroachment upon the régime of freedom of speech and writing that Americans were supposed to enjoy. But, faithful to their principle of letting the legislature decide for itself upon such matters, the justices could decide (as Justice Frankfurter clearly did decide) that the Act might be unwise and yet not unconstitutional.

Persons who take a more stringent view of what respect for civil liberties imposes upon the Court have regarded this distinction as both too abstract for the ordinary citizen, and as tenable only on the assumption that unwise Acts can be repealed through the action of the electorate in choosing wiser legislators. In making this choice, they say, will itself be vitiated if free speech is encroached upon. This means, in fact, that they wish to substitute the wisdom of the Courts for the wisdom of Congress and of the executive branch, and so

a reversal of positions would now seem improbable.

On the other hand, the Courts have limited some attempts at dealing with the problem by Executive action, such as the refusal of passports to presumed 'subversives'; though this is likely to be reversed by Congress on the Executive's recommendation, in which case the question of the new statute's constitutionality will clearly come up for decision.

More significant damage to civil liberties has resulted from the attempt to make communist beliefs a disqualification for certain types of public employment, and to enforce this by legislation requiring loyalty oaths from teachers and others. The provision in the Taft-Hartley excluding communists from access to the services of the National Labor Relations Board has been upheld, and so have certain state statutes imposing loyalty oaths upon classes of their employees and making membership in 'subversive organizations' a disqualification for such employment. More recently, however, the Court has shown a disposition to limit disqualification for employment to persons cognizant of the subversive purposes of organizations to which they may have adhered.

The State employees most closely involved have been the teachers, including university teachers, and the alleged justification for singling them out has been the undesirability of permitting the dissemination of subversive doctrines from the teacher's desk or professorial chair. There is no real parallel here to the position with regard to the Federal Government's own services where there are genuine questions of security

involved. Many of the dismissals arose from a refusal to answer questions about political views or affiliations of the persons concerned relying on the bar to self-incrimination contained in the Fifth Amendment to the Constitution.

As we have seen, libertarians have criticized the ruling in the *Bailey case* which authorizes the special administrative measures for dealing with dismissals from government service on the grounds of alleged disloyalty or other disqualifying factors, on the ground that since public employment, federal, state, and local now bulks so large—in 1956 it accounted for about 13 per cent. of the non-agricultural labour force—the loss of such employment involves discrimination. And they point to the paradox of recent action by the Federal Government (and of parallel actions by states and cities with its support) taken to prevent private employers from discriminating against seekers for employment on such grounds as colour or creed. A much more serious argument would seem to be the fact that exclusion from public employment, especially under the Eisenhower criteria, may be an insurmountable handicap in seeking private employment, so that a class of wholly under-privileged citizens may be created by purely administrative action under procedures to which the ordinary restraints of a court of law do not apply. The loyalty programme has also involved the denial to individuals of some categories of private employment in firms working on government contracts.

Much the most important weakness in the system

to be found in the part played by the Congressional committees of investigation themselves. Even if a charge of communist sympathies cannot be pinned upon an individual, the very fact of the attempt being made—perhaps upon the strength of evidence that would be inadmissible in a court of law—is bound to leave a stain upon his character that it may prove difficult or impossible to eradicate.

A particular problem in this field was raised by the new position which the development of military technology gave to the scientist as such. The very nature of scientific research made it hard to devise any system of security that would not also inhibit scientific progress; and the difficulties of the military and of such bodies as the Atomic Energy Commission were enhanced by the widespread popular mistrust of professional élites, and of the reflection of this mistrust in Congress. The attack upon the loyalty and discretion of Dr. J. Robert Oppenheimer in the hearings before the Personal Security Board of the Atomic Energy Commission in 1954 were important for the whole status of the scientific community and the impact upon that community of the attempt to discredit it, and of the intense network of security regulations with which it was now encompassed may be regarded as even more important than the effect of 'McCarthyism' on the government service.

It is widely believed that the atmosphere in which scientists now had to work tended to keep many of them away from direct government service and to confine them to universities, and in universities to

'non-classified' work, where their area of freedom would be greater. The first result of the launching of the Soviet earth satellites was to bring about self-questioning in America as to the place which scientists had been allowed to occupy in American society, but one cannot be sure that the outcome will be greater freedom for them. For what the satellites helped to demonstrate was the extent to which the nation depended upon its scientists, and it is probable that the resentment at this dependence was itself a part of the motivation for the attacks upon their liberties.

The experience of the scientists confirms the view that the whole problem of civil liberties in modern America is far more a problem of the public mind than of government proper. A genuine confusion between radical views and potential subversiveness is present in the public mind, of which, in this respect, Congress is perhaps a quite adequate representative.

This problem is partly a consequence of the 'cold war' itself, and its gravity will therefore tend to increase with fluctuations in international tensions, but it is partly also a symptom of the surviving uncertainty of American national sentiment. The institutions of the Federal Government presuppose a homogeneous people substantially united in outlook; but as the drive for fair employment practices shows, and as the racial discrimination inherent in all the measures taken to restrict immigration according to national quotas, the social facts are quite different. American society is still in fact organized on the basis of an assumed hierarchy of ethnic and religious groups.

although their members may seek to find a common denominator with their fellow-citizens in a heightened nationalism, there are limits beyond which assimilation can progress only slowly.

To some extent, of course, this is recognized as a political fact. A Jew could not become President, and hitherto being a Roman Catholic has been a bar, as we have already noted. On the other hand, it seems to be recognized that both Jews and Catholics ought to have a representative on the Supreme Court bench; and in making up electoral tickets at the state and local level much ingenuity goes into a nice balancing of ethnic and religious elements so as to appeal to an electorate which is presumed to think in these terms.

But from the point of view of the Constitution all Americans possess identical rights, and differentiation according to race has been outlawed by it since the passage of the post-Civil War amendments. It is therefore obvious that the Courts are or should be a major force in favour of the outlawing of surviving elements of discrimination. And this has been true in recent years in regard to the most palpable of all examples of such discrimination, that of the status of the Negro. It has been a topic of particular difficulty, because resistance to federal action in this field has been maintained by the South on the plea that race relations are a matter for local action, and that no improvement can be envisaged which does not receive the willing assent of the white majority. In rejecting the validity of this argument, the Supreme Court has

.

Why it has done this will be something for the future historian to inquire into. The increased political weight of the Negro due to his migration into states where whatever the limitations upon social equality, the right to vote was at least not denied him; the example set by the Federal Government in taking steps to end segregation in the armed services; the knowledge that there was no aspect of the American record more open to foreign criticism than the handling of the colour question in the United States, and this at a time when its foreign policy is designed to win the sympathy of non-white peoples—all these must come into the account. All that need be said here is that at the end of the last century the Supreme Court was prepared to accept as valid state legislation and private forms of discrimination which together totally undermined the clear intention of the authors of the post-Civil War amendments: a system of chattel-slavery gave way to a caste society in which the presumably inferior race was marked off by various forms of segregation, and denied the political power through which it might seek to remedy its inferiority. In recent decades this position has been increasingly challenged in the rest of the nation (including a part of the old South), and the Court has more and more come round to the majority view.

Its final step was the total abandonment of the doctrine of 'separate but equal' facilities as a permissible form of discrimination in the educational field. The resistance of certain states to the Court's decision in the segregation cases (in May 1954) has involved the revival of the more extreme canons of the Sta-

Rights interpretation of the Constitution, and a new emphasis upon the duties of the states to stand by them. The considerable success so far achieved by the obstructionists, and the collapse of the half-hearted federal attempts to enforce the law in the Little Rock affair, do not, however, affect the constitutional position of the Court whose position as final arbiter the opponents of the decision can do nothing to alter; but these events illustrate a point that has made itself obvious on more than one occasion in American history—namely, that for some purposes at any rate, judicial review requires for it to be effective a willingness to take direct action either on the part of the state authorities, or on the part of the Federal Government. And where the offender is itself a state, this means federal action. At this point the political veto built into the Congressional and party system begins to make itself felt, and the executive branch, by not acting, may nullify the best intentions of the judiciary. To understand the role of judicial review, we have to consider not only its range, but also its manifest limitations.

We cannot here consider many of the other aspects of the relation between the citizen and the government that would be needed in order to complete the picture of the situation as it now exists in the United States. We cannot, for instance, enter further into the technical and disputed question as to how the citizen fares in his personal relations with government departments under the now rather highly developed system of administrative law, particularly under the Administrative Procedure Act of 1946, and with the very wide scope

of appeal to the Courts from administrative decisions as compared with the position in Britain, where a very different situation prevails.

The American devices have certainly not precluded the resort to political pressures to secure favourable decisions from agencies of the government, and the relative frequency with which accusations are made that official positions have been used for purposes of private gain suggests that an element of corruption is inescapable where discretionary decisions can so easily affect private fortunes, as, for instance, in the licensing activities relating to radio of the Federal Communications Commission. American political corruption at every level of government is indeed something that has always attracted attention and always called forth the censure of critics coming from more stable and homogeneous societies, where a fairly rigid system of governmental ethics has been easier to establish through a mixture of institutional safeguards and of binding professional standards of behaviour. But it is not until now that there has been a major threat to political stability except in so far as the belief that it is unduly widespread may diminish Americans' respect for their institutions.

By one criterion familiar to foreign students of politics, Americans already show a lack of interest in the institutions which is the more surprising in view of the intensity of political campaigning; this is the criterion of electoral participation. While it is true that there are even apart from the barriers to voting that exist in the case of Negroes voting in the south and regist-

arrangements that may generally tell against a large turnout in a country where the population is so mobile, the figures are very low. In the Presidential elections of 1940, 1944, 1948, 1952, and 1956, the estimated turnout was 59·1 per cent., 53 per cent., 51·5 per cent., 62·7 per cent., and 60·4 per cent. In the British General Elections of 1935, 1945, 1950, 1951, and 1955, the comparable figures were 76·3 per cent., 72·7 per cent., 84 per cent., 82·5 per cent., and 76·8 per cent. Electoral participation in the French Fourth Republic was 79·5 per cent. in 1951 and 83 per cent. in 1956.

The figures for mid-term Congressional elections and for state and local contests where these are held separately are a good deal lower. It can, of course, be claimed that the reason for the low degree of electoral participation is that the American voter, with his three-tier elections as well as referenda and primaries, has to vote altogether too often and for too many people to regard the discharge of this electoral obligation as an essential of citizenship. Nevertheless, the figures cannot be dismissed as irrelevant to a consideration of the strength of American institutions.

The serious threats to the stability of democratic Federal Government under the Constitution are of three kinds. In the 1930s the depression seemed likely to produce, on the model of contemporary European developments, demagogic movements which had their precursors in native experiences, such as some aspects of the agrarian populism of the 1890s and which could very loosely be described as fascist. The brief domination of 'Huey' Long in Louisiana and the careers of

some of his lesser contemporaries seemed to carry warning; and not everyone was convinced that couldn't happen here'. Whatever else may be said the legacy of the New Deal, it did a good deal remove the social basis of this kind of thing, and even though the South is still vulnerable to appeals based upon racial prejudice and other forms of bigotry, the element of genuine social despair due to irredeemable poverty or prolonged mass unemployment, which is necessary for all such movements to feed upon, now seems precluded as a result of governmental action and of the knowledge of the capacity of government to act. What might happen in the case of another depression of similar dimensions, if the ordered processes of governments were to prove unable to cope, is, of course, another matter.

Today's pessimists will see the threat to the American political tradition as emanating from quite a different quarter. They note the rapidity with which the United States has become a great military power, the extent to which the disposition of national resources is dictated by military considerations, the way in which policies peaceful in their intent—such as economic aid to underdeveloped countries or better educational facilities at home—have to be presented as arising directly from the needs of defence, the inroads on freedom in the name of security, and the consequent social role of the policeman and the informer, and above all, perhaps the terrible nature of the decisions that may at any moment come before the head of the government as a result of the new developments in military technology.

and they conclude that in such a situation the role of the professional military is bound to be enhanced until it is the soldier rather than the civilian who governs and whose objectives settle the shape of society. America, they argue, is unlikely to fall victim to a totalitarian ideology; it may, however, under the pressure of the relentless competition with its Soviet rival, more and more take on the lineaments of the 'garrison state'.

It is arguable that the challenge from the military has already come and been defeated, in the failure of General MacArthur and his friends to make permanent political capital out of his dismissal by President Truman in 1951, arising from their differences about the conduct of the Korean War. On the other hand, it was disquieting to find how ready were Congress and the public, if only for a time, to lend an ear to the case of the dissident General, and to note that in some service circles what seemed to matter was their view that General MacArthur was right on the substance of the dispute, rather than the question of maintaining civilian control through upholding the President's rights as commander-in-chief. There have been signs too that the Strategic Air Command's conception of its responsibilities included the claim to regard any opposition to its estimate of its requirements as itself little short of treasonable; this was made clear in the Oppenheimer hearings.

A more convincing piece of evidence as to the essentially civilian bias of American government was the decision of Congress in the McMahon Act of 1946 to

keep the control of atomic energy in the hands of a civilian body (the United States Atomic Energy Commission), and the retention of this principle despite arguments from the side of the Defense Department that it involved complications in the development and production of nuclear weapons. It is an open question whether a different form of organization would have been any more likely to continue the wartime collaboration with America's allies, and thus prevent the waste and duplication of work between the United States and Britain that went on at least until the partial modification of the Act in 1958, and probably subsequently.

Finally, as we have seen earlier, the fear particularly in Congress of any concentration of authority in the hands of a single military figure or institution, has been one of the obstacles to bringing about a more unified and rational organization of the country's military forces. The degree of civilian control and the multiplicity of levels at which it is exercised suggests that Americans have been willing to pay a rather high price for the loss of military efficiency, for the sake of guard against the spectre of the 'man on horseback'.

One's general conclusions as to the threat of militarism in the United States must be that while some fear of demagogic dictatorship might be the penalty for a massive failure in economic policy at home, a strong element of military rule would be the most likely consequence of catastrophe in the field of foreign policy. If the so-called uncommitted countries, and even America's allies, were to fall under the control of the Soviet rulers, if the United States had to face

totalitarian world virtually in isolation, it could only do so at the cost of sacrificing everything to the demands of military security. Civilian control could be, at best, formal.

In addition there is, of course, the terrifying short-term problem in the question of who decides if a major nuclear attack against the United States has been unleashed. Since the margin for effective counter-attack is calculated in minutes, this is a serious question and is treated as such.

The real long-term threat to America's free institutions is that the American federal system will fail to achieve the objects of America's home and foreign policy. And that it might fail—especially where the latter is concerned—is largely the result of the most conspicuous feature of the American citizen's relation to his government—namely, his intense institutional conservatism. Despite all that has been done by the Court to free Congress from the trammels of constitutional limitation upon its actions, and despite the major shift in power towards the centre, the foreign observer cannot help feeling that the present system of government is ill-adapted to the tasks laid upon it, and that the difficulties in the way of radical constitutional revision are an important obstacle to improving it. Much has been written upon the possibilities of reform, and notably by those who have had some experience in trying to run parts of the present system from executive positions. It is true, however, that American academics have not been numerous among the critics and that their professional attention

has rather been mainly directed towards the application to politics of the so-called behavioural science through the study of the underlying attitudes of citizens, and of the informal organizations by which they make their wishes effective.

Where those relatively qualified to speak have been silent, it is not for the foreign student to make himself heard. But he cannot help seeing the United States in the extreme case of the common fate of modern governments in being unable to cope effectively with the ever growing burden of day-to-day responsibilities and in being forced to postpone or neglect important decisions of principle, including decisions about the shape of government itself. The separation of powers in its American form, and above all the diffusion of authority and responsibility within Congress, means that all decisions are likely to be compromises between different pressures, even where a straight decision either way might be more valuable. The pursuit of agreement is a democratic value, but it may be overdone. The world has suffered from the excesses of the *Fuehrerprinzip*, but lack of leadership may be no less dangerous. Even if the United States could exist for itself alone, it could hardly now afford the expenditure of effort involved in the uncertainties and complications of the budgetary process, or in the many efforts to secure new legislation that simply run into the same. The heads of the executive departments and the President himself should not have to give up so much of their energy to Congressional strategy and tactics and to the appeals to public opinion that this entails.

that they have too little time for thinking through the substance of their problems.

And all this is made far more dangerous by the fact that the United States is not alone, that it has to deal with hostile powers whose governments do not suffer from these handicaps, and that it has to act as the leader of a coalition of nations, a function not easy to fulfil when its own statesmen have continually to be looking over their shoulders to see whether what they are saying in their country's name is likely to be honoured in practice.

It is also clear that the citizen must be prepared to accept and pay for a level of administrative competence in the running of major departments of a kind that he has not in the past thought necessary. The number of 'political appointments'—that is, short-term recruitments from the non-governmental world—is far too large, their periods in office far too short, and the standard of those who can be got in for such work far too low—whether at the secretary or assistant secretary level—for the magnitude of the tasks in hand. The *damnosa hereditas* of Jacksonian Democracy, the view that one man is as good as another, that any literate citizen can do almost any job, and that a democracy can do without an administrative (and military) élite must be eliminated once and for all.

Very little of all this is related to that fact that the United States is a federation; even if its form of government were a unitary one, its size would compel an important measure of decentralization. It is the shape, or rather shapelessness, of the Federal Government itself. and its failure to draw the best men into

the nation's service, that presents the real problem. Whether these deficiencies can be remedied without sacrificing the substance of democracy is the American problem of the mid-twentieth century; it is the same problem as confronted Washington and his friends in the 1780s. Perhaps the fact that they solved it, against all apparent odds, is the most substantial ground for believing that it can be solved again.

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