OGG AND RAY'S

ESSENTIALS OF AMERICAN GOVERNMENT

WILLIAM H. YOUNG





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ESSENTIALS OF

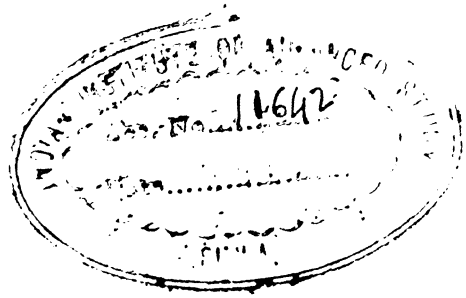
American Government

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PREFACE

As this edition was going to press, President John F. Kennedy was struck down by an assassin's bullet while riding through Dallas, Texas. By means of television, the entire nation was deeply involved in all of the subsequent proceedings in Dallas and Washington, D.C., and thus for the first time in our history participated in a deeply moving national tragedy. The whole melancholy episode provided a stirring testimonial to the enduring strength and stability of our political institutions. The transition of power which placed Vice-President Johnson in the presidency was accomplished without disturbance, the major policies of the government were continued with hardly a moment's interruption and our allies throughout the world were reassured by the ease with which all of this was accomplished amidst national shock.

In preparing this new edition of the *Essentials*, I have continued the process begun in the earlier edition of eliminating footnotes and reducing reference lists. I have also rearranged the material in such a way as to eliminate four chapters from the larger *Introduction*. The whole body of material has been brought up to date as of December, 1963.

William H. Young

Madison, Wisconsin

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ESSENTIALS OF

American Government

I

THE FOUNDATIONS OF GOVERNMENT IN THE UNITED STATES

A. THE CONSTITUTIONAL BASIS

1

The Setting

IN JUST TWELVE YEARS we shall celebrate the two-hundredth anniversary of the American experiment in self-government. We might, therefore, be justified in concluding that our political institutions have proved themselves by the test of time and are no longer on probation. In the history of the world, however, self-government under law has been achieved and practiced by few peoples and for short periods, whereas the practice of despotic, authoritarian, or monarchical regimes has been more widespread and more durable. Toward the close of the last century, it seemed that the ultimate triumph of democratic institutions throughout the world was merely a matter of time and education. The present century has brought new gains to the despots and fear and disillusionment to the democrats. The present era has also brought the American nation to a position of world leadership, involving unprecedented military commitments and staggering defense expenditures, for which it was and is largely unprepared. Our system of government is undergoing its severest test since 1861. No man can now say what of our precious political heritage we may have to discard in the interest of national survival. It is proper, therefore, that we continue to regard our institutions as experimental and to tend and nurture them as befits a fragile and delicate plant.

The great experiment in self-government

THE AMERICAN PEOPLE

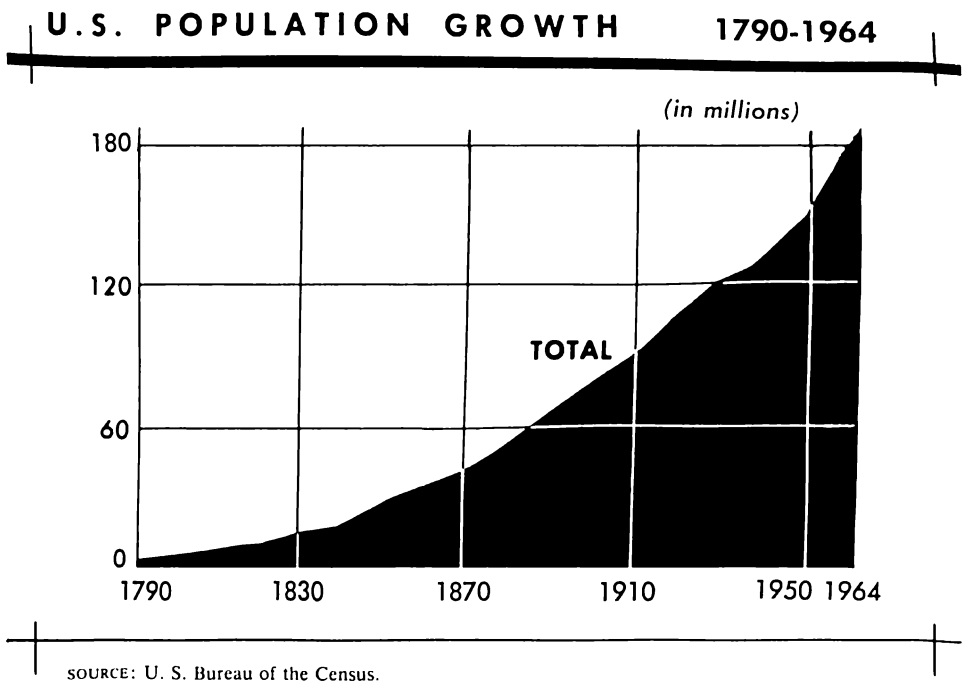
It is fitting to begin the study of the American system of government with the people by whom and for whom it is operated. It is they who make it what it is, and it is out of their desires, hopes, fears, and frustrations that arise its greatest difficulties, its greatest triumphs, and its greatest failures. To begin

The people of the United States

with, the 190 million residents of the United States occupy more than 3.6 million square miles of the earth's surface possessing an abundance of natural advantages unmatched by any area of comparable size. The reach of the American government, however, extends outward from our shores to embrace another 2.6 million persons and 4.5 thousand square miles of land area in our island possessions. The attempt to practice self-government over an area so vast and by a people so numerous is without parallel in history. From it spring some of the most perplexing of our political problems. Only the revolution in transportation and communication that has accompanied the rise of the American nation has made it possible to unite such an area in a single system of legal and political institutions. Even so, the centrifugal pull of sectional and regional interests and ambitions has repeatedly threatened the unity of our party system and of our central government.

Population increase

The Constitution of the United States was written for a nation of 4 million people occupying an area of 890 thousand square miles. The rapid growth of our population by immigration and natural increase, and of our territory by purchase and conquest, tested our governmental institutions to the utmost. In virtually any decade of the nineteenth century our population increased by one-fourth or more. Only in the 1890's did the rate begin to slacken and thereafter, with the curtailment of immigration and the decline in the birth rate, it fell finally to 7.2 per cent in the decade 1930-40. This contraction played as much havoc with our economic institutions, adjusted to an ever expanding market, as the rapid growth had tested our political arrangements. A sharp



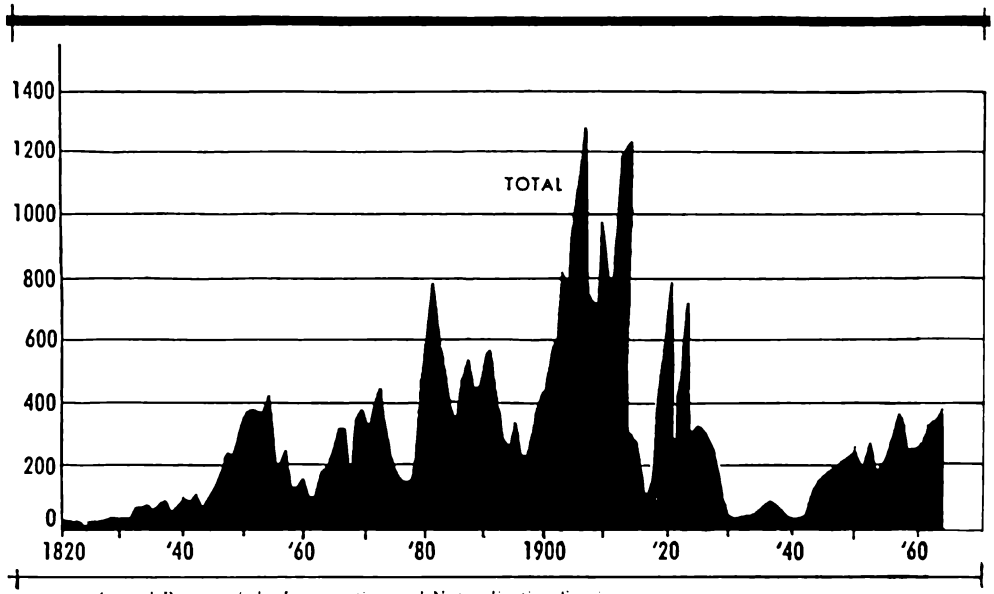
SOURCE: U. S. Bureau of the Census.

upturn in the birth rate in the middle forties sent the decennial rate of increase back up to 14.5 per cent in 1940-50 and to 18.5 per cent in 1950-60. Once again our economy and our political institutions are trying to adjust to these striking reversals.

A nation of immigrants

The United States is a country of immigrants. Except for the Indians, all of our people have come from foreign lands or are descendants of those who did. The movement in a little over a century of 40 million Europeans to our shores is unparalleled in the history of mankind and has been one of the important elements in our national strength and vitality. Until about 1880, the newcomers were largely from the United Kingdom, Germany, and Scandinavia, but thereafter the Italians and the Slavic peoples of Central and Eastern Europe provided the bulk of the migrants. As long as land was plentiful and

THE IMMIGRATION PICTURE, 1820-1962



SOURCE: *Annual Report of the Immigration and Naturalization Service.*

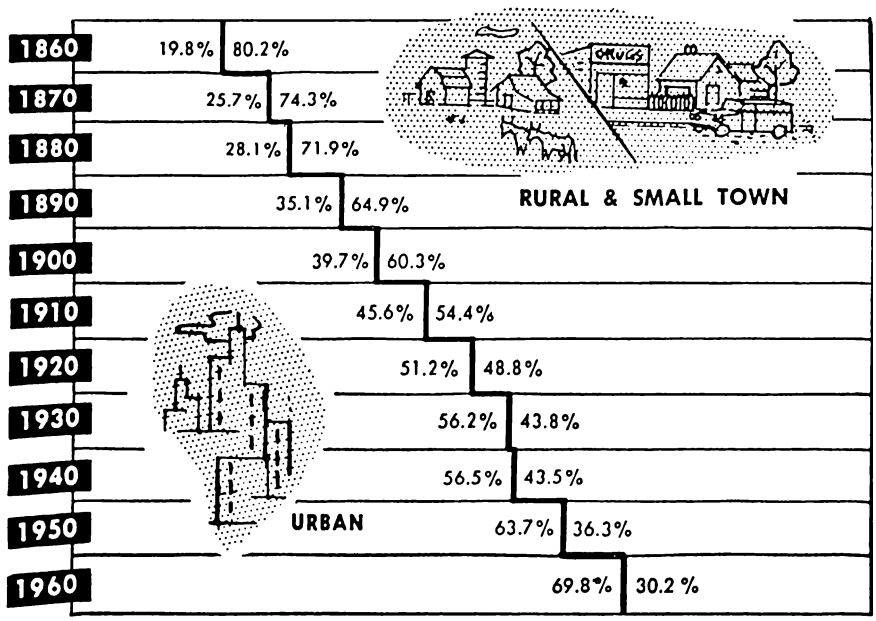
the need for labor in our rapidly expanding industries was acute, the policy of this nation was to encourage and even to stimulate the entrance of new blood. The closing of the land frontier in 1890, the growing power of organized labor, the recurring depressions that accompanied the triumph of industrial capitalism, and the antipathy which the more remote and exotic cultures of the later immigrants aroused, combined to change this policy and ultimately to reverse it. The enactment over several decades of qualitative restrictions (e.g., those aimed at criminals, paupers, and contract laborers) on the flow of immigrants failed to stem the tide and in 1921 the quota system was instituted. It remains today the basis of our admissions policy. Under present statutes about 155,000 migrants from Europe, Africa, and Asia may be admitted annually on the basis of quotas allotted to each nation or group of

nations in accordance with the relative contribution of that nation to our popu lation in 1920. Actually only about 100,000 quota immigrants are admitte yearly, since nationals of the United Kingdom and Ireland are not coming i the numbers authorized. Western Hemisphere nationals are admitted witho regard to quotas and these supply most of the balance of the average annu arrival of 270,000 persons. During the decade 1948-58, the rigors of th quota system were slightly relaxed to provide for some of the displaced pe sons caught after World War II in various European detention camps ar for victims of Communist tyranny in Central Europe. In summary, immigratio now makes an insignificant contribution to our annual population increase.

Internal distribution

Not all of the sections of the country have grown at a uniform rate. Th center of population has steadily moved westward. It is now (1960) in Sou Central Illinois. Although the most densely populated areas are still east the Allegheny Mountains, the Pacific Coast, the South West and Florida ha been gaining rapidly while New England, the South, and the Great Plai are either declining or barely holding on. Regions and states once accustom to a certain and substantial influence in the national life tend to cling stu bornly to their status, and newly advancing sections usually must batt intensely for a place in the scene. All of these regional stresses are reflected the Congress—in the long battle over reapportionment of seats in the Hou of Representatives, for example—and also in the national committees a

PROPORTIONS OF RURAL AND URBAN POPULATION, 1860–1960



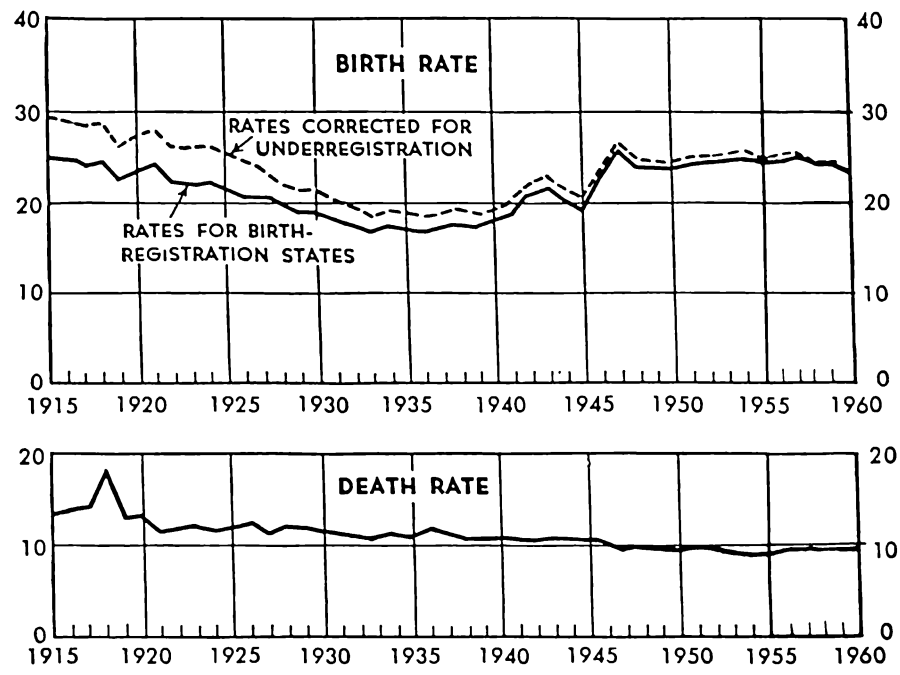
SOURCE: U. S. Bureau of the Census. Since 1910 the Census Bureau has broken down the rural category into farm and nonfarm.

conventions of our two great parties and in the claims for place in the cabinet and the courts.

The swing to urban living

More significant than growth or sectional distribution has been the revolution in the economy of our people. Of those 4 million who founded the nation, more than 90 per cent were farmers. The outlook of the self-reliant freeholder, expressed for the ages by Thomas Jefferson, dominated the nation for generations. Today 70 per cent of our people live in cities or villages of 2500 or more and another 21 per cent in smaller settlements. More than 42 per cent live in the 676 major metropolitan areas of the country. Fewer than 9 per cent of our people live on farms, and this percentage is declining. In fact, the farm population of 15.6 millions in 1960 is about the same as that in 1860.[1] The preference of our people for the life of the city, made possible by a tremendous revolution in agricultural technology, has necessitated the most striking changes in their political arrangements. It is the urban wage earner who invites, if he does not compel, the ever widening concern of the govern-

BIRTH AND DEATH RATES IN THE UNITED STATES, 1915–1960



SOURCE: U. S. Bureau of the Census, *Statistical Abstract of the United States, 1961*.

[1] The census bureau used a new and more realistic definition of farm in taking the census in 1960. Under the definition used in 1950 about 16 per cent of the population would have been classified as farmers. Despite the correction there are still perhaps as many as 6.5 million persons classified as farm dwellers who make most of their living working in a nearby city.

ment in all phases of daily life. Dependent, insecure, huddled together, the city masses expect the government to protect their far-flung system of food and water supply, to shelter them against the storms of economic recession, to educate their young and care for their old, to protect them against bombs and germs. The growth of the modern pervasive state may be traced directly to the urbanization and industrialization of our society. The rural and small-town outlook yields grudgingly, however, and in many states (perhaps a majority) and counties continues to dominate the polity, even though its sponsors are outnumbered by their urban neighbors. To many the great city still stands, as it did for Jefferson, for wickedness, greed, ignorance, and decadence. Somewhere in most contests for ascendancy within and between our parties, in Congress and in the state capitols, the conflict of large city and small-town rural views can be found. The constitutional fabric of American government was largely designed for rural people, and adjusting it to the continuing urbanization of the American nation is a never ending task requiring the highest order of statesmanship.

The increase in longevity

The great attack on communicable disease, incident to the discovery of germ causation, and the spread of preventive public health has added more than 20 years to the life expectancy of Americans in this century. The falling death rate has contributed heavily to the increase in our population over the years. More than this, it has changed the age distribution of our population so that our aged grow in numbers both relatively and absolutely. Just as the basis of the pressure on educational programs and facilities was the rise of the birth rate in the mid-forties, so the basis of modern programs of old-age security can be found in the fact that more and more of our people are living beyond their productive years and must somehow be cared for during the sunset of life.

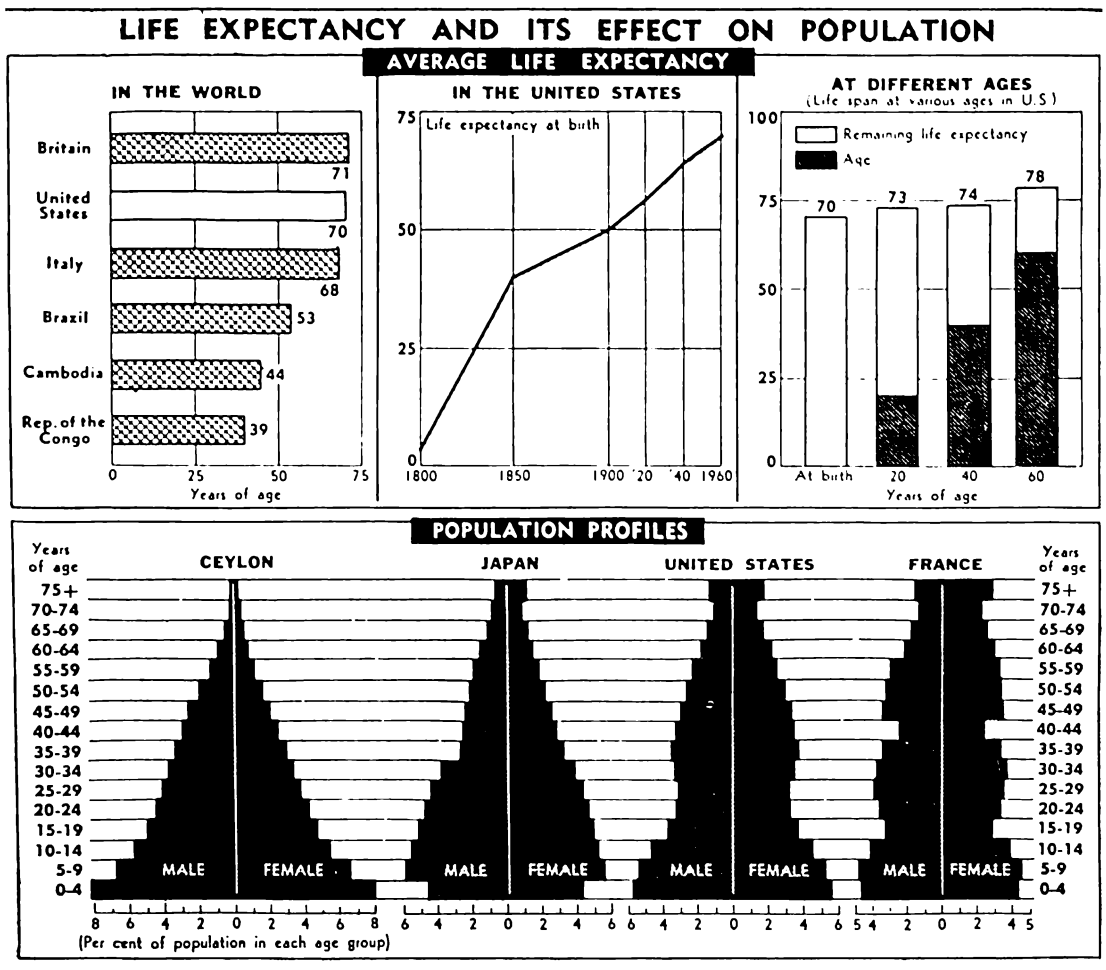
Racial complexion

The first census of the American people (1790) revealed that among our 4 million inhabitants were 757,000 Negroes, more than 90 per cent of whom were slaves. According to the most recent census (1960), there are more than 18.5 million Negroes in the United States. Assimilating the African slave into the American polity has been one of the most difficult of our national problems and we are still far from according them a place in our society consistent with their numbers. For half a century the Negro was largely an adjunct to the southern plantation system of agriculture. After freedom, and especially during the world wars of this century, the Negroes moved in large numbers to northern and middle-western industrial cities. Here they are pressing against discriminatory practices of northerners as well as pressing urban political leaders for greater exertion on behalf of their Southern brethren. The race problem has rarely been quiescent in national politics. Today, a century after freedom, it is as acutely alive as ever. Along the southwestern border, the Mexican and Indian residents present the same kinds of problems as do the Chinese and Japanese on the West Coast, for our population numbers more than 1,600,000 members of nonwhite races in addition to the Negroes.

AMERICAN SOCIETY

Groups and American politics

The great emphasis in the history of the American nation on the free, self-centered individual has tended to obscure the fact that the American people associate together in groups for many purposes. And the activities of these groups are as much a part of the setting of American government as the activities of free-wheeling individuals. Americans have never embraced the idea of the totally pervasive state. They believe that society embraces more than government and that outside the realm of politics exist other realms of religion, business, and family life. Furthermore, they expect their government to react benevolently to the needs of these other social institutions and to respond to their legitimate claims upon it. These other institutional loyalties of our people profoundly influence their political behavior.



SOURCE: *The New York Times*, Jan. 15, 1961.

Religion

In the main, this nation is composed of Protestant Christians. Approximately 60 per cent of all those who profess some religious faith are members of one of the Protestant sects. About 30 per cent are Roman Catholics. We are thus largely inheritors of the spirit of the Reformation—individualistic and anti-authoritarian in religion as well as in politics. Our religious diversity, however, has frequently meant political conflict in those areas of public policy where religious beliefs and governmental objectives collide, for example, the public school system. The Catholic minority, actually a majority in some states and cities, has repeatedly sought public support for the parochial school system.

American economic system

America has brought itself to a standard of living not rivalled nor even closely approximated in the modern world by a combination of rich natural resources and a strong addiction to privately owned and operated economic institutions dependent upon the peculiar calculus of the market place for the distribution of goods and services. The preferred method of industrial organization is the corporation. Some of these have grown to such size, wealth, and power that they overshadow many states and most cities. Although ownership through stock shares is increasingly widespread, some 9 million Americans participating, control is still rather tightly confined to small directorates. The economic power of corporate management, however, has been closely challenged in the past few decades by the spread of labor unions among the industrial workers. Twenty-five per cent of those gainfully employed are now members of some labor organization. Many of these unions control the labor supply of particular industries throughout the length of the nation. Government, representing in this case the consuming public, has been less and less able or willing to watch indifferently while the titans of labor and industry do battle.

Although the American economy is characterized by private enterprise, it is by no means a pure system of private capitalism. Every variation of government intervention in the economy has been or is now being practiced, and a substantial amount of public enterprise exists alongside of private enterprise, sometimes in direct competition with it. Governmental regulation of the great privately owned sector of our economy has been steadily growing in scope and impact. Many of the major political controversies of our national history have stemmed from public efforts to mitigate the disadvantages of unrestrained private decision in the production and distribution of wealth. In no other modern nation, nevertheless, has the government allowed such free play to private initiative and personal acquisitiveness. Private economic groups provide much of the stimulus to political controversy in America. Opposition by them to government control of their affairs has been more than offset by their demands for benevolent governmental intervention on their behalf. There has never been the clear separation of government from the economy that "classical" economics or "laissez-faire" politics is supposed to entail.

The family

Under the impact of urbanization and industrialization, the American family has been undergoing a thorough reconstruction. Children, an economic

asset in agrarian culture, are an economic liability in urban culture, their dependence and helplessness continuing well into the teens. The spread of birth-control information, the economic difficulties in the way of adequate housing, the high cost of food and clothing, the lack of free play space, the dangerous congestion of the streets—all of these combined in the past to promote a decline in the size and the importance of the family unit in urban society. The public school system inherited one of the major functions of the family, that of transmitting our cultural inheritance, and the neighborhood cinema acquired the entertainment function. The entrance of women on a large scale into gainful employment has been another hard blow at the family. Slowly and painfully the family is now being refashioned. The flight to the suburbs from the congestion of the central city for more space and quiet, the introduction by public effort of playground and recreation space, the spread of public housing projects, the decline in the work week and the resultant increase in leisure time for all sectors of the population, the replacement of the cinema by television, have all re-created an atmosphere in which the family has found new functions or recaptured some traditional ones. The sharp upturn in the birth rate among the urban middle classes testifies to the emerging new strength of the family unit.

Classes

Perhaps nothing so sharply distinguishes American society from that of its European neighbors and ancestors as the absence of rigid class distinctions. Since the fall of the southern plantation aristocracy built upon slavery, a class of landed gentry has not appeared on the American scene. Neither Junker nor English squire has fashioned a code of gentlemanly conduct or honorable military service which could claim the loyalty of any segment of the American people. On the other hand, the great appeal of the Marxists to the proletariat, so enthusiastically received by European wageworkers, has fallen largely on deaf ears. In America, more than 80 per cent of our people consider themselves members of the middle class. Virtually every American youth carries a presidential commission or a certificate to high public or private office in his school kit.

Attitudes

The American character, if such there be, is not without its paradoxes and inconsistencies. Our people are probably the most optimistic on earth in their belief in rejuvenation by self-will with the aid of wise legislation. They are also among the most irreverent and lawless. They exhibit little real deference to the institutions of law enforcement and will explode in more violence in the city of Chicago in one month than the people of England in a whole year. We are not as a people very much given to abstract philosophic speculation and rather pride ourselves on our expedient practicality. And yet we cling firmly to some of the most grandiose myths (free market, social contract) of all times and habitually clothe our foreign policy in the most idealistic and humanitarian terms ("open door in China," "making world safe for democracy"). Although we have ever exhibited the most profound and abiding distrust of government and officialdom, we scurry to the public authorities to help us in time of trouble. We are constantly heaping more tasks on our public bodies and are

at the same time stubbornly refusing either to pay enough to perform them or to grant to officialdom the co-operation it needs to achieve effective results. Regimentation in economic affairs we generally oppose with vigor, but under the influence of national advertising we are one of the most regimented people on earth in matters of dress, taste, music, entertainment, decoration, and food. All this ambivalence in the body politic is reflected in our system of government and adds immeasurably to its difficulties. Ours is not an easy people to govern—we are neither docile nor deferential; we are not very consistent governors—we expect too much and contribute too little.

OUR ENGLISH POLITICAL HERITAGE

English experience dominates our political inheritance:

Much of the color and regional diversity of American society stems from the numerous migrants from the continents of Europe and Asia who brought with them some of the culture of their native lands. Our main lineage, however, is undoubtedly English, and it is especially to them that we owe the basic forms and concepts of our system of government. The fathers of the American Constitution and of the War for Independence were inseparably linked to centuries of English institutional development. The triumph of the Revolution separated our people from the English government of the day; it did not, fortunately, sever all ties of memory or shared experience between them and their English forebears. Our political institutions did not emerge suddenly and in complete form in 1776 nor yet in 1787, but had been long abuilding in the colonies and in the mother country as well. Our people lived in the British Empire for almost as long before independence as they have lived outside of it since.

1. The idea and practice of representative government

The Englishmen who settled this land brought with them, among many other concepts, the idea that the powerful parts of any government ought in some sense to represent those who are governed by it. The English Parliament had been in existence for several centuries when this nation was founded and had come to represent the major classes of English life, even if it had not yet achieved effective representation of the great mass of peasants and artisans. The period of settlement of America coincided with a constitutional revolution in England in which the representative branch of the government successfully wrested power from the despotic or monarchical branch. Although settlers sympathetic to both sides came to America, those favorable to Parliament were especially influential throughout New England.

The colonies were established under various auspices—private proprietors, trading companies, and monarchical endowment—but whatever their origin, a representative assembly was established sooner or later in every one of them to share power with, occasionally to dominate, the executive agents of the sponsors. The members of these legislatures were everywhere elected by vote of a limited number of their fellow citizens (property owners or taxpayers mainly) under much more systematic schemes of representation than in the mother country. There was no need in America to represent an almost non-

existent landed aristocracy in an upper house, for example. These colonial legislatures proved the training grounds for colonial politicians and provided this nation with more than a century of experience with elected representative assemblies before we struck off the ties with the English crown.

In our long colonial history something very like the contest between Crown and Parliament occurred. These representative bodies proved their ability time and again to keep the imported English executives under close control. The idea that the legislature ought to represent the people—or at least the better (richer) part of them—that it ought to control the public treasury and determine major public policy was, therefore, firmly established in practice when the constitutions for a new nation were written. It should also be added that most of the colonial assemblies formed the lower house of a two-house legislature, the upper house being a governor's council. The practice of bicameralism was thus well established in America before 1776.

2. The idea of limited government

The essence of constitutional government is that power is limited by law and these limits are enforced upon rulers by established procedures and wide public understanding. Our English forefathers, for the most part, brought with them a firm attachment to the idea that this kind of government is both wise and practicable. The citizens of a nation, they believed, had certain rights which were beyond the power of any government to impair. As Englishmen, they claimed a sphere of personal freedom and asserted that fair procedures must be observed by executive officials. These conceptions linked them with hundreds of years of English constitutional development. The English settler brought tangible records—some old like the Magna Charta and some new like the Petition of Right—to support and illuminate these assertions. In the contest with the mother country, the colonists repeatedly claimed that the English government was trampling upon their rights as Englishmen. There is no more lucid statement in the literature of Western civilization of this English idea of human rights than the opening paragraphs of the Declaration of Independence. Every constitution written for the newly organized states during the Revolutionary period contained guarantees of individual liberty and requirements for fair procedure. In at least seven of these charters these safeguards against undue power were grouped in bills of rights.

3. The idea of popular sovereignty

That the ultimate source of all legitimate public authority is the people themselves is an idea which our forefathers took for granted. To most of them government came into being by agreement of the governed (social contract), found its justification in protecting their liberties, and received only so much authority as the people felt it necessary to grant. The great English philosopher John Locke, who in the late seventeenth century formulated these views for all time, was speaking for the Englishmen in America as well as for those in his own country. The practice of colonial America—illustrated by the Mayflower Compact, the self-written charters of Connecticut and Rhode Island, and the state constitutions drafted by the colonists at the time of separation—more nearly approached the theory than did any experience of European or English history. When the colonists became their own masters they conferred power

upon their own governments in the most grudging and distrustful manner. Frequent elections, short terms of office, and specific limitations on power characterized every one of the first state constitutions. It should not be assumed, however, that the idea that power rested upon consent included the notion that all of the governed were qualified by merit or by right to participate in the processes of selection or decision. The right to vote was not one which either practice or theory attributed to every adult citizen. In other words, our English political heritage was constitutional government, not democratic government; and popular sovereignty was a theory about the origin of power, not about its exercise or its organization.

4. The common law

Perhaps the most complete institutional transfer from England to the New World was that of the English system of jurisprudence. From the beginning of our history to the present day, the English common law has been the basis of our legal system.[2] Deeply imbedded in it at the time of its transportation were conceptions like "due process," "trial by jury," "freedom from arrest except for demonstrable cause," "equity," and many others which constituted important and specific elements in American bills of rights and in our ideas of limited governmental authority. The common law is largely judge-made law, built up over centuries by the application of traditional legal doctrines (precedents) to new situations. The slow and deliberate adjustment of the laws to the changing fabric of life, which adherence to the common law of England encourages, has been and is now one of the major conservative influences in our national life.

5. The institutions of local government

English institutions of local government, evolved over centuries, were also transplanted almost intact to America. The county was established in 1634 in Virginia and in 1643 in Massachusetts. The town dates almost from the landing of the Pilgrims, the chartered municipal corporation from 1686.[3] The borough took root, however, only in the middle colonies like Pennsylvania. Local officials like the sheriff and the justice of the peace continue to this day to remind us that the history of our political institutions reaches backward without interruption into Anglo-Saxon England. The states of the new nation made no important modifications in these agencies of local government.

American contribution

Upon this heritage of English ideas and institutions the American system of government was established. Overlaid, one must add, by a strong belief, especially among the Puritans, in the wickedness of man and the corroding effects of power. To the stock of English political wisdom with which our ancestors launched this nation as an independent unit in the world of nation-states, the American contributions have been: (1) the democratization of the entire system; (2) the practice of written constitutions and the ultimate interpretation of their meaning by an independent judiciary; (3) the practice of separation of powers among the principal branches of the state and national governments; and, most important of all, (4) the achievement of a federal union with a strong central government existing alongside strong state and local governments.

[2] Except in Louisiana where the French legal system is the basis.
[3] From 1653 if the Dutch charter for New York City is counted.

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2

The Constitution of the United States

THE ACHIEVEMENT OF FEDERAL UNION

The Continental Congress

FEARFUL OF THE CONSEQUENCES of concerted colonial action, the English government never gave ideas of colonial unity much encouragement. Scattered proposals like Franklin's Albany plan and experiments like the New England Confederation (1643-83), looking to solidarity, had captured little loyalty. Growing controversy with the mother country, after the defeat of the French removed the compelling need for English support, stimulated the idea of union, and events after 1770 gave the idea of cooperation new impetus. Even yet, the colonists seemed more aware of their differences than of their common purposes. As they became more deeply involved in bold and hazardous resistance to English authority, the creation of at least some intercolonial consultative and directing machinery became a matter of the most obvious common sense, and in the autumn of 1774 the First Continental Congress assembled in Philadelphia. It brought together irregularly chosen delegates from every colony except Georgia. For seven weeks the Congress devoted itself to considering the common peril, planning cooperation, adopting a "declaration of rights," and formulating resolutions for consideration by the colonial legislatures. It concluded with a call for a similar congress to meet the following year unless in the meantime the emergency became war. When the Second Continental Congress convened in May, 1775, it found itself obliged, in the absence of any other common authority, to step into the breach, take measures for raising armies and funds, and in effect transform itself into a government. Moving from place to place as the exigencies of hostilities required, this body

served as the country's sole organ of national authority until March, 1781.

Need for a central government

Without some such unifying authority as the Continental Congress, the War for Independence could hardly have been carried to a successful conclusion. As an agency of government, however, the body left much to be desired. Starting as only a voluntary intercolonial conference, it remained to the end a revolutionary assembly, resting on no basis of law and exercising powers only by virtue of having assumed them with the tacit consent of the governments and peoples of the newly established states. To meet a temporary emergency, makeshift arrangements such as these might, and did, serve. But the war gave promise of lasting many weary years; if successful, it would leave the country confronted with the problem of a permanent national government. In any event, finance, commerce, and foreign relations, to say nothing of military and naval operations, called for management by a government resting on some regular basis, endowed with definite powers, and assured of some degree of permanence. Out of this practical necessity arose the idea of a genuine and enduring union of the states under a national constitution—in other words, that concept of American nationality which gradually broadened and deepened until it found expression in the Articles of Confederation, the Constitution of 1787, and eventually the vast and complicated mechanism of national authority and management which we know today as the government of the United States.

The Articles of Confederation

The first constitution for a union of states was adopted in 1781 and was called the Articles of Confederation. It originated in a resolution offered to the Continental Congress in 1776 by Richard Henry Lee, at the same time that he moved for a declaration of colonial independence. A committee appointed by the Congress quickly drafted a plan of union. It was not, however, approved by the Congress until November 15, 1777, and was not approved by every participating state until three and one-half years later. When this new form of government finally was put into operation, the war that had evoked it was nearly at an end.

Sovereignty of the states

Under the Articles, the United States at last achieved a government resting on a written constitution and with functions and powers defined therein—a government which, it must in fairness be remembered, was considerably superior to the extralegal Continental Congress, even though it in turn eventually was replaced. Three main features characterized it. The first was the recognition of the practice under the Continental Congress of state sovereignty, expressly asserted in the document's second "article." The states, it is true, relinquished important powers to the new central establishment, but on the whole the union remained a loose confederation or league. In this respect as in others it closely resembles the General Assembly of the United Nations.

A Congress of delegates

A second feature was the concentration of all national powers in a Congress of one house, meeting annually and composed of delegates appointed in each state for a single year as the legislature might direct. Each state paid its own delegates and could recall them and appoint others at any time; and no person might serve more than three years out of any six. Voting was by states,

and each state had a single vote regardless of the number of delegates it sent. Committees might, of course, be set up and subordinate officers appointed. There was no separate executive branch and no national system of courts.

Powers and limitations

In the third place, powers and functions conferred on the national government were few and severely restricted. Far from being a general lawmaking authority like our present Congress, the Congress of the Confederation was only a grand committee of the states charged with executive and managerial functions, such as looking after foreign relations, declaring and conducting war on land and sea, building and equipping a navy, carrying on dealings with the Indian tribes, borrowing money, issuing bills of credit, regulating weights and measures, and making requisitions upon the states for soldiers and for funds. It could not reach down past the state governments to control the people in any effective way. It could adopt resolutions and issue commands, but it had only limited means of enforcing them—none at all through judicial process except by resort to the courts of the states. And some of the most important powers entrusted to it—for example, making treaties and coining and borrowing money—could be exercised only if the delegations of as many as nine states concurred.

Controversy over the Articles

Even before the Articles took effect, several leading statesmen of the new nation—Washington, Hamilton, Madison, Jay, among others—felt that the power of the central government was inadequate to its tasks. The Confederation period was thus marked from the outset by controversy over the fundamental law itself, and as the years passed the controversy grew in intensity and scope. On the one side were the nationalists—including many of the officers of the Revolutionary army, the merchants, the holders of certificates of public debt, and the manufacturers—who felt the new union cut but a sorry figure internationally, inviting abuse if not invasion by the boastful and aggressive nations of Europe. Only a strong central government could muster cash, soldiers, and armaments sufficient to compel respect abroad. This group was skeptical of the competence and disillusioned by the behavior of the state legislatures which were the centers of political power in the nation. Distrustful of too much democracy, they disdained the frequent elections, short terms of office, and the agrarian biases of the state lawmakers. Only a central authority, they argued, could establish the public credit, restrain state imposition on trade, deal with foreign nations, and stimulate the development of national rather than regional loyalties and ambitions. On the other side there was a numerous group, largely of freehold farmers and without the brilliant leadership of the nationalists, who supported confederation and opposed granting any more power to the central government. Central governments are far removed from the immediate problems of domestic life and are apt to be despotic, they said. We have not thrown off the chains of a transoceanic monarch only to fetter ourselves to a home-grown one. The states are the important units for the exercise of power. Their governments under new constitutions are everywhere close to "the people" and sensitive to their needs. In this way did one of the enduring issues in American politics originate. These two con-

ceptions ultimately contributed to the formation of political parties and under the new Constitution of 1787 continued to clash for generations thereafter.

Achievements under the Articles

The powerful arguments of the talented nationalists tended to minimize the significant achievements under the Articles. A new national domain was created by the cession to the central government of the claims of the states to lands west of the Alleghenies. In a series of acts culminating in the famous Northwest Ordinance of 1787, the Congress laid the foundation for the development of five republican institutions in this vast area and their ultimate admission to the Union as states. Executive departments were created and staffed with a permanent bureaucracy: the Post Office, Treasury, War, and Foreign Affairs agencies were created under individuals designated by Congress. The vast debt created by the war was brought into manageable form by the settlement of accounts and was substantially reduced. New loans were rather readily negotiated with Dutch bankers. The country successfully weathered the economic depression following victory, and signs of recovery were everywhere apparent at the end of the Confederation period.

Weaknesses of the Articles

The nationalists were, however, able to point to the lack of an independent income and the inability of the Confederation government to meet all of its fiscal responsibilities, either to foreign or domestic creditors, as a serious flaw in the United States government. Without dependable income, the government could not meet its past obligations and it could not prepare the nation to defend itself from hostile European powers. The nation could do little to compel obedience to its mandates; it was wholly dependent upon the states for execution as well as for income.

A revision convention called

The immediate impetus to reform of the Confederation was interstate controversy over commerce. Successful negotiations between Virginia and Maryland, held under the auspices of George Washington, led to another conference on tariff barriers to which Virginia, at the suggestion of Washington and Madison, invited other interested states. To the convention in Annapolis in 1786 came representatives of only five states, but among them were Madison and Hamilton, leaders of the nationalist cause. They induced the delegates to invite all the states to send delegates to a new convention in 1787 in Philadelphia at which all of the defects of the Confederation could be considered, together with proposals for the reform of the Articles. Congress added its weight by formally "calling" the conference, specifying that it be held for

> . . . The sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several state legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the states, render the federal constitution adequate to the exigencies of government and the preservation of the Union.

The nationalist leaders threw their full influence behind the conference, and out of it came the Constitution of the United States.

THE CONVENTION OF 1787

Membership

The convention thus called finally got under way in what is now known as Independence Hall on May 25. Though characterized by Jefferson as "an assembly of demigods," the convention contained men of widely differing temperaments, abilities, and aptitudes. Lawyers predominated, and several of the delegates were reasonably well acquainted not only with the history of English law and politics but with the governmental systems of continental Europe. About half were college graduates. Most had been active in the government and politics of their respective states. Many had helped frame constitutions, sat as members of legislatures, or held executive or judicial offices. Thirty-one had served in Congress. Men of age and maturity were included, notably Franklin, who was almost 82. But a large proportion of the most active and influential delegates were comparatively young: Madison, the master-builder, was 36, Gouverneur Morris 35, Hamilton 30, and Charles Pinckney 29.

Conservative temper

Furthermore, the men who now held the country's political destinies in their hands were not ardent supporters of the Confederation. Many of the great leaders of the movement for Independence were absent. Patrick Henry "smelt a rat," and refused to attend. John Hancock was not there; nor were Richard Henry Lee, Samuel Adams, and Thomas Paine. Almost to a man, the delegates were drawn from the professional and propertied classes, chiefly in the tidewater areas where such wealth as existed was largely concentrated. Not one was a frontiersman or a wage earner, and only one had a small farmer background. Few were as conservative as Hamilton, who wanted to see a highly centralized and more or less aristocratic political system set up. But few, also, could be classed as democrats, in the sense of springing from and speaking for the small-propertied or propertyless elements of the population. They were more concerned with order and stability than with liberty and equality.

Common objective

Plenty of disagreements were bound to arise, once the delegates had started their discussions. Upon the objective chiefly to be aimed at, however, there was, first and last, little difference of opinion—namely, a government of sufficient strength not only to take care of national defense and to discharge national obligations, but to withstand agrarian-debtor agitation typified by Shays' Rebellion in Massachusetts, preserve social order, and keep the country on an even keel. And although the resulting Constitution provided for a more popular plan of government than could at that time have been found in any other important country in the world, it is not surprising that, motivated as it was, it should have been purposely shaped—by means of checks and balances, indirect elections, perpetuation of suffrage limitations in the states and presidential veto—to prevent democratic majoritarian elements from capturing control of affairs. Yet it did not close the doors against more democracy later on, and therein lay one of its principal merits.

Although 74 delegates in all were appointed, only 55 ever attended, and

the average attendance seems not to have exceeded 30 or 35. At the opening meeting, Washington was unanimously chosen to preside, and this prevented him from taking an active part in the debates. Indeed, so far as is known, he addressed the convention only twice, on the opening and closing days. With the possible exception of Franklin, he, however, was less dependent on speech-making than any other delegate. He performed his duties as moderator in a manner to allay strife; in private conversation and informal conference, his opinions and advice were always to be had; and it is doubtful whether, on the whole, any member exerted greater influence. Organization and procedure

Having full power to make its own rules, the convention early decided that each state, regardless of number of delegates, should have one vote, as in the contemporary Congress. In order to enable the members to speak freely and plainly and to protect them against outside criticism and pressure, the convention further decided that the sittings should be behind closed doors, and that nothing should be put into print or otherwise made public until the work was finished. This injunction of secrecy was observed with remarkable fidelity. A secretary was appointed and a journal kept. When, however, in 1819, this official record was printed by order of Congress, in the hope that it would throw light on the way in which various provisions of the Constitution then in controversy should be interpreted, it proved to be only a bare and not wholly accurate enumeration of formal motions and of votes by states. Happily, Madison, one of the most vigilant and efficient delegates, sensing the importance of what was being done, kept a record of his own. Fragmentary memoranda were left by a few other members, and something can be learned from letters written by certain delegates to their friends. But what we know today about the convention's discussions, as distinguished from its formal actions, comes mainly from the clear and candid *Notes* laboriously compiled by the learned and methodical Virginian.

THE CONSTITUTION FRAMED

> We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.—Preamble to the Constitution

Deliberations had not gone far before the delegates were brought face to face with a truly challenging question. Should they merely revise the Articles of Confederation, or should they make a new constitution? There was no getting away from the fact that their instructions looked only to revision. On the other hand, many thoughtful persons agreed with Washington when he confessed the hope that the convention would "adopt no temporizing expedients," but would "probe the defects of the constitution [i.e., the Articles] The convention's main problem

to the bottom and provide a radical cure, whether they are agreed to or not." Both points of view were strongly represented in the convention, and a plan based on each was quickly presented for consideration.

The Virginia plan

The first scheme to appear came logically from Virginia, the state that had taken the initiative in bringing the convention about. Governor Edmund Randolph presented it, although Madison was its principal author. It embodied the best thought of the convention's ablest student of political, and especially federal, institutions. The plan did not explicitly repudiate the Articles. But it looked to a general reconstruction of the system of government existing under them; and after it was submitted the fiction that a mere revision was intended was soon dropped. A national executive was to be established; also a national judiciary; and, finally, a legislature, with a lower house elected directly by the people and an upper one chosen by the lower from persons nominated by the state legislatures. Thus reconstructed, the national government was to have greatly increased powers, among them those of levying taxes, vetoing state legislation when considered contrary to the national constitution or to a treaty, and calling forth the militia against any member of the union "failing to fulfill its duty." Presented on May 29, in the form of 15 resolutions, this plan gave the convention something to go to work on at once.

The New Jersey plan

One feature of the plan strongly objected to by members particularly sensitive about the "rights" of their states was the proposal to substitute for the existing equal voting power of the states in Congress an arrangement under which, in both branches, such power should be apportioned in accordance with numbers of free inhabitants or perhaps contributions to the national treasury. To forestall such an innovation, a counterplan based on a "purely federal" principle was laid before the convention on June 15 by William Paterson of New Jersey. It went far toward meeting the demands of the delegates for a drastic change. It allowed Congress power to raise money from duties on imports and from stamp taxes, and to regulate commerce, and it invested acts of Congress with the character of "supreme law of the respective states." It even envisaged a national executive in the form of a council chosen by Congress and a national judiciary composed of a "supreme tribunal." Congress, however, was still to consist of but a single house, with all states retaining an equal voice.

Compromise the only solution

Advocated ably by Paterson and other interested members, the New Jersey plan enlisted the support of many delegates. Its introduction, indeed, split the convention sharply into two factions or groups: one representing the nationalist view, the other the federationist view. One wanted political power proportioned to the ability of the states to aid in bearing the public burdens; the other wanted the states to retain the full equality they had enjoyed since independence, and argued that on any other basis the less populous ones would be placed at grave, and even ruinous, disadvantage. Happily, it was not necessary that either element have its way completely. The delegates were, after all, not dogmatic theorists and were accustomed in their business relations and in their state politics to the saving principle of give and take. They

expressed their widely differing views freely, sometimes acrimoniously. Having done so, most of them were not averse to compromise. The constitution upon which they finally agreed became, clause after clause, a product of mutual concession.

Decision in favor of a strong national government

Fortunately, however, a majority of the delegates were essentially united on matters of decidedly larger significance than those on which they differed; and compromise was resorted to only after certain vital decisions had been reached. The most important of these was to cast aside the Articles and to establish a government resting on a more truly national basis. Some delegates were of the opinion that the instructions given by the states were binding literally, and that if the convention wanted to do more than merely revise the Articles, its members ought to go back to their states and ask for appropriate authority. But the majority were, as Randolph later put it, "not scrupulous on the point of power," and felt, as he further testified, that "when the salvation of the republic was at stake it would be treason to our trust not to propose what we found necessary." Within five days after the convention began work, a resolution was adopted in committee of the whole "that a national government ought to be established consisting of a supreme legislative, executive, and judiciary." Madison, Hamilton, and other delegates made it perfectly clear that this meant a government embodying one supreme power, with "complete and compulsive operation." The federationists protested, saying at first that they would have no part in such a union; the nationalist delegates declared they would accept nothing less. The federationists, as we have seen, brought forward the New Jersey plan, yet at the final test only three states voted for it. From first to last—sometimes at grave risk of driving the convention on the rocks—the initial determination was wisely adhered to.

From the key decision mentioned flowed certain great corollaries: (1) the powers of the national government should be sharply increased; (2) the machinery of government should be expanded, as indeed was proposed in all of the plans offered; (3) the national government, equally with the state governments, should operate directly on the people, through its own laws, administrative officers, and courts; and (4) the new constitution should be the "supreme law of the land," enforceable in the courts like any other law and paramount over all other constitutions, laws, and official actions, national or state.

A national government resting upon the people

Adoption of the third principle, in particular, meant that the national government was to be put on a wholly new basis. Instead of resting upon semi-independent states, and having little control over the people except through the medium of state authorities, it was thenceforth to be a government of a single body politic, with power to levy and collect taxes and to make and enforce laws by its own direct action. Thereafter, as James Wilson explained, over each citizen were to be two governments, both "derived from the people," both "meant for the people," and both operating by an independent authority upon the people. And, as Madison subsequently wrote to Jefferson, in adopting such an arrangement the convention deftly divested itself of

one of its most delicate problems. If the experience of the Confederation indicated anything, it was that states might fail to live up to their obligations; and every plan thus far presented to the convention had embraced or assumed some arrangement for coercing states proving delinquent. The nature and method of such coercion would, however, have stirred grave differences of opinion; and members must have been relieved to find that in providing for a national government endowed with power to enforce its authority directly upon *people*, they had—so, at least, it was supposed—made the coercion of *states* unnecessary.

The great compromises:

These fundamentals settled, the nationalist forces were ready to make concessions; and the first and most notable one related to voting power in Congress. The nationalists wanted representation, and with it voting power, proportioned to population; the federationists wanted voting power to be equal; delegates on both sides threatened more than once to withdraw unless their demands were met. At a very critical point in the proceedings, the delegates from Connecticut brought forward a proposal for equal representation in the upper house, combined with representation in the lower house in proportion to numbers; and after heated debate the deadlock was broken and the compromise adopted. This eminently sensible disposition of the matter was casually suggested quite early in the deliberations and did not originate with the Connecticut delegation. Franklin, indeed, was probably its actual author. Dr. Johnson and his colleagues deserve credit, however, for putting it formally before the convention with an array of unanswerable arguments; and the agreement has ever since been known as the "Connecticut compromise." It removed the greatest single obstacle to harmony.

1. The Connecticut compromise

2. The three-fifths clause

The decision in favor of proportioned representation in the lower house, however, made it necessary to determine how population should be computed; and difficulty at this point was produced by the existence of slavery. Should slaves be regarded as persons or as chattels? If the former, they ought to be counted in; if the latter, they ought to be left out. With a view to increasing their quotas in Congress, the southern states wanted slaves included; the northern and middle states, having few slaves, wanted them disregarded; and much lively discussion ensued. A possible solution was, however, already in men's minds when the convention met. When asking the states for additional funds in 1783, Congress had proposed changing the basis of requisitions from land values to numbers of population, so computed as to include three-fifths of all slaves. This "federal ratio" was early incorporated in the Virginia plan as an amendment; it found a place also in the New Jersey scheme; and, notwithstanding initial differences of opinion, it was ultimately adopted by the convention as being, in the words of Rufus King, "the language of all America." There was no defense for it in logic. But it represented the closest approach to a generally satisfactory arrangement that a body of practical-minded men could discover. The slave states received less representation than they thought their due. They found compensation, however, in a provision that direct taxes laid by Congress should be apportioned on the same

reduced basis as representation—although, in point of fact, direct taxes were actually imposed by the national government only four times before slavery was abolished.

3. Commerce and the slave trade

Still another compromise pertained to the powers of Congress over commerce. The delegates north of the Potomac were keenly interested in commerce and wanted Congress to have full power to regulate trade and navigation. The four states farther south, however, were agricultural, and their delegates feared that Congress would levy export duties on southern products and in other ways discriminate against the noncommercial section. Furthermore, there was the question of the slave trade. The northern states would have been willing to see the traffic abolished immediately, and Maryland and Virginia, being well stocked, had no great interest in it. But Georgia and the Carolinas wanted it to continue, and the convention was told firmly that these states would never accept the new plan "unless their right to import slaves be untouched." The outcome was an agreement which pacified all elements. Congress was to have broad powers to regulate navigation and foreign trade, including power to lay duties on imports. But national taxes on exports were forbidden, and the importation of slaves might not be interfered with by the national government (except to the extent of a head-tax not exceeding $10) prior to the year 1808.

The Constitution completed

Many other important matters claimed the attention of the delegates through the sultry midsummer days during which the convention patiently pursued its labors. The nature and powers, and especially the mode of selection, of the executive absorbed much time and thought, the more by reason of the fact that plans gradually took form for a chief executive different from any the world had ever known. The manner of electing senators—whether by the people, by the state legislatures, or by some agency especially devised for the purpose—proved difficult to decide. The appointment and status of the national judiciary provoked ardent discussion. The broadened powers to be vested in Congress, the mode of admitting new states, the control of the national government over state militia, the manner of amending the new constitution—these and a score of other topics required painstaking consideration; and the convention, as Franklin testified, spent a great deal of time "sawing boards to make them fit." From first to last, the Virginia plan, as progressively amplified, formed the main basis of discussion. First, the essentials of this plan, embodied in the Randolph resolutions, were thrashed out in committee of the whole. Then, after being reported back to the convention considerably altered, they were again debated in full. Next, the growing document was turned over, after a couple of months, to a committee of detail which worked it into a balanced constitutional text. The convention spent upwards of six weeks more in discussing this draft. Finally, Gouverneur Morris, aided by his fellow Pennsylvanian, James Wilson, wrote out with his own hand the completed fundamental law, putting it into the lucid English for which it has ever since been notable among great documents; and on September 17, 39 delegates, representing 12 states, signed it.

Franklin, whose contributions had been chiefly those of wise suggestion

The test ahead

and quiet conciliation, remarked to a group of delegates while the signatures were being affixed that "often and often" during the session he had looked at a sun painted on the president's chair without being able to tell whether it was rising or setting. "Now, at length," he added hopefully, "I have the happiness to know that it is a rising, and not a setting, sun." The actual test, however, was yet to come. The convention had ignored the instructions given most of its members and, instead of patching up the Articles, had prepared a new and very different frame of government. Would the people of the states approve what it had done? Even the delegates were not very enthusiastic about the results of their labors. Three of those present when the document was signed refused to put their names to it. Of 13 who were absent, at least four are known to have been critical if not actually hostile. Few, if any, were entirely satisfied: Franklin had many misgivings which he willingly submerged in the interests of unity; Hamilton admitted that he signed mainly because he felt that the proposed scheme of government could not possibly prove worse than the existing one.

THE CONTEST OVER RATIFICATION

Procedures

A decade earlier, adoption of the Articles had been held up for three and one-half years awaiting ratification by every one of the states. To ease matters this time, the Constitution provided in its closing article that it should take effect when ratified by nine states only. To give it a more popular basis, action was required to be taken in each state not by the legislature, as in the case of the Articles, but by a convention chosen for the purpose by the voters. Assenting to both procedures, Congress, on September 28, formally transmitted the proposed instrument to the states without recommendation or other comment.

Objections to the new plan

The controversies that had stirred the convention were now transferred to the country at large. From New England to Georgia, the new frame of government was circulated and discussed, dissected, explained, praised, denounced. Objections arose in many quarters; scarcely a feature of the plan, indeed, escaped attack. There were men who, like Patrick Henry and Samuel Adams, were so imbued with the Revolutionary concepts of liberty that they took instant offense at any proposal looking toward a centralization of authority. On the other hand, some people thought that the new plan did not provide for as much centralization as was needed. The debtor elements were aroused by the clause which forbade the states to issue bills of credit. Many northerners considered that too much was conceded to the slave-holding interests; many southerners felt that these interests had been dealt with unfairly. Large inland elements—small farmers, backwoodsmen, pioneers—feared the effects of the commercial powers given to Congress; men of property, although generally favorable, wondered how freely the new taxing powers would be used. Everywhere the complaint was voiced that the document failed to take any notice of numerous fundamental rights and liberties, e.g., freedom of

speech, freedom of the press, freedom of assembly, right of petition, and religious liberty, so carefully guaranteed in the bills of rights prefixed to a majority of the state constitutions, and likely to need protection even more, popular elements thought, against a strong central government. No single group of dissenters could have prevailed by its own efforts; but in most states the various hostile elements tended to merge into an opposition extremely difficult to convert or overcome.

Ratification by nine states

In the Philadelphia convention, the interests hardest to satisfy were the delegates of less populous states. The conclusions arrived at were, however, on the whole favorable to those states, which accordingly became the first to ratify. In Massachusetts, Virginia, New York, and other states, time was required to rally support. There was grave danger lest some state indispensable to the proposed union because of its location or general importance should remain obdurate. By cleverly appeasing Samuel Adams and John Hancock, to whom the "Anti-Federalists" of the interior looked for leadership, the supporters of the pending plan won in Massachusetts by a close vote, and only after agreeing to a series of suggested amendments aimed at reducing the power of the central government. Ratification in New Hampshire after a hard contest brought the number to the required nine. But no one supposed that the new government could be launched successfully on this minimum basis. Even after Virginia gave a favorable decision, following an exceptionally bitter fight, the battle was not yet won. New York was still outside, and New York was a pivotal state without which the union would be a mere caricature.

Ratification of the Constitution of 1787

State	*Date*	*Vote*
Delaware	Dec. 7, 1787	Unanimous
Pennsylvania	Dec. 12, 1787	46-23
New Jersey	Dec. 19, 1787	Unanimous
Georgia	Jan. 2, 1788	Unanimous
Connecticut	Jan. 9, 1788	128-40
Massachusetts	Feb. 6, 1788	187-168
Maryland	April 28, 1788	63-11
South Carolina	May 23, 1788	149-73
New Hampshire	June 21, 1788	57-46
Virginia	June 25, 1788	89-79
New York	July 26, 1788	30-27
North Carolina	Nov. 21, 1789	184-77
Rhode Island	May 29, 1790	34-32

Ratification in New York: The Federalist

Moreover, the opposition in New York, especially in the rural sections, was very formidable; and, realizing this, the friends of the Constitution made every effort before the state convention met at Poughkeepsie to convince the people that the proposed plan of government was moderate, safe, and workable. Most active in this was Hamilton, who, after having been "praised by

everybody but supported by none" at Philadelphia, now came into his own as a leader in the campaign for ratification. He it was who conceived the idea of printing in the leading newspapers of the state a systematic explanation and defense of the Constitution in the form of a series of brief public letters, associating with himself for the purpose another able New Yorker, John Jay, and also the most convincing expounder outside of New York, Madison. The result was the remarkable group of papers, 85 in number, appearing over the pen-name "Publius," but known ever since to students of American history as *The Federalist*. The letters were prepared in haste and published in New York City newspapers at the rate of three or four a week, as campaign documents. But their authors—all young and vigorous—were full of their subject and knew how to write. Taken as a group, the papers, though frankly propagandist and presenting only one side, have never been surpassed as examples of direct, lucid, and convincing exposition. Better than anything else—unless possibly Madison's *Notes*—they reveal what the Constitution meant to the men who made it.

The Constitution put into effect

Either won over by Hamilton and his collaborators or unwilling to see the state remain outside of the Union after all but two of the others had joined, the New York convention finally ratified on July 26, although by a margin of only three votes. Meanwhile, on July 2, it was officially announced in Congress that the ninth state had ratified, and attention was turned to preparations for putting the new government into operation. The states were instructed to choose presidential electors, senators, and representatives, and New York City was fixed as the temporary seat of government. Then the old Congress, already incapacitated by lack of a quorum, disappeared, leaving the field clear for its successor. The new House of Representatives was organized on April 2, 1789; the Senate came together three days later; and on April 30, Washington took the oath of office as president. Seven months afterwards, North Carolina, appeased by a decision of Congress to submit a series of constitutional amendments guaranteeing civil liberties, and threatened with being treated commercially as though a foreign country, ratified the new fundamental law; and similar action by Rhode Island in the spring of 1790 made the union complete.

THE CONSTITUTION'S CHARACTERISTICS AND SOURCES

The Constitution as a document

"This paper," wrote Gouverneur Morris in commending the Constitution to a friend, "has been the subject of infinite investigation, disputation, and declamation. While some have boasted it as a work from Heaven, others have given it a less righteous origin. I have many reasons to believe that it is the work of plain honest men, and such, I think, it will appear." Herein lies the reason why the instrument, once adopted, succeeded and survived beyond the hopes of its most ardent advocates. As constitutions go, it is a brief and simple document. Even with the later amendments, its approximately 6000 words fill only 12 or 15 pages of print; one can read it through in leisurely fashion in half an hour. Second, its contents are organized according to a clear

and logical pattern. Following a brief preamble (significant as a statement of general purpose, but having no legal force), three main articles are devoted to the legislative, executive, and judicial branches, respectively. Four shorter articles deal, in order, with the position of the states, the modes of amendment, the supremacy of national power, and ratification. Finally come the amendments, appended at the end and numbered serially. Third, thanks to the committee of detail, and especially to Gouverneur Morris, the document's language is clear, direct, and concise. To be sure, some clauses, for example, those touching citizenship, or that authorizing Congress to "provide for . . . the general welfare of the United States," lend themselves to more than one interpretation; and the conflicts and decisions arising out of resulting differences of opinion make up a considerable part of the country's constitutional history in the past 174 years. Nevertheless, our greatest constitutional controversies are traceable rather to omissions than to provisions of doubtful meaning.

Significance of its omission

Yet it is its omissions, at least as truly as its actual provisions, that stamp the document as "the work of plain honest men." If theorists had written it, very likely it would have been filled with high-sounding phrases out of touch with reality. Even "practical" men might have made the mistake of overloading it with details. Instead of merely authorizing Congress to regulate interstate commerce, they might have undertaken to define "regulate" and "commerce." Instead of simply empowering Congress to lay and collect taxes to provide for the general welfare, they might have undertaken to specify the kinds of taxes to be employed and even to indicate what they meant by "general welfare." If they had done such things, however, they would at once have tied the hands of the new government, and would either have forced a long line of later amendments or permanently thwarted the freedom of interpretation, experiment, and decision that has been the very lifeblood of the nation in later days. What the framers wisely undertook was simply to apply practical remedies to the defects of an existing political system. In doing this, they did not hold back from strong measures. Aware, however, that their judgment and foresight were not infallible, they deliberately omitted from the resulting basic law everything that could safely be supplied by generations faced with new problems and blessed with even richer experience.

Its sources

It follows that the framers did not go out of their way to invent political forms. Nor did they borrow far afield. Some of them were students of Vattel, Montesquieu, and other continental writers; some had read history and could cite the failures of ancient confederacies or draw illustrations from the experiences of France and other continental states. But, as an earlier writer has remarked, this knowledge taught them rather what to avoid than what to adopt; and insofar as they drew upon European sources at all, such sources were the common law, the principles of Magna Carta and the Bill of Rights, the writings of Locke and Blackstone, and other characteristic products of their English motherland. In the main, however, this monumental heritage had passed to America far back in colonial days, and, at the time when the national Con-

stitution took form, was already deeply embedded in the constitutions, laws, and usages of the states. In a literal sense, therefore, the new instrument grew out of the political life of Americans themselves in the colonial and Revolutionary periods. "Experience," said John Dickinson, "must be our guide; reason may mislead us." Fortunately, our forefathers had accumulated enough political experience by 1787 to serve as a rich and adequate resource.

Great principles embodied

All of the great ideas and institutions of our English heritage were embodied in the Constitution as adopted in 1788 and amended by the First Congress and the states. The government established by it was limited in power, representative in character, and based upon the people. By leaving the prescription of voting qualifications to the states it opened the door to the spread of the voting privilege throughout adult America, and thus paved the way for the democratization of American government which has so strikingly modified the entire machinery provided in 1787. By providing a written instrument self-designated as the "supreme law of the land," the framers stimulated the innovation of judicial review, that is, the ultimate and authoritative interpretation of its provisions by an independent national judiciary. The system of separation of powers and of checks and balances which it contains, although directly traceable to colonial and state experience, marks one of the major departures from both the tradition and evolving practice of the British government. The greatest achievement of the framers, however, was unquestionably the federal union—the creation of a strong national government side by side with strong and effective state governments. The Constitution, finally, provides for orderly change, and by legislation, custom, executive action, judicial interpretation, and formal amendment it has proved adaptable to the revolutionary changes in the life of our people since it was adopted. Despite all of the modifications and adaptations, the great principles of the Constitution have endured.

THE PROCESS OF CONSTITUTIONAL DEVELOPMENT

> The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, . . .—Art. V.

Actual Constitution is more than a document

The moment the new instrument became effective, executive officers, congressmen, and judges began to interpret and apply its provisions and thus to build up year by year in accumulating practice and precedent the flesh of government that covers the skeleton. The constitutional system of our own times, therefore, embraces the whole fabric of documents, practices, and con-

ceptions, and hundreds of pages are required to expound its operations. It is appropriate that we examine the ways in which the Constitution, thus conceived, expands and adjusts itself to the never ending flux of American society. The first method to be considered is that of formal amendment.

The amending process

Desiring that the new fundamental law should neither be impossible to amend, as the Articles had been, nor yet capable of too easy change, the framers devised a difficult but not prohibitive procedure. The only restriction placed upon the free operation of the procedure (aside from a temporary one relating to the slave trade) is that no state may be deprived of its equality in the Senate without its consent.

Stages in the process:

Although two methods of initiating amendments and two methods of ratifying them are provided, all thus far adopted have been proposed in the same way: by joint resolution of the two branches of Congress. All except the Twenty-first (repealing national prohibition) have likewise been ratified in the same manner: by action of the state legislatures. Any amendment receiving a two-thirds vote, that is, at least two-thirds of a quorum, in both House and Senate is transmitted by the head (administrator) of the General Services Administration to the governors of the several states, to be laid before the legislatures or conventions. The president can interpose no veto. Not being legislative acts, amendments are not officially submitted to him at all.

1. Initiation

The national convention an unused device

This does not mean that there have been no attempts to launch amendment proposals by the alternative method of a national convention. In fact, at one time or another the legislatures of considerably more than two-thirds of the states have called upon Congress to convoke a convention for the purpose. For example, under the auspices of the Council of State Governments, a concerted drive was launched in December, 1962, to get the states to memorialize Congress to call a convention for consideration of three amendments aimed at reducing the power of the Supreme Court and strengthening the power of the states. One of these amendments was aimed at the amending process itself and would authorize two-thirds of the state legislatures to initiate amendments without Congressional approval. Thus far the drive has not achieved the requisite support. Petitions designed to convoke a convention for a broad reconstruction of the Constitution had been sent earlier by the states. They were especially numerous at the time of the nullification controversy of 1832 and again in 1859-60 when civil war was imminent. The opinion has sometimes been advanced that every request for a convention made at any time by a state is to be regarded as pending indefinitely, and that whenever two-thirds of the states are found to have made such a request, Congress ought forthwith to call a convention. This "cumulative" view, however, is not generally accepted. Even though there never has been any official determination of the length of time a request from a state shall be regarded as remaining "alive," it is hardly conceivable that Congress would call a convention unless petitions were received from the necessary number of states within a sufficiently limited period to create an appearance of concerted demand. If a convention were once convoked, it presumably could go as far as it liked in proposing amend-

84TH CONGRESS
1ST SESSION

H. J. RES. 214

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 1955

Mr. JOHNSON of California introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States providing for the election of President and Vice President.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That an amendment is hereby proposed to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by three-fourths of the legislatures of the several States. Said amendment shall be as follows:

THE BEGINNING OF AN AMENDMENT TO THE CONSTITUTION

ments, and might even put before the country a completely rewritten fundamental law.

2. Ratification

Whether a given amendment shall be acted upon by state legislatures or by conventions especially chosen for the purpose is determined by Congress. Although the original Constitution was ratified by conventions, the legislative method was adhered to uniformly for amendments until the Twenty-first was submitted in 1933. Conventions, although more costly, are likely to give quicker results, and they have the further advantage of being chosen by the people with reference solely to the proposal upon which they are to act. Although ratified by legislatures, the Eighteenth (prohibition) Amendment came to be looked upon as more appropriate for action by conventions, which therefore were employed in repealing it. Whichever plan is used, reports of

actions taken are sent by the governors to the General Services Administration, which, if the necessary three-fourths majority is attained, proclaims the amendment effective as part of the Constitution.

Until fairly recently, a proposal failing to get the requisite majority was never officially announced as rejected, and accordingly was looked upon as remaining before the states indefinitely. By their own terms, however, four out of the last six amendments were to become operative only if ratified within seven years. How long an amendment with no time limit shall be considered pending is, the Supreme Court has said, a political question and therefore one for Congress alone to decide. No decision on the matter has ever been made; and a child labor amendment submitted in 1924 is regarded by some as still "alive." Congress has gone so far as to decree that while a state which has rejected an amendment may change its mind and ratify, a state, once having ratified, cannot reverse its action. Finally, under judicial interpretation of Article V, ratification must be literally by state legislatures or conventions, as Congress may ordain, and not by the people acting directly. In 1918, Ohio amended her state constitution to provide that after her legislature should have ratified an amendment the voters should be given an opportunity through a referendum to confirm or reverse the decision. A test case being brought, the United States Supreme Court held this procedure invalid.

Number of amendments proposed and adopted

The states were not yet safely gathered under the "new roof," as the Constitution was popularly termed in early days, before proposals began to be made for "extension of the eaves." Altogether, almost 5000 drafted amendments (many of them duplicates, of course, or relating to the same matters) have been introduced in Congress from 1789 to 1964. Nowadays, anywhere from 40 to 60 proposals are presented in the House or Senate (or both) during an average session, referred to the appropriate judiciary committee, filed, and mostly forgotten. The total number of amendments actually endorsed by the two houses is only 29, and the number ratified by the states only 24. Indeed, it would hardly be erroneous to say that the Constitution really has been amended only 14 times, because the first ten amendments were, to all intents and purposes, part of the original plan promised to many state ratifying bodies.

THE AMENDMENTS

The successful use of the amending process has been episodic: a few years of intense effort separated by long periods of quiescence. In the first twenty years of its life, 12 amendments were added to the Constitution: ten as a result of promises given to ratifying conventions and two as a result of practical difficulties encountered in applying certain provisions. The first ten amendments comprise the Bill of Rights, the absence of which from the original document was widely criticized in the contest over ratification. Madison and others solemnly promised to introduce the desired changes at the earliest opportunity and in the first year of Congress, seventeen amendments were voted by the House, 12 endorsed by the Senate, and 10 later ratified by the

The first twelve amendments

states. The eleventh amendment added in 1798 reversed a decision of the Supreme Court and provided that thereafter a state could not be sued by a citizen of another state or nation in the national courts. The twelfth changed the method of voting for president and vice-president by the electoral college after a tie vote between Jefferson and Burr threw the election of 1800 into the House of Representatives. Henceforth, the electors were required to ballot separately for president and vice-president.

The Civil War Amendments

Not until the Reconstruction era after the Civil War was the Constitution again changed despite numerous efforts to postpone or delay the crisis of 1861 by constitutional revision. The Republican majority, after victory, attempted to protect and define the rights of the emancipated Negroes by three amendments aimed at prohibiting slavery, preventing discriminatory state actions against the freedmen, and at forbidding the denial of the vote to them because of their color or previous condition of servitude. The Southern states were required to approve these amendments as a condition of their readmission to the Union as equal partners.

The Wilson Era Amendments

The next reform era coincided with the administration of Woodrow Wilson. Four amendments were added in this period. The most far-reaching of these was that (16th) authorizing the taxation of incomes without apportionment. It was also aimed at reversing a Supreme Court decision of 1894 which had held such taxation to be direct and, therefore, subject to the apportioning requirement of the Constitution. Two others aimed at widening the democratic aspects of our system by providing for popular instead of legislative election of Senators and by removing discriminatory barriers against woman suffrage. The final amendment of this epoch embraced the ill-fated effort to banish the manufacture and sale of alcoholic beverages.

The New Deal Era Amendments

The reformist New Deal of Franklin Roosevelt achieved most of its goals by procedures other than formal constitutional change. However, during this era the old constitutional calendar was modernized and the traditional "lame duck" session of Congress from December to March after a new election was made unnecessary. The effort to achieve national prohibition was abandoned and the Eighteenth Amendment repealed. As an aftermath of the New Deal and the long tenure of Roosevelt, the Constitution was again changed in 1951 to limit presidential tenure to two terms.

Amendments of the 60's

The most recent use of the amending process stems from continued efforts to spread democracy through our system. The twenty-third, proclaimed in 1961, grants residents of Washington, D.C., the right to vote in presidential elections and the twenty-fourth, proclaimed in 1964, is aimed at tax-paying qualifications for voting in national elections and is primarily intended to get rid of the poll-tax requirements of five Southern states.

Observations on the amendments as a group

Looking over the 24 adopted amendments as a group, one observes certain significant facts. (1) In the main, they deny powers rather than confer new powers. Sometimes (as in the first eight) it is only or chiefly the national government that is restrained; sometimes (as in the Civil War group) it is only or chiefly the state governments. But in any event, most of the number

are restrictive rather than otherwise. (2) The amendments are to only a slight extent responsible for the remarkable growth of governmental functions and activities in the last few decades. The phenomenal extensions of national power associated with the New Deal and World War II came without any major change in the written fundamental law. From a somewhat earlier amendment, it is true, the central government derived the exceedingly important power to tax incomes and this has been an important factor in financing the new programs. How could so much happen without more resort to amendments? There has been frequent, indeed ceaseless, resort to fresh and broadened interpretations of words, phrases, and clauses happily chosen a century and a half ago to allow precisely such flexibility. (3) While, however, the amendments have not conferred many express powers on the national government, they have imposed enough restrictions upon the states to have augmented national supremacy indirectly, and hence may be said to have had a nationalizing tendency. Finally, (4) the amendments, while introducing relatively few changes in governmental machinery and procedures, have contributed materially to the advancement of democracy. The first eight defined and guaranteed civil liberties; the Fifteenth, Nineteenth, Twenty-third, and Twenty-fourth removed barriers to universal suffrage; the Sixteenth shifted the burden of government costs in the direction of the well-to-do; the Seventeenth definitely placed the election of senators in the hands of the people.

Proposed amendments

Of proposing new changes in the Constitution there is, of course, no end. And in recent years Congress has repeatedly been urged to adopt amendment resolutions: (1) granting equal rights to women; (2) changing the method of counting the electoral vote in presidential elections; (3) straightening out the tangle of marriage and divorce laws in the 50 states; (4) forbidding national intervention in state schemes of legislative apportionment; (5) limiting the amount of income that may be taken by taxation; (6) changing the treaty-making procedure by making it easier to ratify treaties, by increasing congressional control of executive agreements, and by limiting the subjects on which treaties might be negotiated; and, (7) creating a Court of the Union made up of the 50 state chief justices to hear appeals from certain decisions of the Supreme Court of the United States.

Criticism of the amending process:

1. On the ground that it is too slow and difficult

Madison believed that the modes of amendment agreed upon by the framers guarded "equally against that extreme facility which would render the Constitution too mutable and that extreme difficulty which might perpetuate discovered faults." On the whole, history has sustained his judgment. Chief Justice Marshall, however, characterized the amending machinery as "unwieldy and cumbrous." During the long periods between effective use of the amending process, notably those from 1870-1913 and from 1920-1933, reformers have strongly attacked the process as unnecessarily difficult and have made numerous proposals for lowering the vote in Congress requisite for submitting amendments (usually to simple majorities), or the number of states required for ratification (commonly to two-thirds), or both.

Hamilton devoted almost an entire number (85) of *The Federalist* to

2. On the ground that it is too easy

arguing that the amending process could not have been made any easier without inviting constitutional instability. The speedy ratification of the Eighteenth Amendment by legislatures of states in which, both before and after the advent of national prohibition, the people in state-wide referenda voted against the plan led many persons to believe that in point of fact the amending process was easier than it ought to be. For some years, therefore, proposed changes looked chiefly in the direction of making it more difficult. This particular complaint died with the repeal of prohibition.

3. On the ground that it is not sufficiently democratic

There has been the criticism, also, that in the absence of any provision for direct popular initiation of amendments or for submission of amendments to popular vote, the system is not sufficiently democratic. In 1912, the elder Senator LaFollette brought forward a now forgotten plan designed to meet the objection. Since his effort, several similar proposals have been made. On the whole, however, little is heard in this vein any longer.

4. On the ground that minorities may control

The amending process has been occasionally criticized also because of the possible consequences of giving all states, regardless of numbers, an equal voice in ratification. Any combination of 38 states can make an amendment effective; and 38 can readily be found which among them will contain not much more than one-third of the country's population. Conversely, any 13 states can defeat an amendment; and 13 could be listed which together would have hardly one-twentieth of the total population. Such alignments have not arisen and are quite unlikely to arise.

5. On the grounds that Congress controls the process

The most recent criticism is of a wholly different nature from any of these. Congress, the President, and the Supreme Court acting together or separately may and do conspire to enhance the power of the central government at the expense of the state, say the critics (mostly state legislators). Unless the states can find a way to change the Constitution without national approval, they may be doomed. And, the argument goes, the national authorities are really subverting the federal system contrary to our traditions and must be halted by allowing the states to initiate amendments. Although subscribed to by a majority of state legislative representatives at a conference of state legislators, this view has as yet been endorsed by only a dozen states.

Any change unlikely

Any change in the amending procedure in the foreseeable future is highly improbable. We have found that it is workable but usually only in great emergency. More than this, we have found that by other procedures the Constitution can be subtly accommodated to changing conditions without the necessity for formal amendment. It seems most unlikely that Congress will consent to reducing its own role in constitutional change. Finally, the so-called "undemocratic" features of the process are part of the whole scheme of American government and will not lightly be thrust aside.

OTHER METHODS OF CONSTITUTIONAL GROWTH

The secret of the endurance of the Constitution will be found not in the formal amending process but in the other processes of constitutional elabora-

tion: legislation, executive action, judicial interpretation, and custom. Illustrations of each of these are found throughout this volume, but a general comment is here appropriate.

Legislation

Desirous of avoiding what one of them called "a too minutious wisdom," the framers of the Constitution outlined clearly enough the general framework and functions of the new government, but wisely left a multitude of matters to be taken care of, as need might arise, by Congress, and even at certain points by the state legislatures. For example, they provided for a vice-president to take over the duties of the presidency in case of necessity, but said nothing about what should happen if there was no vice-president; and Congress later supplied the deficiency. They assumed the existence of executive departments, and twice referred in the Constitution to the heads of such establishments; yet left Congress to create the departments and to determine what should be their functions and interrelations. The composition of the two houses of Congress was prescribed carefully, but the times, places, and manner of electing both senators and representatives were left to be fixed by the state legislatures, subject to control by Congress itself. In a somewhat belated statute of 1842 on the election of representatives, and another of 1866 on the election of senators, Congress amplified the constitutional law of this subject in much detail. Again, the judicial power of the United States was vested in "one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Aside from the Supreme Court, therefore, the entire national judicial establishment—the names, numbers, grades, and jurisdictions of the courts, together with their procedures—rests upon acts passed from time to time by Congress.

Congress defines commerce and creates agencies like the Interstate Commerce Commission and the Federal Communications Commission to regulate it. The means and methods of governing territories are provided by Congress. And so one could go on. Every time, in fact that Congress enacts a law it, in effect, starts with some express or implied constitutional provision, interprets it, and applies it, perchance in some new area or in some new manner, thereby projecting the Constitution into a new field or extending its meaning in an old one. In doing these things, Congress, of course, does not have a completely free hand; its constitutional interpretations may be challenged, and the courts may overrule them. In the great majority of instances they stand; and legislation thus becomes one of the principal means by which the Constitution grows.

Executive and administrative action

It is not Congress alone that interprets and applies and adds. Within their spheres, the other two great branches of government, executive and judicial, do the same thing. On the executive side, the power starts with the president, who not only is as much entitled to construe the constitutional provisions as is Congress, but is equally entitled to make decisions and perform acts in accordance with his interpretations—subject to similar check from the courts. In the exercise of their powers, many presidents have taken and maintained positions virtually settling constitutional questions previously considered open, or even giving the Constitution some meaning and application never before attributed

to it. Moreover, from the White House this function of constitutional interpretation and adaptation filters down through the various levels of administration. Confronted almost daily with the necessity of making decisions, heads of departments, and even inferiors within their proper spheres, adopt positions, perform acts, or give orders resting, however remotely, upon some interpretation of a constitutional provision, and perhaps stretching the provision's meaning. When such actions escape successful challenge and establish themselves as precedents, the Constitution may be found to have undergone permanent extension, in however limited a particular.

Judicial interpretation

Then there is the significant matter of constitutional expansion at the hands of the courts. How this comes about must already be apparent. Congress, or a state legislature, passes a law, or a national or state official performs an act, which some person or group of persons affected adversely challenges as exceeding proper authority. A case is brought in the courts and the law or action is attacked as being unconstitutional; whereupon the judges must decide whether the charge is well founded—in other words, whether the measure is or is not in conformity with constitutional provision or reasonable construction. To do this, it is, of course, necessary to determine what the pertinent constitutional clauses mean. This opens wide opportunity to make them mean something different from, and probably more than, they previously had been supposed to mean, with the result of giving the Constitution a new twist or slant. The process operates cumulatively. A disputed phrase is so interpreted as to give it new scope and content. This, in turn, furnishes a point of departure for a further extension when the next similar case comes up. Nearly all of the more important implied powers of Congress are traceable to this source. And these implied powers have never been projected farther into new areas than during the past three decades. The most important single reason why the Constitution has not been amended more frequently is that from an early stage in the nation's history the Supreme Court has sat (in Woodrow Wilson's words) as "a kind of continuous constitutional convention," interpreting, developing, and expanding the basic law. One almost may say that every time the Court hands down one of its weekly batches of decisions, we have a constitution in some respects new.

Usage or custom

"Time and habit," remarked Washington, "are at least as necessary to fix the true character of governments as of other human institutions"; and so it comes about that still another mode by which our Constitution expands and develops is usage or custom. This method of change attracts less attention than the others; it does not—at all events at the outset—result in amendments, laws, or judicial decisions. Superimposed, nevertheless, upon the instrument of 1787 and its formal amendments, upon the laws that amplify and the decisions that extend it, is a broad and steadily developing "unwritten constitution," consisting of usages determining actual governmental practice quite as truly as do the provisions of written law. Plenty of illustrations will be encountered as we proceed; for the present, it must suffice merely to call to mind the manner in which the electoral college functions in choosing the president, the assembling

of department heads in the advisory body known as the cabinet, the frequent use of "executive agreements" in lieu of treaties, the caucus and committee systems in Congress, the introduction of all appropriation bills in the House of Representatives, the custom requiring members of the House of Representatives to be residents of the districts in which they are elected, and substantially all of the apparatus—caucuses, conventions, committees, platforms, funds—of political parties.

"The living word and deed of living men"

The general theme need not be elaborated farther. The upshot of all that has been suggested is that the bare outline of a governmental system contained in the Constitution as it came from the hands of the framers, and as it still can be read in the books, has been amplified and filled in—by amendment, executive action, statute, judicial construction, usage—until it has come to be one of the most elaborate and complicated plans of political organization and procedure known to history. And the process goes on unceasingly. The actual Constitution at any time is what citizens, lawmakers, administrators, and judges think it is. If a time should come when the fundamental law no longer grows and changes, the nation it serves will have vanished.

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The Federal System

> 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.—Tenth Amendment

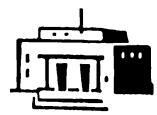
ALTHOUGH DETERMINED TO CREATE a stronger and more effective central government, the framers of the Constitution were constrained by the circumstances of the day to preserve the states as important centers of power. The device which they hit upon was to create two levels of government acting on the people. This is called a federal system of government.[1] It may be distinguished from a unitary or highly centralized system and a confederation or a highly decentralized system. The federal system requires rather specific assignments of power to at least one level and in our case this is the national level. These assignments as prescribed in the Constitution are not the product of abstract speculation but of the felt needs of the times. As such, therefore, they adhere to no preconceived formula by which power is divided between center and region; and the federal system of the United States is unique. The framers, moreover, did not go any further in specifying the powers of the various levels of government than they had to. They left a great many unresolved and unforeseen problems concerning the relation of the levels of

[1] Misunderstanding of our political institutions has been encouraged throughout our history by the use of the term *federal government* to mean the *central* government. Throughout this text, despite popular usage, the central government will be called "national" and the word "federal" reserved for the system of state and national governments.

government to one another. Around these much of our later history has revolved.

Although the system of government prescribed by the Constitution creates two levels of government, and both endows them with power and prohibits to them certain other powers, it does not create two wholly independent sets of political or legal institutions. The two levels are bound together by certain mutually dependent relations—the states, for example, are key units in amending the Constitution and in selecting congressmen and presidential electors; the central government is obliged to protect the states from invasion and from domestic upheaval. In a dynamic society a complex set of power relationships like these can never be fully and finally determined. Our federal system continues to change and the boundaries of power and prestige between the two levels are in a never-ending state of flux.

THE ASSIGNMENT OF POWER UNDER THE CONSTITUTION

POWERS GRANTED		POWERS DENIED
1. To the national government exclusively (e.g., conducting foreign relations, declaring war, controlling currency, regulating foreign and interstate commerce, establishing "a uniform rule of naturalization")	 NATIONAL GOV'T	1. To the national government only (e.g., levying direct taxes otherwise than in proportion to population*)
2. To the states exclusively, as being appropriate to their status and not forbidden (e.g., conducting elections, establishing local governments, regulating intrastate commerce, controlling the law of wills, contracts, torts, and domestic relations)	 STATE GOV'T	2. To the state governments only (e.g., making treaties, levying general taxes on imports, issuing bills of credit, coining money, passing laws impairing the obligations of contracts)
3. To national and state governments concurrently, conferred on the former and not withheld from the latter (e.g., enacting laws, maintaining courts, levying taxes, borrowing money, chartering banks).	 BOTH	3. To both national and state governments (e.g., taxing exports, passing *ex post facto* laws and bills of attainder, granting titles of nobility, abridging the right of United States citizens to vote on account of race, color, or sex, depriving persons of life, liberty, or property without due process of law).

* Under the Sixteenth Amendment, the limitation does not apply to income taxes, whether or not considered direct.

THE CONSTITUTIONAL DISTRIBUTION OF POWERS

National power

The agencies of the national government created by the Constitution have, for the most part, expressly assigned powers. The legislative power "herein granted" is conferred upon the Congress; the jurisdiction of the national courts is rather clearly marked out. Only the executive power is not precisely confined. However, the Tenth Amendment clearly reserves to the states all powers not delegated to the national government. The influence, functions, and prestige of the national government are immeasurably greater today than in Washington's time, but whatever expansion has occurred—except that provided by constitutional amendment—has been based upon authority assigned somewhere in the Constitution.

State power

Although the state governments are the recipients of the largely undefined residue of power not specifically conferred upon the national government, they are also circumscribed by constitutional prohibition. A number of powers are expressly denied to them by the Constitution. A number of others are denied by inference as conferred on the national government. It must be added that the states are limited further by their own constitutions in the exercise of the powers reserved to them. It is impossible precisely to say what powers may be found in the vast reservoir of authority preserved to the states by the Constitution. Over the years the states, like the national government, have undertaken ever greater functions and responsibilities.

All governments are limited

It should be abundantly clear at this point that no government in our system possesses unlimited power. Taken together, the national and state constitutions create areas of immunity for all of our people into which no governmental authority can rightfully penetrate.

THE SUPREMACY OF THE NATIONAL GOVERNMENT

> The Constitution and the Laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.—Art. VI, cl. 2

National government superior to states

Theoretically, under our federal system each level of government is supreme within the sphere assigned to it. And it is true that there are many actions states may take within their boundaries which may not validly be challenged elsewhere. However, over the years the national government has emerged as the arbiter in all cases of conflict between state and national authority, and has been able to enforce its will throughout the land regardless of state opposition.

Judicial review

The problem of upholding national authority against anticipated encroachments of the states gave the fathers at Philadelphia a difficult time. One

proposal, that Congress be authorized to disallow state legislation, was agreed to at one stage but ultimately developed so much opposition it was abandoned. The method finally selected was the famous "supremacy of the law" clause which stands at the head of this section. This clause was expected to bind state judges to invalidate state legislation conflicting with national laws, treaties, or the Constitution. Whether it was also intended to confer upon the national supreme court the power to declare state actions unconstitutional is not clear. Under the vigorous leadership of Chief Justice Marshall, the Supreme Court declared that such was the intention and it has successfully exercised such power ever since. The Congress, on its part, made the same assumption. The first judiciary act passed in 1789 conferred upon the Supreme Court the power to review any case in which a state court had upheld a state law alleged to be in conflict with the national Constitution, a statute, or a treaty. The question of how the national government, Congress especially, would be confined to its proper sphere, also left unresolved by the constitutional convention, was settled in the same manner: by the Supreme Court successfully asserting its authority to review acts of Congress and of the executive to determine their constitutionality. The development of this practice of judicial review of the actions of the other branches of government, as well as those of the other levels, is a distinctive American contribution to the art and science of constitutional government.

The national government as judge of its own powers

Judicial review as developed by the Supreme Court is of major importance with respect to the boundary lines between national and state powers. In all disputes touching this subject, the last word is, or may be, spoken by national judges in Washington—which is tantamount to saying that in conflicts of authority between national and state governments, the *national* government makes and enforces the decision, subject only to possible, but improbable, reversal by a constitutional amendment. As an organ of the national government, the Supreme Court has undeniably shown predisposition, if not downright favoritism, toward that government. Over against the clear principle that the national government is a government of limited powers stands the hard fact that there is no limitation on its authority in relation to state authority which Congress, the president, and the Supreme Court—indeed, merely Congress and the Court—acting concurrently, may not override if they wish. It is this circumstance that has called forth from state legislators, alarmed at the present trend of national decisions, the proposal for a Court of the Union composed of the Chief Justices of the 50 states and empowered on petition of the legislatures of five states to review decisions of the Supreme Court touching on rights reserved to the states or to the people. The Congress is restrained in practice, however, by the federal character of the Senate and of our political parties and by the strong disposition toward state power which has long characterized certain sections of the country.

Other contributions to national supremacy

The supremacy of the national government has been established in practice by other than judicial means. Sporadic efforts at nullification of national laws by states and at secession from the Union have been firmly repelled, the

latter by a fierce and bloody war. The Civil War was prosecuted by the Lincoln administration as an effort to suppress rebellion among the southern people rather than among southern states, but in dealing with the states after the war, the national government left no doubt that their governments would be tolerated only on terms prescribed in Washington. The development of an interdependent national economy with internal free trade has also played its part in strengthening the hands of the central government in relation to the states. Finally, the emergence of the nation into a position of world leadership has presented the nation with a series of problems which only the national government can wisely and legally meet.

How national authority is enforced

How is the supremacy of national authority maintained and enforced? Normally, of course, by the ordinary processes of legislation and administration, operating directly upon the people irrespective of state governments. When, however, these processes are challenged or obstructed, the courts may be brought into play to determine to what extent the actions taken or contemplated are constitutionally legitimate. Once it is established (whether through judicial decision or otherwise) that the laws under which the national authorities are claiming to act are valid, the president may, indeed must, proceed to execute them, by military means if necessary, regardless of the attitude of state authorities.

ADMISSION OF NEW STATES

"Original" and "admitted" states

Not least among the factors which have contributed to the practice of national supremacy is the fact that 37 of the 50 states were admitted into statehood by actions of the national government and 30 of these came to that status after having been territories administered under national authority.

The 13 "original" states became members of the Union by participating together in the Revolution and ratifying the Articles of Confederation and the Constitution. Five states were formed by separation from other states: Vermont set off from New York in 1791, Kentucky from Virginia in 1792, Tennessee from North Carolina in 1796, Maine from Massachusetts in 1820, and West Virginia from Virginia in 1862-63. Texas was an independent republic before its admission in 1845. California was formed—also without passing through the territorial stage—out of a region ceded in 1848 by Mexico.

Process of admission

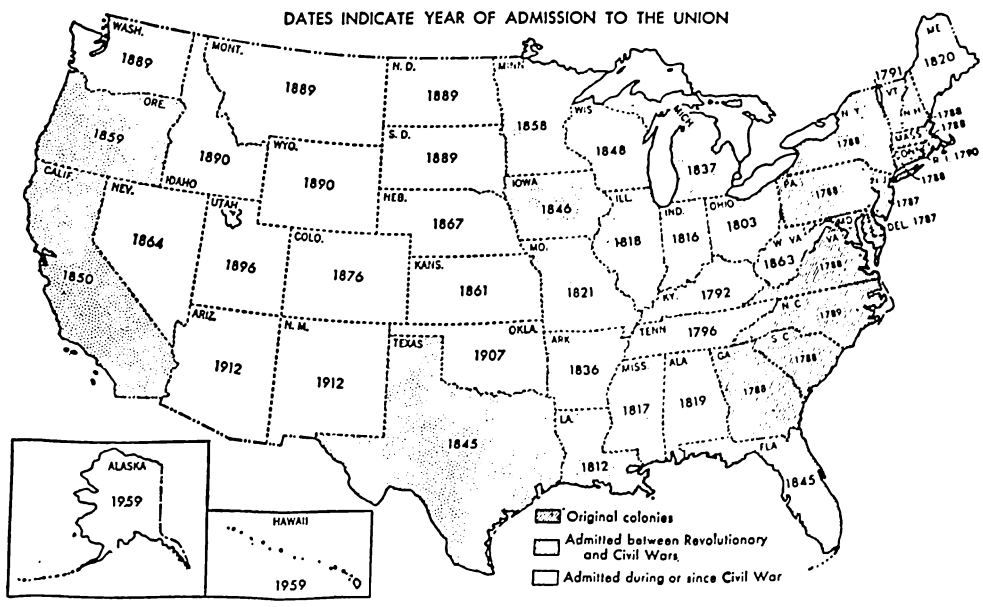
The Constitution confers on Congress general power to admit new states, subject only to the restrictions (1) that no state may be erected within the jurisdiction of any other state except with the consent of the latter's legislature, and (2) that no state may be formed by the union of two or more states or parts of states without consent of the legislatures of all states concerned as well as of Congress. Traditionally, the procedure of admission was started by the people of a territory petitioning Congress through their territorial assembly or territorial delegate to specify and authorize the steps necessary to be taken so that the territory might be received into the Union as a state. If favorable to the petition, Congress passed an "enabling act" under which the people of the

territory elected a convention and framed their constitution. If the resulting instrument met the approval of the territorial electorate when submitted for adoption, it went to Congress for inspection. If Congress, in turn, found it acceptable, it passed a joint resolution recognizing the territory as a new member of the Union as soon as its elected senators and representatives were seated. Efforts by Congress to impose conditions for admission have not been uniformly successful. Once admitted the state becomes the equal legally of all the other states.

Special conditions may be imposed

The newest members of the Union, Hawaii and Alaska, were admitted by a somewhat different process. Both territories, after prolonged petitioning had produced no enabling legislation, actually drafted constitutions—Hawaii in 1950 and Alaska in 1956—and presented these to Congress. In the legislation of 1958 authorizing admission for Alaska and in that for Hawaii in 1959, Congress accepted the proposed constitutions but required in both territories that public referenda be held on the question of immediate admission and also on the prescribed terms of admission. When the territorial voters overwhelmingly endorsed admission, approved the reservations of national property and powers contained in the law, and elected their Congressional delegations they were admitted by presidential proclamation: Alaska on January 3, 1959 and Hawaii on August 21, 1959.

OUR GROWTH FROM 13 TO 50 STATES



OBLIGATIONS OF THE NATIONAL GOVERNMENT TOWARD THE STATES

1. Protection against involuntary dismemberment

By way of further defining the position of the states in the federal system, the Constitution requires of the national government a number of significant guarantees in their behalf. To start with, that government must scrupulously respect every state's geographical unity and integrity. It may neither instigate, promote, nor sanction the erection of any state within the jurisdiction of an existing state except with the consent of the latter's legislature. It may not allow a state to be formed by uniting two or more states or parts of states unless the legislatures of all states affected signify their approval. In other words, a state cannot be deprived of its separate existence, or even of territory, without its consent. If, for example, effort were made to set off Chicago and its environs as a separate state (as has sometimes been suggested), nothing could be done without the assent both of Congress and of the Illinois legislature.

2. Protection against invasion and domestic violence

A second obligation resting upon the national government is to protect every state against invasion and (when requested) against domestic violence. An invasion of a state by a foreign enemy is, of course, also an invasion of the United States, and the right and duty of the national government to repel such attack is clear, quite apart from any action independently taken, or any request made, by the state or states affected. Repression of insurrections, riots, and other domestic violence is, however, a different matter. One of the things the government of a state is expected to do is to maintain order, and unless such a government, finding itself unable to cope with a disturbance, calls for assistance, national authorities will not interfere, so long as national laws are not violated, national functions (e.g., carrying the mails) interfered with, or national property endangered. If, however, assistance is requested (by the legislature or the governor), the president will comply, unless he is of the opinion that the state can and should handle the situation alone. If national interests are menaced, he may act without invitation and even against the wishes of the state authorities. When President Eisenhower in 1957 ordered troops into Little Rock, Arkansas and when President Kennedy in 1962 ordered troops into Oxford, Mississippi and in 1963 into Tuscaloosa, Alabama, in all cases against the wishes of the Governors of those states, they did so to enforce national court orders to admit Negroes to certain public educational facilities.

3. Guarantee of a republican form of government

A third requirement made of national authority is that it guarantee to every state a republican form of government. With differences then existing from state to state, it is clear that the framers did not contemplate requiring any one precise governmental set-up to the exclusion of all others. Madison, indeed, assured the people that they would continue to have the right, in their respective states, to "substitute other republican forms" whenever they chose and to claim the federal guarantee in behalf of them.

Who decides whether a state government is republican

The final judge of whether the government of a state is republican is not the people of the state, but the national government. In handling cases turning on the nature of republicanism, the Supreme Court has always held that the question is of a political nature, and hence one to be decided not by the judiciary but by the government's political branches. As for the president, he undoubtedly might pronounce the government of a given state to be other than republican and might use force to dispossess it. Indeed, in the single instance in which the guaranty clause was invoked prior to the Civil War, the Dorr Rebellion in Rhode Island in 1841-42, President Tyler recognized the established government of the state as the rightful government and took steps to aid it against a rival government set up by an insurrectionary element led by Dorr. According to the courts, the really decisive factor in the national government's handling of the Rhode Island problem was the action of Congress in continuing to receive the state's elected senators and representatives. It was Congress, too, that at the close of the Civil War forced the southern states, as a condition of regaining representation, to adopt suffrage (and other) arrangements which the radical Republican majority at Washington professed to consider essential to a republican form of government. Certainly its power to cut off a state from any share in controlling national policy, enacting national laws, and raising and appropriating national funds gives Congress the whip hand in the matter.

Tendency to liberal construction

In the Reconstruction period, the term *republican* was construed arbitrarily and narrowly. At all other times, however, it has been interpreted broadly and liberally. Thus, when a generation or so ago, opponents of the popular initiative and referendum as newly adopted devices of direct legislation in Oregon sought to make out that republican government means only *representative* government, with all laws enacted by elected assemblies, the Supreme Court said that as long as Congress continued to receive senators and representatives from the state, it would be satisfied. Congress itself took the sensible view that as long as representative institutions are maintained by a state, it does not matter if they are *supplemented* by occasional direct action by the people.

CONSTITUTIONAL LIMITATIONS UPON THE STATES

To protect the national government in the exercise of its expressly delegated authority, the Constitution specifically imposes a number of limitations upon the power of the states. A number of other limitations have been inferred from the language of the document and from the character of the relations it creates. Some of these are in the nature of civil rights and will be treated in a subsequent chapter on that subject. Several of them, however, bear directly on the nature of our federal system.

The national government is plainly intended to conduct all official relations with foreign nations and the states are consequently forbidden to enter

any "treaty, alliance, or confederation." A state may enter into a "compact or agreement" with a foreign state with the consent of Congress, but only if the agreement does not create a political relationship such as an alliance. Except for an agreement between New York and Canada concerning an international bridge, no such agreements have been concluded. 1. Foreign and interstate relations

The Constitution does authorize interstate agreements or compacts provided Congress gives its consent. This device for regulating matters of interest to neighboring states or to states in a single region has proved increasingly popular. Although used sparingly in the nineteenth century, the compact has taken a firm hold in this century. More than 100 are now in existence and the device is serving a steadily widening range of interests. Compacts are now used not only for settlement of boundary disputes as of old but for: (1) the development, exploitation, and conservation of interstate water resources, (2) the stabilization and conservation of other natural resources such as petroleum, wildlife, or fish; (3) the control of floods; (4) the development of interstate toll highways; (5) the coordination of higher educational facilities; (6) mutual protection against forest fires; (7) the coordination of civil defense measures; (8) the reciprocal supervision of probationers and parolees; (9) the co-ordination of welfare and institutional programs; and (10) the administration of particular functions in interstate metropolitan areas. The compact has attracted great interest as a method of dealing with certain interstate problems of a regional character without enlarging the expense and administrative responsibilities of the national government. Interstate compacts

The Constitution appears to require that all compacts be approved by Congress. In practice, however, a few compacts have been entered into without express approval and the courts have held that congressional consent is required only of agreements "tending to increase the political power of the states, which may encroach upon . . . the just supremacy of the United States." Consent need not, furthermore, be granted expressly for each agreement. On several occasions, the most recent in 1958 in the field of highway safety, the Congress has given blanket approval in advance. In recent years, however, Congress seems to be holding a tighter rein and has on several occasions frowned on the use of supplementary agreements or amendments to the original agreement without express approval, a practice hitherto quite common. In 1960 the Judiciary Committee of the House of Representatives undertook an investigation of the Port of New York Authority (created by compact between New York and New Jersey in 1921) and demanded the production of certain Authority records. The director, acting under instructions from his Commission and from the governors of the two states involved, refused to comply with the Committee order. The House promptly voted to cite him for contempt. While avoiding the constitutional issue of congressional authority, the U. S. Court of Appeals nevertheless excused the Director from compliance.

In general, defense, like foreign relations, is a national rather than a state function. Without the consent of Congress no state may keep troops or ships 2. Defense

of war, or "engage in war unless actually invaded or in such imminent danger as will not admit of delay." The restriction, however, does not preclude the states from maintaining organized militia for use primarily in repressing domestic disorder. Such militia have, however, long since been assimilated to the armed establishment of the nation. The governors are still fairly free to direct their use inside the state boundaries.

3. Commerce

The most important limitation imposed on the power of the states by the Constitution, excluding only the Fourteenth Amendment, is the grant of power to Congress to regulate commerce among the states. In the first place, the national courts have defined "commerce" to include virtually every type of movement of persons or things and every type of communication or negotiation whether for business purposes or not. They have defined "interstate" to embrace any such movement across state lines at any stage of a transaction. They have defined the total regulatory power of Congress to embrace any operation or transaction which might affect the "commerce" they have so broadly defined. There are, in consequence, relatively few business transactions in modern America which do not come within the purview of congressional power. Furthermore, all of the navigable or potentially navigable rivers of the country come under national authority by a series of interpretations. The area of state freedom has been progressively contracting by the economic development of the nation, with more and more businesses serving regional, national, and international needs, and by the expanding definitions of the Supreme Court. Congress and the courts have left some small freedom to the states to deal with business, transportation, or communication within their boundaries in their own ways under the following circumstances: (1) if the enterprise or activity is wholly and exclusively intrastate and does not substantially affect interstate commerce; (2) if Congress has not seen fit to exercise the power it possesses, provided that the courts find that state regulation in these circumstances either is authorized by the Congress or is not inconsistent with the courts' views of national needs; (3) if a state regulation in the interests of public health and safety imposes only an incidental and insignificant burden on interstate commerce; and (4), if a state regulation is not inconsistent with a national one and deals with a matter not held to be preempted by national government action. No aspect of this thorny subject has been more bitterly contested in recent years than the question as to whether the Congress intended to preempt a particular subject and thus to bar all state action in it. Most of the traditional controversy over the "preemption doctrine" centered on the commerce clause and much of it still does, especially in the cases on national-state authority in labor relations. However, the use of the doctrine to strike down a state act regulating subversive activities against the United States has caused many of the attacks on the modern Supreme Court.

4. Taxation:
a. Export and import duties

The power of the states to levy and collect taxes for revenue or regulatory purposes is limited expressly by the Constitution and also by judicial inference from its provisions. In order to assure uniform national impositions on interstate and foreign trade, the Constitution forbids any state, without the consent

of Congress, to levy any duty on imports or exports, except for the purpose of financing inspection at terminals or harbors. Such duties, if laid by a state, are subject to validation, revision, or control by the Congress and net proceeds must be turned over to the national treasury. State duties of this type, while collected for a time in the early days of the nation, are now virtually unused. States are also forbidden without congressional approval to levy "tonnage duties," that is, taxes on the cargo or carrying capacity of ships.

b. Tonnage duties

State taxing power is also bound by the general limitations on states such as those forbidding them to impair the obligation of contracts or to deprive any person of property without due process of law, or to deny to anyone the equal protection of the laws.

c. General limitations

One of the most significant limitations on state taxing power stems from a decision of the Supreme Court in 1819 written by Chief Justice Marshall in which he asserted that a state could not levy a tax on a national instrumentality. The power to tax, he said, is the power to destroy, and the federal system prescribed by the Constitution did not intend the states to be able to hamper the national government by burdening its agents or functions.[2] Under this general doctrine, the property of the national government has been immune from any type of state or local taxation. In some instances this is true even though the property may be leased to private interests for profitable purposes, but the Court has recently been narrowing the exemption of goods in private possession. This policy has worked some hardship in areas where national holdings are vast, such as the Tennessee Valley. Congress has, therefore, on occasion authorized cash contributions by national agencies to local units of government in lieu of tax revenues lost to the unit by national ownership. The doctrine of national tax immunity also shelters fiscal institutions chartered by Congress and their shares, unless Congress authorizes state or local taxation. Congress has so authorized the taxation of national bank stock and bank property but only under conditions which it imposes. For a time, the Marshall doctrine was construed as protecting the salaries of national employees from state income taxation, but the Congress in 1939 authorized such taxation and the Supreme Court reversed its earlier position and concurred. The income

d. Exemption of "instrumentalities"

[2] In 1818, the state of Maryland imposed a stamp tax on the circulating notes of all banks or branches thereof located in the state and not chartered by the legislature. The Baltimore branch of the United States Bank refused to pay the tax. Suit was brought against the cashier, McCulloch, and the state court rendered judgment against him; whereupon the case was taken to the national Supreme Court. Pronouncing the law imposing the tax unconstitutional, Marshall declared (in a decision cited later as helping to establish the doctrine of implied powers), that, otherwise unlimited as is the power of a state to tax objects within its jurisdiction, that power does not "extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States . . . powers . . . given . . . to a government whose laws . . . are declared to be supreme." McCulloch *v.* Maryland, 4 Wheaton 316 (1819). National-bank stock and the physical property of national banks are now taxable; but this is not only because such property is private rather than public, but also on the theory that, falling on property rather than on operations, such taxes do not impair the capacity of the banks to serve the national government according to the intent of the laws establishing them.

from national securities, even when issued to finance farm or business loans, is still exempt from state taxation despite several recent efforts to procure congressional authorization for such taxation.

State immunity from national taxation

The states, it should be added, long enjoyed a similar, but not identical, immunity for their instrumentalities from national taxation. Congress and the courts have, however, been steadily narrowing the allowable exemptions from national taxes. And the national government may now tax salaries of state and local employees, state or local property when used for business purposes, and many other state activities. The Court still insists that some immunity remains to the states, but it is not nearly so broad as that remaining to the national government.

5. Currency

One of the advantages the framers hoped to derive from the Union was a common currency system. Hence the Constitution gives the national government full control over the country's currency and forbids the states to coin money, to emit bills of credit (any evidences of indebtedness intended to circulate as money), or to "make anything but gold and silver coin a tender in payment of debts." Under their reserved powers, the states can charter banks; and banking institutions so created exist beside and compete with national banks in all of the states. Furthermore, the states can authorize these banks and banking associations to issue notes for circulation as currency, although not as legal tender. In 1865, however, this latter power was stripped of all practical significance by an act of Congress laying taxes up to 10 per cent on such notes and thereby making it unprofitable to issue them. The Supreme Court upheld the measure, and as a result state bank currency has passed entirely out of existence.

6. Contracts

Frightened by Shays' Rebellion and by the continuing threat to creditor interests of the agrarian-debtor-dominated state legislatures, the framers were determined to place the sanctity of contracts beyond the power of states to diminish. The Constitution, in consequence, forbids any state to pass any law impairing the obligation of contracts. This clause from its inception has been one of the most fruitful in litigation and in pleas for the Supreme Court to overturn state legislation. Early in our history the Court held that the contracts protected by the Constitution included public grants of land or privilege, including charters or franchises granted to corporations. The effect of this broad interpretation has been mitigated subsequently by judicial exclusion of charters to public corporations such as municipalities, by state legislation reserving the right to alter or amend charters granted by the state, and by judicial acceptance of the idea that the needs of public health, safety, and welfare may override the sanctity of some types of contractual relations. Since 1900 there has been a growing area of judicially accepted state power over contracts and a consequent diminution in the protection to vested interests prescribed by this constitutional prohibition. Even creditor-debtor relations have been invaded by state legislation during the depression of the 1930's—with the approval of the Court. The clause, nevertheless, continues to provide a basis for judicial review

of the justification for the exercise of state power. It also stands as a strong bulwark protecting many rights of creditors.

7. Privileges of citizens of the United States

The Fourteenth Amendment forbids any state to make or enforce any law abridging the privileges and immunities of citizens of the United States. Designed to protect the freed Negroes against discriminatory treatment by southern state governments, this clause was early construed to add little or nothing to the existent system of protection of personal rights. The Supreme Court has stated that the privileges here protected are only those expressly conferred by the Constitution and laws, and are manifestly attributes of national rather than state citizenship. This particular provision of the Constitution has not, thus, imposed any serious limitation on state power.

OBLIGATIONS OF THE STATES TO ONE ANOTHER

One of the great strengths of the American nation undoubtedly arises from the relative freedom of people and commodities to move about within the national domain despite the 50 separate governments which regulate so many aspects of our society. Among the many factors which contribute to this mobility not the least are the constitutional obligations imposed on the states in their dealings with one another.

1. Recognition of legal processes and acts

"Full faith and credit," says the Constitution, "shall be given in each state to the public acts, records, and judicial proceedings of every other state." This means that transactions of government and commerce which are authenticated by valid legal instruments must be recognized and accepted everywhere in the land, regardless of the state in which they originated. Of course, these legal instruments must be duly authenticated according to forms prescribed by Congress. Thus, the courts in Illinois, for example, must recognize and carry out a decision made by a court in Michigan if invited to do so under proper circumstances. Contracts entered into in New York may be enforced in Florida. Corporations chartered in Delaware, and many of them are, must in general be admitted to do business in North Dakota. It is not possible to evade legal obligation by the simple expedient of moving out of one state into another. Although the effort to make state laws on commercial transactions more uniform throughout the nation has been gaining headway, there is still a large variation from state to state in these matters, and the effect of the constitutional obligation is to require a state to recognize actions properly taken in other states regardless of the fact that such actions may be out of line with the practice in that state.

Divorce decrees

One aspect of this obligation has, in recent years, proved troublesome: what recognition must be granted by strict states to divorce decrees granted in states like Nevada? Two cases in recent years have arisen over the obligation, or lack of it, of North Carolina to recognize Nevada divorce decrees for a couple who took up temporary residence in Reno to obtain the decrees, then married and returned to their home state of North Carolina. The Supreme

Court at first held that North Carolina must necessarily recognize the decree, then later said that the parties had not established a bona fide domicile in Nevada and the Nevada court had, therefore, no jurisdiction over them. The latter decision opened the door for states to challenge the validity of divorces granted by other states where the decree had been preceded by only temporary residence on the part of one or both parties. Although in subsequent cases, the Court has appeared somewhat more disposed to enforce Nevada decrees, new decisions involving alimony payments and the custody of children have added to a complex and confused situation. Some groups are proposing a Constitutional amendment to resolve the matter.

2. Interstate citizenship

The framers of the Constitution rightly thought that no state should be allowed to discriminate, in favor of its own citizens, against persons coming within its jurisdiction from other states. To do so would jeopardize basic rights common to all of the people and seriously interfere with national unity. Hence it is provided (in a clause carried over almost literally from the Articles of Confederation) that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." In general, this means that citizens of any state may move freely about the country and settle where they like, with the assurance that as newcomers they will not be subjected to discriminative taxation, that they will be permitted to carry on lawful occupations under the same conditions as older residents, and that they will not be prevented from acquiring and using property, or denied the equal protection of the laws, or refused access to the courts. It does not mean that privileges of a political nature, for example, those of voting and holding office, must be extended forthwith. Nor is a state prevented from imposing quarantine or other police regulations which will have the effect of denying free admission or the right to move property in or out. But such restrictions must be justified by provable public necessity. Furthermore, they must be so framed as to fall alike upon the citizens of the given state and those of all other states. It is hardly necessary to add that a citizen of New York, migrating to Pennsylvania, does not carry with him the rights which he enjoyed in New York. The point is rather that he becomes entitled to such rights as the citizens of Pennsylvania enjoy.

3. Rendition

A third obligation resting upon a state is the rendition of fugitives accused of crime. "A person charged in any state with treason, felony, or other crime," says the Constitution, "who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." The object is, of course, to prevent criminals from "beating the law" by taking refuge on soil over which the states from which they have fled have no jurisdiction and on which they can execute no processes. Rendition as practiced among the states is similar to, and was suggested by, extradition as carried on from very early times in the domain of international relations. There are differences, however. Rendition of fugitives in the United States is based upon the Constitution, not upon interstate compacts; states, typically, give up

even their own citizens on proper demand; there is no rule against trying a fugitive for some other offense than that for which his return was demanded.

An act of Congress specifies that after the accused has been properly indicted, the demand for his return shall be addressed to the executive of the state into which he has fled and by which he has been captured. The governor, if he chooses to honor the request, then returns the fugitive to the police officers of the state making the request. Governors, however, in practice, have not always elected to honor such requests. The reasons for the occasional refusals are usually that the individual has become a law-abiding citizen of his new state in the meanwhile, or that (in case of Negroes demanded by southern states) he may not expect a fair trial in the state making the request, or that there is not sufficient evidence against him. Despite the mandatory language of the Constitution and the laws of Congress, there is no legal way to compel a reluctant governor to act.

Acting with Congressional authorization, more than 40 States have, since 1936, entered into an interstate compact for the mutual rendition of witnesses needed in criminal proceedings and have thus effectively enlarged the scope of their obligations. The Supreme Court has held this arrangement to be valid, asserting that the "Constitution did not purport to exhaust imagination and resourcefulness in devising fruitful interstate relationships."

DISPUTES BETWEEN STATES

Modes of adjustment

The history of the Confederation was filled with controversies between states regarding boundaries, commercial regulations, and other matters; and the makers of the Constitution were not so naive as to suppose that under the new frame of government the members of the Union would always live in perfect accord. Among sovereign nations, disputes have traditionally been settled by (1) direct agreements reached through negotiation, (2) arbitration undertaken by some neutral ruler or similar authority, (3) adjudication in an international court, or (4) in the last resort, war. The states of the Union are not supposed to make war on one another—although they did so in 1861-65. They may, and do, reach agreements through direct negotiation. But the method of settlement chiefly contemplated by the Constitution's authors was that of judicial determination. In pursuance of this intent, the judicial power of the United States is extended to all "controversies between two or more states," with the further provision that in all cases in which a state is a party (regardless of the identity of the opposing party) the Supreme Court shall have original jurisdiction. The road to amicable adjustment of interstate differences by regular judicial process is thus always open, and many troublesome disputes over boundaries, water diversions, fishing rights, and other matters have been cleared up by resorting to it. A good illustration of this is the 1963 decision of the Court in the 40-year-old dispute between Arizona and California over the distribution of water from the lower Colorado River basin under the terms of the Boulder Canyon Project Act of 1928. Years of

effort to resolve the matter through interstate compact had failed. The Court decision upheld the distribution under the Act of 1928 but opened the door for subsequent modification by Congress.

CHANGING NATIONAL-STATE RELATIONS

Thus far we have sketched out the boundaries of constitutionally assigned powers and duties of the two levels of government yoked together in our federal system. The use made of the reserved powers of the states and the political and legal implications of national authority are constantly changing, however, and the daily conduct of public affairs has throughout our history surrounded this constitutional skeleton with the flesh of a growing and vigorous body politic.

Growth of national power

The federal system we have today is quite different from that of 1800. The most significant difference is the present extent of the power, influence, prestige, and importance of the national government compared to the state governments. Throughout the generations which separate us from the architects of our system of government, the central government has burgeoned and spread its influence until it far overshadows the states. In part, this is a reflection of the growth of all governments in our society, for the states and the local communities are also more costly, more influential, and more pervasive than ever before. The rise of the national government, especially since 1861, has, however, been so remarkable and so great that it has left the states far behind. How has this come about?

The change in national economy

Many factors have worked together to produce the situation. The most important of these has been the change in the national economy. When people lived mostly on farms, in villages, and in small towns, along the Atlantic seaboard, their interests were largely local, and most needs for government on any higher level were met by the states. To be sure, a national government was necessary for some purposes—to conduct foreign relations, to co-ordinate defense, to regulate interstate commerce. But, relatively, the government over which Washington and Jefferson presided had little to do. In time, however, the country expanded to include the Louisiana territory, the regions thence westward to the Pacific and eventually Alaska and islands of the seas. Cities developed; industry was built up; railroads penetrated the great West; wealth increased; life became more complex; state lines were increasingly transcended. Gradually what had been an association of more or less self-sufficient states became a far-flung nation, with matters more and more demanding management on national lines. Commerce, transportation, communication, linked the country from coast to coast. So did corporations, holding companies, labor unions. At first the states tried to cushion the shocks of this rapid change in our mode of living from agrarian isolation to urban industrial interdependence. They were unable to cope with institutions and problems which transcended their boundaries and their resources. People demanded services that states could not—or did not—provide. With the misery created by recurring

economic depression, the states repeatedly proved they were largely unable to deal. And step by step—significantly, too, with general public approval—the government at Washington assumed responsibility for regulating what had become a national economy and protecting the individual from its uncertainties and insecurities. In this century, America became a more consequential part of the world. Our produce flowed out in greater and greater volume to distant lands. We became self-conscious of our potential power and wished to take a place in the world of great powers. Threats to our position stimulated engagement in great wars and the exigencies of military strategy spread the national power throughout the fabric of our society. Now we maintain a huge defense establishment and have pushed our explorations even into outer space. Much of the world, as well as our own citizens, look to Washington for leadership, funds, and policies. Gathering headway through the years also have been the fierce fires of nationalism. The Civil War demonstrated our national will to preserve the union and to establish the ascendancy of our national institutions. The symbols of national—not state—loyalty attract the devotion of our people. We have become one nation and Washington expresses the national will.

The doctrine of implied powers

The central government, as arbiter of the limits of national power, has occupied the key position to mold subtly the constitutional fabric to meet the needs of a great industrial nation. We have noted that interpretation rather than formal amendment has been the preferred method. We have observed how a broadening definition of interstate commerce and national power over it has supported demands for national action in the field of economic regulation. One of the most useful tools of constitutional interpretation in favor of national power remains to be mentioned: the doctrine of implied powers.

a. How the question arose

The careful phrasing of the Constitution did not prevent—no linguistic niceties could have prevented—differences of opinion as to the limits of power of both the national and state governments, and lively controversies arose before the new system had been in operation a year. In 1790, Hamilton, as secretary of the treasury, proposed the establishment of a national bank. People who considered that centralization had already been carried far enough at once objected that the Constitution, in enumerating the powers of Congress, said nothing about a bank; they could show, indeed, that its authors had deliberately refused to give Congress even limited power to create corporations. Hamilton and others who supported his project replied that while the Constitution truly enough did not authorize Congress in so many words to create a bank, the power to do so could easily be deduced from certain grants of authority about which there could be no question—in particular, those relating to currency and other aspects of national finance, backed by the "sweeping clause" with which the Constitution's enumeration of the powers of Congress concludes, in which the two houses are authorized "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." The Hamiltonian view

prevailed, and the bank was established. Opinion on the matter, however, continued divided.

b. Opposing views

Led by Jefferson, "strict" constructionists argued that the national government had no powers except such as were expressly conferred upon it in the Constitution, or, at most, such as could be shown to be indispensably involved in the exercise of these delegated powers. To take a single step beyond the boundaries "specially drawn" around the powers of Congress by the Tenth Amendment, urged the Virginian, "is to take possession of a boundless field of power, no longer susceptible of any definition." On the other hand, the loose, or broad, constructionists, such as Hamilton, contended that the national government had all powers which could by any reasonable interpretation be regarded as implied in the letter of the granted powers, and also that it had a right to choose the manner and means of performing its functions, even though involving the employment of agencies not necessarily *indispensable* for its purposes.

Events proved Jefferson right in predicting that the doctrine of implied powers, once accepted, would lead to endless expansion of the national government's activities—often at the expense of powers originally considered as belonging to the states. The logic of practical necessity lay, however, with the Hamiltonian view. If the national government, perennially confronted with new conditions and unforeseeable problems, was to attain the ends for which it was established, it must without fail have the benefit of all authority that could reasonably be deduced from the grants that had been made to it; otherwise, it would be halted at points where inaction would be ruinous. This was eventually conceded, although grudgingly, by the Jeffersonians themselves. After they gained control of the government in 1801, it was not long before they were found invoking implied powers almost, if not quite, as freely as had their Federalist rivals. On no other basis, for example, could Louisiana have been annexed in 1803 or an embargo laid on foreign trade in 1807.

c. Chief Justice Marshall's historic pronouncement

In the course of time, the question reached the Supreme Court; and in a memorable series of nationalizing decisions between 1809 and 1835, that tribunal—while acknowledging limits beyond which powers could not properly be inferred—lent the doctrine the full weight of its authority. Classic expression was given the Court's views by Chief Justice Marshall in the case of McCulloch *v.* Maryland, in 1819, as follows:

> This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising and will probably continue to arise as long as our system shall exist. . . . The powers of the government are limited, and its powers are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in a manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all

means which are appropriate, which are plainly adapted to that end, which are not prohibited but consist with the letter and spirit of the Constitution, are constitutional.

The principles here laid down gained general acceptance and are today firmly embedded in our constitutional law. Not only so, but, as a result of social and economic changes and of wartime and depression crises the implied-powers concept is nowadays applied in directions and in situations of which Marshall and his colleagues never dreamed.

d. Legislative and judicial action

With implied powers as a mighty lever, national controls have been forced to ever mounting heights by legislation, backed by judicial action. In great fields like finance, commerce, agriculture, labor, defense, and social security, Congress often has started with the most meager phrases in the Constitution's text, or indeed with none of direct application at all, and, spinning a web of inference and deduction, has projected a presumed regulating authority into the deepest recesses of the national life. The courts have followed, hearing objections, weighing the validity of powers asserted, and usually, although of course not invariably, giving the stamp of approval, and perchance of finality, to new national-state frontiers.

The States restrict themselves

While all this was going on, the states, as we shall see in later chapters, were taking the opposite tack. They were confining and restraining their powers by constitutional inhibitions, by judicial doctrines of implied limitations, by the development of similar restraints on their units of local government and by the dispersion of executive and administrative responsibility.

THE GRANT-IN-AID SYSTEM AND NATIONAL SUPREMACY

National financing of state and local activities

The most powerful engine in this century for reshaping national-state relations has been the "grant-in-aid" system of national financing of state and local activities. Grants by the national government to the states are no novelty; on the contrary, they go back almost to the beginning of our national history. Starting with Ohio in 1802, Congress made a regular practice of bestowing on newly admitted states public land within their boundaries equivalent to one section in every township, to be used for the development of permanent school funds—in fact, two sections after 1848, and even four in the cases of Utah, Arizona, and New Mexico. In the famous Land Grant College (Morrill) Act of 1862, it set aside still more land for the benefit of the states, specifying that the proceeds should be used by each in endowing and maintaining one or more colleges devoted primarily, although not exclusively, to instruction in "such branches of learning as are related to agriculture and the mechanic arts." Funds derived from this source help support many of our "land-grant" colleges. Not only land but also money (in periods of surplus revenues) was bestowed in earlier times; and not only for education but likewise for roads and canals.

In recent decades, a new form of *conditional* grant has been devised and used widely, and it is this new form that has enlarged national power. Re-

The modern pattern of conditional grants

ferred to commonly as a "grant-in-aid," its cardinal principle is that Congress will appropriate money for the promotion of a specified service or activity carried on by the states, apportioning the sum for any given purpose among the whole number of states on some fixed basis, but permitting a state to share in the subvention only, as a rule, on four conditions: (1) that the state shall spend the national money only for the exact purpose indicated and under whatever conditions may have been laid down; (2) that the state itself, or its subdivisions, shall make concurrent appropriations for the purpose in hand (usually in amounts at least equal to its share of the national grant, but sometimes more, sometimes less, and occasionally none at all); (3) that the state shall maintain a suitable administrative agency—highway commission, extension director, vocational education board, or whatever it may be—with which the national government can deal in connection with the activity to be carried on; and (4) that in return for the assistance received, the state shall recognize the national government's right (with suitable regard for local conditions) to approve plans and policies, interpose regulations, fix minimum standards, and inspect results. Often, of course, it has been necessary for states to enact new legislation in order to qualify for sharing in a given grant. Usually administrative machinery has been reconstructed so as to open a way for supervision by national officers over activities that previously—if undertaken at all—were entirely in the state's own hands. Ostensibly, no compulsion is exercised. A state may, if it likes, decline to meet the conditions imposed in which event it simply does not participate in the subsidy. This voluntary aspect of the plan has been of great help to the courts in getting around the constitutional difficulties which some of the legislation, dealing with matters far out on the rim of national authority, presents. Compliance by the states is, however, less voluntary than appears. For the national funds represent the proceeds of taxes paid by the people of the entire country, and if any state refuses to go into a given arrangement, it thereby cuts itself off from the benefits which its taxpayers are helping to bestow on the states that participate. Typically, the state has been reluctant to do this; and the same considerations that initially induce a state to accept its share of a grant commonly impel it to live up to the standards and specifications required rather than run the risk of having its subvention withheld. Virtually all existing forms of grants-in-aid are shared in by all of the states.

Expansion of grant-in-aid procedure

Beginning in 1887 with cash grants for the maintenance of agricultural experiment stations in the states, the modern grant-in-aid program has steadily reached out to embrace ever larger areas of state and local action. Forestry was added to agricultural research and education as an object of grant-in-aid in 1911, highways in 1916, vocational education in 1917, health in 1918, social welfare in 1935, low-cost housing in 1937, airports and hospitals in 1946, libraries in 1956 and educational television in 1962. From 1895, with the requirement of national audit of state expenditures under the agricultural experiment station program, the amount and character of national administrative supervision of state agencies has also steadily expanded to the point

GROWTH OF REGULAR NATIONAL GRANTS-IN-AID TO STATES AND LOCALITIES, 1902-1964

(Excludes emergency grants, shared revenues, loans and special payments to one or a few states)
(In thousands)

Program	1902	1912	1920	1930	1940	1954	1964
Highways	—	—	20,306	77,891	153,379	521,637	3,353,100
Airports	—	—	—	—	—	17,482	62,500
Agric. Experiment Stations	786	1,593	1,440	4,335	6,848	13,426	39,000
Agric. Extension	—	—	4,472	7,540	18,448	31,772	73,900
"Land Grant" Colleges	1,200	2,500	2,500	2,550	5,030	5,051	14,500
Vocational Education	—	—	2,107	7,385	19,299	25,322	41,300
School Lunch	—	—	—	—	—	83,498	137,000
Vocational Rehabilitation	—	—	—	736	2,125	22,997	89,800
Public Health & Hospitals	—	—	1,759	—	13,689	72,716	289,200
Maternal & Child Welfare	—	—	—	10	9,545	29,380	82,600
Public Assistance	—	—	—	—	279,181	1,388,967	2,950,000
Unemployment Compensation & Public Employment Service Administration	—	—	—	—	61,702	202,837	413,200
Public Housing—Annual Contribution	—	—	—	—	—	44,474	196,500
Area Redevelopment and Urban Renewal	—	—	—	—	—	—	450,000
Forestry	—	—	—	1,318	2,212	9,800	64,500
Miscellaneous	1,015	1,162	1,302	725	2,200	21,389	37,700
Total	*3,001*	*5,255*	*33,886*	*102,490*	*573,658*	*2,539,277*	*8,294,800*

SOURCE: Figures 1902-1940 from Council of State Governments, *Federal Grants-in-Aid* (Chicago, 1960), p. 32.

Includes aid to libraries, to state homes for veterans, to marine schools, and for wildlife restoration.

that under the social welfare legislation of 1935 even the personnel policies of state agencies spending national funds came under national review. Furthermore, the dependence of the state governments upon income from this source to finance their operations has progressively become greater. In 1963, the national payments averaged more than 20 per cent of total state receipts from all sources. Finally, the total demands on the national budget made by the grant-in-aid programs have risen from $33 million in 1920 to more than $8 billion in 1964. The end of this period of expansion in national financing of state and local functions is not yet in sight. In recent years there has been a mounting pressure for national financing of general public education.

National financing of local services

The grant-in-aid procedure has, furthermore, reached beyond the states down into the local units of government. Direct fiscal and administrative relations have been established between the national government and cities and counties in such programs as housing, area redevelopment, urban renewal, and airport construction. For a time during the depression, local relief and public works programs were also supported by national funds. In these programs the state government has been bypassed to link national and local units of government together.

Other payments for state services

Along with the grant-in-aid program there has developed also a growing system of national payments in behalf of state and local functions, but not as regularized as the aids nor as widely distributed. Many annual payments are made in some areas for public education where the defense establishments have thrown unusual burdens on the local facilities. There are also payments for civil defense shelters and for special demonstration projects of many types. The national government is now spending more than $2 billion annually on these efforts.

Results of aid program

The result of this twentieth-century development has been to cast the states and their local units into a new relationship of subordination to the national government. The states are today, for those programs involving national financing, largely administrative subdivisions of the national government. Although they are subdivisions of a novel kind—a good deal of autonomy of method and objective is tolerated—they are nevertheless more dependent upon national money and more susceptible to national control than ever before in our history.

Criticisms of the grant-in-aid system

Over the years, the grant-in-aid policy has been opposed vigorously on the grounds that: (1) under it the national government practices a species of bribery, that is, in effect buys the right of prescribing and supervising activities over which it otherwise would have no control; (2) the system coerces the states (however gently) into overloading themselves with expenditures and obligations; (3) in addition to depriving the states of their proper powers, it engenders the habit of relying on doles, and if adhered to means "the gradual breakdown of local self-government in America"; (4) "national aid" is a misnomer, since all that the central government does it to take money from the people of the states in the form of taxes, put it in the general fund, draw it out again, and redistribute it—with the dollar exchanged sharply shrunken through administrative wear and tear if and when it comes back; (5) returns to the states are in very different proportions from contributions made, with more prosperous states compelled to bear most of the burden and progressive ones penalized for the benefit of backward ones; and (6) if grants are to be made at all, they might better be "block," or lump-sum (rather than functional) grants, to be spent by the states entirely at their own discretion and without accounting to any national authority.

Counter arguments

To all this there has, of course, been a rebuttal, running somewhat as follows: (1) the system encourages the states to undertake social services

which many of them otherwise would ignore or feel that they could not afford; (2) it enables minimum national standards to be set up in fields of social and economic regulation in which the people of the entire country have a vital interest; (3) it divides burdens which states often are unable to bear alone, quite justifiably requiring the richer states to help the poorer ones improve conditions in which all have a common concern; (4) pointing to any state paying several times as much in national taxes and receiving back much less in grants is specious, since the taxes paid were for *all* national purposes, with only some indeterminate portion bearing any relation to the grant-in-aid program; (5) the initiative and responsibility left to the states keeps the scheme elastic and furnishes all necessary safeguards against undesirable dictation from Washington; (6) opposition to national aid for socially desirable activities sometimes is merely a disguise for opposition to the activities being undertaken at all; and (7) in the final analysis, the grant-in-aid system is the only alternative to an enormous expansion of direct national control in ways that would be still more damaging to state power and pride.

Conclusions

It seems clear that whatever the merits of these conflicting views the grant-in-aid system is here to stay. No national administration has attempted seriously to abandon any of the aid programs, and it is doubtful if Congress would concur if one should hereafter attempt to do so. In each program the aid system has been resorted to usually after other expedients have failed and, typically, only after a substantial segment of the population has demanded national action. Many of the more recent aids are aimed at urban problems and the states have, on the whole, failed to exert themselves in the urban areas. Frustrated at state capitals, the urban leaders have gone to Washington for help. There is no doubt, further, that the conditional grant method diminishes the autonomy of state executives and legislatures and enhances the power of state and national administrative agencies. Republican party leaders have been especially critical of the growth of the grant-in-aid system. In 1953, when they gained control of the national government, they authorized the creation of a Commission on Intergovernmental Relations to evaluate the system and, it was hoped, recommend its curtailment. However, the report of this Commission, delivered in 1955, contained no proposals for drastic changes in the present system but rather accepted the aid system as fundamentally sound and recommended changes of a relatively minor nature.[3]

Returning to the attack in 1957, President Eisenhower named a committee of his administrative officers to work with a committee of governors to study what national functions and what revenue sources might wisely be released to the states. This Joint Federal-State Action Committee proposed the national government abandon the excise on telephone service, and the responsibility for vocational education, disaster relief and other programs. The Congress has not, as yet, implemented any of these suggestions.

[3] Report of the Commission on Intergovernmental Relations (Washington, 1955).

THE OUTLOOK FOR THE STATES

The role of the states

What then is the future of the states? Are they to be completely overborne by the advancing might of the national government? Have they become but provinces in a great centralized colossus of governmental power? In the first place, it must not be overlooked that the states too, within their boundaries, are more powerful than once they were. They perform more services, employ more staff, spend more money, and have a greater impact on the lives of their citizens than they ever have done. They are not dying but are growing and expanding. In fact, in the last decade state and local expenditures on domestic functions and services have increased more rapidly than national domestic expenditures. All talk of the weakness, helplessness, and moribund character of state governments is at odds with the facts. There are, it is true, several of our most pressing problems—economic security, international peace, and military preparedness—with which the states as such cannot cope. As public interest has centered in them much of the time recently, the activities of the states may have been forgotten or ignored by many of us. In the second place, the states, as we shall presently observe in more detail, are vital parts of our system of political parties. Our great national parties are not highly centralized at all but are more nearly federations of state party organizations. In the states, the parties practice their tactical exercises; leaders are trained in the ways of democratic statecraft; workers energize the electorate into participation in the processes of self-government. The states continue to provide testing grounds for embryonic statesmen. Many congressmen gained their experience of popular lawmaking in state legislatures; the governor's offices have frequently tested candidates for the presidency; the state courts supply recruits for the national judiciary. The states too are our greatest laboratories for experimenting with new ways by which the government can serve and enrich the lives of our people. From their experience, the nation has saved itself numerous failures and heavy additional costs. The states even today assume the heaviest responsibilities for the leadership, the costs, and the day-to-day services in education, law enforcement, rehabilitation of criminals, care of the mentally ill, construction and maintenance of our far-flung system of highways, protection of wildlife, regulation and supervision of the entire election process, and many other areas of public concern. The states of the United States have a useful and important life ahead of them. Our federal system, although different from that of Jefferson, is still one of partnership between nation and states. One partner has gotten very big and one somewhat bigger, but the smaller partner is quite active and extraordinarily useful.

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4

Civil Rights and How They Are Protected

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.
>
> That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed.—*Declaration of Independence*

Two opposing theories of government

NOTHING QUITE SO APPROPRIATELY characterizes the deep ideological gulf separating the leading members of the Atlantic community from the Iron Curtain states or from the totalitarian aggressors of World War II as their various conceptions of the proper relation between the individual and his government. Emphasizing the dignity and worth of the individual, the people of Great Britain, France, the United States, and other Western nations regard government as resting on the consent of the governed and ascribe to even the humblest of citizens a sphere of personal liberty which no state authority, however organized, can impair. Everything that is valuable in this earthly realm, they assert, is created by individual effort and this creativeness requires a large measure of freedom in order to bear fruit. The state they regard as the traditional enemy of individual self-government and hold tightly to the conviction that its power over individuals must be confined by effective constitutional machinery and fair and workable legal procedures. The communists and authoritarians of other shades practice, if they do not subscribe to, the conception that it is enough for the state to serve man. It is neither necessary nor de-

sirable that he possess any right to develop in his own way. The individual has neither right nor destiny apart from that of the group of which he is a member. He must and should conform his behavior and his thoughts to what his rulers have determined group welfare requires. To be an effective instrument of group welfare, the state must not be restricted in any significant way.

American ideals not easily reconciled

Each of the Western democracies has developed its own institutional arrangement to embody these great ideals of freedom. In the United States, we place our faith in the democratic process by which our officials are chosen and in the constitutional recognition of and protection of civil rights. It is, however, necessary to point out that these two facets of the American system are not easily harmonized. The democratic process is predicated upon the idea of the determination of the scope and direction of governmental effort by majority rule in which each participant is equal to every other one. The constitutional system of civil rights is predicated upon the idea that there are some personal liberties which even majorities may not infringe and that a semi-independent and politically irresponsible judiciary is essential to enforce these limitations. It is hard for the American people to conceive of genuine citizen participation in the processes of government without freedom publicly to criticize, explore, and discuss the problems of the day. For the exercise of free speech, they are nevertheless dependent upon a legal rather than an electoral procedure. Another area of conflict between the two notions concerns the rights of property. In the late nineteenth and early twentieth centuries, one of the major battlegrounds of American politics concerned the question of whether property rights were, equally with personal rights, immune from governmental infringement. A strong and vigorous argument in behalf of property rights issued from those who maintained that the practice of personal freedom depended upon the sanctity of property and an equally insistent claim for governmental regulation from those who maintained that personal freedom was enhanced by restrictions on property. In this conflict judicial restraints upon government efforts to regulate property came into disrepute with those who claimed the most progressive democratic ideals.

Renewed concern for civil rights

The rise of the continental dictatorships both red and black and the posture of international politics since 1930 have stimulated in America a renewed appreciation of the importance of civil rights. The present generation is witnessing the liveliest agitation on the subject since Reconstruction days. Even now as we celebrate the 100th anniversary of the war which gave freedom to the slaves, the Negroes remind us that we have not yet accorded them the full rights of free citizens which the victors strove to give them. From its position as world leader in promoting the conception of human dignity, the nation has perforce been brought to grips with the question of whether its own practice corresponds to the ideals it professes. Not only has there been a growing insistence on a better and more broadly conceived application of the traditional *restrictions upon government* in the interest of personal liberty but also a mounting demand for *positive governmental exertion* to achieve a more adequate realization of these ideals. As early as 1941,

President Franklin D. Roosevelt, in a message to Congress, sought to redefine prevailing concepts, bracketing freedom from want and freedom from fear with the more traditional freedom of speech and religion as rights to which men everywhere are entitled. From this broad statement of aspirations, attention was directed to a number of concrete conditions and practices widely regarded as calling for remedy. From 1944 to the present, after years of relative indifference, both parties have included civil rights planks in their national platforms. Early in 1947, President Truman, responding to growing public concern, set up a Committee on Civil Rights, the report of which—"To Secure These Rights,"—is rated as one of the great public documents of our time. On the basis of this report, Mr. Truman early in 1948 transmitted to Congress a strongly-worded message in which he included a number of proposals calling for governmental action to promote the enjoyment of rights, thus going far beyond the traditional view that governmental action poses the chief threat to such rights. President Eisenhower, too, called upon Congress on several occasions for national legislation aimed at racial barriers to education and to participation in national elections.

The Civil Rights Acts

Repeated urgings by Truman and then by Eisenhower bore no significant fruit until 1957 when the first national civil rights legislation since Reconstruction days was passed. This was followed by a second act in 1960. The Civil Rights Act of 1957 established and subsequent legislation has extended the life of a bi-partisan Civil Rights Commission of six members in the executive branch to: (1) investigate alleged deprivations of rights of citizens; (2) study all legal developments that involve denials of equal protection of the laws; and (3) appraise the policies of the national government relative to equal protection. Power was conferred upon the Attorney General to intercede where a deprivation of voting privileges had been threatened or accomplished. In the Civil Rights Act of 1960, the Justice Department's and the national courts' powers to protect voting privileges were further enlarged. Amidst mounting tension, violence, and murder, President Kennedy in mid-1963 called upon the Congress to stay in session until it had enacted a sweeping new Civil Rights Act of 1963. The Congress must provide legal remedies for every deprivation of right, he argued, or disorder and violence will grow. It must sweep away every barrier to Negro access to every business establishment which serves the public. It must authorize the national executive to aid in school desegregation litigation. It must strengthen still more the Department of Justice's power to enfranchise the Negro. It must eliminate discrimination in employment and must embark on an extensive program of retraining, vocational rehabilitation, and aid for the unemployed.

Although Congress has responded slowly and cautiously to the mounting agitation, much has been achieved by the other branches of the government. The courts have struck down many forms of racial segregation and citizen groups have been actively seeking the removal of all barriers to complete racial and religious equality. Some 30 states and many cities have enacted

fair employment laws of varying effectiveness. The executive has desegregated the armed forces and eliminated discrimination in public contracts.

LEGAL RECOGNITION OF CIVIL RIGHTS IN THE AMERICAN SYSTEM

How civil rights arise

All of the governments operating in the United States are conceived by our citizens as having only limited powers. The people who created and those who continue to support these governments have withheld from them power to invade the sphere of private liberty which is believed to surround each one of us. It is out of this denial of authority that legally recognized civil rights spring and find their tangible expression in the "bills of rights" of our state and national constitutions. Traditionally, these specifically recognized rights are enjoyed as against the government and can be transgressed only by governments.

The federal system and civil rights

Constitutionally recognized civil rights are not identical—although nearly so—throughout the length and breadth of the nation. Our federal system not only complicates but introduces variation in the pattern of rights. There are rights—for example, "the privileges and immunities of citizens of the United States"—that can validly be claimed only by national citizens. There are others which are assigned only to state citizens—by state laws and constitutions. There are still others to which all "persons"—natural or artificial (corporation), citizen or alien—are entitled. Some rights may be properly invoked only against the national government; others may be invoked against the states; and still others against both. Of those which may be claimed against state action, some are based on the prescriptions of the national constitution, others on the provisions of state constitutions, and still others on the absence of any express or implied grant of authority to any government.

Rights nationalized

In practice, the variations in state constitutional prescriptions are now rarely of fundamental importance. Since the Civil War, and especially since 1925, there has been an unmistakable trend toward centralizing the guarantees of many civil rights in the national government. During the first half-century of our national history, the bill of rights embodied in the first 10 amendments to the Constitution was construed (as plainly had been its intent) as restricting the national government only. The states enjoyed a good deal of latitude for interfering with personal liberty (maintaining slavery, restricting freedom of religion, speech, and press, tolerating judicial processes now generally discarded, and imposing other restraints forbidden only to the national government). Not only was there a dual system of civil rights, but a very wide divergence between rights that were national and those that were state. The Civil War amendments mark the change in this policy—the Thirteenth making it impossible for a state to legalize slavery, and the Fourteenth going much farther by forbidding a state (1) to make or enforce any law abridging the privileges or immunities of citizens of the United States, (2) to deprive any person of life, liberty, or property without due process of law, or (3) to deny to any person within its jurisdiction the equal protection of the laws. The

broadening of national concern in guaranteeing civil rights which these amendments made possible was, however, realized but slowly. For almost half a century, the Supreme Court construed the Fourteenth Amendment's mandates so narrowly that no great changes resulted. In the 1920's, however, at a time when state legislatures were attempting restrictions upon freedom of speech, press, and teaching, the Court began "discovering" the Amendment and declaring its full impact upon the states. In 1925 it affirmed freedom of speech and of the press, protected by the First Amendment from abridgment by Congress, to be "among the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states." When in later decisions the same view was asserted of religious liberty and freedom of assembly, there arose a single (and nationalized) system of rights in the four great areas mentioned. Since the 1940's, the Supreme Court has also been "discovering" the full impact of the "equal protection" clause and this too has tended to center responsibility for protection of rights at the national level. Not all rights have as yet undergone such assimilation. In the area of fair procedures, rights nationally protected and those state protected still differ significantly.

No full enumeration possible

Still another characteristic of the American system of rights is that it is impossible to compile a complete and definitive list of the civil rights to which each of us is entitled. If we turn first to the Constitution we discover—chiefly in the first eight amendments—a long and impressive list, followed, however, by the baffling provision of the Ninth Amendment that "the enumeration . . . of certain rights shall not be construed to deny or disparage others retained by the people." What others? No man can say conclusively. Similarly, we would find in all of the state constitutions articles and sections comprising bills of rights, but in no instance any indication that the rights mentioned form an exact and exhaustive list. Quite the contrary. The Court, speaking of guarantees contained in the Constitution, has said that interpretation of them must be "a gradual process of judicial inclusion and exclusion." And, one might add by the same gradual process of legislation and executive action and public discussion, rights are being broadened and redefined all of the time.

Rights not absolute

Liberty is not license, and rights are relative, not absolute. After all, one of the main purposes of government is to prevent the safety and well-being of the many from being jeopardized by the few. Freedom of speech and press does not carry with it any right to utter or publish slander or libel or to incite persons to crime or panic; freedom of assembly does not entitle any group to interfere with public order and safety. To be validly claimed, a right must be exercised so as to cause no impairment of the same or any other right possessed by others. The attempt to apply this principle, however, catapults us immediately into all of the major controversies of civil rights. If it is carried to extremes, it spells the end of any rights at all.

Civil rights in war

Our history suggests that the emphasis on public order and safety is likely to grow with a concomitant reduction in the area of allowable individual liberty when the nation is engaged in or feels itself threatened by war. Al-

though, legally speaking, constitutional rights are not created or suspended by "national emergency," they are, in practice, sharply curtailed and, typically, with both electoral and judicial consent. Since 1939-40 this nation has been living through just such a period of real or supposed emergency. Although technically at peace since 1953 and from 1945-51, the fear of Soviet Russia has mounted to such intensity that restrictions have been piled upon restrictions until the sum total of prohibitions of various kinds of expressions and activities is probably as great as has existed at any time since 1918. There has been some relaxation of efforts at "thought control" in the last few years.

Civil rights classified

Civil rights which have received legal or political recognition in America may be classified into (1) those dealing with personal liberty and (2) those dealing with fairness in governmental procedures.

RIGHTS OF PERSONAL LIBERTY

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.—Thirteenth Amendment

1. Right to personal security

"Freedom can exist," said the President's Committee on Civil Rights, "only where the citizen is assured that his person is secure against bondage, lawless violence and arbitrary arrest and punishment." No general immunity from personal servitude was legally recognized in the United States until the adoption of the Thirteenth Amendment in 1865. Since that time, slavery in all of its forms has been eliminated. This amendment has been interpreted to mean that a laborer cannot be compelled to work out a debt in his employer's service. National statutes as well as several state constitutions and statutes forbid peonage in this or any other form, and several state constitutions also prohibit imprisonment for debt. Persons may, however, validly be held to the completion of terms of service for which they have contracted (sailors, for example) and may also be conscripted for military, police, jury, or highway laboring duty. These latter are considered appropriate exercises of governmental power and do not, therefore, involve "servitude."

Efforts at national enforcement

The deprivation of personal liberty by mob violence (lynching) has posed a very different problem of civil rights. For a time after the Civil War, the Congress felt that positive action in the form of national statutes was necessary to assure the Negroes of the South the new status which the Civil War amendments sought to give them. In a series of civil-rights acts passed between 1866 and 1875, national authority was invoked to prevent intimidation of or violent assault upon American citizens. The Supreme Court and later the Congress took the view that the Fourteenth Amendment did not intend to authorize the national government to regulate the behavior of citizens nor to replace local or state law enforcement. The demand for positive national action to guarantee personal security against coercion or violence has been

voiced with new vigor in the past three decades. Congress has repeatedly been urged to enact laws against lynching and to strengthen the remnants of the old civil rights acts. For a time it seemed that racial tensions and the accompanying violence associated with the reestablishment of white supremacy were declining. The effort to mix the races in the public schools, followed by the vigorous demands for ending discrimination in stores, restaurants, depots, and city buses has led to new tensions and new lawlessness. Thus far Congress has been unwilling to depart sharply from the traditional paths. In the Civil Rights Act of 1957, the 1866 Statute empowering the president to employ troops to enforce or prevent violation of civil rights legislation was repealed. However, in the Act of 1960, the transportation or possession of explosives intended for use in bombing buildings or vehicles and flight across state lines to escape prosecution or to escape giving testimony in bombings were made national crimes. The executive branch has, in fact, intervened with force cautiously and infrequently and only when: (1) a national Court order was defied (Little Rock, Ark., Oxford, Miss., and Tuscaloosa, Ala.); (2) interstate movement of persons was being obstructed (Alabama); or (3) when invited by local officials to assist (Clinton, Tenn.).

An illustration of the lengths to which curtailment of the rights of personal security will be tolerated in a wartime atmosphere is provided by the wholesale, compulsory relocation of 110,000 Japanese-Americans (citizens as well as aliens) from the West Coast in 1942 by congressional and executive authority with the approval of the Supreme Court and without trial.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .—First Amendment

2. Right to religious freedom

Freedom of religious worship is guaranteed against national legislative impairment by the First Amendment and against state impairment by the prevailing interpretation of the Fourteenth Amendment. It is also guaranteed against state restriction by the constitutions of the states, although not always in identical terms. By these guarantees individuals are, in general, free to cherish such religious convictions as they please, to declare them publicly, to seek converts to them, and to engage in whatever forms of worship they prefer. These guarantees do not, however, confer any exemption from the criminal laws of the land, for example, to practice polygamy or to extract fees from the gullible for occult cures.

Jehovah's Witnesses

Religious beliefs, on occasion, come into conflict with norms of conduct cherished by some members of society as well as with governmentally ordained principles of safety and order. In recent years the vigorously nonconformist sect known as Jehovah's Witnesses has tested the contours of the constitutional guarantees. This sect attracted national attention several years ago when it denounced the practice in some public schools of saluting the American flag. This, they said, was idolatry and they refused to allow their

children to join in the ceremony. Attempts by local school boards to exclude their children were at first sustained. Later, regulations requiring their expulsion were declared invalid by the Supreme Court. The strident anti-Roman Catholic tenor of their literature and preaching, coupled with their penchant for street corner and house-to-house solicitation, have stimulated a number of communities to attempt to curtail the Witnesses by local ordinances or police regulations. A number of such efforts have been brought to the courts with varying results. On the whole, religious canvassers have been given a rather wide latitude to proselytize without licensure or payment of fees so long as they are careful to keep the streets free and to observe other local regulations governing public meetings in public parks or on public thoroughfares.

Subsidization of parochial schools

The right of religious bodies to establish and maintain their own schools and thus to avoid compulsory public school attendance has long been recognized. In recent years, the related problem of subsidizing religious schools from the public treasury has come increasingly into prominence. In a number of states (Wisconsin, for example) the state constitution forbids subsidy of any kind (books, transportation, buildings, etc.), but in some (New Jersey, for example) the practice is expressly sanctioned by law or constitutional prescription. A few years ago the United States Supreme Court was invited to declare state subsidy of parochial school pupil transportation a violation of the religious freedom guarantees of the Constitution. In a close and vigorously contested decision, the Court ruled that states could validly subsidize private schooling if they wished to do so. The question of religious freedom was not involved but rather one of public benefit, said the Court majority. On the other hand, the Court has refused to review state decisions holding subsidization of parochial schools to be contrary to the state constitution. One of the troublesome issues in the continuing debate on a national grant-in-aid program for public education has been the question of providing aid for parochial schools. The Kennedy Administration has supported the view that aid in various forms can constitutionally be given. This issue has not been resolved either in Congress or in the courts.

Religious instruction in the public schools

Religious education in the public schools, long a sensitive nerve in the anatomy of free public education, has repeatedly been touched in recent years by controversy. The sharpest jar to widely accepted practices came in 1948 when the Supreme Court declared that an Illinois practice of offering religious instruction to willing children by various denominations in the school buildings on time "released" for the purpose by the school authorities was inconsistent with the principle of separation of church and state imbedded in the Constitution. This decision spread consternation among the hundreds of communities then using this or a similar procedure and started several new cases to the courts to discover if any extant practice could be accepted. The Court, in 1952, set at rest much of the uneasiness created by its 1948 decision by approving a New York City procedure in which denominational religious instruction was provided to those who wanted it on released time outside the public

school buildings. "Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person," said Justice Douglas for the Court. "It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction." The Court, in 1962, further held that official prayers, even if denominationally neutral, may not be recited in public schools and, in 1963, that states may not require the reading of selections from the Bible nor the recitation of the Lord's Prayer in the public schools.

By way of further definition of allowable state conduct, the Supreme Court in 1961 held that state constitutions and laws may not require officeholders to declare a belief in God as part of the oath of office. "Neither a state nor the Federal Government can constitutionally force a person to profess a belief or disbelief in any religion," said Justice Black. The Court refused, however, in the same year to strike down "blue" laws, restricting the sale of goods and services on Sundays, now found in many states. The Court said that the essential purpose of these laws today is not religious but rather economic and social.

Conscientious objection in wartime

Positive governmental assertion of the value of religious freedom has occurred under trying circumstances in both world wars of this century. The Congress, as an act of grace, has authorized draft boards to call "conscientious objectors," those with bonafide religious scruples against military service, only for noncombatant service or for service in other public programs not operated by the armed services (park improvement, conservation, care of the ill) and thus has excused them from combat.

> Congress shall make no law . . . abridging the freedom of speech or of the press. . . .—First Amendment

3. Right to speak and write freely

Freedom of speech controversies rarely involve the right to say or to print things that a majority of the people already believe. It is the right to say unpopular, unorthodox, or unconventional things which is really at issue. Further, an untrammeled right to say anything one pleases has never been recognized by any nation. And in the United States from the beginning, speaking and writing have been confined by prevailing standards of decency of language and subject and of slanderousness of intention as well as by certain imprecise requirements of public peace and safety. Although standards and tastes in these matters have changed from generation to generation, even the most ardent exponents of unfettered communication recognize the wisdom and necessity of some limitation. In our day, as in many prior epochs of our history, the major problems of speech and press arise from the determination of a large number of our people to use the authority and prestige of the government to suppress opinions which they detest and which they believe tend to undermine

our scheme of social values, our system of constitutional government, or our national independence. This determination, now as in earlier years, gains added vigor when applied to utterances which betray or seem to betray or can be made to appear to betray an affinity for some foreign state or imported ideology. When, as in the case of England in 1776, France in 1798, Germany in 1917 and 1941, and Russia since 1946, this foreign state is an actual or potential enemy the determination becomes well-nigh irresistible. Under these circumstances, restrictions on freedom of communication have gone and do now go far beyond the suppression of alleged "alien" ideas. They embrace positive injunctions to loyal behavior and speech. Even criticism of the conduct of the government, essential as it is to the conduct of a democratic state, tends to be regarded as seditious and disloyal. The modern problem is further complicated by the fact that the opinions and movements which the prevailing restrictions are aimed at suppressing, communism and totalitarianism, are themselves hostile to freedom of expression. Should democratic tolerance be accorded to those who do not believe in it and would not practice it if they had the opportunity?

National legislation restricting speech

The long history of national legislative and executive efforts to restrict speech and publication in the interests of national safety begins with the Alien and Sedition Acts of 1798, which among other things forbade the uttering of defamatory remarks about the president or the Congress or the inciting of the hatred of the people against them. In the Civil War period, the president took the initiative in suppressing pro-southern expressions in the North. Congress passed no general limitations on speech, although it did later ratify some of the executive actions. In World War I, the Congress dealt with seditious writing and talking by sweeping restrictions on expressions critical of the government or its wartime policies. In each epoch the courts have, with very few exceptions, sustained these types of laws and their application to individuals.

"Clear and present danger" doctrine

Out of the post-World War I efforts to curb socialist, communist, and syndicalist movements in the United States by state legislation, the Supreme Court gradually evolved one of its most significant doctrines in the field of free speech: the clear and present danger test. As enunciated by Justice Holmes in several dissenting opinions, this theory holds that restrictions on freedom of expression in the interest of public safety can be validly applied only when the statements and circumstances in which they are uttered involve a clear and present danger of evils which the government has a right to prevent. By 1940, the Court had fully adopted this theory as controlling in such matters, and had, in doing so, considerably broadened its previous theories of the amount of freedom of speech and of press which would be tolerated.

Contemporary restrictions aimed at communists

A new wave of restrictive legislation and executive action set in about this time. The first peacetime sedition act since 1798 was passed in 1940 (Alien Registration Act), aimed especially at advocates of the violent overthrow of the government of the United States. This was followed in 1950 by the Internal Security Act designed to force communist-dominated organizations to reveal themselves as such and to place their activities under rigid sur-

veillance. A Communist Control Act in 1954 withdrew from the Communist party or any of its offspring the rights, privileges, and immunities of legal bodies in the United States or in any state. By these and other statutes the communists or individuals found to have advocated forceful revolution are denied positions on the public payroll, in the armed services, or in defense plants, are required to disclose their affiliations and may be jailed. In this atmosphere, the clear and present danger doctrine has been on the defensive in judicial circles. The Supreme Court in 1951 sustained the conviction of eleven top communist leaders under the Act of 1940 and held that the Communist party did advocate the violent overthrow of the government and that Congress had the power to prohibit such advocacy. It also has sustained state and national efforts to bar communists or other "subversives" from public employment. Speaking for the Court in the communist case, Chief Justice Vinson said, "an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent." The clear and present danger doctrine, he also observed, should not be applied or construed to force the government to wait for a violent uprising before it can act.

In more recent cases, however, the Court has suggested limits to the available acts for stamping out subversion. In 1957, it freed a number of West Coast communists on the grounds: (1) that the statute of limitations outlawed charging these communists with "organizing" a conspiracy to overthrow the government, and (2) that the advocacy validly outlawed by the Act of 1940 must be advocacy to take action leading to violent revolution and not just advocacy of an abstract doctrine of revolution. Congress, thereafter, amended the Act of 1940 to define "organizing" to include continuing activities as well as the initial act of organization. The Court, in 1961, however, faced directly the constitutionality of the Act of 1940 as applied to a member of the Communist party. Membership in an organization advocating the violent overthrow of the government is itself a crime, said the Court, if the person is an "active" member and has a "specific intent to bring about violent overthrow." In a related case of the same year, the Court upheld the validity of the registration provisions of the Act of 1950. In perhaps its most controversial decision on the communist issue, the Court, in 1956, held that the Act of 1940 recited above superseded any state laws on this subject and that convictions on "disloyalty" to the United States could be sought only under the national law.

Loyalty oaths

Not satisfied with prosecutions for sedition, with prohibitions of communistic propagandizing and with denials of certain types of privileges and opportunities to communists or totalitarians, executives and legislatures by law and by the activities of their investigating committees have sought positive declarations of loyalty from civil servants, military men, school teachers, beneficiaries of national grants for research and for collegiate loans and fellowships, and others. Typically, these have taken the form of loyalty-oath requirements and these too have in some cases been upheld by the Court. A few, such as that of the State of Florida, which have gone beyond denial of membership

in a subversive organization, have been invalidated; also, an effort by California to require a loyalty affidavit from those who claimed property tax exemption was declared to be invalid as placing the burden of proof on the taxpayer rather than on the state. Also an attempt by Congress to demand such oaths from tenants of public, low-rent housing projects has been set aside by several state courts and the national administration ceased, in 1956, any effort to enforce the rule.

One final word on the contemporary efforts to root out "subversive" influences in American life. There is a great deal of disagreement on what constitutes subversion. Many of the state and national statutes, executive orders and legislative committee fiats, are loosely worded and imprecisely aimed. There is some danger that in rooting out the communists we may also be intimidating every type of unconventional opinion. There are far too many in the land ready to stamp out any kind of opposition to those in power on the grounds that any criticism of the existing policies or institutions of our society gives aid and comfort to our enemies.

Censorship

In the age-old conflict between freedom of speech and press and standards of public decency, courts and public alike have been developing much broader tolerance. Books and magazines today deal with sex in a more uninhibited fashion than would have been tolerated in any other period of our history. Tastes in these, as in so many other matters, change with the years and the courts are, in fact, reflecting these changes in numerous cases by staying the arms of local and state censors. In 1952, the New York ban on the movie "The Miracle" and a Texas ban on "Pinky" were upset on the grounds that the powers granted to the censors by legislation were too vague and uncertain. A Michigan law was invalidated in 1957 on the grounds that it forbade to adults what might be considered corrupting to children. A Los Angeles ordinance making it a crime for a bookseller to have obscene books in his shop was overturned as applied to a storekeeper who claimed he did not know what was in the books in question. Efforts by the Postmaster General to stop the circulation through the mails of magazines dealing with nudism and homosexuality and of the book *Lady Chatterley's Lover* have been halted. This does not mean that obscenity is now permissible in speech, films, or writing or that censorship cannot be imposed under proper circumstances but only that broader conceptions of what is censorable and what is obscene are being applied.

Censorship in the national government

The ability of the national government to restrain the circulation of undesirable opinions or materials is greatly aided by its operation of the mails. Congress has authorized the postal authorities to exclude from postal privileges indecent, fraudulent, and seditious materials and has conferred rather wide discretion on these authorities in deciding what falls within the prohibition. The licensing of radio and television broadcasting also places the national government in a strategic position from which to exclude by administrative determination similar materials from the air waves. The Federal Communications Commission, although denying censorship, nevertheless does in fact exercise it indirectly. In wartime, the government is obliged to introduce rigid and

stern controls on the flow of news on the conduct of military operation. Frequently, however, these have gone far beyond the strict requirements of military security. The post-World War II period of international tensions, Korean police actions, and huge armaments has stimulated the continuation of many types of restriction on free communication to the press and public by executive departments and agencies. The most recent controversy in this field has concerned security regulations issued by President Truman and continued by Presidents Eisenhower and Kennedy. The newspapers, in particular, have been campaigning nationally against what they regard as a growing and unwarranted suppression of information by government agencies. Scientists too have joined the attack, claiming that important research is being hampered by the secrecy surrounding governmental scientific programs.

> Congress shall make no law . . . abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances.—First Amendment

4. Right to peaceable assembly and to petition

The right to peaceable assembly is regarded by the Court as equally fundamental with those of free speech, press, and religion and, therefore, as guaranteed against state encroachment by the Fourteenth Amendment. The right of petition has the same status. It also includes the right to demand positive actions by government as well as a redress of grievances. It does not, however, include a right to have the government take action on the request. For a time (1840-45), the lower house of Congress refused to receive petitions on the subject of the abolition of slavery. John Quincy Adams, in one of his last great efforts in the House of Representatives, paved the way for the repeal of this rule. Petitions now, as for many years, are regularly delivered by any member of Congress to the clerk for entrance on the records of Congress. Many of these are referred to the appropriate committee. Most are never heard of again. The regulating of public assembly has presented the Court with more difficulties than the preservation of the right of petition. In 1937, the Court struck down a Jersey City ordinance under which the city officials had been prohibiting many types of meetings by leftist organizations. In general, the courts have sustained regulations where the major purpose has been to keep streets and thoroughfares free of obstruction and where licensure is used without discrimination among groups seeking authority to hold meetings in public places.

> A well regulated Militia being necessary to the security of a free state, the right of the people to keep and bear Arms shall not be infringed.—Second Amendment

5. Right to keep and bear arms

Provisions similar to that above may be found in many of the state constitutions. The arms referred to are those of the soldier; and it is not only the right, but also the duty, of every citizen, if called upon, to bear such arms in

the service of his country. Under the police power, the "bearing" of arms intended for private use, however, may be regulated and restricted by both the national government and the state. There are many laws forbidding the carrying of concealed weapons (pistols, revolvers, dirks, bowie-knives, sword-canes, etc.) and the sale, possession, or use of sawed-off shotguns and other weapons not employed for military purposes but habitually used by criminals.

> No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.—Fourteenth Amendment

6. Right to equal protection of the laws

The original intent of this provision was to protect the lately emancipated Negroes against discriminative treatment at the hands of the southern states. In practice, it has developed into a general guarantee against arbitrary classification in legislation and administration and against other forms of discrimination. As such, it is applicable alike to all persons (citizens and aliens, individuals and corporations) and to all kinds of civil rights. Furthermore, although the Fourteenth Amendment lays the injunction upon the states only, equal protection is now construed as contained within the broad concept of due process of law, and therefore as binding upon the national government as well. The purport of the "equal protection" clause is to require that when statutory classifications are made, they shall be reasonable with respect to the end sought, and that all persons or things standing in substantially the same relation to the law shall be treated alike. People of large income may be taxed at higher rates than people of low income, but higher rates for Protestants than for Catholics would be invalid as constituting classification unrelated to the legitimate objectives of taxation. To some, the right to equal protection carries with it an implied denunciation of discrimination in any form. The constitutional guarantee, however, is aimed only at discrimination by official state action.

Racial discrimination:

The most controversial frontier of civil liberties in our day has centered around racial discrimination. In this controversy the "equal protection" clause has played an important role. In recent years, however, the government has been urged not to confine itself to the negative restraints of the Constitution but by positive action to cast out discrimination and penalize its practice. At the same time, the traditional view of civil rights as essentially restraints on government action has been broadened. The problems arising from the status of the Negro which have challenged the lawmakers as well as the law-interpreters may be grouped for discussion under those concerned with (1) residential rights; (2) employment rights; (3) educational rights; and (4) rights in public facilities.

a. Residential rights

With respect to residence, the traditional issue has been whether, in many of our cities, Negroes can be debarred as owners or renters from specified blocks, streets, or districts. No one ever supposed this could be done by public regulation. But in numerous places the objective had been attained through white "covenanting" to keep colored people out; and in no fewer

than 19 states, supreme court rulings have at various times upheld such discriminatory contracts. Technically, covenanting of the kind is still possible. In cases coming up from Detroit and St. Louis, the United States Supreme Court, however, in 1948 ruled unanimously that although property owners signing agreements not to sell real estate in a given area to Negroes violate no law, such covenants cannot constitutionally be enforced through either state or national courts. The Court went even further in 1953 when it held that a state court may not validly entertain a suit for damages against violators of such covenants. A campaign in Congress to change the national law governing public low-rent housing which allows the projects to segregate according to the neighborhood pattern has thus far not been successful. However, late in 1962, President Kennedy by executive order forbade racial and religious discrimination in the sale or rental of all housing financed in whole or in part by the national government. At least 10 states have also forbidden discrimination in housing projects. Many states have extended the prohibition to publicly-aided housing, and several cities and states prohibit discrimination in the sale or rental of private housing developments. A nationwide campaign is now under way to increase the number of state and local units with such prohibitions.

b. Employment rights

The main problems of discrimination against nonwhite groups in employment have not arisen under constitutional "bills of rights" at all. Rather the effort to end discriminatory employment practices by private employers and labor unions has taken the form of positive legislation aimed to prohibit such practices. New York state pioneered in the enactment of so-called "Fair Employment" laws by its act of 1945, and almost half of the states have followed this lead. Several cities have also enacted local ordinances aimed at the same evil (Chicago, Minneapolis, Philadelphia, Cleveland, for example). A few states have enacted laws based upon consultative and advisory techniques rather than compulsive ones (Indiana and Wisconsin, for example). About two-thirds of the nation's labor force is now covered by some form of regulation. President Kennedy, in mid-1963, put new vigor behind a request for Congressional approval of a national fair employment law. The southern congressmen have thus far steadfastly and successfully opposed compulsive legislation. The executive branch has, however, by executive order struck at discrimination in civil service employment, at segregation of races in the ranks of the armed forces, at discrimination by contractors holding government contracts, and at discrimination by contractors on nationally-aided projects. A Committee on Equal Employment Opportunity, now headed by the Vice President, investigates the effectiveness of these measures as well as that recently aimed at housing discrimination.

c. Education

For almost half a century, the practice of segregating the races in the public schools of southern and border states was sanctioned by the national judiciary under the doctrine that separate facilities could be provided if they were substantially equal. As Negroes sought larger and larger educational opportunities, especially at the collegiate and professional level, they began steadily

to assail this time-honored doctrine and a sympathetic Supreme Court began to erode it. In a series of cases between 1948 and 1954 several states were ordered to admit Negroes to state-supported collegiate and professional institutions. Finally in 1954, the Court ordered the abandonment of all segregation in publicly supported education institutions at all levels everywhere and specifically reversed the traditional doctrine. "Separate educational facilities are inherently unequal," said Chief Justice Warren for the Court. "Segregation [itself] is a denial of equal protection." Recognizing that such a drastic change in the practices and attitudes of many decades invited caution, the Court delayed the execution of its judgment pending further review and then ordered (in 1955) the lower national courts to determine in each case how best to end segregation in the schools. The lower courts were instructed to allow time for the necessary readjustments but to insist on reasonable efforts at compliance. In all cases the burden of proof was placed on the local authorities to show why they could not move faster and that they had a plan to end segregation.

Along the border, integration of the schools has, on the whole, been steadily making progress without major incident. West Virginia, Maryland, Delaware, Kentucky, Missouri, Oklahoma, and the District of Columbia have achieved substantial results with from 21 percent to 84 percent of the Negro children of school age attending mixed schools. Token integration has been achieved with some difficulty in Arkansas, Florida, North Carolina, Tennessee, and Texas. Court ordered integration has occurred in one or two districts in Georgia, Louisiana, Alabama and Virginia. Little integration of consequence has occurred in Mississippi or South Carolina. In fact, in most of the states of the "deep South" integration has been resisted by every possible means. The Congressmen of these states in 1956 signed a resolution pledging themselves to "use all lawful means to bring about a reversal of this decision . . . and to prevent the use of force in its implementation." State legislatures declared that the Court's ruling was an unwarranted invasion of their "reserved" powers and several invoked the old nullification doctrine of "interposition" to justify disobedience to the rule. Laws and constitutional amendments have been passed authorizing the closing of any schools ordered to be integrated and also authorizing public funds to be used for private schools. New procedures for the assignment of pupils have been devised including use of several criteria not obviously based on race. Violence has erupted in Clinton, Tennessee and in Little Rock, Arkansas when efforts have been made to comply with a court order on integration. In Clinton, the ring-leaders were prosecuted by the national government and convicted of criminal contempt. President Eisenhower had to order troops into Little Rock in 1957 to frustrate the Governor's efforts to nullify an integration order for Central High School. A cadre of U. S. marshals, a portion of the federalized National Guard of the state, and units of the Army were all used in Oxford, Mississippi in 1962 to force the court-ordered admission of a Negro to the University of Mississippi. Both the Governor and the Lieutenant Governor of that state are under

court indictment for their efforts at obstruction. The Mississippi experience was repeated almost exactly at Tuscaloosa, Alabama, and the situation in Birmingham remained highly explosive at the end of 1963. Case after case has been contested in the lower courts charged with seeking compliance with the 1954 decision. The Supreme Court meanwhile has steadfastly adhered to its position. Invited to stay the execution of the desegregation order in Little Rock in order to avoid violence, it enjoined Governor Faubus from intervening, denounced state efforts to support segregation "through any arrangement, management, funds, or property" and dismissed the "interposition" doctrine as, in John Marshall's words, making the Constitution "a solemn mockery." Supporters of desegregation sought unsuccessfully in the Civil Rights Acts of 1957 and 1960 to strengthen the hands of the executive branch in enforcing desegregation. President Kennedy in his mid-year message in 1963 on civil rights asked for power for the Department of Justice to intervene in certain desegregation litigation. Earlier Attorney General Kennedy had entered the case of the closed schools of Prince Edward County, Virginia, on behalf of the national government. He also instituted a suit in Virginia to end school segregation in public schools receiving aid from the national government because of the impact of military installations in the district. From all of this, it is clear that full implementation of the 1954 decision still lies many years in the future.

d. Public facilities

In the past, southern states have been held to be justified—with a view to minimizing special antagonisms and promoting public order—in sanctioning, or even by law requiring, the segregation of white and colored people not only in hotels and restaurants but also on railway trains and buses. The modern Supreme Court has been sweeping these practices away also. In 1946 the Court held invalid a Virginia "Jim Crow" law segregating the races in buses on the grounds of inconvenience to interstate carriers rather than on the question of equal protection. In a later case against the Southern Railway turning on its refusal to seat a Negro in the dining car, the Court, in effect, invalidated all forms of discrimination on railroad trains and the laws on which they rest. The Interstate Commerce Commission followed this decision by a sweeping order in 1955 ending segregation in all interstate trains and buses. The next step was a decision in 1956 outlawing an Alabama law and a Montgomery City ordinance requiring segregation on intrastate buses. This decision came in the midst of a boycott of city buses by the Negroes of Montgomery. Ultimately segregation in buses in a number of large Southern cities was ended by the bus companies. Using the "sit-in" system the Negroes then attacked segregation in restaurants, terminals, and large chain stores. The Court in a recent case outlawed segregation in the terminals as well as in the bus or train. Attorney General Kennedy in 1961 urged the I.C.C. to order an end to discrimination in all terminals and in restaurants in terminals and this it did. In other areas of concern, the Court has swept away enforced segregation in public parks, playgrounds, golf courses, and bathing beaches.

Where the segregation is practiced by private entrepreneurs and is not

PROGRESS OF SCHOOL DESEGREGATION

1963

State	School Districts			Enrollment		In Desegregated Districts		Negroes in Schools with Whites	
	Total	Bi-racial	Deseg	White	Negro	White	Negro	No	%
Alabama	114	114	4	539,996**	287,414**	106,199**	70,896**	11	.004
Arkansas	415	228	13	328,023**	112,012**	66,752	18,643	1,084	968
Florida	67	67	16	964,241	237,871	669,375	130,667	3,650	1.53
Georgia	197	181	4	689,323	337,534	95,731	77,599	177	.052
Louisiana	67	67	2	460,589**	301,433**	68,700	79,077	1,814	.602
Mississippi	150	150	0	304,226**	291,971**	0	0	0	0
North Carolina	171	171	40	802,900*	346,746*	367,764	133,164	1,865	.538
South Carolina	108	108	1	368,496*	258,955*	3,108	9,539	10	.004
Tennessee	154	143	44	687,902*	164,940*	374,621*	119,547*	4,466	2.71
Texas	1,421	899	244	2,045,449*	326,409*	1,290,000*	186,000*	14,000*	4.29
Virginia	130	128	55	728,259*	236,386*	486,231	145,658	3,721	1.57
SOUTH	2,994	2,256	423	7,919,404	2,901,671	3,528,481	970,790	30,798	1.06
Delaware	86	86	86	79,024	18,422	68,321	13,976	10,209	55.4
Dist. of Columbia	1	1	1	19,803	117 915	19,803	117,915	99,998	84.8
Kentucky	205	166	164	620,000*	46,000*	500,000*	44,000*	25,202*	54.8
Maryland	24	23	23	540,667	160,946	535,691	160,946	77,816	48.3
Missouri	1,597	212*	203*	793,000*	95,000*	NA	90,000*	40,000*	42.1
Oklahoma	1,180	241	197	529,300*	42,916*	317,670*	34,898*	12,048	28.1
West Virginia	55	44	44	417,595*	21,055*	417,595*	21,055*	18,500*	87.9
BORDER	3,148	773	718	2,999,389	502,254	1,859,080††	482,790	283,773	56.5
REGION	6,142	3,029	1,141	10,918,793	3,403,925	5,387,561††	1,453,580	314,571	9.2

* Estimated. ** 1962-63. † No. of Negroes in schools with whites compared to total Negro enrollment.
†† Missouri not included.

Southern Education Reporting Service, December, 1963

SOURCE: *Congressional Quarterly Weekly Report*, Jan. 3, 1964, p. 2.

based on state law or local regulation, it has, so far, not been successfully assailed in Court. However, some 30 states and the District of Columbia now have laws against discrimination in places of public accommodation—hotels, restaurants, theatres, retail stores. Such legislation is now being pushed energetically across the nation and President Kennedy has asked Congress for a national law guaranteeing equal access to such facilities. Human rights agencies and Community Relations Services have also been widely established to direct the campaign against discrimination and to mediate settlements in cases of dispute. Riots and street fighting have increased sharply as the Negroes have conducted one well-organized assault after another on segregated stores, shops, restaurants, theatres, parks, and hotels. The Supreme Court has invalidated convictions of Negro sit-ins who have sought service in segregated facilities.

Equal protection and legislative representation

The equal protection clause has quite recently been injected into another highly controversial field of American politics: the apportionment of seats in state legislatures. Early in 1962, the Supreme Court brushed aside its traditional views on this question and held that state systems of representation that departed sharply from state constitutional requirements for equal districts could be outlawed under the "equal protection" clause and redress sought in the national courts.

In view of the stubborn opposition to the desegregation of public schools, the results thus far of the apportionment decision are astonishing. In 23 states Court actions have upset long-standing apportionment schemes of one or both houses of the legislatures or have strongly intimated they would do so if remedial action were not taken promptly. New apportionment systems for one or both houses have already been adopted in 22 states and are pending in at least 6 others. Opposition to the Court effort is centered around a proposed constitutional amendment which would deny national jurisdiction in state legislative apportionment cases. Thus far only a dozen states have memorialized Congress in behalf of the amendment.

Other schemes to perpetuate rural domination of state politics, such as the Georgia and Maryland county unit systems for primary election of governors, senators, and other state-wide officials were invalidated under the same interpretation of "equal protection" in 1963.

7. Freedom of Association

One of the by-products of the campaign against racial discrimination has been the unequivocal assertion by the Supreme Court of the right of freedom of association as part of the liberty guaranteed by the Fourteenth Amendment. Several Southern states and cities sought to force the National Association for the Advancement of the Colored People—the leader in the effort to halt discrimination—into the open by requiring registration and the submission to state or local authorities of membership lists. In cases from Alabama and Little Rock turning on the refusal of N.A.A.C.P. to comply with the regulations, the Court held that such efforts to compel disclosure effectively restrain freedom of association and that this freedom "to engage

in association for the advancement of beliefs and ideas is an inseparable aspect of liberty assured by the due process clause."

RIGHT TO FAIRNESS IN GOVERNMENTAL PROCEDURES

It is an axiom of Anglo-American jurisprudence that a person suspected or accused of illegal behavior is entitled to a fair trial, by humane procedures, and with the burden of proof resting on his accusers. This conception sharply differentiates the English-speaking world from that of the modern authoritarians with their secret police, torture-chambers, and stealthy apprehension. The constitutions of the United States and of the several states, in pursuance of our traditional ideas, surround the entire process of criminal justice with restrictions. And while the guilty occasionally escape conviction by hiding behind the ancient guarantees, the innocent usually find refuge in the shelter of their time-tested rights.

> No person shall be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury. . . .—Fifth Amendment

1. Indictment by grand jury

The grand jury is an institution of ancient origin, consisting of 12 to 23 citizens who hear the public prosecutor make accusations of crime and then determine if there is sufficient evidence to require the suspects to be held for trial. It was designed to prevent frivolous or capricious prosecutions by public officials. The procedure, however, is cumbersome and many states, especially western ones, have abandoned it in favor of indictment by "information" of the district attorney. Even the national government authorizes its use in major but noncapital offenses when the defendant agrees and in minor offenses at the discretion of the prosecution. The Supreme Court has accepted these procedures as within the spirit of the Constitutional guarantees. When the grand jury is used, however, it must be constituted so as not to discriminate among races.

> The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.—Art. 1, Sec. IX, cl. 2

2. Writ of habeas corpus

The most revered of the great safeguards of personal security is the privilege of the writ of habeas corpus. This writ is a court order, addressed to any officer having custody of a prisoner, directing that the petitioner be brought before the court that the court may inquire if he is being properly detained. President Lincoln's suspension of the privilege in certain areas of the North during the Civil War evoked considerable legal controversy over the question of which branch of the government has this power. The general conclusion from this debate is that the function belongs to Congress but may be exercised

by the president if authorized by statute. The state governments are similarly bound by provisions in state constitutions, although some of them have forbidden the suspension of the privilege under any circumstances. The uses of the writ have been steadily expanding over many centuries and the law surrounding its use is still developing. One of its growing uses is to test compliance of state authorities with proper constitutional procedures and it is frequently sought in national courts by those held in custody in the states.

> The trial of all crimes . . . *shall be by jury;*—Art. III, Sec. II, cl. 3.
>
> In all criminal *prosecutions the accused shall* enjoy the right *to a speedy and public trial by an impartial* jury of the State and *district wherein the crime shall* have been committed. . . .—Sixth *Amendment*

3. Trial by jury

Like indictment by grand jury, trial by jury passed into American usage with the English Common Law. The Constitution provides for it in several places and no state constitution fails to ordain it also. It is, however, by common law that a jury must consist of 12 persons and must arrive at its verdict by unanimous vote. It is also by common law that the right of jury trial does not apply to cases in courts of equity, to cases in contempt of court, and to petty offenses or misdemeanors punishable only by small fines. Formerly it was supposed that wherever applicable under constitutional provision or common law, jury trial must prevail. The Supreme Court has now held, however, that since the device is intended fundamentally for the accused's protection, he may, if he considers it to his interest to do so, waive the right in national proceedings; and many states allow the same discretion. The Court, moreover, has ruled that where juries are employed, they must not be made up deliberately to exclude workingmen, Negroes, or any other particular class of persons—although there still are states in which women are debarred. State civil procedures that modify the old common law jury requirements have, typically, been upheld by the Court as in compliance with the Fourteenth Amendment.

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.—Fourth Amendment

4. Security in the house

Another treasured inheritance from English Common Law is grounded upon the ancient maxim that every man's house is his castle. The language employed in the Fourth Amendment suggests that there are searches and seizures which are *reasonable* and defines them as being such as are conducted on the basis of warrants (1) issued "upon probable cause, supported by oath or affirmation," and (2) "particularly describing the place to be searched and the persons or things to be seized." The Supreme Court has, however, recognized situations in which the police may legitimately make searches and seizures without a warrant. Thus if it is known or thought probable that a person

guilty of a felony or breach of the peace has taken refuge in a certain house, officers of the law may go in after him without waiting for written authority. Likewise, if a search is to be made of a boat, automobile, airplane, or other vehicle which could take advantage of delay in order to escape, a warrant is not needed. In general, these rules are also imposed on the states by their constitutions or by the "due process" clause of the Fourteenth Amendment as now construed by the Supreme Court. The possibility under our federal system of both state and national jurisdiction over certain offenses has surrounded this ancient right with a number of the most complex questions concerning the use of evidence obtained illegally—by wiretapping, for example—by one enforcement level or the other. By its rulings, the modern Court has invited appeals from state criminal actions and has sought, with some success, to apply the developing rules governing national police action to state and local police under the due process clause of the Fourteenth Amendment.

> No person . . . shall be compelled in any criminal case to be a witness against himself. . . .—Fifth Amendment

5. Protection against self-incrimination

The frequent invocation of the "Fifth Amendment" by witnesses in widely publicized hearings into subversion by Congressional committees in the early 1950's brought into great prominence the ancient guarantees against self-incrimination contained therein. This old English rule, developed largely to prevent persons from being tortured to extract admission of guilt, has come down to us as a well-tested protection against inquisition in most any form. It may be claimed by witnesses as well as by those accused and be pled as an excuse for not giving evidence even if that evidence only lends support to a charge of crime. Courts have repeatedly lashed out at those who assert that anyone who claims protection of this rule is obviously guilty, and in most courts in the land it is not permissible for the judge or the prosecutor to comment to the jury on the failure of a defendant to testify in his own behalf. There are a large number of national and state laws authorizing the granting of immunity from prosecution in order to extract testimony from reluctant witnesses. The latest of these, the Immunity Act of 1954, was designed to assist the committees of Congress in ferreting out subversive behavior.

6. Miscellaneous procedural guarantees

Under the Constitution, in matters involving national offenses and officers of the national government, a person accused of crime is further guaranteed a speedy trial by an impartial jury of the district in which the crime was committed. He has a right to confront his accusers, to have counsel in making his defense, to compel the attendance of witnesses in his behalf. He may not be subjected to cruel and unusual punishment or required to pay excessive fines or offer unreasonable bail. He may not be twice put in jeopardy of life or limb for the same offense. The state constitutions generally contain the same guarantees as against state actions, and the "due process" clause of the Fourteenth Amendment assures national protection as against state deprivation of many of these rights.

7. Right to due process of law

The broadest of all guarantees of governmental fairness is the Constitution's requirement that neither the nation (Fifth Amendment) nor the states (Fourteenth Amendment) may deprive any person (individual or corporation) of "life, liberty, or property" without "due process of law," a guarantee which is also contained in all of the state constitutions. Notwithstanding its great significance, the term has never been fully and conclusively defined. Broadly equivalent to the "law of the land" as guaranteed in *Magna Carta* and to the "rule of law" upon which English jurists have traditionally placed the utmost stress, it has, like those phrases, been subject to steadily broadening and deepening interpretation. Certainly the constitutions do not fix its bounds, and no more do the courts. Efforts to apply it to the multifold actions and relationships of life have given rise to a stupendous amount of litigation and to an unending stream of judicial decisions.

"Due process" and fair procedure

As applied to the national government, the "due process" clause supplements the more specific guarantees of the other amendments dealing with fair procedure. It imposes on national authorities the duty of providing "persons" with a *fair* trial before a proper agency—court or administrative agency. They must be given proper notice, be allowed to present evidence and be permitted, ordinarily, an appeal to a court of law to assert their rights. As applied to the states by the Supreme Court, it imposes upon them the duty in civil and criminal cases to provide a regular proceeding before a proper court with a *fair* hearing for both parties. Specifically, the Court has said that the "due process clause" of the Fourteenth Amendment guarantees the right of counsel to the accused in state criminal proceedings. If the accused is too poor, the state must provide him with legal aid. It does not guarantee a jury trial nor an indictment by grand jury nor does it protect an individual, contrary to state practice, from self-incrimination. It does, generally, outlaw the use of evidence or confession obtained by force or fraud or, for example, by wire-tapping.

Although the "due process" guarantee is one of the major constitutional supports of proper governmental procedure, it would claim much less interest and attract very much less litigation if this were all it involved. Toward the end of the last century the Supreme Court gave the phrase a new meaning and a new direction which represented a sharp departure from the traditional view. Industrialization and urbanization of the nation were at that time revealing some of their less benevolent aspects, and state governments were attempting by various types of remedial legislation to mitigate the evils of rapid expansion. The Court, repeatedly invited to upset state efforts at regulating the economy, finally yielded to the idea that the "due process clause" conferred upon it the power to review legislation to determine if it contemplated an *arbitrary* or *unreasonable* limitation on property rights. The problem was not whether the judicial or administrative procedures used by the state or prescribed by the law were fair but rather whether the legislation or regulation was itself proper.

"Substantive due process"

This use of the constitutional clause is usually referred to as *substantive due process* to distinguish it from the procedural due process already described. The Court proceeded to invalidate state laws regulating industry, hours of

labor, wages, rate-fixing for utilities if not based on proper evaluation of economic factors, and other aspects of the economic relations of individuals and groups. It also discovered new limits on the statutory authority of Congress arising from the Fifth Amendment's "due process" clause. In general, the Court seemed to interpret the clause as if it prescribed the economic tenets of Adam Smith and made them the law of the land. Thus, it found efforts to equalize the power of workers in dealing with corporations as unduly interfering with the freedom of contract of both parties. In doing this, the Court necessarily defined the power of the states to promote the health, safety, and welfare of its citizens (police power) in very narrow terms. In adopting this interpretation of the "due process" clause, the Court further found that the word *person* was meant to include corporation. This view allowed it to consider any legislation which might be shown to threaten corporate property. The result of the attitude and theory of the Court was to plunge it into the middle of some of the bitterest political controversy of the past half-century and to earn for it the scorn of those determined to bring the economy under public control and the applause of those striving to stave off public regulation. The depression of the 1930's brought a new appreciation to the vast majority of the nation of the necessities of energetic governmental action in the economic field and, after some political maneuvering by President Roosevelt, it brought a new view to the Supreme Court. From its first reversal of precedent in 1937 when it sustained a state law regulating the wages of women and children, the Court has steadily broadened its view of allowable interference by the government in the economic relations of our society. "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies," said Justice Black for the Court in 1963. "We emphatically refuse to go back to the time when Courts used the due process clause to strike down state laws regulatory of business and industrial conditions, because they may be unwise, improvident or out of harmony with a particular school of thought."

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B. THE DEMOCRATIC PROCESS

5

Voting and Elections

Democracy and the Constitution

THROUGHOUT MOST OF THE NINETEENTH CENTURY, the American system of government was understood primarily in terms of the constitutional assignment of powers among the several levels and branches of which it is composed. Since about 1910 we have come to a more adequate realization of the implications of the spread of democracy throughout the land. Today, one could, with compelling reason, begin a description of our polity with the voter and the elaborate arrangement of interest groups, parties, and communication procedures by which he seeks to make his will felt in the determination of public policy. Democracy has modified our constitutional arrangements in ways and to an extent undreamed of by the founders. Its spread has challenged and will continue to challenge any institutional arrangements which frustrate majority decision and which safeguard the position of entrenched minority groups. The majoritarian democrat sees little validity in power assignments which cannot be modified by popular will. The constitutionalist, however, sees lawlessness and popular tyranny as the consequence of destroying the nicely calculated prohibitions of our legal tradition. The modern American polity is, therefore, a complex and dynamic mixture of constitutionalism and democracy and we must now seek an understanding of the second of these elements.

Government to many of us is some remote *they* who make decisions which affect us but for which *we* have no direct responsibility. We read about *them* in our newspapers, criticize *their* bungling, speculate about *their* motives and objectives. *We* feel no direct connection with *them*. We like to think that we

believe in something called democracy, a noble conception by which men, or a large part of them, govern themselves. Only occasionally do many of us identify our own parts in this great dream. On election day, for example, thousands of us troop to the polls moved by some deep feeling that what we do on that day will in some way determine the course of national destiny. It is when we come to consider how, in fact, the people govern themselves that we begin to realize the complexities and subtleties of this system of government and also to feel any strong sense of personal identification with it. What then is the basis of our proud boast that here in America the people govern? How do you and I influence the conduct of our national, state, and local governments?

How citizens participate in public affairs

There are at least six ways by which almost every adult citizen may, and many in fact do, participate in this great experiment in popular government: (1) by voting on election day for candidates for the positions of power; (2) by expressing publicly views on the questions of the day; (3) by entreating public officials in behalf of or against a particular program or policy; (4) by joining an organization which expresses to those in power the views of its members on questions of public policy; (5) by contesting a governmental decree before the courts; and, (6) by joining a political party and perhaps working for it and contributing money to it. It is almost impossible to say which of these methods is the most effective at any given time or in any particular controversy. Some of the methods, for example, joining an interest group, have not been accepted as legitimate by every thinker on the subject of the democratic process. All agree, however, that the selection at the ballot box of those who will hold the reins of the state is fundamental to a democratic society. It is appropriate, therefore, to begin our analysis of how you and I and other Americans participate in running our government by considering voting on election day. The other methods of participation we shall consider in subsequent chapters.

CITIZENSHIP AND HOW IT IS ACQUIRED

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.—Fourteenth Amendment

The first requisite for participating in the government of the United States is citizenship. Taken for granted by most of us, American citizenship is a prize of great value to many people of the world.

Citizenship by birth

Only the War of 1861-65 succeeded in establishing a clear and simple rule of citizenship in the United States. Until that time the matter had been confused and uncertain. The adoption of the Fourteenth Amendment cleared up most of the confusion. From that time to the present all persons born in the United States are citizens regardless of the status of their parents. Supple-

menting this general rule are statutory provisions for children born abroad of American parents.

Citizenship by naturalization

American citizenship may also be acquired by naturalization, that is, by some kind of established legal process. Naturalization may be either collective or individual. Typically, collective naturalization is accomplished by an act or treaty extending citizenship to the people of an area acquired by purchase or conquest. Individual naturalization is accomplished by a judicial procedure initiated by the alien applicant and involves investigation of his qualifications by the Naturalization Service. Typically, the entire process takes many months and is available only to those who have reached 18, have resided here at least five years, can read, write, and speak English, and are not associated with subversive or criminal enterprises.

THE NATURE AND HISTORY OF THE "SUFFRAGE"

> . . . the electors [of the House of Representatives] in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.—Art. I, Sec. II, cl. 1

Constitutional basis

Every democratic system defines those who are entitled to vote for the officers of the government. In every system known to history this definition has excluded some persons (aliens and children most commonly). It is obviously of great consequence who makes this definition and on what basis, since if any great numbers are excluded, especially if any particular class, race, or religious group is excluded, to that extent the system is not genuinely based on the great body of citizens. In the United States, this determination has up to now been made by each of the 50 states. Each state has been left largely free to determine for itself who might vote for national as well as for state and local officers. The states are restricted by the Constitution only to the extent that they may not deny the right to vote to those otherwise qualified because of their race, color, previous condition of servitude (Fifteenth Amendment), sex (Nineteenth Amendment), or failure to pay a tax (Twenty-fourth Amendment), nor may they deny to any person the equal protection of their laws (Fourteenth Amendment). The national electorate is, therefore, the sum of separate electorates determined by state constitutions and laws.

The "right" to vote

It might well be asked at this point, How can any person be denied the right to vote? Is this not a natural right similar to the right of religious freedom which cannot validly be withheld? The answer to this in American constitutional theory and practice is that it is not a natural right of the type called civil rights. It is a *legal* right and belongs only to those who have been properly endowed with it. The Constitution does not guarantee to anyone the right to vote as it does guarantee that freedom of speech may not be infringed by the Congress or due process of law denied to anyone by the states. The Constitution may and has been invoked, as we shall see, to prevent discriminatory state regulation which effectively denied the vote to certain classes of citizens con-

trary to its provisions. It does not, however, confer the voting privilege on anyone.

Expansion of the suffrage

The legal theory and practice in determining who may vote may, perhaps, be best understood in the light of the history of the suffrage. When the Constitution of the United States was adopted it could hardly be said to have established a system of government as democratic as it is today. Although it recognized the idea of popular participation as the basis of just government and although, in fact, a larger number of people were authorized to and did participate in the processes of government than in the major nations of the world at that time, nevertheless, the suffrage was restricted to white, male, property-owners. Since that time, and especially since 1810, one after another of the restrictive qualifications has been abandoned and the suffrage progressively widened to embrace virtually the entire adult population of this country.

Elimination of property qualifications

The main battle against property qualifications for voting occurred in the older states along the Atlantic seaboard in the period 1810-50. The frontier states had no such economic distinctions and virtually all of them entered the Union without property qualifications of any kind. It was partly the political strength and example of the newer states which forced the older ones to extend the vote to the "common" people. Antipathy to Irish-Catholic immigrants induced Connecticut in 1855 and Massachusetts in 1857 to require reading and writing tests designed to disqualify the illiterate foreign-born, but by 1860, the nation had substantially achieved universal, adult, white, male suffrage.

Enfranchisement of the Negro

Since 1860, the suffrage has been broadened to include Negroes and women. A few Negroes were authorized to vote in a few states (mainly in New England) before 1860. General enfranchisement of the Negroes came in the northern states, however, only in the Civil War period. In the South, the Negro was enfranchised as a result of the pressure of the radical Republican majority in Congress during the Reconstruction era. The Fourteenth and Fifteenth Amendments were added to the Constitution by the victorious northern forces in an attempt, largely unsuccessful, to guarantee Negro suffrage in the South for all time. In many of the southern states, the Negroes were effectively disfranchised as soon as possible after the Union troops were withdrawn in 1877. In this century, the vote is once again being gradually extended to the southern Negro.

Enfranchisement of women

Demand for the enfranchisement of women was heard as early as the Jacksonian era. It was pressed rather vigorously in some states during the later stages of the Abolition movement, but the real campaign began in the eighties and nineties and achieved its first successes in Wyoming, Colorado, Idaho, and Utah. By the time the woman-suffrage amendment was placed before the states, women could vote in 11 states. The Nineteenth Amendment forbidding any state to withhold the ballot on account of sex was finally approved in 1920. Victory for the feminists in the struggle for the ballot was part of a larger movement for feminine independence in the home, in industry, and in society. As such, it both celebrated their newly won position and contributed to it.

Together with the wide extension of the voting privilege in the last century

there were also a few contractions. The addition of the requirement of registration, the development of more rigid residence requirements, and the imposition of literacy tests in some states all have served to reduce the number of persons eligible to participate in any particular election.

Contraction of the suffrage

THE SUFFRAGE TODAY

General qualifications:

Although the qualifications for voting vary from state to state at the present time, there are some qualifications which are almost universally imposed and others which are employed only in certain states. In the first category are those relating to age, citizenship, and residence.

1. Age

The legal voting age in every state but four is 21. Georgia in 1943 and Kentucky in 1955 lowered the required age to 18. Alaska entered the union with the age fixed at 19 and Hawaii with it fixed at 20. In inaugurating the movement for a lower voting age, the Governor of Georgia (Ellis Arnall) declared that the "fresh viewpoint of youth" was needed in politics and that the young people would benefit from acquiring political experience at an early age. Elsewhere the argument most widely pressed was that if young men and women were old enough for military service they were old enough to vote. In a large number of states the matter was considered at that time and rejected. Interest then subsided until it was revived by President Eisenhower. He proposed in 1954 and again in 1955 that the Congress submit a constitutional amendment to the states authorizing citizens 18 and older to vote. The Congress on both occasions failed to respond. Southern members, generally, headed the opposition and argued for state determination of voting qualifications. A large number of states once again considered the matter and in all except Kentucky it has thus far been disapproved.

2. Citizenship

Western states used to bid for settlers by offering voting privileges to aliens who had taken out "first papers." Since 1926, when Arkansas at last fell into line, every state has required citizenship of its voters. A few states require a person to have been a citizen for at least 90 days.

3. Residence

The typical requirement relating to residence is that the voter shall have lived in the state at least one year, some specified portion of which (frequently three or six months) must have been spent in the county, and some briefer portion (often 30 days) in the district in which one's ballot is to be cast. No one may vote in a given election in more than one place; and this place must be the voter's legal residence, however little of his time he may actually spend there. Such requirements tend to prevent importations of "floaters" at election time, but operate also temporarily to disfranchise honest voters (most frequently working people) for moving from one place to another—even across a street if the street happens to be a boundary line between voting districts.

Special qualifications:

1. Payment of taxes

The payment of taxes as a qualification for voting has been at one time a requirement in as many as 19 states. In the period 1889-1902, the southern states enacted poll-tax requirements as a part of a concerted movement to disfranchise the Negro. Since about 1930, this requirement has been under

strong attack and several of the states have abandoned it or have authorized so many exemptions that it is no longer of consequence. In 1963, only Alabama, Arkansas, Mississippi, Texas, and Virginia required of their voters the prepayment of a poll tax of one or two dollars. The Twenty-fourth Amendment abolished this in 1964. In six states, some kind of property tax payment is required for voting on bond issues or special assessments.

2. Literacy

The imposition of educational or "literacy" qualifications for voting began in Connecticut in 1855 and spread from there to Massachusetts and much later to New York and other New England states. In these states it was aimed at immigrants. The device was borrowed in the 1890's by several of the southern states to keep Negroes and "poor whites" from voting and was copied by a few western states to exclude Orientals. Nineteen states (including four in New England, four in the West, and six in the South) now have this requirement in some form. In a few states the test is confined to ability to read English. In most, however, the ability to write in English is also required—though in some the ability to write one's name is adequate. A few southern states employ an alternative test in the form of demonstrating to an election board (of white members) ability to "understand and give a reasonable interpretation" of a selected passage from the national or state constitution. The test is ordinarily conducted at the time of registration, and in the South at least, wide latitude in administering it is conferred on the local election officials. The best system in the country is that adopted by New York in 1921 in which a test of reading and writing designed by experts is administered by the state educational department annually for those who have not successfully completed the sixth grade in public school. Where fairly administered, there is much to be said for this type of qualification, in view of the necessity for understanding the issues of the day in order to participate effectively in the processes of election.

Disqualifications

Certain categories of persons are almost universally disqualified from voting: inmates of prisons or asylums; violators of certain election laws, for example, those forbidding bribery; malfeasants in office; vagrants.

THE PROBLEM OF ENFRANCHISING THE SOUTHERN NEGRO

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> The Congress shall have power to enforce this article by appropriate legislation.—Fifteenth Amendment

The southern states, as we have noted, were compelled to give Negroes the vote if they wished to be restored to partnership in the Union. For more than a decade the armies of the central government occupied the South to insure compliance with these commitments. The results of the northern policies were disastrous from the southern point of view, and the Reconstruction Era has always been for them a black page in the nation's history. Gullible freed-

men led by northern "carpet baggers" depleted their treasuries and mocked their cultural and social traditions. The southern whites resorted to violence and intimidation through the Ku Klux Klan to regain control of their governments and, when the troops were withdrawn (in 1877), firmly and vigorously re-established white supremacy, partly by these methods. Fearful that national intervention might again be attempted, unhappy over the demoralizing effects of forceful methods, and anxious to legitimatize white dominion, the southern statesmen cast about for "respectable" methods for surmounting the plain requirements of the Fifteenth Amendment. Agrarian discontent in the 1880's further stimulated certain groups to find methods for weakening the political power of the share-cropper and the small farmer—white or black.

The Mississippi plan

In 1890 Mississippi pointed the way for her sister states by writing into her constitution clauses under which, in order to vote, one not only must have lived two years in the state and one year in the election district, but must have paid all taxes assessed against him (including a poll tax of $2), and must be able either to read any section of the state constitution or to give a reasonable interpretation of it when read to him. None of these was aimed at the Negro as such. The lengthy period of residence, however, barred large numbers of Negroes accustomed to drift from plantation to plantation. Even if a colored man succeeded in paying his poll tax on time (and it was artfully required to be paid a year before election time), he was likely to be careless enough to be unable to produce his tax receipt when called for. Few Mississippi Negroes could read, and still fewer could give an interpretation of a craftily selected passage from the state constitution likely to be accepted as "reasonable" by a white official with a strong predisposition against Negro voting. If, too, in replying to searching personal questions a candidate for registration was detected deviating an iota from the truth, he became guilty of perjury, for which also he could be disfranchised. When the Supreme Court scrutinized these provisions in a test case, it was unable to find that they in any manner violated the Fifteenth Amendment. Clauses of similar purport accordingly found their way into the constitutions of most other southern states—all going to show how ingenious men can become when trying to find a way around nationally ordained requirements not supported by local or regional public sentiment.

"Grandfather clauses"

There was, however, one drawback: while a secondary object of the tests was in some instances to curb the political effects of radical (chiefly Populist) inclinations among poor whites, the restrictions operated to debar too many whites along with Negroes. But for this, also, a remedy was found—in the so-called "grandfather clauses" adopted at one time or another, as temporary constitutional amendments, in as many as seven different states. The clauses differed in details, but their general purport was to open a way by which any man otherwise qualified could avoid the tax and literacy requirements and become a permanently registered voter if either he or a lineal ancestor had been a voter on January 1, 1867. The significance of this date is that it preceded by two months the first act of Congress prohibiting the disfranchisement of freedmen. No Negro could get on a voters' list under the new provisions, but the

poorest and most illiterate white could do so because of being the son or grandson of a voter of 1867. All of the clauses were for a duration of only a few years, or even a few months; and all had served their purpose and expired before the Supreme Court, in 1915, got around, in an Oklahoma case, to pronouncing them discriminatory, contrary to the Fifteenth Amendment, and therefore unconstitutional.

Negro disfranchisement in the South becomes general

Thus, constitutional and statutory disfranchisement of the Negro south of the Mason and Dixon line was accomplished with one barrier rising behind another in massive array. First of all, there was the poll tax, so obviously designed to trip up the Negro that in many places little or no effort was made to collect the tax at all from whites, and in any event payable only (whether by Negroes or whites) in election years—in effect, therefore, simply a fee for the privilege of voting. If that were surmounted, there was the literacy test, and sometimes an "understanding" test so administered that even instructors in Negro colleges often failed it. Beyond this might lie a "character" test, under which a Negro aspiring to vote must produce "evidence of good character," backed by testimony from as many as ten or a dozen witnesses, and satisfactory to white registration officials disposed to be incredulous. And crowning all this in later days, after the direct primary had come into vogue, was exclusion, by constitutional provision, statute, or party regulation, from participation in the only significant electoral contests in the one-party South: the Democratic primaries.

It should be understood that the Negro was not kept from voting solely by these devices. Much evidence exists to show that the Negro had been "persuaded" to stay away from the polls before these laws were enacted. The laws tended to insure that intimidation would be unnecessary in the future. The result of the "persuasion," followed by the laws, however, was that Negro voting in the southern states fell to insignificant proportion. The border states of West Virginia, Kentucky, Tennessee, and Arkansas tended, however, to have larger Negro participation than the states of the Deep South.

New attack on the poll tax

Gradually the suffrage policies of the South became part of the accepted pattern of American politics. The acrimonious attacks of the late nineteenth century abated. In 1912, the Republican party stopped writing in its platform its traditional denunciation of southern practices. In the past three decades, however, the issue has exploded into national politics with almost as much force as before. The two world wars of this century were accompanied by heavy migration of the Negroes into northern industrial centers. Here they have become increasingly articulate participants in party organizations, inspiring sympathetic attention to their demands on behalf of their southern brethren. As a part of a general movement to eradicate racial discrimination in all its forms from the American scene, many groups have also sought to give the vote back to the southern Negro. The first major target of the urban leaders of the North has been the poll tax. As recently as 1937, however, the Supreme Court was unable to see that, in the absence of prohibitive national legislation, the tax requirement was invalid. Congress has then been called upon re-

peatedly since 1942 to outlaw taxpaying qualifications for voting in national primaries and elections. President Truman strongly urged such legislation. Many states voluntarily abandoned the requirement or authorized so many exemptions as to weaken its effect. Finally, in 1962, under the leadership of Vice-President Johnson, the Congress laid before the states a constitutional amendment outlawing the tax-paying requirement. This amendment, ratified early in 1964, is now the Twenty-fourth Amendment.

The attack on the "white primary"

The next attack was on the "white primary" rules of several of the Southern states. Efforts to exclude Negroes as such from democratic party primaries had been successfully challenged in the courts in those instances where the exclusion rested on express statutory or constitutional provision. The Supreme Court, however, in 1935 could find nothing wrong with a "white primary" rule uttered by a party convention and not required by a state law. A new assault on the practice before a new court in 1944 brought a reversal of the earlier decision. Primaries form a part of the electoral system, said the Court, and where state law requires primaries this opens the door for a private organization to exclude Negroes. Thus, the exclusion is, in effect, an act of the state and is invalid.

The "white primary" in collapse

For a time vigorous efforts were directed in various southern states to find ways of getting around this logic. South Carolina moved first. The legislature was called into special session; all statutes relating in any way to primaries were repealed; by amendment, the subject was similarly expunged from the state constitution; and parties were left ostensibly as free to determine their own membership and otherwise manage their affairs "as the Elks and the Baptist Church." This done, a Democratic state convention barred Negroes from the party, and, therefore, from any Democratic primaries that might be held outside the pale of public regulation. Other states contemplated similarly drastic action; and in a few, initial steps were taken. The courts, however, would have none of these expedients. Alabama rejected the South Carolina procedure and passed an amendment to its constitution to require as a condition of registration, ability to read, write, and explain any article of the Constitution of the United States, also "good character" and an understanding of the obligations of citizenship. This too was declared invalid by a lower court and the Supreme Court refused to review the decision. The southern states then fell back upon more rigorous enforcement of their numerous suffrage qualifications and applied most of them to the primaries.

A few southern states have reacted to these efforts by enacting even more stringent registration requirements. Alabama even attempted to redraw the boundary lines of Tuskegee, home of the famous Negro Institute, so as to place most of the Negro residents outside the corporate limits. This effort was nullified by the Supreme Court.

With the demise of the "white primary," Negro voting in the South increased sharply but by 1950 probably did not exceed 20 per cent of the Negro population of voting age. In the mid-fifties, Republican leaders began to join the northern urban Democrats in pushing for electoral reform. Presi-

The attack on discriminatory administration of voting requirements

dent Eisenhower sought legislation authorizing national intervention in behalf of eligible Negro voters. As part of the first civil rights legislation of this century, pushed through Congress against strong southern opposition by a Republican-Democratic coalition, the Attorney General was authorized to seek injunctive relief in a national court to prevent threatened intimidation or coercion designed to prevent any person from voting for national officials. The Civil Rights Commission created by the law and authorized to inquire into deprivation of voting privileges held a series of inquiries in several southern cities on voting practices. As a result of the investigations it proposed certain changes in the law including the requirement that registration and voting records should be retained at least five years and that the president should be authorized to appoint a federal registrar to enroll voters in national elections where it can be shown that the state registrars have refused voter registration in a discriminatory way. These became the major issues in the debates in 1959 and 1960.

The Civil Rights Act of 1960: enlarged the powers of the Civil Rights Commission (the life of this Commission had been extended in 1959 for two more years and was extended again in 1961 and in 1963); required that voting records and registration papers in national elections including primaries must be preserved for 22 months; and provided that when the Attorney General won a civil suit in a case of deprivation of voting privileges he might then ask the court to make a finding that there was a "pattern or practice" of deprivation in the area. If the court found that such existed, then a Negro in this area could apply to the court for an order declaring him eligible to vote. Voting referees might be appointed by the court to hear requests for registration orders from deprived Negroes.

Under these laws, the Department of Justice started numerous suits aimed at discriminatory administration of voting requirements and a few were successfully carried to the Supreme Court. Most, however, are still moving slowly through the courts as southern officials utilize every delaying tactic of our cumbersome judicial machinery. In 1961 the U.S. Civil Rights Commission issued a new report—*The Right to Vote*—summarizing months of intensive investigation of deprivation of voting privileges. The Report alleged that "there are reasonable grounds to believe that substantial numbers of Negro citizens are denied the right to vote in about 100 counties in 8 southern states." An effort by the Kennedy Administration to deal a solid blow at the literacy test as administered in the South was frustrated by Senate filibuster in 1962. Kennedy returned to the attack in early 1963 asking Congress to prevent Negroes from being denied registration because of: (1) minor or technical errors in filling out registration forms; (2) requirements imposed on them that are not, in fact, imposed on those found eligible to vote; and (3) failure of any literacy test not administered in writing and under suitable conditions. He also asked that Congress require the states to accept completion of the 6th grade of any accredited school as demonstrating literacy without further testing. He asked, finally, that the procedure for appointing national voting

The proposed Civil Rights Act of 1963

referees by District Court judges be made easier in any district or area where fewer than 15 per cent of the adult members of any race are registered to vote.[1]

These proposals languished in committee until mid-1963 while riots and demonstrations mounted in ferocity and spread to many cities (North and South). In June, the President launched a new effort to push an enlarged civil rights program through the Congress including his earlier proposals on voting.

PARTICIPATION BY THE VOTER

Amount of non-voting

The hard-won privilege of voting is of no value if it is not used and the sad fact is that a great many adult members of our society rarely, if ever, use the power which so many worked so hard for so long to win for them. One of the major factors influencing the amount of nonvoting is the type of election. Presidential elections, typically, attract the largest amount of voter participation, congressional and state elections a lesser amount, and local elections, the least. The presidential election, however, in this century has rarely been attended by more than 65 per cent of our adult citizen population. Mid-term Congressional elections usually attract only 50 per cent and local elections in which as many as 40 per cent vote are unusual.

The suffrage policies of many of the Southern states, of course, restrict participation in that region and even in presidential contests, a turnout of 30-35 per cent is common. The one-party system in these same states tends to make the primary more significant than the election and thus adds an additional deterrent to high turnout on election day.

In view of the variations from state to state in the requirements for voting, it is impossible to say how many adults are disqualified in any given election. The best guess is that, in order of importance, the major disqualifications are: (1) failure to satisfy local residence requirements—the mobility of our population is very great and this factor probably accounts for 7-9 million potential voters; (2) failure to satisfy citizenship requirements; (3) failure to satisfy literacy and taxpaying qualifications; (4) residence in the District of Columbia —beginning in 1964, the permanent residents will be able to vote in presidential elections.

Reasons: 1. Disqualifications

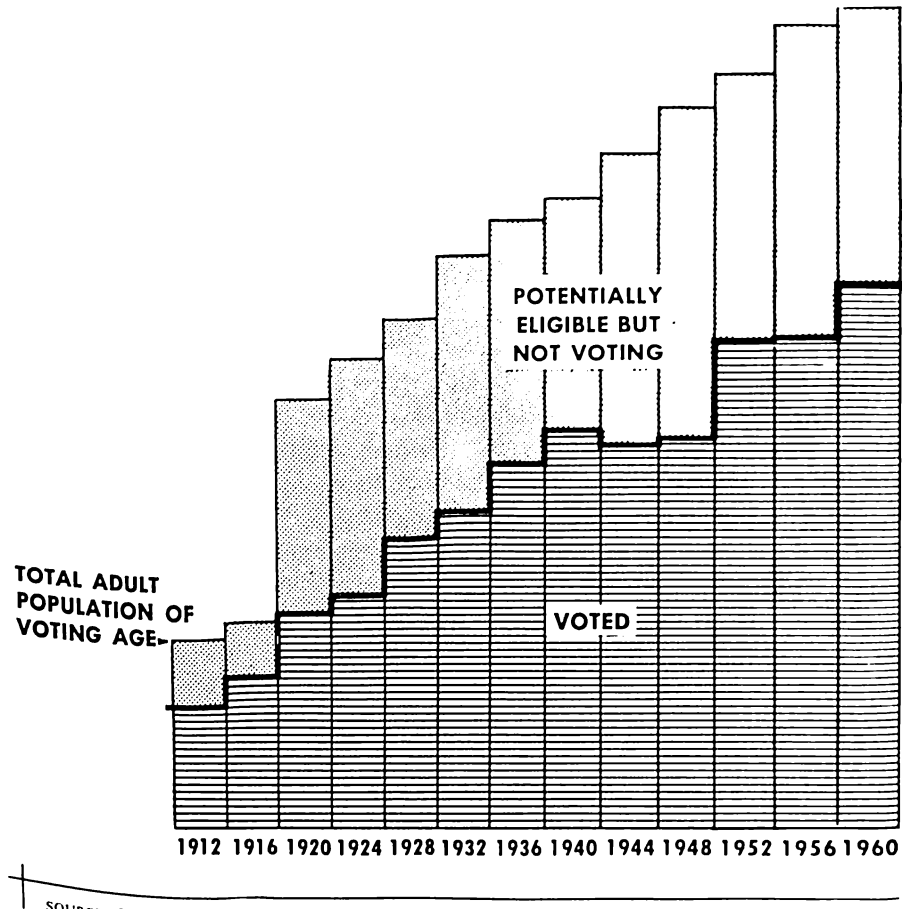
A large number of adult citizens are discouraged from voting. Some are unwilling to take the trouble to register—and in some jurisdictions registration procedures are inconvenient and time-consuming. Some are necessarily absent from their home districts on election day and are unwilling to go to the extra trouble associated with absentee voting—this procedure is made quite inconvenient by some states. Many are confined to their beds by illness and others are unwilling to venture forth if the weather is bad.

2. Discouragement by procedural difficulties

After all allowances are made, however, it is doubtful if half the nonvoting adults can be accounted for by these difficulties and disqualifications.

[1] It is estimated that this provision would affect 261 counties in 60 Congressional districts and 11 states. *Congressional Quarterly Weekly Report*, July 6, 1963, p. 1086.

POPULAR VOTE FOR PRESIDENTIAL ELECTORS, 1912-1960



SOURCE: U. S. Bureau of the Census.

3. Lack of interest

Most of those who stay at home on election day do so because of la interest. This lack may be rationalized, and perhaps in a few cases justific such factors as (1) lack of real issues in the election; (2) fear of emplo neighborhood disapproval; (3) the complexity and size of the ballot in states. Studies of voter behavior show that education, sex, economic s and age are influential factors in nonvoting. Women fail to vote mor quently than men; uneducated or little-educated persons vote less frequ than high school and college graduates; unskilled and semiskilled m workers vote less frequently than skilled laborers and professional pe those in lower income groups vote less frequently than their more comfo compatriots; persons under 30 vote less frequently than those above 30

VOTER PARTICIPATION IN 1960

By States

Rank	State	Civilian Population of Voting Age	Total Vote	Percentage
1	Idaho	372,000	300,451	80.766
2	New Hampshire	367,000	295,761	80.588
3	Utah	469,000	374,981	79.953
4	North Dakota	350,000	278,431	79.551
5	South Dakota	388,000	306,087	78.831
6	West Virginia	1,085,000	837,781	77.214
7	Minnesota	2,003,000	1,541,887	76.978
8	Connecticut	1,590,000	1,222,883	76.910
9	Indiana	2,784,000	2,135,360	76.701
10	Massachusetts	3,230,000	2,469,480	76.454
11	Iowa	1,669,000	1,273,820	76.321
12	Illinois	6,244,000	4,757,394	76.191
13	Rhode Island	533,000	405,534	76.085
14	Wyoming	186,000	140,892	75.748
15	Delaware	264,000	196,683	74.501
16	Maine	574,000	421,767	73.478
17	Michigan	4,519,000	3,318,097	73.425
18	Alaska	83,000	60,762	73.207
19	Colorado	1,007,000	736,246	73.112
20	Missouri	2,651,000	1,934,422	72.969
21	Washington	1,703,000	1,241,572	72.905
22	Wisconsin	2,373,000	1,729,082	72.864
23	Vermont	230,000	167,324	72.749
24	New Jersey	3,827,000	2,773,111	72.461
25	Montana	387,000	277,579	71.725
26	Nebraska	857,000	613,095	71.539
27	Ohio	5,833,000	4,161,859	71.349
28	Oregon	1,089,000	775,462	71.208
29	Kansas	1,315,000	928,825	70.633
30	California	9,219,000	6,507,082	70.583
31	Pennsylvania	7,102,000	5,006,541	70.494
32	New York	10,788,000	7,291,079	67.584
33	Oklahoma	1,399,000	903,150	64.556
34	New Mexico	491,000	311,118	63.364
35	Nevada	174,000	107,267	61.647
36	Kentucky	1,876,000	1,124,462	59.939
37	Arizona	680,000	398,491	58.601
38	Maryland	1,819,000	1,055,349	58.017
39	Hawaii	321,000	184,745	57.552
40	North Carolina	2,521,000	1,368,966	54.302
41	Tennessee	2,079,000	1,051,792	50.591
42	Florida	3,099,000	1,544,180	49.828
43	Louisiana	1,770,000	807,891	45.604
44	Texas	5,329,000	2,311,670	43.379
45	Arkansas	1,029,000	428,509	41.643
46	Virginia	2,244,000	771,449	34.378
47	South Carolina	1,227,000	386,687	31.514
48	Alabama	1,825,000	569,989	31.332
49	Georgia	2,342,000	733,349	31.212
50	Mississippi	1,163,000	298,171	25.638
Total		106,974,000	68,838,425	64.351

SOURCE: *Congressional Quarterly Weekly Review*, 111, Jan. 27, 1961.

Results

Many politicians have assumed that the amount of voter participation has important partisan consequences. A heavy vote, it was felt, favored the Democrats because nonvoting was more characteristic of the groups which support that party. The Truman victory in 1948 in a light vote and the Eisenhower victory in 1952 with a heavy vote have cast some doubt on this assumption but have not completely dispelled it.

In the past decade, efforts to remove some of the major obstacles to voter participation have won substantial support. Residents of the District of Columbia will be able to participate in presidential elections hereafter as a result of the Twenty-Third Amendment and the implementing legislation passed in 1961. A movement to allow newcomers in the state to vote in presidential elections gained its first victories in Wisconsin and Connecticut in 1953-54 and has since spread to Vermont, California, Ohio, New York, Oregon, and Missouri. Absentee voting has increased substantially in the past two elections as procedures have been made more convenient in a number of states. Of course, the drive to enfranchise many Negroes in the south will have important consequences. President Kennedy in 1963 created a Commission on Registration and Voting Participation to study the causes of nonvoting other than those based on racial discrimination and to report promptly on its findings.

THE CONDUCT OF ELECTIONS

Importance of election administration

The intentions of the voter are not completely realized unless he can record them in secret, on a ballot which provides him with a choice, in a place which he can get to, under circumstances which are not oppressive, and unless his vote is honestly counted and weighs in the result exactly as much as that of any other qualified voter. The administration of elections is thus an important element in the processes of popular government. More than a century and a half of experience has brought us nearer to the achievement of a fair, convenient, and honest election system but there are still many weaknesses.

Registration

As the number of voters increased as a result of the expansion of the suffrage and the growth of population, and especially as people huddled in ever larger numbers in our great cities, the problem of identification of those qualified to vote became increasingly acute. In the small town, where everybody knows everybody, almost any resident could tell who could vote and who could not. In the great cities, however, ruthless political organizations began early in our national history to exploit the anonymity of the city throng by sending their lackeys to vote in one district after another. Some system of identification which would allow only those qualified to participate became necessary. Hence, the rise of systems of registration and of the preparation of voting lists to be used by those directing the election proceedings. Every state but Arkansas and Texas now requires some type of registration in connection with virtually all elections. In general, a voter must appear in person before a registration official some days in advance of the election and establish his

qualifications. An earlier preference for *periodic* registration—a system requiring the voter to register annually or at fixed intervals—has gradually given way to the less expensive and more convenient system of *permanent* registration. In the permanent system now used by 45 states (state-wide in 34 states and for certain areas in the others) a voter registers but once and his name remains on the list as long as there is no reason for removing it. Typically, if he does not vote in any election for two years his name is stricken from the list. The main problem of the permanent registration system is keeping the lists up to date by adding newcomers and deleting those who have died or moved away. Sluggish and partisan administration of the system opens the door for the "cemetery" and the "vacant house" vote.

Creation of precincts

In order for each voter to be able to get to the polls and to cast his ballot in the same day it is, of course, necessary that cities and counties be divided into polling districts. These districts are called *precincts* and are laid out by city or county officials. Typically, a precinct is designed to contain from 200 to 1000 voters and is a subdivision of a city ward or a rural township. Each precinct contains a polling place where the voting occurs. In general, school houses, fire stations, or other public buildings are now used for this purpose but in some areas private quarters (stores usually) are rented by the local officials.

Election officials

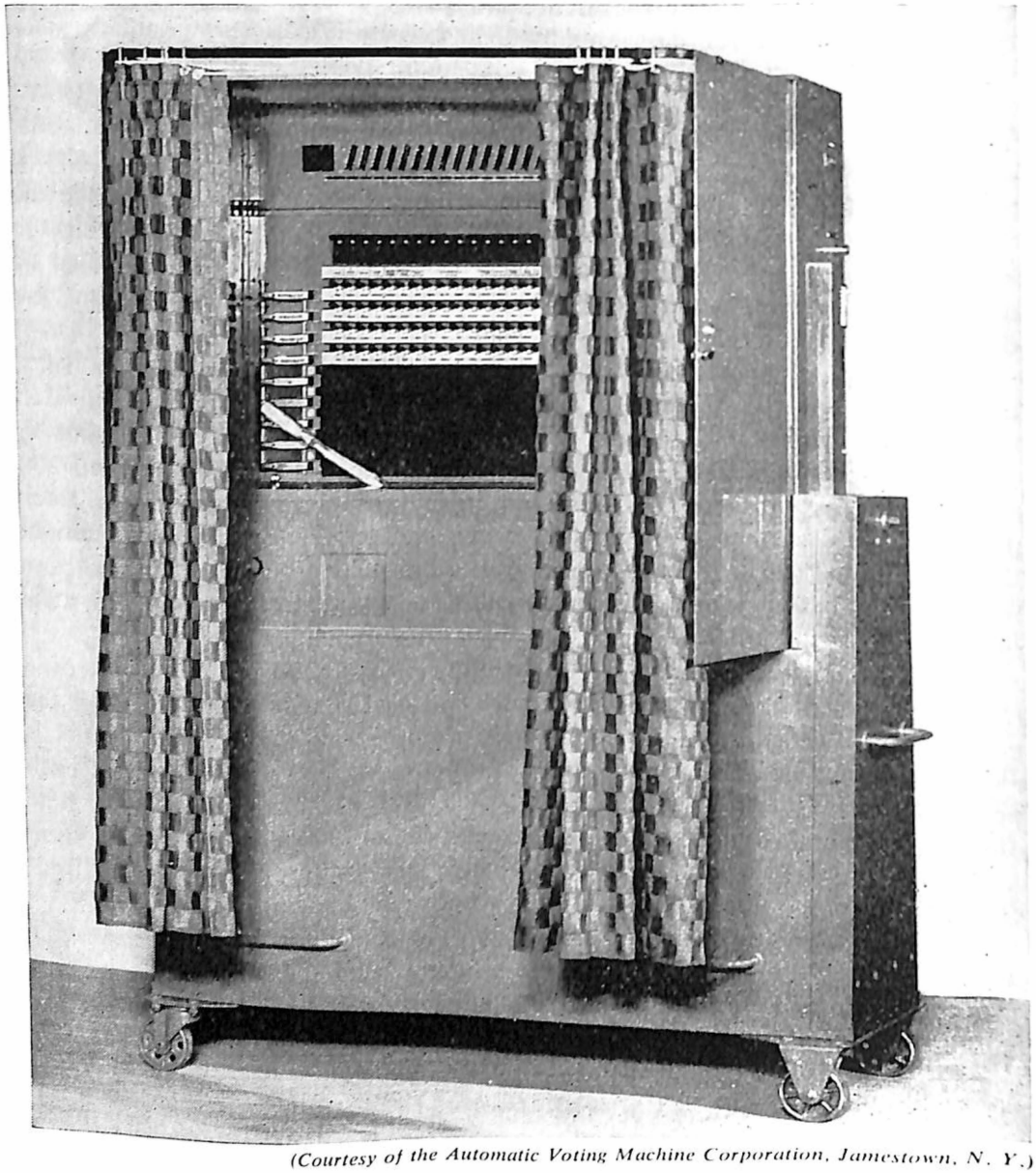
The next stage in preparing for elections is the designation—largely on a temporary basis—of a large number of election officials to preside over the polls on election day, to count the ballots and to decide disputes. These officials are selected most everywhere on a partisan basis, with the leaders of each party designating their choices for each precinct to the city, county or state officials charged with the selection. Most state laws require that some from each party serve in each district. The theory that bipartisan selection will prevent fraud in the polling place is only partly supported by the facts.

Casting the ballots

When, on election day, the voter enters the polling place, he takes his turn in identifying himself to the clerks, carries a blank ballot to a screened compartment, or "booth," marks the ballot according to his preferences, folds the ballot, and emerging, deposits it in the ballot-box, and is duly checked off as having voted. Under only one circumstance may his privacy in the voting booth be invaded: if on account of blindness, illiteracy, or other handicap, he asks for assistance, one clerk of each party may, under normal arrangements in most states, enter the booth to give it.

Voting machines

Paper ballots are gradually disappearing and voting machines are coming more and more into use. More than two-thirds of the states now authorize them. Where such machines are employed, the voter identifies himself at the polls in the usual way, but instead of receiving a printed ballot, is directed to a curtained space in which stands the machine showing on its face the candidates' list which the ballot would contain if one were used, and where he votes by merely pulling levers—a single master lever (in states providing such) if voting a straight ticket, otherwise individual levers for particular candidates. Automatically recording the votes, and simultaneously adding them up, the

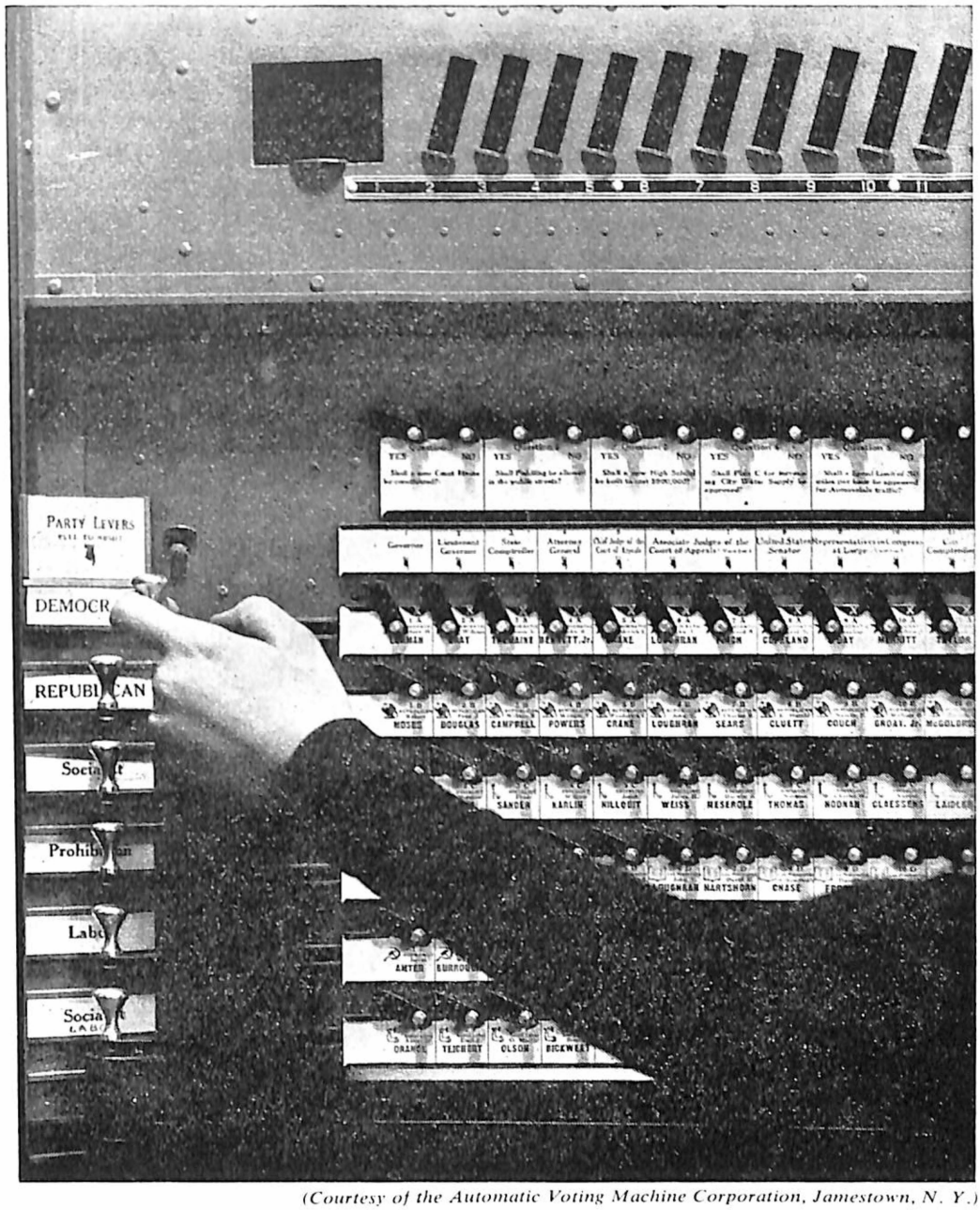


(Courtesy of the Automatic Voting Machine Corporation, Jamestown, N. Y.)

FULL VIEW OF A MODERN VOTING MACHINE

voting machine has the great advantages of complete secrecy, economy of time, elimination of defective votes, and full tabulation of results the moment the polls are closed. Aside from hesitancy to adopt new ways, and perhaps in some cases the lukewarmness of politicians toward a device that cannot be easily manipulated, the main obstacle to wider employment of voting machines is the cost of the machines themselves—something like $1700 apiece, besides transportation and upkeep.

When the polls close, the results are tabulated by the election officials



(Courtesy of the Automatic Voting Machine Corporation, Jamestown, N. Y.)

DETAIL OF A VOTING MACHINE

Counting and reporting the results

and entered upon an official "return" which is sent to the county or city election board to be consolidated with those from other precincts. In a state-wide or national election these city or county returns are then forwarded to a state canvassing authority. All of this, of course, takes some time and it is usually several days after the election before the official canvass is completed and the results formally recorded. Meanwhile, however, the totals from each precinct

are phoned into the newspapers, the city clerk, the police or the party headquarters where they are totaled, and these unofficial returns are announced hour by hour through the night so that the public is informed how the election is coming out.

The task of the precinct officials is completed when they return to their superiors all of the ballots (used, spoiled, and unused), poll-books, voters lists, and tally sheets which had been issued to them. When paper ballots are used, all are deposited in a sealed ballot box where they are kept for a specified period. Dishonest counting, stolen ballot boxes, stuffed ballot boxes, and mutilated voting machines appear to be a diminishing characteristic of this phase of election administration. In the past these practices were all too common in virtually every large city.

Disputed elections

The final stage in the process is the issuance of a certificate of election to each person declared elected by the official county (county clerk) or state (secretary of state) canvassing authority. This certificate is prima facie evidence of legal right to hold the office. It is not, however, conclusive. All state laws make provision for disputed elections. Such cases are commonly settled in the courts except that legislative bodies, national, state, and local, invariably have the power to settle all such contests involving their own membership. Most states also make some provision for a "recount" in disputed cases. Many such laws require the candidate making the protest to pay all or part of the costs.

BALLOT FORMS

The Australian ballot in general use

It took about a century for the American voter universally to achieve secrecy in casting his vote. Votes for many decades were cast orally and in public with untold pressures and irregularities surrounding the process. Then, for a time, each party printed its own ballots, frequently on colored paper so that watchers could tell how any person voted. Since 1888, however, the "Australian" ballot has been adopted by every state. The essence of the Australian system is that the only ballots allowed to be used at the polls are prepared by responsible public officials at public expense in accordance with forms prescribed by law and can be cast without possibility of detection of the ticket or person for whom one has voted. The ballot is normally in blanket form, that is, bearing on a single sheet the complete list of offices to be filled and of candidates; although when national, state, and city elections are held simultaneously, the names of candidates for presidential elector, and also of candidates for municipal offices, are sometimes printed on separate sheets. Where voting machines are used, these are prepared by public officials in accordance with state laws and are identical for all voters in the same constituency.

Ballot forms

The arrangment of names on the ballot or machine varies from state to state but, in general, tends to conform to one or the other of two plans: the *party-column* ballot, introduced in Indiana in 1889, and now used by 30



Democratic Ticket

DEM.	For United States Senator ALEX M. CAMPBELL
DEM.	For Secretary of State CHARLES F. FLEMING
DEM.	For Auditor of State JAMES M. PROPST
DEM.	For Treasurer of State F. SHIRLEY WILCOX



Republican Ticket

REP.	For United States Senator HOMER E. CAPEHART
REP.	For Secretary of State LELAND L. SMITH
REP.	For Auditor of State FRANK T. MILLIS
REP.	For Treasurer of State WILLIAM L. FORTUNE



Prohibition Ticket

PROHI.	For United States Senator LESTER N. ABEL
PROHI.	For Secretary of State J. RALSTON MILLER
PROHI.	For Auditor of State GARNETT JEWELL
PROHI.	For Treasurer of State HORACE N. SMITH

PARTY COLUMN BALLOT FORM

To vote for a Person, mark a Cross X in the Square at the right of the Party Name or Political Designation. X

GOVERNOR — Vote for ONE

PAUL A. DEVER - of Cambridge	Democratic
ARTHUR W. COOLIDGE - of Reading	Republican
HORACE I. HILLIS - of Saugus	Socialist Labor
MARK R. SHAW - of Melrose	Prohibition

LIEUTENANT GOVERNOR — Vote for ONE

CHARLES F. JEFF SULLIVAN - of Worcester	Democratic
LAURENCE CURTIS - of Boston	Republican
LAWRENCE GILFEDDER - of Boston	Socialist Labor

SECRETARY — Vote for ONE

EDWARD J. CRONIN - of Chelsea	Democratic
RUSSELL A. WOOD - of Cambridge	Republican
ELLSWORTH J. M. DICKSON - of Needham	Prohibition
FRED M. INGERSOLL - of Lynn	Socialist Labor

To vote for a Person, mark a Cross X in the Square at the right of the Party Name or Political Designation. X

CONGRESSMAN
Fifth District — Vote for ONE

EDITH NOURSE ROGERS - of Lowell	Republican
CLEMENT GREGORY McDONOUGH - of Lowell	Democratic

COUNCILLOR
Third District — Vote for ONE

OTIS M. WHITNEY - of Concord	Republican
JOHN A. DOLAN - of Boston	Democratic

SENATOR
Fifth Middlesex District — Vote for ONE

RICHARD I. FURBUSH - of Waltham	Republican
JAMES J. VAHEY - of Watertown	Democratic

OFFICE BLOCK BALLOT FORM

states; and the *office-group* ballot, introduced in Massachusetts in 1888, and now used in some form in 20 states. The party column ballot is designed to facilitate "straight-ticket" voting and the other to emphasize the office rather than the party.

RECALL ELECTIONS

Purpose

Normally, elections are held only when officers' terms are about to expire, or occasionally to fill a vacancy arising from the death or resignation of an incumbent. Elections are sometimes held in reverse, aimed at "recalling" an official in the midst of his term. In the early part of the present century, with a tide of "direct" popular government running strong, many people became enamored of the idea that the voters ought to be in a position to oust an elected official in the midst of his term if they were displeased with him. The idea took hold to such an extent that a dozen states adopted some form of recall procedure for use against state and local officers (usually elective ones only).

Procedure

Except for the manner in which it is initiated, a recall election does not differ greatly from any other one. When a movement to oust a given official gets underway, a paper setting forth the charges against him, and known as a "petition," is circulated in a quest for signatures. If the requisite number (usually about 25 per cent of the electorate of the area concerned) is obtained, the city clerk or other official with whom it is filed sets a date for a recall election (unless a regular election is about to take place). If the official whose recall is sought chooses not to face the issue, he may simply resign. If, however, he prefers to fight for vindication, his name is placed on the ballot along with the names of any other persons nominated (usually by petition) to succeed him. The voters then render the verdict. If the incumbent polls the largest number of votes, he continues in office. But if one of his opponents outstrips him, the victor forthwith assumes the office and fills out the remainder of the term.

Results

In practice, the recall has proved a very modest addition to our electoral usages. There is, it is true, no way of measuring its moral effect upon officeholders, but one can hardly believe that the comparatively few instances in which the device has been successfully invoked by dissatisfied voters represent all of the situations in which officials deserved to be ousted. A goodly number of local officers, including a mayor of Los Angeles, have been recalled in California—a mayor also in Seattle and one in Detroit. But in only two instances have officials chosen by the voters of an entire state been reached. It is significant that there have been no new state adoptions of the plan in more than 20 years. The terms of most public officers are short enough that dissatisfaction can readily be registered in the regular election.

CRITICISM OF THE ELECTORAL SYSTEM

The task of the electorate

Although much remains to be done, especially in our larger cities, to insure a fairer, less expensive, more convenient, and more honest system for casting and counting the votes, the improvements of the past half-century in all these respects have been substantial. The most persistent and thoughtful criticism of our electoral process is that it heaps too large a task on the voter. He is called upon to vote too frequently on too many offices and propositions. Not only is there an election of some kind in many states every year but, if primaries are included, there are two and even three a year. It is not easy for the average citizen to keep up an intelligent interest and to take an active part in so many electoral contests. More serious than this, when he does go to the polls he is confronted with a long ballot filled with scores of names and dozens of offices. He cannot easily be familiar with the duties of so many offices or the qualifications of all of the candidates for them. The length and complexity of the typical ballot may be accounted for: (1) by the fact that in many states national, state, and local elections occur at the same time; (2) by the use of popular referenda in many states which require the voter to express his views on proposed constitutional amendments, municipal charter changes, pieces of legislation or bond issues; (3) by the large number of state and local offices that are filled by election. A great many voters start off well by voting for president, governor, senators, and perhaps members of the House of Representatives but then succumb to "voter's fatigue" and never reach members of the state legislature, the elected state officers, local officers, or referred propositions. The vote on constitutional amendments, for example, is rarely more than 75 per cent of the vote for governor or senator. Politicians with a small but solid block of votes to be cast for local officials can frequently determine the outcome of these minor contests. Few voters trooping to the polls to select a president of the United States will be even mildly informed on the candidates for coroner when they reach that office on the ballot.

The short ballot

The movement for reform is commonly called the "short-ballot" movement. One of the remedies proposed is to hold state and local elections at a different time from national elections. This simplifies the ballot in any given election and also has the merit of focusing attention on state and local issues. This is now being done in a number of states. Another remedy is sharply to reduce the number of elective officers. Only the president and members of Congress among our national officials are elected. If the same policy were adopted in state, county, and municipal government, the ballot would be much simpler. There is no excuse, say the critics, for electing essentially administrative or judicial officers. Provision should be made for appointing judges, sheriffs, coroners, district attorney, state treasurers, and all of the other offices of this type which clutter up the ballot and confuse and irritate the voter. Promoters of these reforms, however, find a deep resentment among many voters against proposals that appear to be taking away the power of the people.

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6

Public Opinion and Political-Interest Groups

THE SOLITARY CITIZEN in the privacy of the polling booth, casting his vote for those who will direct his government, is a stirring dramatization of the processes of democracy. In this great drama each player, the humble and the proud, the rich and the poor, the intellectual and the workingman is equal to every other player. It is easy, however, to mistake election day for the whole of government by the people. The people of the Soviet Union also vote and in very large numbers. With them, however, voting is a testimonial to the virtue of their rulers; it is not a process for giving them direction. We believe that a democratic system must offer the voter a choice among competing programs or policies. The victor in the contest must emerge with some sense of what he is to do with his victory. Furthermore, the governors of the nation should, as we believe, be made rather persistently aware of the desires of the governed. We expect our officials to resolve the conflicts in society, and this requires that they know what these conflicts are and who and what is involved.

Voting is not the whole of democracy

Influencing public policy is a far more complex task than selecting persons to hold office. Electing persons committed to the policies that we desire is but one way in which this is done. A great deal more than voting is involved even in making sure that the persons who stand for office are committed to some policies. In this aspect of democratic government the individual, as such, is relatively powerless and ineffectual. By associating himself with others of similar persuasion he mobilizes and articulates his interests and desires and places himself in a position to give direction to the government. The constituent elements of society are not solely atomic individuals or even families but

Group basis of politics

also groups of many kinds. It is through the group that the individual participates in and reacts to society. It is in terms of the group that the individual very largely defines the "public good" or the "general welfare." It is as members of a group that individuals realize their personal or familial ambitions. Group activity is as much a part of the processes of government as individual behavior. Not all groups, of course, have political implications. A great many of them are formed to advance the interest—religious, economic, social, fraternal, racial—of the individuals who compose them. Advancing the interest of a group, especially the economic interest, commonly involves participation in the political process. The state with its vast power and its traditional prestige is in a position to advance benevolently or to curtail harshly the interest of any segment of society.

Political-interest groups

Groups which seek to advance the interest of their members in the political arena may be called *political-interest groups* to distinguish them from groups with other objectives. Some authors refer to these groups as *pressure groups,* which is rather a designation of one of their typical methods than a description of their general orientation. It is through such groups, however named, that citizens may influence the policies of government.

Interest groups in American society

One of the outstanding characteristics of the American system of government is the great multiplicity and diversity of political-interest groups which operate within it. The ease of formation, the intensity and scope of activities undertaken, and the political concern of these groups in our society exceeds that of any other in the modern world. This may be attributed in part to the tremendous technological development in the United States in the last century, accompanied as it has been by increasing specialization of function, by increasing interdependence, and by increasing ease of communication over wide distances. The rapidity of technological change has stimulated the formation of groups to soften the hardships associated with such rapid change. To put it another way, groups spring into being as a result of maladjustment in social or economic relations and seek to order anew, relationships which have been shattered by technological change. The labor union, for example, is a response to the factory system, accompanied by the removal of the management from daily face-to-face contact with the laborer. The second factor contributing to the growth and activity of political-interest groups in American society is the tolerance of our laws and customs. Freedom of association is a cherished cornerstone of the American way and is protected against undue governmental restriction. Some observers assert that we are a nation of joiners; the necessity for group identification is a characteristic of the American individual. However this may be, it certainly is demonstrable that our society comprises more political-interest groups than any other today.

The clash of interests

The interests of some groups are very frequently served only at the expense of the interests of others. The clash of such interests is the very essence of political dynamics. From the beginning of our national life the activities of interest groups have been regarded by many as sordid, unpatriotic, and dangerous to social unity and political stability. Sensational exposés of the "behind-

the-scenes" activities of the "interests" in the legislative halls or the administrative offices still shock large segments of the American populace and fill them with a sense of the futility of democratic government and the treachery of their officials. Group interest, in this view, is opposed to "national" or "public" interest. It is unkind but just to point out that the interest groups whose conduct revolts us and whose machinations we distrust are not the groups to which we belong. James Madison, in the most frequently quoted of the Federalist papers (No. 10), revealed his keen understanding of the role of interest groups in society and of the place of the government in respect to them:

> A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

In the same essay Madison took some pains to show that the constitutional arrangements of 1787 were designed to prevent any one group from ever getting the upper hand. Whether regarded as signs of illness or of health in the body politic, the activities of interest groups are an essential part of the American scheme of democratic government. It is impossible to understand the behavior of political leaders, legislators, executives, judges, or even the voters themselves except in terms of the groups with which they tend to identify themselves or from which they expect support.

American government and interest groups

One other characteristic feature of our governmental system influences not only the number but the activities of the interest groups of our society. The federal system, the division of power among three branches of government at the various levels, and the two-party system provide an unusually large number of points of access to power and influence. Interest groups thus may aspire to influence by working at a number of entrances, and each of the doors is likely to be well attended by numerous and conflicting groups. No single door leads certainly and inexorably to domination of the state.[1]

POLITICAL-INTEREST GROUPS IN ACTION

Numbers of groups

How many political-interest groups are active on the American scene no one can say with accuracy. At least 500 maintain permanent headquarters in the national capital but this is only a small portion of those that are politically active at some level of government. The Department of Commerce in 1949 listed 4000 national trade, professional, civic, and other associations. If

[1] For balanced and comprehensive treatments of the role of interest groups in American government consult D. B. Truman, *The Governmental Process* (New York, 1951) and A. F. Bentley, *The Process of Government* (New York, 1908). This section is very largely based upon these two works.

account is taken of local branches, chapters, affiliated units and independent local groups, there are perhaps 150,000 groups more or less active in politics. The number swells or recedes daily as new groups are formed and old ones languish. Most of these groups and associations have interests other than political ones and the intensity of their political activity varies widely from one year to the next and among themselves. All of them are at least potential political forces. Even among those that are regularly active politically there is great diversity. Some number only a handful of adherents; others have memberships running into the millions. Some have little money to spend; others have a great deal. Some have more or less elaborate headquarters and secretariat, others engage the attention of one part-time employee. It is possible here to describe only a few of the more important ones.

Business groups

One of the largest and most aggressive spokesmen for the "business community" is the Chamber of Commerce of the United States. The Chamber is essentially a federation of local Chambers of Commerce and these include firms as well as individuals and typically embrace the merchants, manufacturing establishments, and financial and service institutions in each substantial community. It is thus a cross section of the "business" interests of the country and cannot and does not commit itself to political issues about which the business community is sharply divided. In the national scene it can regularly be found attacking governmental regulation of prices or wages, supporting reductions in the tax rates on profit or investment, advocating rigid economy in government—except in the public works fields where many of its local chapters are strong pleaders for new post offices and river and highway improvements—and assailing any government protection for labor unions. The national headquarters produces and publishes material for the members, for Congress, and for congressional committees, urging its point of view on matters in which it is interested. In *Nation's Business* it presents its views to the public. Its position in national questions is frequently determined by the results of a referendum of its members.

Close to the Chamber in size and even more aggressively belligerent in behalf of the interests of industrialists is the National Association of Manufacturers (N.A.M.) organized in the 1890's. Composed of firms engaged in every type of manufacturing, its chief focus throughout this century has been to counteract the power and influence of organized labor. Since 1933, when it was reorganized, it has been more or less dominated by the large corporations. It can be relied upon to support governmental curbing of labor unions, private enterprise, economy in government, low taxes (on profits, incomes, or manufacturing), and similar views on which industry as a whole is agreed. It maintains friendly, and in some cases paternal, relations with the thousands of trade associations organized in the last three or four decades to promote the interests of particular industries, such as the Cotton Manufacturers Association, Newspaper Publishers Association, Iron and Steel Institute, Automobile Manufacturers Association. In the *N.A.M. News* its staff reports to the members on political developments and policy positions.

Labor groups

The outstanding pleaders for the interests of organized labor are the American Federation of Labor and Congress of Industrial Organizations (A.F.L.-C.I.O.) and the railroad brotherhoods. The A.F.L.-C.I.O., like the Chamber of Commerce, is a federation, in this case of unions, and represents a recent merger of the A.F.L. with the C.I.O. Many of the older A.F.L. unions are organized on the craft basis (carpenters, plumbers, etc.) while many of the C.I.O. unions are organized on the industrial basis (auto workers, steel workers, etc.). The federation is importantly concerned with achieving peaceful relations among these unions and with representing the unions' point of view to the public and to the government. Traditionally, the A.F.L. had opposed governmental restriction on the freedom of labor to use its customary methods in dealing with employers. It had also opposed the use of governmental power in regulating many aspects of the economy. It has been gradually modifying its laissez-faire attitude to one more sympathetic to governmental intervention in behalf of workingmen. And now it will usually be found with its new partner supporting minimum wage legislation, unemployment insurance, public housing, and many public welfare programs. The C.I.O. had been more disposed to governmental action from its origin than its parent, the A.F.L. Its representatives could usually be found supporting emergency price controls, wage and hour regulation, social insurance, expanded public educational programs and many other policies aimed at benefiting the laboring man. The merger of these two great federations late in 1955 produced what has been described as the most formidable interest group in American politics. Since merger, however, one of the largest unions, the Teamsters, has withdrawn amidst charges of corruption and dictatorship in its organization. The railroad brotherhoods are the most conservative of the union organizations. They direct a large share of their political energies to those special programs of government dealing with the railroad industry.

Farm groups

The most powerful organization representing the farmers' interests is the American Farm Bureau Federation. A product of agrarian discontent in this century, it is a federation of county farm bureaus organized originally around the county extension program of the United States Department of Agriculture. Although its membership blankets the nation, it is especially strong in the Midwest and South and is sometimes described by its critics as an alliance of cotton and corn. Clearly it represents the more successful farmers. The Bureau speaks with a strong, and frequently a compelling, voice on such subjects as price supports, parity, increased agricultural research and extension and against high property taxes, governmental production controls, and trade regulation. The National Grange dates from the agrarian upheavals of the 1870's and at one time was one of the most belligerent of all farm organizations. Its membership and strength are now largely confined to New England and the Middle Atlantic states and it reflects the conservatism of the farmers of those areas. It is a strong supporter of the family farm against the large commercial farm, an enemy of organized labor, and an eloquent advocate of the spiritual superiority of rural life. The National Farmer's Union is the most

reform-minded of the great farm groups and represents the marginal farmers of the Plains. Its strength is centered in Oklahoma, Nebraska, Colorado, and the Dakotas. It has been a strong supporter of high, rigid price supports, the cooperative movement and has been consistently friendly to organized labor.

Other groups

This is but a small sample of active and influential groups identified with the great sectors of our economy. Every sector has its group or groups. And not only every sector of the economy, almost every sector of our society has a spokesman for its interests. The American Legion and the Veterans of Foreign Wars are constantly pressing the claims of ex-servicemen for bonuses, pensions, rehabilitation grants, hospitalization, and other services and also are active policemen of the purity of our national ideology, laying about them against all critical, "pink," radical, or unorthodox political or economic opinions. The National Association for the Advancement of Colored People battles discriminatory legislation and private prejudice against the Negro. The Navy League sponsors appropriations for expanding the fleet; the Civil Liberties Union patrols the frontiers of the Bill of Rights against judicial, legislative, or executive encroachment; the National Education Association promotes the interests of teachers and administrators of the public schools; the League of Women Voters pushes vigorously for administrative reform and for many other items on its national, state, or local agenda. For every interest—consumer, homemaker, child, patriot, censor, preacher—there can be found some group seeking to protect or advance it.

Group organization

Effectiveness in advancing the interests of the group in the political arena is generally held to depend in large part on organization. A treasury, a permanent staff, a headquarters, an annual convention, a news organ, these are regarded as minimal needs for group success. Many groups are organized in the most casual way with little money and no staff. The group interests, however, which persist and which command attention and enjoy influence are, typically, highly organized. Commonly, the group is supported by dues or contributions from the members supplemented by gifts from affluent supporters. Several of the groups operate profitable enterprises (publishing, insuring, loaning) as a source of part of their fiscal requirements. Many groups which lay claim to large membership and substantial popular sympathy are entirely supported by a few large contributors whose backing is not apparent. Many of the groups operating in national politics are federations of local or state groups which are active at those levels. These groups are likely to exhibit less cohesion and to have more internal disagreements on policy than the groups with unitary-type organizations. Some groups are directed and controlled by elections and referenda and periodic conventions in which a large part of the membership participates. Most groups, however, are dominated and directed by a small portion of the total membership. Some are controlled completely by one man. Some groups make no pretense to democratic procedures for determining the group position on public issues. In recent years, however, most groups have claimed to be democratic. Almost every group operates on the basis of a formal constitution approved by the members at

some stage in its organization. The permanent staff is likely to be especially influential in most group activities and decisions, regardless of how it may be selected. In some groups the entire staff spend all their time promoting group political interests. In others, with broader scope, this phase of the group interest is assigned to a special bureau, committee, or person.

Methods employed:

How do these organized groups go about the business of promoting group interest in the politics of the nation? The best-known method is lobbying before the legislature. This method, as we shall describe later in more detail, takes many forms but may be summarized as presenting the group point of view to individual legislators or before legislative committees. Urging the peculiar claims of one interest group upon public officials is not confined to the legislative halls. In modern American government, wide discretion to benefit or to harm certain interests is conferred on administrative agencies and individual administrators, and increasingly the spokesmen of interest groups seek out those concerned in the executive branch to make timely representations on behalf of their members. Even the courts are not immune to these representations. A substantial amount of litigation, contesting legislative or administrative decisions, is carried before the judiciary by interest groups rather than by individuals in their own interests. The smaller, less affluent groups are likely to hire skilled pleaders to present their views before the various governmental agencies; the larger groups make this the business of their permanent staffs. Not all of the special pleading before the government is done by or in behalf of interest groups. Some corporations and individuals make representations on behalf of their own interests.

1. With the government

Interest groups seek to influence the policies and personnel of political parties as well as of the state. Claims on behalf of these groups are frequently urged upon party platform committees at all levels of government and upon individual members of important party committees and conventions. Although many of the groups prefer, and some practice, a kind of neutrality as between parties or among candidates, several of them seek to promote the candidacy of individuals favorably disposed to their claims and to assist one or the other of the major parties to victory. Influence in party circles is sought, and sometimes achieved, in many ways: by contribution to campaign chests, by grants of publicity or office space, by loans of skilled personnel to candidates or parties. Some avowed spokesmen of large interest groups stand for office as candidates in their own right.

2. With the parties

In the modern age, interest groups have more and more sought to go beyond the traditional methods of dealing with a few important statesmen or party leaders on a private and personal basis and by propaganda to cultivate a favorable attitude on the part of the great mass of citizens not members of the group. In other words, they have tried to build a broadly based support, a favorable climate of opinion, which legislators and executives will be obliged to respect. Every known medium of communication with the public is used by one or more interest groups: newspaper releases, radio broadcasts, periodicals, television programs, leaflets, brochures, speeches, advertisements. Much

3. With the public

of this publicity is so artfully contrived and so skillfully inserted in the stream of daily communication that its source is not apparent and its bias not disclosed. Much of it, of course, bears the imprimatur of the group which has sponsored it.

LIMITATIONS ON INTEREST-GROUP EFFECTIVENESS

Interest-group politics not all of democracy

Having been exposed for the first time to the activities, especially the successes, of interest groups or their leaders in our governmental system, young citizens are apt to be disillusioned. The idyllic view of the unselfish, responsible citizen majestically casting his ballot in behalf of what is good for the public and not necessarily for himself, and by this process electing statesmen who take the same attitude, is an easy one to puncture. Unfortunately, many citizens never grow in understanding beyond the sophomoric conception that all of the processes of democracy in America can be summarized in the selfish, ruthless, immoral, and deceitful behavior of certain interest groups and their representatives. It is as easy to mistake interest-group operation for the whole of American democracy as it is to mistake voting for the whole of it. What saves us from a polity dominated wholly at each level by the stronger or the wilier interest group or groups at that level?

Conflicting loyalties of group members

In the first place, many citizens, particularly those who are most active politically, identify themselves with a number of interest groups. It is quite possible for a person to be a member of the Retail Grocers' Association, a member of the American Legion, a Republican, a Lutheran, a member of the Parent Teachers Association, and a member of the Chamber of Commerce all at the same time. These groups may frequently be found urging mutually contradictory policies upon the government. His Grocers' Association may be attacking a sales tax which his Chamber of Commerce is supporting. His veterans organization may be demanding preference for veterans in teaching positions which his educational association is opposing. His party may require his support of a candidate who is wholly obnoxious to his Legion Post. No group can fairly represent the whole of a citizen's public views. No group can make the politician's job of balancing and reconciling conflicting views unnecessary. When group conflict occurs where overlapping membership is common, the group spokesman cannot command the effective loyalty of the whole membership and cannot, therefore, swing it behind the group program either at the ballot box or before the officers of the government. The larger the group, the more likely it is that most of its members will have other loyalties which may at any time conflict with loyalty to that group. In any group there is usually only a hard core of members who react to all political issues as members of that group. This hard core is rarely able to persuade the others to follow its lead at election time.

In the second place, members of the same group frequently disagree on policies which affect the group. The larger the group, the more unlikely it is

Lack of internal cohesion in groups

that it can reach agreement on anything. The huge federations like the Chamber of Commerce or the A.F.L.-C.I.O. find that the numerical strength which makes them formidable makes them soft. The "business" community is to some extent a myth. Individual men and firms have decided differences on what is good national policy. A high tariff may be a fine thing for the watchmaking industry; it may be a bad thing for the automobile industry. What stand can the N.A.M. or the Chamber of Commerce take on the tariff issue and still hold their members' loyalty? Furthermore, there is a tendency for the permanent staff to act as if it were the whole group, to arrogate to itself power to make policies which the group does not in fact support. Balloting has frequently revealed that the members do not act like the leaders say they are going to do. The point is that if the group leaders cannot punish on election day the politicians who have opposed the group interests, they have, to that extent, made it less necessary for the politicians to please them. A politician will, typically, be more responsive to interest-group pressure if he feels that the group can hurt him. Parenthetically, the representation of group interests informs the politician of possible repercussions to policy decisions which he is contemplating. Lobbying, thus, serves the valuable purpose of a barometer of the political weather in the politician's district.

The unorganized interests

Finally, there are a large number of genuine and deeply felt interests in society which are rarely expressed and are almost never organized. There is a great deal of loyalty among our citizens to the traditions of American government as they understand them and to ethical conceptions like the Golden Rule or the Ten Commandments—to the "rules of the game" in a phrase. An organized group interest which flouts any of these traditions is likely to lose the loyalty of many of its members. What is more serious, it is likely to arouse these deep-seated interests on the part of the public, that is, the nonmembers of that group. It is easy to underestimate the force of these unorganized interests in our society simply because they are not organized and ordinarily have no spokesman. When any of these interests are threatened, however, they come vigorously to the surface of the political sea and assail those who endanger them. The best example of the role of the unorganized interest is the attack on corruption in government. There are interest groups that promote their own advantage by coarse methods: bribery, entertainment of officials, expensive presents. When exposed to public view, these methods frequently stimulate the expression of the unorganized interest in honesty in government. When corruption is rife, this interest in preserving honesty in government is likely to become organized and mobilized to "throw the rascals out." Many politicians and interest-group leaders have found to their sorrow that there is a limit beyond which they cannot go without arousing this slumbering interest in clean and honest government. Loyalty to interests like those in maintaining the separation of powers, respect for the individual, fair play in governmental procedures, and the federal system may seem to be weak and ineffectual compared to the desire for wealth or prestige, but let a group, a party, or an individual

attempt or seem to attempt to undermine or destroy them and these interests are quickly manifested. Loyalty to the rules of the game is probably quite as strong, even if latent, as loyalty to an interest group.

PUBLIC OPINION

Party orators and interest-group propagandists ordinarily pose as upholders of the traditions of our society. In seeking popular approval they tend to identify the latent or unorganized interests of the public with party policy or group programs. In so doing they exhibit their belief in the force of these unorganized interests; but more than this, they testify to the widely-held assumption that modern government is dependent upon public opinion. The spread of equalitarian ideas, the achievement of literacy among the masses, and the development of elaborate networks of communication have all aided in placing our governors under the strong, if not decisive, influence of public opinion. Even the conduct of foreign affairs, once the preserve of a small, aristocratic clique, is not immune to the tides of mass attitudes.

Democracy and public opinion

While every form of modern government seeks mass approval for its policies, democracy is founded upon popular consent. Apologists for the democratic ideal—its critics also—postulate a direct correlation between majority will and public policy. Some see the government in a democratic society, for good or ill, as under the constant and decisive influence of the concerted and more or less spontaneously developed will of the masses. While the ballot box is the most powerful vehicle for this will, it is not the only one. Individuals may also influence the decisions of government by expressing personally or in association with others their views on public affairs. In democracies, at least, it is supposed that these expressions, if widely enough made, must be controlling.

Many factors in the modern world have combined to challenge the validity, the feasibility, and the wisdom of these cherished notions. Psychologists have shown that attitudes and opinions can easily be influenced by skillful manipulation of emotions. Thoughtful men everywhere have become alarmed at the brutal and unreasoning aberrations of the multitudes as exhibited, for example, in Nazi Germany. On many issues of public concern, it appears that a vast majority of the people do not know, do not understand, or do not care about the matters in controversy. Decisions are, therefore, made by small but active minorities perhaps with high stakes in the result. Even the ballot box does not give unequivocal directions to the victors. Electoral triumph may depend more on personality or image than on commitment to program or policy.

The development of sampling for measurement of opinion

Heretofore, the problem of empirical verification of hypotheses like those recited above has been formidable. What could be accepted as showing popular attitudes? Are statesmen influenced by the various and frequently contradictory expressions of voter attitude? Is not all of this apparent deference

to public will merely a ritual designed to give legitimacy to the actions of the few rulers? Surely, skilled modern sophists can manufacture opinions to specification.

The invention of and the continued improvement in the technique of sample-interviewing for testing public attitudes have in the past few decades offered an opportunity to probe the nature and influence of citizen opinion. Many of the best minds in sociology, psychology, and political science are now studying these questions and striving for light in this cave-like world. The validity of modern inquiries is, of course, dependent upon the validity of the sampling technique. Capturing and recording and analyzing the attitudes of a substantial majority of the American people is manifestly impossible. If some small number (500-5000) could be taken to represent the whole, then intensive and repeated interviewing of these could reveal many things about opinion that students and statesmen need to know. The polling system may assume that attitudes on public matters are influenced by economic, religious, ethnic, geographical, and similar factors and use these as the basis for constructing a sample of the body politic, or it may select its sample at random on a geographic basis, or it may use other hypotheses.

Predicting elections

The sampling technique achieved wide and impressive popularity when it was used in 1936 to predict the outcome of the presidential election and scored astonishing success, especially when compared with the straw-vote system used for several years by the *Literary Digest* magazine. Until 1948, the pre-election polls conducted by the American Institute of Public Opinion, Elmer Roper and others gained increasing prestige and respectability but the forecast in that year of a Dewey victory brought them under a cloud from which their cautious forecasts of 1952 and 1960 and more accurate predictions of 1956 have not completely removed them. Despite the critics, pre-election polling is still practiced extensively. The parties are using them heavily to plan campaign strategy. President Kennedy while seeking nomination and election maintained his own polling experts.

Polling on issues

The sample-interview or polling system is also used widely to measure sentiment on questions of public policy as they arise in the course of events. In fact, some of the leading pollsters assert that they are valuable, if not essential, additions to the democratic process. They not only tell public officials how the people feel about proposed courses of action—and in a democracy officials should know this—but also reveal areas of ignorance and indifference which should aid those involved in planning programs of civic education. The value of the election-poll and of the issue polls is widely debated. Many people feel that predictions cannot be validly made and the effort should be abandoned; others that the consequences of publishing results are unfortunate—creating band-wagon effects or showing the woefully inadequate state of public understanding.

Polling and opinion studies

Whatever the merits of this controversy, the controlled, objective, and increasingly knowledgeable use of the sampling technique by scholars has provided us with much new knowledge about political behavior and public

attitude. It has also suggested vast areas of continuing ignorance about the practices and professions of democracy.

Whose opinions matter?

The picture that is beginning to emerge from numerous inquiries is of a relatively small minority of people who are active politically—running for office, serving party purposes, rallying supporters, speaking out on people or issues—operating within a larger mass characterized by varying degrees of indifference, misunderstanding, and docility. Within the large mass, however, is some vague sort of consensus about the nature and expectations of government. By conviction and expedience the activists tend to operate within the broad limits of this consensus. These activists are probably not so few as to constitute a self-conscious power elite nor so many as to justify the majoritarian hypotheses of some democrats. Clearly, however, the path to citizen influence on government decision is through activism and most citizens do not take it.

The formation of opinion

Among the major influences on the formation of mass opinions are the family, the school, the interest-group, the party, and the mass media of communication. Party loyalty, for example, appears to be strongly influenced by family tradition as is a disposition toward political activism. The schools are probably important transmitters of the basic attitudes which comprise the consensus within which the activists work. The interest-group encourages and supports its adherents in articulating more precise positions on the direction of public policy.

The importance of mass media

As sources of information and as sources of influence the mass communications media—newspapers, television, radio, magazines, the cinema—play a critical role in the American democracy. Mass media opinion is likely to be accepted by many as public opinion. When politicians talk about what the public is thinking they frequently base their statements on what the mass media are saying. Although it is true that the press, the radio and the others influence opinions; that many people decide what they think about a particular issue on the basis of what their favorite columnist tells them to think; and that the news of the day can be, and frequently is, written in such a way as to convey approval or reproach, this is still a long way from making their opinion and public opinion synonymous. Media opinion is, in fact, the opinion of a relatively small number of individuals (owners, editors, and reporters) but its power to influence the opinions of those who read it—statesmen or citizens—is great. Many citizens, perhaps a majority, learn what they know about the conduct of public affairs, the character of statesmen, and the operations of the government from the newspapers or the television news broadcasts. The primary function of news reporting, according to journalists, is to inform public opinion. This admittedly is difficult to do without also molding opinion. "Facts" are hard to handle meaningfully and interestingly. Which facts are to be reported? There is not room for all. Which will be read? However informative, factual, and dispassionate the story, if not read it will not inform the public. What significance is to be attached to the "facts"? Reporting happenings without background and statements without context is almost meaningless.

Some, however, place primary emphasis on the molding and attach only secondary importance to the informing.

Limitation on newspapers as media of communication

On the whole, ours is probably the best-informed citizenry in the world today. Nevertheless, our media are not perfect vehicles of public communication: (1) They have become large-scale enterprises and thus cautious, semi-monopolistic, and dependent upon maintaining a wide reader-interest; (2) they labor under a great shortage of time for reflection and review—they must publish each day; (3) the people who write the news cannot possibly know enough properly to evaluate everything they must report. These attributes of the modern metropolitan daily newspaper, the great news telecasts, and the weekly magazines reflect to a large extent the social environment in which they operate. Circulation or listening audience is the key to business success. Getting and keeping readers consists in serving them what they want to read. Mass circulation means mass appeal and this means sensationalism, comics, department store advertising, advice to the lovelorn, sports, and glamor. In spite of their obvious limitations and in view of their vital role in a democratic polity, it is easy to overestimate the influences of newspapers. For 20 years—from 1932 to 1952—the overwhelming majority of American newspapers were unsympathetic, if not openly hostile, to the party and its leaders repeatedly returned to power by a majority of the voters.

Much yet to be learned

About all of this, however, we have much yet to learn. What are the elements of the consensus? How is wide agreement on the rules of humanitarian democracy produced? How much influence do the various elements of our society exert? How can basic predispositions be modified? What links private and personal attitude to public decision?

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7

Political Parties

Parties are essential to democratic government

NONE OF THE PROCEDURES by which individual citizens participate in directing the government would be wholly effective without political parties. Unless candidates for office stand for something, voting is likely not to be successful in giving direction to the machine of state. Unless the range of choice is narrowed down, the electorate is likely to be divided among numerous claimants with no single claimant representing more than a small portion of the total. No political-interest group can claim the loyalty of more than a minority of the voters and cannot, therefore, itself dominate and direct public policy. The results would be tragic if it could, for it might push its own claims to the exclusion of those of other groups and so divide our society that rebellion or revolution would ensue. None of the methods for voicing or recording opinions on the questions of the day makes certain that the opinions will be both representative and influential. Although for decades there were grave doubts about the usefulness or the necessity of political parties and even today there are lingering suspicions, it is now generally conceded that strong parties are essential to the practice of democratic government.

THE NATURE OF A POLITICAL PARTY

Nature of a party

In a sense a political party is a kind of political-interest group. It is a group of voters consciously bound together by a shared interest in promoting some kind of public policy and a shared adherence to some sort of traditional values. A party differs rather strikingly, however, from all other political-interest groups or associations in that it seeks to capture the power of the state. It is not content merely to persuade those in power to follow a particular

policy. The party offers candidates for office and is willing to assume the responsibility for running the government. Although devoted to some kind of program, its major aim is power and, within certain broad limits, it will shift its program to attain it. The ordinary political-interest group is much more rigidly dedicated to a program of governmental benevolence to its own members than is any party. Strong parties are likely to be much larger than any other type of interest group and to embrace members of many different groups. Of course, parties may be large or small, national or local, highly organized or loosely built. The major parties of American experience, however, have operated on a national scale and have permeated all levels of government.

Party membership

American parties are loose and amorphous associations. Membership in a party is a vague and elusive matter. How does one join a party? A few minor parties have regular enrollment, the members subscribe to a body of doctrine and, in many instances, pay dues. The major parties, however, have nothing so clear cut. There is no enrollment, except that arising in several states from preprimary registration of party affiliation. There are no dues, although many efforts have been made to institute regular contributions. There are no rules of behavior for members and no effective sanctions for improper conduct. In common with the large interest groups, there is at the center of each party a hard core of party officials and workers surrounded by a steadfast band of supporters who contribute money and time and influence, if they have it, to promote the success of the party. Close to this core, but not always part of it, are the officeholders whom the party has helped elect. There is the party in Congress and the party in state legislatures and in city and county councils and commissions and the party in the executive branch at all levels. These groups are closely identified with the party hierarchy, may even be part of it, but in view of official positions have responsibilities and loyalties which transcend party status. At any particular time, a segment of the party in office may be at odds with the party hierarchy. Beyond the hierarchy and the officeholders are the office-seekers and others who aspire to influence in the party and in the government. Then there are the myriad hosts of those who regularly support the party at election time, occasionally work for it, usually talk for it in their own circles, and sometimes contribute to its treasury. Beyond this group are a large number of persons who usually support the party but cannot be depended on to do so and who are rather quick to change their loyalties and support another party or candidates. Surveys by the American Institute of Public Opinion and by the Survey Research Center of Michigan place these "independents" in politics at between 20 and 25 per cent of the electorate. Finally, there are on election day all of those who vote for the party's candidates. Many of these, however, are not members in any sense save this one and for this short period.

The usefulness of parties in American government

How can a group whose membership is so hard to determine and whose character is so difficult to define be so useful to democratic society? No better agency for mobilizing the electoral power of large numbers of people and channeling it to drive the wheels of government has been found in almost 200 years of experimentation. No other agency assumes for its chief task the for-

mation of a majority so that officials can assume office with the knowledge that they may speak and act for their fellow citizens. No other agency so persistently or so successfully stimulates citizen interest and participation in the processes of self-government. No other agency is quite so responsive to the feelings of the people. No other agency is in a position effectively to harness the multiple seats of power provided by our federal and tripartite constitutional system and drive them toward an agreed goal. Finally, no other agency has, at the same time that it has promoted political division, also promoted national unity. Only the political party reaches across sectional boundaries, economic distinctions, interest-group competitions, religious differences, and racial antagonisms and softens the conflicts, bridges the gulfs, and helps to cement together a divergent, mobile, and aggressive people.

Parties in authoritarian states

One of the distinguishing characteristics of genuinely democratic government everywhere in the world is the free competition of political parties. The ruling cliques in some authoritarian governments also call themselves parties largely because of their origins in differently organized regimes. In the democratic sense the Communist party in the Soviet Union, for example, is not a political party at all and the system is not a party system. Parties, to correspond to our definition and to function as they do in democratic states, must be free to compete openly for public support and to criticize freely those in charge of the state.

THE DEVELOPMENT OF THE AMERICAN PARTY SYSTEM

The history of party cleavage in America

The disposition of the American electorate to divide into major groups identified with particular governmental conceptions extends back to the very beginnings of our national government. The movement for separation from England sharply divided the people of the colonies, with the Loyalists or Tories opposing the revolutionaries. Achievement of independence was accompanied by a general suppression of Loyalist sentiments. The attempt to replace the Articles of Confederation with a new constitution providing a stronger central government evoked a loose union of its sponsors into Federalists and of its opponents into anti-Federalists. The Federalists drew their chief strength from the commercial, financial, industrial, and plantation interests, their opponents from the small farmers and frontiersmen. These loose coalitions more or less dissolved with the establishment of the new government, only to reappear in slightly different array during the late phases of Washington's presidency. The commercial, financial, and industrial elements of New England and the Middle States retained their party label of Federalist and, led by Hamilton and Adams, sponsored new national programs for the benefit of these sections and interests. Their policies in regard to national debt, a protective tariff, and the role of the national government, however, stimulated Jefferson and Madison to rally the planters along with the small farmers and artisans into a new party—the Jeffersonian Republicans. Jefferson's skill as a party leader, continued expansion of the frontier, quarreling among the op-

position leaders, the War of 1812, and other factors too complex for easy summary brought such sweeping victories to this party that by 1816 the Federalist party was driven from the field. Renamed Democrats, the party of rural America held the field unchallenged nationally until 1832. The Jacksonian Democracy of 1828, however, was a coalition different from Jeffersonian Republicanism. Jackson's appeal to the artisans of the city and the farmers of the frontier was much stronger than his appeal to the southern plantation aristocracy. Many of the slave-holders were driven into an alliance with northern manufacturing, commerce, and finance in the National Republican or Whig party organized about 1832 and contesting national offices with the Democracy from 1832 to 1856. The slavery controversy rent the Democratic party still further and created an unbridgeable gulf finally between southern and northern agriculture. The Whig party, too, disintegrated under the fires of abolitionism and secession, its southern wing joining hands with the slave-holding Democrats and its northern industrial wing forming the chief sinews of the new Republican party which emerged in 1860. Lincoln's party successfully united the northern industrial and financial groups with the midwestern free farmers in a coalition for union, against the spread of slavery, and for tariffs. The shades of rebellion hung over the Democracy for decades after the Civil War, but farm depression, rigid credit controls, high tariffs and industrial exploitation drove more and more northern workingmen and farmers to embrace the Democratic standard. Deep distress in American agriculture in the 1920's, followed by an unparalleled depression in industry in the 1930's, cemented a powerful new farmer, laborer, southern plantation coalition which is the basis of the modern Democratic party. The Republican party continues to receive the support of the manufacturing, commercial, and financial interests of the North and Midwest and of the more prosperous farmers of these regions. The Democratic party can thus trace its ancestry back to Jeffersonian Republicans and the Republican party to Hamiltonian Federalists. Each, thus, draws upon traditions and conceptions reaching far back into the past.

Economic and sectional interests not sole determinants of party cleavage

This characterization of American major parties as based largely upon economic and sectional interests has only rough validity. There were many cross currents of interests, religious and social, for example, which influenced party affiliation at every epoch of our national history. No party ever enlisted the undivided support of any economic interest or section. Family tradition has proved capable of maintaining party loyalties long after any direct economic attachment is discernible. Regional devotion too has been a strong contributor to party loyalty. The South, for example, still shuns the Republican party as the author of its defeat and the despoiler of its culture. The older a party becomes, the more likely is habit to be a large factor in the devotion of its followers.

A two-party system

This capsule history of the American party battle does show, however, that certain great economic and sectional interests have persistently sought political expression through the vehicle of a party. Some of them, industry, for example, have been consistent supporters of a particular party. Most significant

of all, however, the history of American parties reveals the deep attachment of the American voter to one or the other of two major parties. In sharp contrast with continental practitioners of democratic government, English-speaking peoples generally seem to prefer a two-party alignment to a multi-party one. Despite the great diversities of sections, economic groups, and religious loyalties, which in France, Italy, Germany, Belgium, Holland, and the Scandinavian countries have promoted numerous parties contending for power, the American people have tended to coalesce into two great combinations of such interests.

Why we have a two-party system

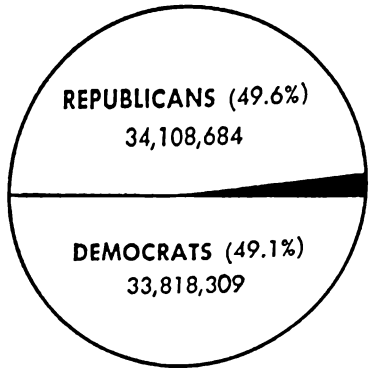
A number of explanations have been offered for bipartisanship in American politics. On the one hand, some have ventured the belief that the two-party system is more natural than any other. People "naturally" tend either to conservatism or reformism by temperament, upbringing, and disposition. A conservative party and a reform party are, therefore, in keeping with human nature. This explanation is not very satisfying. Human nature is not so simply catalogued; few of us are consistently conservative or consistently reformist throughout all of the phases and facets of our lives. Some find the explanation in American constitutional history. They find that there have usually been but two main attitudes toward our constitutional arrangements: a strict constructionist, states'-rights attitude; and a loose constructionist, nationalist attitude. This explanation fails to reckon with the fact that the party in power in the national government has usually been nationalist while it was in power—whether Democrat, Whig or Republican—while the party out of power nationally has typically been in favor of states' rights. The Republican devotion to states' rights of the last two decades would sound strange to the supporters of Lincoln. Elihu Root felt that the two-party system was the product of longer practical experience of self-government than the continental peoples had enjoyed. Contemporary students believe that the following factors are more important than any thus far mentioned: (1) the single-member district system for electing legislators—plurality election in each district invites if it does not compel coalition of interests in order to achieve a decision at the polls; (2) the popular election of the president—this contributes a powerful impetus to unite groups across state, sectional, and economic lines in order to make the voting decisive; (3) once established the system built up its own impediments to any rival scheme.

Minor parties in America

Not all Americans have been content with the two-party division. Dissident elements in the electorate have periodically launched independent or "third-party" movements. One of the first of them was the Anti-Masons, appearing in 1826 and spreading over New England, New York, and Pennsylvania. It made a lasting contribution to American politics in the national convention system for nominating presidential candidates. It also formed part of the basis of the opposition to Jackson which later became the Whig party. The equivocation of the major parties on the slavery question stimulated the formation of the Liberty party about 1840, dedicated to abolition, and of the Free Soil party, active in the campaign of 1848 and determined to sustain the

Wilmot Proviso. Antipathy to immigrants, especially Irish Catholics, led to the formation of the Native-American or "Know-Nothing" party which flourished in the fifties. The Republican party, itself, began as a third party in

MINOR PARTIES IN THE PRESIDENTIAL ELECTION OF 1960



MINOR PARTIES (1.3%)

Party	Candidate	No. of votes
LIBERAL (N.Y.C)	KENNEDY	406,176
NATIONAL STATES RIGHTS	FAUBUS	214,522
INDEP. ELECT. (Miss.)	UNPLEDGED	116,248
SOCIALIST LABOR	HAAS	48,031
PROHIBITION	DECKER	46,197
SOCIALIST WORKERS	DOBBS	39,692
OTHER	---	38,184
TOTAL MINOR PARTIES		909,050

1854-56. Agrarian discontent on the Plains and in the South after 1870 was largely responsible for the Greenback party of the seventies and the People's or "Populist" party of the nineties. Urban industrial capitalism was the target of the Socialist party organized in the late nineties and of the Communist and Socialist-Labor parties organized after World War I. In this century the National Progressive party of 1912 embodied the presidential aspirations of Theodore Roosevelt, the Progressive party of 1924, those of the elder LaFollette and the Progressive Party of 1948, those of Henry Wallace. The LaFollette tradition was embraced in a new Progressive party in Wisconsin in the years 1934 to 1946. A Farmer-Labor party in Minnesota joined with the Democratic party in 1944 after several years of independent existence. Southern resistance to northern pressure in behalf of the Negro, especially within the Democratic party, has produced States Rights or "Dixiecrat" parties in each election since 1948. New York City continues to be the home of a vigorous labor party, the Liberal party.

Their strength and role

Some of these parties momentarily attained sufficient strength, especially in pivotal states, to affect the results of a presidential election. One—the Republican—grew into a major party. In only two elections in this century (1912 and 1924) has the combined vote of all minor parties exceeded 6 per cent of the total vote cast, and since 1932 it has exceeded 4 per cent only once (1948). The Progressive parties which did so well in 1912 and in 1924 were both short-lived. These minor parties—free to cultivate ideas rather than

worry about power—have found their importance mainly in revealing and crystallizing dissenting opinion (usually on economic and social matters). As threats to the rather evenly balanced major parties, third parties have impelled them, whether they liked it or not, to bid for support by taking up issues sponsored by these minority groups. A large proportion, indeed, of leading party issues in the past several decades—the income tax, the regulation of railroads and other corporations, the use of injunctions in labor disputes, woman suffrage, prohibition, farm relief, and others—were "borrowed" from third-party platforms. Except for occasional "one-purpose" parties like the Prohibitionist, minor parties are typically more radical or reactionary than the old-line organizations. The internal heterogeneity and lack of cohesion of our major parties are more than matched by the rigid and doctrinaire character of minor parties.

THE TWO MAJOR PARTIES TODAY

Two parties hard to distinguish

The two major parties of today are notoriously composite and disunited. In order to capture the loyalty of great numbers of voters scattered throughout the nation, they must stand for many different things and not too rigidly for any one thing. To a foreign observer, especially one accustomed to the doctrinaire parties of Europe, it must seem that the Republican and Democratic parties are identical. James Bryce years ago described them as two bottles carefully labeled but empty. Many observers since his time have been baffled by the excitement engendered in an American political campaign when the contestants seem to be so much alike. This is really not so surprising if one conceives of the campaigns of each as aimed at the so-called "independent" vote. Although the line of demarcation between the two parties is blurred, and ideologically there is much overlapping of views, the center of gravity of the two parties is different. They do stand for somewhat different things.

The Democratic party

The modern Democratic party is a loose coalition of the dominant white agricultural leadership of the South and the industrial workers and minority ethnic groups of the large urban centers of the North and Middle West. Stated another way, it is a combination of conservative southern politicians and the highly-organized political machines of the large cities of the nation. To this coalition has been attached a large number of farmers, ranchers, and miners of the Plains, the mountain states, and the West Coast. Only four times in this century has the Democratic party failed to carry all of the states of the South. Hoover, Eisenhower, and Nixon carried Florida, Tennessee, and Virginia. Hoover and Eisenhower carried Texas; Eisenhower in 1956 carried Louisiana. New York City and Boston have been firmly Democratic for decades and virtually every large city was captured by the party in the period 1932-52. Only in 1952 and 1956 did the Republicans make serious inroads upon northern urban Democratic strength. Nixon, in 1960, carried only 14 of the nation's 41 largest cities. Numerous studies of voter preferences indicate also that the Democratic party has a very strong appeal to lower-income groups everywhere. The labor unions are strongly pro-Democratic in sympathy. The

orientation of the Democratic party is revealed also by the kinds of programs it has sponsored. In general, the Democrats have been more willing than the Republicans to control the industrial economy in the interest of workers rather than of management and to sponsor programs of public succor for the poor, the underprivileged, and the unfortunate. They have also been in favor of freer international trade and, recently, of more extensive international political and military commitments than the Republicans.

The Republican party

The sectional strongholds of the modern Republican party are New England (except Massachusetts and Rhode Island) and the Northern Great Plains (Kansas, Iowa, Nebraska, and the Dakotas). The small towns and the rural areas of the Midwest and Middle Atlantic regions (Wisconsin, Illinois, Indiana, Ohio, Michigan, Pennsylvania, and New York) have also been strongly in the Republican camp for many decades, although the Democrats did attract a large number of Midwestern and Plains farmers in the period 1930-50. The manufacturing and financial interests have been especially influential in the party as have upper-income persons everywhere but in the Deep South. In contrast to the Democrats, the Republicans have been less sympathetic to governmental restriction on private industrial management and have tended to emphasize individual initiative and free enterprise as against governmental benevolence and economic security. In international affairs, the Republican party contains a much higher proportion than the Democratic party of those who are critical of international commitments and who are sympathetic to high tariffs on imports and strong home defense.

Composite character of both major parties

It should not be inferred from these thumbnail portraits of the two parties that there are no wealthy Democrats nor poor Republicans, that there are no Republican laborers and no small-town Democrats. There are some of every kind of class, race, religion, and sectional patriot in each party. Each party is furthermore sharply divided within itself. Its unity is assailed by factional contests of the bitterest kind. The conservative southern leaders of the Democratic party are staunch foes of the demands of northern urban leaders for an end to racial discrimination and for stronger governmental protection for labor unions. Agrarian Democrats in the Middle West are likely to find southern preferences for cotton and tobacco do not square easily with their own aspirations in regard to dairy products, corn, and hogs. Eastern Republicans committed to international trade and the support of friendly nations in Europe find themselves vigorously assailed by isolationist Republicans of the Plains and Middle West and by "Asia-firsters" on the West Coast. New England farmers do not easily support the agricultural programs sponsored by the Republican corn farmers of Iowa and Illinois. These intraparty squabbles are often as animated as are the contests between the two parties. Each party does, however, have a center of gravity in particular sections and interests which is different from that of its chief rival. Neither of the central blocs is powerful enough to capture majority support unaided. Each must appeal to other sections and interests to gain victory at the polls. Since it frequently occurs that

each of them is appealing to the same group for support, it is not strange that they should sound very much alike at campaign time.

The parties and the states

Although both major parties and most minor parties offer candidates for national office and campaign on national issues over the whole nation, the real strength of the parties is in their state apparatus. The major political parties of America are federally organized in much the same way as the government. In the case of the government, however, the national level is more powerful in relation to the state level than in the case of the parties. Party activity in state and local government resembles that in the national government. Candidates are sponsored for state and local offices; platforms are written dealing with city and state problems; campaigns are conducted for governor, legislator, mayor, councilman, sheriff, district attorney, and all the other offices filled by election. In these contests for local and state power the parties prepare themselves for the national contests. It is here that the skills of the politician are learned and that political leaders are developed. Here the professional politician finds his livelihood in public office and puts himself in position to participate in national campaigns. Here party organization attains its maximum of effectiveness and detail. Each of the major parties has arisen from devastating defeat in national election to contest vigorously the next election with its rival because it still holds place and power in numerous localities and states from which to strike out anew. No party can hope for success nationally unless it is strong in many states and dominant in some. Confronted with imminent defeat nationally, local and state leaders will bend every effort to stay on top in their own states and cities. They have been known even to sabotage their own national ticket if they thought by so doing they could salvage local victory.

One-party states

The states are not perfect miniatures of the nation in party matters. For decades a goodly number of states have not had genuine two-party competition of the national variety. The Deep South has been solidly Democratic since the Civil War, and most of the Plains, New England and, until the 1930's, the Mid-Atlantic have been predominantly Republican. In these one-party states, factions within the party tend to develop and to offer candidates, contest nominations, and promote controversial policies. These factional competitions resemble bipartisan conflicts, but take many peculiar local forms. The nominating procedure is likely to be the chief battleground in one-party states and the elections less significant. Two-party competition has, however, been increasing in the past few years and there are fewer one-party states today than at any time since 1865.

Separating national and state politics

The cooperative union of national, state, and local politicians in the American party pattern has the great value of promoting a similar co-operative union of national, state, and local government. It helps to overcome the centrifugal tendencies in the federal system. To some, however, the mixture of national issues into state and local campaigns which necessarily accompanies the federated party organization is a monstrous evil. Only misgovernment locally results from confusing the voter by injecting national party positions on

war, taxes, or international affairs into municipal campaigns, they argue. The stock remedy for this alleged illness is the nonpartisan ballot (one having no party emblems or identifications). And a number of states have adopted such ballots for municipal officials, judges, and state officials. Two states, Minnesota and Nebraska, now select the members of their legislatures in a nonpartisan election. In this nation as a whole, somewhat more than half of all the members of city councils in municipalities with more than 5000 population are selected in this way. This method has not completely eliminated partisan campaigning but it has certainly reduced it. It has also weakened the influence of city officials in state and national politics. The separation of national, state, and local elections is another way which has been widely adopted for getting at the same problem. This procedure strengthens the state position of a party not in command in Washington and may build one-party dominance.

REGULATION OF PARTIES

Parties as voluntary associations

Political parties are as much a part of the American system of government as the Congress of the United States. They are the most important vehicles for translating individual will into public policy. And yet they developed almost wholly outside the law. The national and most state constitutions are completely silent about them. Even the statutes were relatively indifferent to their existence for 100 years. Congress passed its first laws touching them directly in 1907, and state laws dealing with their machinery and operations are, typically, of more recent origin. Legally speaking, parties are voluntary nonprofit associations with no personality apart from the individuals who compose them. Over the recent decades, however, national and state regulation has invested them with a public status without, however, making them organs of the government.

The development of public regulations: 1. National

Under constitutional authority to regulate national elections including primaries—an authority which in practice would tend to extend also to state and local elections not separately held—Congress might control party machinery and operations. This, however, it has not chosen to do, except with respect to campaign finances. Accordingly, the task is left largely to the states. Congress has, however, closed party competition to the Communist party.

2. State

The old situation in which parties determined their own form of organization, made their own rules, nominated their candidates, and raised their funds with no external controls, was gradually brought to an end in most states by demand that party activities be recognized as matters of public concern and abuses curbed. Regulations (following no single pattern) are now found in nearly every state covering: (1) definition of what constitutes a party, with the privilege of a place on the ballot; (2) processes of election, including forms of ballots, use of voting machines, counting of votes, and the like; (3) composition and powers of party committees; (4) manner of making nominations; (5) dates for holding primaries; (6) membership tests for voting in

primaries; (7) settlement of disputes in connection with nominations; (8) campaign contributions and expenditures, and other aspects of party finances; (9) corrupt and illegal electoral practices, financial or otherwise; (10) outlawry (in many states) of parties advocating totalitarianism, overthrow of the government by violence, or other "subversive" doctrines or objectives; (11) protection for parties against impostors as candidates in primaries, against misleading and unauthorized use of party names (including adoption of them by separate organizations), and against appropriation of party emblems duly adopted and recorded.

Not infrequently, cases involving party matters get into the courts. In addition to sustaining a great deal of statutory regulation when questioned, the courts have, at various times and places, ruled (1) that a political party has no right to limit the suffrage at a general election or a primary; (2) that it has no authority to add to qualifications for voting specified in state constitutions or statutes; and (3) that it has no authority over eligibility to public office, nor any right to make binding decisions on questions relating thereto.

PARTY ORGANIZATION—STATE AND LOCAL

Characteristics of party organization

Every successful party has elaborate organizational machinery to hold its members together, stir them to action, raise funds, carry on propaganda, recruit new members and supporters, and guide the party effort in primaries and elections. This machinery in each of the two major parties enlists more than 150,000 men and women who make a profession or at least a major vocation of their party work. Although there are many local variations, the pattern of party organization is fairly uniform throughout the country. Its characteristic feature is a pyramid of committees ranging upward from the city or county to the national level but with co-operative rather than authoritative relations among the levels. Although in earlier times parties were free to contrive their own organizational arrangements, increasing public control of electoral processes has brought with it public regulation of party machinery. Almost everywhere the structure and mode of election of party committee members is regulated by state law. Typically, they are elected by the voters in connection with a direct primary election on candidates for public office.

Precinct organization

It is well to begin at the bottom of the pyramid of party organization, for here is the real strength of the parties and here is where elections are likely to be won or lost. The primary unit or cell of party organization, particularly in the large cities, is the precinct or voting district already described in a previous chapter. The party functionary at the precinct level is called a precinct leader, captain, or committeeman, and typically is elected by the party voters of the precinct, although sometimes appointed by the ward chairman or city committee. The precinct captain is the key man in the highly organized apparatus of metropolitan parties. In the rural areas, a town, township, or village chairman is likely to be more important than the precinct leader. In fact, the precinct position is often vacant in rural areas even in states where the post is pre-

scribed by law. In the big cities, however, the success of the party organization, locally at least, depends in large part on the skill and energy of the precinct leader in getting his people to the polls on election day. Commonly the precinct leader is given a quota (based on the registered party members in his district) by the city leaders which he is expected to produce on election day. To this end, the successful precinct leader works tirelessly *all* the time cultivating acquaintances, passing out favors, interceding with the government on behalf of troubled constituents, instructing citizens how to register, sponsoring sociables and clambakes, distributing literature, naming watchers on election day, seeking employment (public or private) for his friends and in general making himself useful to his neighbors so that they will remember him on election day and vote for those he tells them to. The typical precinct leader may occupy a public job (by patronage appointment) the duties of which are such that he can work in his district much of the time. Many, however, are justices of peace, real estate dealers, merchants, labor-union executives, or salesmen. As a class, they are hard-headed realists with little genuine interest in theories or issues. Their job is to deliver a solid majority for their party, and especially for their city leaders, on election day. Usually they love the game of politics and the prestige which they get from their "influence." The best ones go on to become ward leaders and city leaders. The pecuniary rewards are often substantial but rarely do these workers become wealthy. In some cities, they are allied with vice rings or criminal interests in a corrupt conspiracy to subvert the laws on gambling and prostitution. In most, they dispense less harmful favors to their supporters. Since the 1930's when the government inaugurated wide programs of assistance to the unfortunate, the hold of the city politicians resulting from the "relief" efforts of the party apparatus has been considerably weakened.

Ward and city organization

The precinct leaders commonly represent their precincts in some form of ward committee organization. The ward committee, headed by a ward chairman, commonly coordinates the work of the various precinct leaders within the ward. A ward is a major political subdivision of a municipality and in many cities forms the basis of representation in the city council. The various ward chairmen together form the city committee of the party, the executive of which is the city party leader. In highly organized urban political machines, the ward leaders are extremely powerful and the city leader is likely to be one of the most powerful party officials in the area. The city committee frequently directs the entire local campaign of the party, collects and then distributes funds to wards and through them to the precinct leaders, and operates a headquarters for the dissemination of campaign literature. The city leadership ordinarily determines the local slate of candidates for city office and for the state legislature and commands the distribution of patronage if the local ticket is successful.

County organization

In rural areas, and even in many urban ones, the most powerful local party organization is the county committee and its chairman. This committee is composed of township, village, and city representatives commonly elected by the party voters in those areas, and the chairman is elected by the com-

mittee or sometimes by a convention or even by the voters in the primary election. The county chairman, typically, directs the party campaign locally, selects the candidates for county office and for the state legislature that the organization will support, controls the distribution of county patronage as well as state and national patronage if his party is in power at those levels, dispenses party funds, plans rallies, and directs local publicity. In rural America, where a high percentage of all public offices are filled by partisan election and where virtually all appointed positions are filled by partisans, the county chairman is by far the most important local politician. Even in some urban areas, New York and Chicago, for example, the county chairman comes closest to being the real boss of the local party.

District organization

Intermediate between the county and the state organization, various types of district committees may usually be found. Congressional and state legislative districts are apt to be formed of several counties and the parties frequently make some effort to create a campaign organization to support their candidates for these posts. A district committee made up of representatives of the county committees in the district is the most common. Rarely are these district organizations effective. They function if at all, only during a campaign and in many areas have only a shadowy existence.

State organization:

In earlier days, the supreme party authority in a state was a state convention whose members were elected, in counties or other areas, by the party voters directly or in local conventions. The Supreme Court has recognized a convention as the highest authority of a party. For most practical purposes, however, the state convention has now lost its importance. Supreme party authority on the state level is now centered almost completely in a state central committee and its chairman. State committees vary greatly in size, and their members are chosen in different ways. Occasionally they consist simply of all county chairmen in the state. Usually they are elected directly or indirectly by the voters in counties or other units of representation, with the trend strongly toward direct choice through primaries, and often with men and women elected in equal numbers. Their functions include maintaining effective organization throughout the state, adjusting dissensions, promoting the election of party candidates (in cooperation with the national committee in presidential years, with congressional committees when members of Congress are being chosen, and at all times with county and other local committees), raising funds, occasionally nominating candidates for certain minor offices, sometimes preparing the party platform, and in some states selecting the state delegation to the national nominating convention. Committee membership is often far too large to permit effective collective action, and tasks tend to fall into the hands of a smaller executive committee and especially to such officers as the chairman and treasurer.

1. State convention

2. State central committee

3. State chairman

The state chairmanship is a post much sought after by politicians and often bitterly fought over by rival party leaders or factions. The state central committee commonly elects the chairman. In doing so, however, it may merely ratify a choice already made by the party nominee for governor or even by

a powerful party leader who prefers not to occupy the titular post. In many cases, the United States senator is likely to be influential in selecting the chairman. The party leadership, in any case, is often shared with the governor or a senator. Whether the real leader of his party or a member of the top party team, the chairman, presumably working with the state committee, is the principal director of state-wide party campaigns. He usually is influential in making up state-wide slates and, in the event of party victory, is importantly involved in dispensing patronage, both state and national.

Criticism of party organization

Throughout our experience of organized political parties the apparatus just described has evoked much criticism. Before the advent of the direct popular election system for filling many party offices, during the time especially when these posts were filled by local caucuses or city, county, or state conventions, the party organization fell rather easily under the domination of a few ruthless and unprincipled leaders who solidified their position by carefully contrived organization and bolstered it by corruption, graft, and spoils.

"Bossism"

This was notably true in the large cities and the scandals of the Tweed Ring and of Tammany Hall in New York City, of the Penrose and Vare machines in Philadelphia, of the Pendergast machine of Kansas City, of the Kelly-Nash machine in Chicago, and of many others during the past decades blackened the reputations of party organizations everywhere. The word *machine*, used to characterize a highly organized and tightly controlled party apparatus, is still an epithet connoting corruption and oligarchy. "Boss," as the leader of the "machine" is still called, is also a term of opprobrium. The system of filling party office by election was widely adopted in the period 1900-15 to make oligarchic or dictatorial control of the party organization more difficult. It was supposed by the reformers that the voters disapproved of machine politics and if given an opportunity would destroy it. The convention and caucus system, it was argued, was much easier to manipulate in the interests of the leaders. State regulation of party organization involving the prescription of party offices and the methods of filling them has not wholly solved the problem or mitigated the criticisms. The fundamental difficulty, if it be one, is that only a small percentage of the electorate are really interested in party organization or in party work. Elections of party officials ordinarily attract a very light vote. Further, it does no good to elect to party office persons who are neither fitted for nor interested in working at the job. The small band of party enthusiasts who do the party's chores and, of course, enjoy the party's rewards are indispensable to strong parties. Since they are a small minority, they can always be criticized as an oligarchy. Even the most dictatorially managed party organization, however, depends in the final analysis on public support. It cannot survive repeated repudiation of its candidates at the polls. The voters in any area have today and have always had it in their power to destroy a "machine" or a "boss." Wherever they continue to exist, and they still do in some places, it is a fair assumption that a majority of those voting approve of what they do.

Development of informal party organization

One unintended result of state regulation of party organization has been the development of informal or "voluntary" party organization outside the legally-constituted party organization. In Wisconsin, for example, the elected "statutory" party committees are relatively unimportant parts of the party apparatus and real power has shifted to party committees and groups which have grown up outside the law. These groups use the old caucus and convention procedures for selecting officials and candidates just as was done in the last century. "Reform" has brought us full circle.

PARTY ORGANIZATION—NATIONAL

Although much of the strength and vitality of our major political parties is in their state and local organizations, they also are organized nationally to conduct campaigns for the presidency and for members of Congress. In general, however, the national machinery of the parties is a federation of state organizations and lacks the powerful central direction characteristic of some state and many local organizations.

1. Senatorial and congressional campaign committees

Pursuing the ascending order thus far followed, one finds first among national agencies two committees of which as a rule the public hears little—(1) a senatorial campaign committee, composed usually of six or seven United States senators chosen by the party group in the upper branch and charged with promoting the election or re-election of the party's senatorial candidates in the biennial contests; and (2) a corresponding congressional campaign committee consisting in the case of the Republicans of one member of the House of Representatives from each state having a Republican delegation, and in that of the Democrats, of one member from each state having a Democratic delegation, plus also a woman member from each state insofar as the chairman chooses to designate such. In a presidential contest, these two committees, typically, place their resources at the disposal of the national committee (with which, however, they have no organic connection) and become its close allies. Elections tend to follow the fortunes of the contest for the presidency. In "off years" the committees (which now maintain permanent working staffs) tend to play an independent role. Relying, of course, upon the co-operation of national, state, and local committees, they provide central co-ordination of the senatorial and congressional campaigns. In meeting this responsibility they distribute political literature and film strips, maintain a speakers' bureau, raise and disburse money (giving special attention to marginal states or districts), offer technical aid on radio and television appearances, and often intervene to smooth out local factional differences. Despite much duplication of effort with the national committee, the congressmen jealously guard the independence of their own campaign committees.

2. The national convention and its agencies:

Although on the lower levels party conventions have largely been displaced, the supreme organ of the national party is still the national convention. It not only nominates candidates for the highest offices and formulates a plat-

form but controls the party organization and "constitution." This convention which meets every four years will be discussed in some detail shortly. At this point we need only to discuss the two major arms of the convention: the national committee and the national chairman.

a. The national committee

The national committee of the Democratic party consists of two party members—a man and a woman—from each state and territory. The Republican party, since 1952, has added to these two, the state party chairman from each state which was carried by the party in the preceding presidential election or in which the governor or a majority of the members of Congress are Republicans. The two traditional state members of the committee of each party are formally designated by the conventions on the nominations of the respective state delegations. In at least 30 states, however, the real selection is made at primaries or at state conventions and the national delegation simply confirms the local selections. The national committee is most active during a presidential campaign year. It decides where and when the nominating convention will be held and makes all the necessary local arrangements. It issues the call to the state party organizations, compiles the temporary roll of delegates who may attend, and selects the temporary officers of the convention. Both of the latter decisions are subject to review at the convention. The committee also makes recommendations to the convention for changes in the rules governing the national organization. The convention selects a new national committee which then bears a heavy responsibility for conducting the national campaign. In between campaign years, the committee is not nearly so active. Its continuing responsibilities for "off year" campaigning and for mobilizing sentiment nationally for the party and its leaders are discharged largely by the permanent staff which each headquarters maintains in Washington, D. C. These staffs supply material for local and state use, recruit speakers, assist in arranging the campaign itinerary of the president, if he is to be active, or of the chief party spokesman—usually the defeated presidential candidate—gather and distribute funds, and generally try to coordinate state party effort throughout the nation.

b. The national chairman

The chairman of the national committee is the active campaign manager of the presidential candidate of the party. He is ordinarily selected by the candidate and formally invested with office by the committee. When the campaign is over, the defeated candidate's manager ordinarily does not stay in the job until a new candidate is selected four years hence. Under these circumstances, the committee picks a chairman to serve until a candidate for president is named. If the campaign is successful, the chairman traditionally steps into the new president's cabinet as postmaster general and the president, in consultation with the committee, selects a new chairman. The tasks of the chairman are many and difficult and only the most skillful politicians of long experience are ordinarily selected for this post. In the party, he ranks second only to the president himself as the chief director of its operations.

PARTY FINANCES

To maintain party organization, carry on propagandist and other activities and wage campaigns requires money, and usually a great deal of it. There have been instances in which use of large sums backfired against a candidate or a party, but no party management ever thinks it has money enough or relaxes its efforts to get more. The first, and often the principal, task of many of the party committees is to raise funds. As a rule, the burden devolves primarily upon the treasurer of the committee concerned, although in states and localities it may be assigned to a director of finance. Such officials commonly leave no stone unturned in their search for the "sinews of war," appeals going not only to people of wealth, but to any and all party adherents. Money is only one factor in winning elections, but it is important enough to tip the scales when two parties or two candidates are rather evenly matched. Some amount of money is essential just to get the candidate's name before the voters.

Recent levels of expenditure in presidential campaigns

If they are to remain going concerns, parties must spend money all of the time to support the permanent headquarters and the organizational work which is always going on. Their outlays are highest and attract the most attention in connection with campaigns. It would be interesting if figures could be compiled showing precisely what such outlays are. Few accurate records are kept, however, and it is impossible to discover with exactness what is spent in campaigning in the United States. There are, it is true, certain published figures. Party organizations engaging in national campaigns are required by law not only to stay within a specified maximum, but to make full reports on their financial operations, both intake and outgo. Various states also require reports. However, the regular channel for party expenditure on a campaign—the party's national, state, or local committee—is by no means the only one through which money is spent. All sorts of voluntary, unofficial committees and organizations raise and spend large sums. With possibly three times as much actually spent as reported by the committee, Republican outlays on the presidential (and congressional) campaigns of 1928 to 1936 inclusive reached a high of $14.2 million, and Democratic outlays, of $9.2 million (both in 1936). In 1939, an act (Hatch) was passed limiting a national committee's outlay in any calendar year to $3 million. The committees have, of course, reported spending less than this in each national campaign since that time, but the reported expenditures of auxiliary organizations (citizens groups, labor unions, etc.) and the unreported expenditures of informal, voluntary, and state groups have far exceeded the reported totals. The costs of campaigning since 1940 have increased the same as other costs. Estimates of the total expenditures in the campaign of 1952 vary from a low of $35 million to a high of $140 million. The parties and other participating national groups reported spending $23 million. An exhaustive study by the Senate Subcommittee on Privileges and Elections of the expenditures in 1956, placed the national total at $33 million ($21 million by Republican, $12 million by Democrats and labor). Reported

national expenditures in 1960 were $28 million (Republican, $13 million; Democrats and labor, $15 million). In addition, of course, there are heavy state and local outlays, not only in "presidential years," but every year, in connection with the primaries and elections perpetually going on.

Why expenditures are so large

Many people contemplate such outlays with apprehension, wondering whether money in politics has not become a menace to our democratic institutions. Rival party organizations or candidates, especially if blessed with less ample resources, habitually take advantage of this popular concern and loudly denounce the "slush funds" of their opponents. It is, however, possible to spend very large sums of money in perfectly legitimate ways. It is true that a good deal of party work is done without pay. Only a small proportion of committee members or other party officials receive any salary or other stipend from the party. The general public pays for much, perhaps without realizing it, when public officials take time off from their regular work to make speeches, collect funds, and otherwise serve their party, especially during campaigns. But even in off years all this is far from enough. There are publicity men, research workers—even clerks and stenographers—to be paid. There is office space (sometimes entire buildings) to be rented, often at high cost in large cities; there are office supplies to be provided; there are heavy demands for postage and travel; telephone and telegraph charges mount up; printing takes its toll, along with many forms of advertising, including banners, buttons, and the like; radio time is essential and both major parties pour money into party periodicals.

Any fair-minded person who will look into the facts will find that in a nation-wide political effort it takes only a few items of a perfectly legitimate nature to account for outlays running into the millions. Like other forms of publicity and salesmanship, campaigning has come to be tremendously expensive. One reason is the size of the electorate. A nation-wide campaign necessarily involves the expenditure of millions of dollars, in the aggregate, for the rental of headquarters and places for holding political meetings, for printing and distributing campaign literature, for the traveling expenses of speakers and higher party officials, for an army of organizers, canvassers, clerks, copyists, typists, tabulators, and addressers, to say nothing of the towering costs of advertising in newspapers, in magazines, on billboards, and by radio. The largest item in the cost of modern campaigning is broadcasting time and the two parties reported in 1960 having spent over $14 million on this item alone from Sept. 1 to election day. When all of these entirely proper objects of expenditure are duly listed and footed up, it will not be difficult to understand why, in spite of protracted and searching investigations by special Senate committees in connection with the big outlays in every presidential campaign from 1920 to 1956 inclusive, almost no evidence has come to light justifying suspicion of extensive corruption in the national politics of recent years. This is perhaps the price we pay for stirring interest and getting our citizens to do their civic duty.

Sources of party funds

Whence come the funds with which to meet party outlays on the present generous scale? Speaking broadly, from anybody who can be induced (or coerced) to give. Raising money in humdrum times between elections is a thankless task. Party officers charged with the responsibility do what they can; but naturally—at least in the case of the major parties—nearly all is gathered in at campaign time, and for immediate use. To begin with, candidates are almost invariably expected to dig into their pockets to take care of part of their own campaign expenses. Party members already in public office, whether or not up for re-election, are likewise counted on for contributions, frequently in terms of some fixed percentage of salary received. Especially are public officers or employees, national, state, or local, who get their jobs by partisan appointment expected to contribute to the party. Contributors among the general public during past campaigns are invited to help, and especially associates or friends of candidates. A decade or more ago, widely heralded efforts were made, particularly by the Democrats, to get the general rank and file of party adherents to manifest interest in national campaigns by contributing a dollar apiece or some similar small amount. The most impressive success was achieved in the 1960 campaign but this was still far short of reaching most members and of supplying more than a fraction of the party's campaign resources. A sustaining membership program begun in 1957 by the Democrats has also scored some important successes. The Republicans have never reached the small contributors as effectively as the Democrats.

Contributions at campaign time

All of these sources, however, would not carry a major party far toward the vast sums required. By and large, the money for national, and to some extent for state, campaigns comes rather from businessmen, bankers, government contractors, labor unions, and other private citizens who have, or think they have, something at stake in the success or defeat of a given party. These chiefly are the "prospects" on whom the party treasurers and members of finance committees work in their money-raising drives. Corporations are forbidden by law to contribute. This does not stand in the way of gifts by officers, directors, stockholders, acting as individuals. The list, especially of Republican contributors, is filled with the names of the executives of large corporations. Since 1943, labor unions also have been forbidden to contribute to campaign funds, but this has not prevented the A.F.L.-C.I.O. from aiding the campaigns of several Democratic candidates through auxiliary agencies, notably the Committee on Political Education. Although the number of large gifts to either party is small, the bulk of the contributions come from a comparatively few persons. The six top party committees in 1952 reported 55 per cent of their contributions were received from 2407 gifts of $1000 or more and the figures in 1956 and 1960 showed about the same thing. Among the efforts to reach the smaller giver, an increasingly popular device is the $50 to $100 plate dinners invented by the Democrats but now used also by the Republicans.

Televised debates

A new device which alleviated some of the strain on the party treasuries was the series of television debates between the presidntial candidates in 1960

over all the networks and on time provided by the broadcasters. These debates attracted the largest listening audience ever assembled for any kind of spectacular and may well become a standard feature of campaigns in the future.

REGULATION OF CONTRIBUTIONS AND EXPENDITURES

The need for regulation

The high cost of modern campaigning and the resultant pressure on the party organization to raise huge sums of money raise a number of difficult problems. In the first place, the candidate in modest circumstances who cannot afford a large outlay on his own behalf is either unable to compete or is completely dependent upon the party organization to support him. In the second place, some of the contributions are not wholly disinterested. Some contributors expect personal favors from a successful party or candidate in the form of an appointment to office—as ambassador, for example,—or of benevolent governmental policies toward the enterprise or group with which they are identified. The politicial-interest group, for example, is likely to want legislation or administration favorable to the group in return for campaign aid. Concern over the excessive domination of candidates or parties by a few wealthy persons or special interests has induced national and state governments to attempt to regulate political contributions and expenditures by laws known as "corrupt-practices acts."

State regulation

The corrupt-practices legislation of the 50 states varies widely and only a brief summary is possible. Typically, it prohibits such patently corrupt behavior as bribery, treating, intimidation or impersonation of voters, ballot-box stuffing, and tampering with voting machines. It also outlaws many practices not in themselves corrupt and extends to both giving and spending party funds. About three-fourths of the states, for example, forbid contributions by banks and other corporations—although not by the officers or directors as individuals. About one-fourth of the states forbid levies on officeholders. Nearly all the state laws attempt to place a ceiling on expenditures by or on behalf of candidates either as a flat sum or as a percentage of salary of the office sought or as a multiple of the number of voters in the constituency. A few states place a limit on the total expenditures of a state committee. Few of these regulations are effective anywhere. If the law limits the party committee or the candidate, expenditures can be made by unofficial committees or by friends of the candidate. If assessments of officeholders are forbidden, contributions by officeholders rarely are. A more effective part of most state corrupt-practice laws is that requiring publicity of receipts and disbursements. About three-fourths of the states require candidates and parties to file reports of their finances either before or after election or at both times. Publicity after the election is usually not effective, however, and that before the election is incomplete.

National regulation

Congress, on its part, has also attempted to regulate campaign financing in connection with the election of national officers. The congressional efforts

have been little more effective than those of the state legislatures. They may be summarized under four heads.

1. *Limitations on the raising of money.* Persons on the national payroll may not be solicited for contributions for political purposes by any officer or employee of the government or by anyone in a government office building. An act of 1907 forbids any national bank or other corporation organized under national law to contribute to any campaign fund whatsoever, and makes it unlawful for any corporation organized under state law to contribute to such a fund in connection with the election of national officials. A clause in the War Labor Disputes (Smith-Connally) Act of 1943 extended these restrictions to labor unions. The Labor-Management Relations (Taft-Hartley) Act of 1947 replaced the expired act of 1943 and prohibited, under severe penalties, contributions *or expenditures* by labor unions or other organizations (equally with banks and corporations) in connection with national elections and all primaries, caucuses, and conventions held in connection therewith. Finally, under the Political Activities Act (Hatch) of 1939 as amended in 1940 no contributions from relief workers (when such exist) may be received, and no individual, committee, or association may donate more than $5000 in any calendar year to the campaign of any candidate for a national office, exclusive of any contribution to a state or local committee.

2. *Restrictions on amounts that may be spent.* The Federal Corrupt Practices Act of 1925 limits the expenditures of a candidate for the Senate to $10,000 and of a candidate for the House to $2500, unless a lower maximum is fixed by law of the candidate's state, in which case that law governs. A candidate has a right, however, to the benefit of an alternative rule under which he may spend up to three cents per vote cast for all candidates for the given office in the last preceding general election, with a maximum of $25,000 for a senatorial candidate and $5000 for a candidate for the House. One other restriction, found in the amending Political Activities Act of 1940, is that no "political committee" operating nationally may receive or expend more than $3 million in any calendar year.

3. *Limitations on the purposes for which money may be spent.* State laws on this subject are usually quite ample. National restriction does not extend much beyond prohibition of the more obvious types of corrupt practice; indeed, in limiting the amount of expenditure as indicated above, the law expressly exempts outlays of candidates on travel, subsistence, stationery, postage, circulars, telegraph and telephone service, and for "personal" items.

4. *Requirement of publicity.* This takes two main forms. First, every candidate for the Senate or House is required to file with the secretary of the Senate or the clerk of the House, both before and after election, a full report of all contributions received in support of his candidacy and an itemized statement of expenditures. Second, all party committees (and likewise all other committees, organizations, and associations which receive donations or spend money for political purposes in two or more states) must under oath make full periodic reports of their financial operations, and must include the names

of all donors of $100 or more (in the case of national organizations, $10 or more).

Weaknesses:

Some of the reasons why these regulations of campaign finance have not been particularly effective are set forth below.

1. Excludes primaries

At the time the Corrupt Practices Act of 1925 was passed, it was widely supposed that Congress could not constitutionally regulate primary elections preceding national elections. Although the Supreme Court now holds the primaries to be subject to congressional regulation, the Congress has never extended the act to include expenditures in primaries. Not infrequently, especially in the South, primary campaign expenditures are larger than those in the election campaign.

2. Excludes personal expense

Secondly, a candidate need not report as expenditure any sums paid out for his travel, subsistence, stationery, postage, printing, or personal services.

3. Excludes indirect expenditure

A larger loophole is that there is no restriction or even any reporting required of amounts spent on behalf of candidates by friends or associates or local or state party groups, whether such expenditures are with the knowledge and consent of the candidate or not.

4. Excludes auxiliary organizations

The attempt to limit national committee expenditures to $3 million a year has the same weakness. All sorts of new clubs, associations, and informal committees have grown up alongside the national committee as vehicles for additional expenditures, for example, Citizens for Eisenhower, Associated Willkie Clubs of 1940, Citizens for Kennedy-Johnson. The prohibition of labor union or corporation expenditure does not apply to auxiliary organizations which may be supported by union or corporate funds. As for individuals having contributed the legal maximum of $5000 to a national committee, they are not prevented from making further contributions to auxiliary organizations and to state and local committees.

5. Excludes loans

In their desperate campaign-time search for funds, party authorities not only seek gifts but sometimes contract loans, usually from affluent well-wishers. Whether originally so intended by the lenders, such loans often turn into actual contributions, though at campaign time are unaccounted for as such.

6. Deficits

Parties sometimes emerge from campaigns with sizable deficits and may raise the money to meet them long after the accounting for the year's expenditures has been made.

7. Publicity

Publicity requirements of both national and state statutes are very imperfectly met, and accounts are often so poorly kept and reports so carelessly prepared as to be almost unintelligible. In a single recent campaign year, 122 candidates for the House of Representatives completely failed to turn in any reports—and apparently nothing happened. Such looseness and obscurity balk anyone trying to find out what actually goes on and, of course, defeat the purpose of well-meant legislation.

8. Enforcement

Finally—and it is now hardly necessary to add this—the entire system (apart, at least, from the main reports of the two national committees) suffers from inadequate enforcement. In fact, there is no proper and permanent enforcing machinery at all. A candidate alleged to have overspent in his campaign may be haled into court or before a congressional committee by a rival contesting his seat; and after each quadren-

nial campaign, special congressional committees on campaign expenditures dig through such records as they can lay hold of and issue voluminous reports. By and large, however, it is only occasionally, and often largely by accident, that anything is done really to put teeth into the laws.

The problem of improvement

The problem of regulating campaign finances is clearly one of great difficulty and complexity. Parties must have money and lots of it. Few people are willing either to give money or to do political work voluntarily. Under the circumstances, it is not surprising that great influence in party affairs and in the government accrues to those who are willing and able to give or to those who although unable to give are willing to work at the chores of democracy. There has been a great deal of genuine improvement over the years in the ethics of political competition. There is little outright bribery, vote buying, and ballot-box stuffing today, and there was a great deal 75 years ago. Party leaders are not quite so anxious to throw money around, callously indifferent to the public reaction, as they used to be. On the other hand, campaigning is more expensive than it used to be. Voters will no longer attend the old-fashioned rallies which are relatively inexpensive; they want to sit at home and be reached by radio and television.

Public financing of campaigns

In order to reduce the influence of wealth in the democratic process and to equalize party and candidate competition, it has been repeatedly suggested that some or all campaign expenses should be appropriated from the public treasury. In justification it is pleaded that these are necessary costs of our system of government. President Theodore Roosevelt advanced this idea in 1907. In 1910, Colorado undertook an experiment in this direction but the law was declared unconstitutional on the grounds that as drafted it was unfair to minor parties and to new parties. Former Senator Hatch, author of the national legislation in 1939 and 1940, suggested limiting the expenditures of each party in a national campaign to $1 million, with the government giving this amount to each party. In Oregon and North Dakota at present, and in four other states at various times, brochures on the candidates and party platforms have been prepared and distributed for each campaign at state expense. These "publicity" pamphlets are intended to relieve the candidates and parties of some of the costs of getting their names before the voters. Puerto Rico inaugurated in 1957 a system of limited public financing of party activities. A President's Commission on Campaign Costs recommended in 1962 that political contributors receive limited tax benefits. Minnesota in 1955 and California in 1957 have authorized modest recognition for tax purposes of political contributions. In general, the reaction to these schemes for public financing of campaigns has been unfavorable. Many people regard this as a private, not a public, problem. A large proportion of the voters are not deeply interested. It would be very difficult to draft a system of public financing which would consider legitimate costs realistically, would be fair to all candidates and parties, and would eliminate competition for additional funds.

SELECTING CANDIDATES FOR PUBLIC OFFICE

Importance of nomination procedure: 1. Facilitates majority rule

Among the many useful purposes in the American system of government served by political parties, none is more fundamental than the designation of candidates to stand for public office. In sifting out the many aspirants for power and place in the vast constituencies of American politics, the parties reduce the alternatives available and thus facilitate majority decision. Without this sifting process the power of the electorate would be scattered among numerous choices, no one of which might command the support of more than a small handful of the voters. Although party efforts do not universally produce majority decisions, they do tend to prevent domination of the electoral process by one or two groups.

2. Has become a part of elections

The grip of the party organizations on the nomination process has been loosened but not shattered by the introduction of direct participation by the voters in the selection of party candidates. The primary election systems have made the nominating of candidates an integral part of the election process. An understanding of nominating procedure is indispensable, therefore, to a proper appreciation of the meaning and nature of the power of the voter in American democracy.

3. Replaces election in one-party areas

In many communities and in several states, where one political party so far overshadows any others that its nominees are virtually assured of election, the nominating procedure is the main point at which real influence can be exerted by the average citizen. In the Democratic South, Republican New England and the Plains, and cities such as Chicago and New York, dominated by entrenched political organizations, the nominating process is frequently more influential in determining the policies of the governments of those areas than is the election.

Nomination by petition

Contemporary nominating procedures are the product of many decades of poltical experience. They have evolved through successive forms—caucus, convention, primary—each of which has broadened the amount of popular participation over its predecessor but none of which has ever been wholly abandoned. Before we embark, however, on a survey of this development it may be useful to digress a moment and to point out that candidates do not have to be nominated in order to be elected. A qualified person may, legally at least, be elected to almost any office in the nation without ever having been nominated in any formal sense. Aspirants for public office in nearly every state may have their names appear on the ballot on election day by filing a petition supported by some specified number of qualified voters. Such aspirants are not, however, entitled to bear the label of a major political party. They must run as independents or as representatives of a party which cannot or will not participate in the regular nominating process. Moreover, candidates may be selected to office whose names do not appear on the ballot at all. Virtually every ballot (or voting machine) in America makes provision for a voter to "write-in" for any office within his choice the name of an individual whom he

"Write-in" candidates

wishes to support. Few persons, however, ever attain office either as "independents" or as "write-in" candidates. Occasionally, in small constituencies and for local offices, such candidates are swept into office by their fellow citizens. In the state and the nation, however, election is normally achieved only by those who have been nominated by a party.

The earliest known nominating procedure in American experience appeared in pre-Revolutionary days in connection with election to city councils or colonial assemblies and came to be called the *caucus*. This method is quite informal and is simply a meeting of party or faction or community leaders in advance of the election at which they agree to support, and to propose that their fellow citizens support, some individual or slate of individuals to the office or offices presently to be filled by election. The caucus sprang up and flourished spontaneously without legal prescription or party rule, and until the Jacksonian era no other nominating procedure was used to any extent. As party organization became more formalized, caucuses also became more formalized and spread upwards to state and national politics much as the hierarchy of party committees reached across city, county, and state lines. Gradually the caucuses at the local (ward, town, city) level began to designate representatives to meet with those from other districts to form county and state bodies which coordinated the selection of party standard bearers for state and congressional offices. As they enlarged their scope they became formalized into county, state, and ultimately national conventions of representatives from local caucuses, and thus the convention system of nominations came into being.

The development of nominating procedures:

Caucus

The predominant mode of designating candidates from 1825 to 1910 was the party convention. Caucuses continued to function as devices for selecting delegates from precincts, wards, or towns to city, county, or state conventions. The national, state, and local conventions became more and more regularized institutions for naming party candidates. Apportionment systems were developed for determining the number of delegates to which each precinct, ward, or election district was entitled. Party rules were adopted, providing for such delegate apportionment and for the methods for selecting delegates. Typically, delegates were chosen from precincts for city or county conventions, from city or county conventions to state conventions and to congressional district conventions, and from state conventions to national conventions. This method, it was asserted, transmitted the wishes of the party voters from the precinct upward to the national conclave by an unbroken chain. The conventions also came to serve many other partisan functions. They provided rallying places for energizing the party apparatus and enthusing the party workers. They provided a useful facility for the adoption and promulgation of local, state, and national platforms. They served as testing grounds for party orators and for influential party leaders from other areas of the nation. The convention, although characterized by noise, confusion, and drama, nevertheless provided a means through which party leaders could weigh and balance the qualifications of the candidates. Behind the scenes of the conventions, a few leaders continued as before to meet in caucus and propose slates which the rank-and-file

Convention

delegates might accept. With this difference, however: a larger and more representative segment of the party members had the opportunity to ratify or veto the leaders' choices.

Criticism of convention

Toward the end of the nineteenth century, the convention fell increasingly into disrepute. The delegate selection procedures, irregular at best, fell periodically under the domination of ruthless leaders who packed local caucuses and frustrated genuine representation of local party sentiment. By the time that attempts to regulate such matters by law became general, the convention system was disappearing. In the state and national conventions, several stages removed from popular participation, opponents of the leaders found it especially difficult to make headway, although frequently they enjoyed wide public support. The continued surge of the democratic ideal, interpreted in this situation as demanding more voter participation, also contributed to the downfall of the convention system.

Direct primary

After 1900, the convention system was gradually discarded as a nominating device. It survives today only for presidential nominations and for statewide offices in a few states (notably New York and Indiana). In its place the direct primary system for making nominations has been adopted in some form in every state. The essence of the direct primary is the selection of candidates by direct action of the voters themselves. The procedures employed are so similar to those used in the final elections that the primary becomes, in effect, a preliminary intraparty election, and often in earlier days was called *a direct primary election*. Primaries of the different parties are commonly held on the same day, and at the places where the regular elections are held later; they are administered by the regular election officials, with all costs met out of the public treasury; the ballots are like those used in regular elections; and the same corrupt-practice laws and other safeguards apply. Persons seeking nomination to an office may get their names on a primary ballot simply by self-announcement and perhaps payment of a fee; or they may have been picked at some caucus or preprimary convention. The common method, however, is to file a petition signed by some specified proportion of the voters in the area, the proportion being gauged roughly in accordance with the importance of the office, and varying all the way from one-half of 1 per cent to as high as 5 or even 10 per cent. Ordinarily a candidate receiving the largest number of votes for a given office is declared the party nominee for that office, even though, with often three or four persons seeking the same nomination, the victor may win by virtue of a plurality. All southern states except Tennessee, however, provide a "run-off" primary when no candidate receives a majority in the first contest. In any event, winners in the respective party primaries automatically get their names on the ballots placed in the voters' hands at the regular elections.

Partisan and nonpartisan primaries

The direct primary presupposes elections on a party basis, and consequently is itself partisan. Persons seeking nomination do so as Republicans or Democrats and are so listed on the ballots used. Where, however, nonpartisan elections have been introduced (as for legislative members in Minnesota and

Nebraska, and for local offices in many cities and some counties), they usually are preceded by a single nonpartisan primary conducted in all respects like an ordinary party primary, except that the ballots carry no indication of the party affiliations of the persons to be voted for, and that no question as to the voters' own affiliations is raised at the polls. Partisan and nonpartisan primaries, for different offices, may indeed be held at the same time and place, with separate ballots employed for the two. In any event, the two candidates on a nonpartisan ticket polling the highest and next highest number of votes for each office get their names on the nonpartisan ballot used at the ensuing election, the primary thus becoming "a sort of qualifying heat which eliminates the weaker contestants from the final race" and at the same time assuring ultimate election by majority rather than mere plurality. The system tends to decrease the role of party organizations in the election and the dependence of candidates on party labels to win support.

"Closed" and "open" primaries

Partisan primaries may be classified as "closed" or "open," on the basis of the conditions laid down for participating in them. The "closed" primary is one in which participation is confined to bona fide members of the given party. The intention is to prevent members of the opposition party from helping to select the party's candidate. Two methods of guarding against this "raiding" are employed. One—required by law in 19 of the closed-primary states (including New York, Pennsylvania, and California)—is an advance enrollment of the party affiliations of all voters. This party registration is shown on the voter lists supplied to polling officials on primary election day and enables them to give to each voter only the ballot of the party with which he has claimed affiliation. The other method, employed in most of the remaining closed-primary states, involves a procedure for challenging voters who call at the polls for the ballot of a party with which they are not known to be identified. Such voters may, for example, be asked to state whether they supported that party at the last election, or at all events half of its candidates, or perchance whether it is their expectation to adhere to it in the future. Either of the two procedures can be flouted by persons of easy conscience if there is sufficient motive; the second is particularly weak. By and large, however, a closed primary of a given party is participated in only by more or less habitual adherents of that party.

A large number of voters, however, have no strong and abiding party allegiance, and 9 states frankly accept the fact and maintain "open" primaries in which there is no attempt to put the voters' party preferences on record. Instead of asking for and being handed a Republican or a Democratic ballot when he presents himself at the polls, a voter is given either a blanket ballot listing the candidates of the respective parties in separate columns (*one* only to be voted) or a sheaf of ballots containing one for each party. In any event, he votes the ticket of his choice, with no one the wiser. Republicans may take a hand in Democratic nominations, and vice versa. Some states ostensibly having the closed form of primary really have the open form in disguise, since the tests which they prescribe notoriously fail to prevent voters from shifting

their adherence from one party to the other. Professional politicians and strong partisans generally favor the closed primary on the theory that the primary is really a party affair and should not be open to "independents," nonpartisans, or members of some other party. The secrecy of the open primary has a compelling appeal to many voters.

The primary and the platform

The primary is a nominating device and serves none of the other purposes which conventions had come to serve. There is no room in the primary itself, for example, for preparing a party platform for the coming election. In the few states still using the convention system for state-wide purposes this is no problem. In the exclusively direct primary states, however, some other provisions must be made for platform preparation. In 14 states, some form of party conference is recognized by law as the platform drafting agency. The Wisconsin system illustrates this procedure. After the primary, the nominees of the party for the state legislature and for the state executive posts and the hold-over party members of the state senate are directed by law to assemble and prepare a platform upon which presumably they will collectively campaign.

Critique of the primary

The direct primary unquestionably gives the rank and file voter a larger share in the nominating process than either of its predecessors. It has not, however, eliminated the need for organization to achieve electoral success nor, consequently, the need for some agreement among party leaders on candidates that ought to be offered for the approval of the public. Thus the caucus of party leaders continues to function in many, if not in most, constituencies. With the primary, however, the party voters have to ratify the leaders' choices and minority groups may contest the leaders' slate. Although there is probably less outright vote-buying today than in the heyday of the convention, the cost of getting elected has probably been increased, not decreased, by the primary. With the primary system a candidate has to run twice. Important public office is farther out of the reach of poor candidates unsupported by an organization than ever before. The primary system also tends to weaken party organization and party responsibility. The party apparatus may well find itself obliged to support candidates who are distasteful to it and opposed to its ideology but who have captured the sympathy of the voters. The National Municipal League in its Model Direct Primary Elections System recommends that the party organization by conference or caucus ought to be allowed to place a slate on the primary ballot. In the home of the state-wide primary, Wisconsin, both major parties have gone outside of the legally prescribed party machinery and created unofficial and unregulated party organs (called voluntary committees) to breathe new ideological homogeneity and a sense of party responsibility into their operations. This has taken them back to the convention system; and the Republican party, at least, meeting in unofficial convention endorses candidates for state-wide offices and for United States senator to the rank and file of its members. This endorsement carries with it the support of the treasury and of the organization of the extralegal committee. Party organizations by these and other methods are gradually adjusting themselves to the primary

system, but it has been a painful and difficult process for many of them. They are still not proof against a strong upsurge of popular feeling sweeping away their most cherished tenets of public policy. In considering the results of the direct primary system, it must also be remembered that state law and practice vary in many details from one state to another. No two systems are identical in every respect. There is, finally, no concerted effort of consequence to abolish the primary and return to any earlier nominating process.

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Nominating and Electing a President

The pageant of a presidential election

THE DEMOCRATIC PROCESS realizes its most significant fruit in the quadrennial selection of the nation's chief magistrate. All of the elements of the process coalesce in this unique and dramatic spectacle. The political parties reach their maximum effectiveness; the nomination process, involving caucuses, conventions, and primaries, captures the interest and enthusiasm of the people as at no other time. Every medium of communication—radio, television, newspapers, magazines, books, pamphlets, leaflets—swamps the public with fact, argument, and exhortation on the affairs of the nation and of those who seek to run it. Political-interest groups strive for places in the sun of each candidate's appreciation. The voters troop out to the polls on election day in larger numbers than on any other occasion. A vast radio and television audience intensely follows the tabulation of the returns. The pageant of an American presidential election is the most remarkable exhibition of popular government anywhere in the world. No other election quite equals it in drama, suspense, oratory, participation in electioneering, carnival atmosphere, ink spilled, or money spent.

The timetable of a presidential election

It is impossible to fix a precise time at which this great spectacle begins to unfold. In one sense it is going on all the time, for hardly has a new chief executive settled into the White House before some plans are afoot for the next campaign. Late in the year preceding an election year, however, "available" candidates begin to utter declarations or make decisions which convey their willingness to make the run. Organizations then begin to form, "booms" are launched, personal and party groups spar for advantage in the press, in the Congress, in state capitals, city halls, and county courthouses throughout the land. Voter participation in the nominating process begins in March of a

The Kennedy Statement

Special to The New York Times

WASHINGTON, Jan. 2—Following is the text of Senator John F. Kennedy's statement announcing his candidacy for the 1960 Democratic Presidential nomination:

I am announcing today my candidacy for the Presidency of the United States.

The Presidency is the most powerful office in the free world. Through its leadership can come a more vital life for our people. In it are centered the hopes of the globe around us for freedom and a more secure life. For it is in the Executive Branch that the most crucial decisions of this century must be made in the next four years.

How to end or alter the burdensome arms race, where Soviet gains already threaten our very existence; how to maintain freedom and order in the newly emerging nations; how to rebuild the stature of American science and education; how to prevent the collapse of our farm economy and the decay of our cities; how to achieve, without further inflation or unemployment, expanded economic growth benefiting all Americans, and how to give direction to our traditional moral purpose, awakening every American to the dangers and opportunities that confront us.

These are among the real issues of 1960. And it is on the basis of these issues that the American people must make their fateful choice for their future.

"I Can Win"

In the past forty months, I have toured every state in the Union and I have talked to Democrats in all walks of life. My candidacy is therefore based on the conviction that I can win both the nomination and the election.

I believe that any Democratic aspirant to this important nomination should be willing to submit to the voters his views, record and competence in a series of primary contests. I am therefore announcing my intention of filing in the New Hampshire primary and I shall announce my plans with respect to the other primaries as their filing dates approach.

I believe that the Democratic party has a historic function to perform in the winning of the 1960 election, comparable to its role in 1932. I intend to do my utmost to see that that victory is won.

For eighteen years I have been in the service of the United States, first as a naval officer in the Pacific during World War II and for the past fourteen years as a member of the Congress. In the last twenty years, I have traveled in nearly every continent and country--from Leningrad to Saigon, from Bucharest to Lima. From all of this, I have developed an image of America as fulfilling a noble and historic role as the defender of freedom in a time of maximum peril—and of the American people as confident, courageous and persevering.

It is with this image that I begin this campaign.

SOURCE: *The New York Times*, Jan. 3, 1960.

presidential year and continues sporadically through April, May, and June. In July or August the great and tumultuous national conventions assemble to select their standard bearers. A pause follows while the campaign apparatus of the parties is geared and oiled for the great effort. Then from September until election day in early November, the drama moves from scene to scene, mounting in intensity, noise, and enthusiasm. At length the vote is cast, the decision made by 60 to 70 million people. It is a stirring demonstration of American democracy in action.

THE CONSTITUTIONAL ELECTORAL SYSTEM

The plan originally adopted

This is not at all the sort of thing that the makers of our Constitution had in view. They did not want the president elected by Congress, because then he would not be sufficiently independent. Neither did they want him elected by the people, because that, they thought, would (in Hamilton's words) invite "tumult and disorder"; besides, the voters, scattered thinly over what already seemed a large country, would not know enough about the qualifications of available men to be able to make wise decisions. The matter troubled the convention considerably, and 30 different votes on it were taken. At last, however, a plan of indirect popular election was agreed upon under which: (1) each state should have as many "presidential electors" as senators and representatives in Congress; (2) these electors should be chosen in the several states in whatever manner the state legislatures should specify; (3) each elector, at the proper time, should cast a ballot for two persons for the presidency; and (4) the persons receiving the highest and next highest votes, respectively, should be president and vice-president. The entire procedure was to be quiet, dignified, and deliberate, with presumably the best qualified men emerging from the sifting. During the struggle over ratification, the plan proved one of the few features of the new Constitution that did not have to be defended. This system produced two presidents: Washington and Adams. By 1800, it had been modified almost beyond recognition.

Effect of the rise of political parties

In 1788, and again in 1792, every elector wrote the name of Washington on his ballot, with second names scattered. In 1796, with Washington bent on retiring, 13 different persons received electoral votes, John Adams standing first and Jefferson second. In 1800, however, every elector except one, the country over, wrote on his ballot the names of either Jefferson and Burr or Adams and Pinckney. In the meantime two political parties—Federalist and Republican—had organized to capture the presidency. Each had taken steps in advance of the elections in the states to agree upon particular "candidates" (nominally for the presidency, but actually for the presidency and vice-presidency), and to put before the voters and legislatures making the choices lists of men who would, if chosen, cast their electoral ballots in all cases for the persons supported by the party to which they belonged. With the party system thus fastening itself upon the country, presidential elections from that time assumed an entirely different aspect from that planned. The way was thus

opened for partisan, popular presidential campaigns to develop the "tumultuous" characteristics which the framers would have deplored. The presidential electors became the mere "row of ciphers," which we know today, with president and vice-president to all intents and purposes chosen by the people. No better illustration can be found of how the actual working Constitution changes without a hand being laid on the written fundamental law nor of how the spread of democracy has changed the Constitutional system.

The Twelfth Amendment (1804)

In the new situation, a tie between the two candidates of a winning party was inevitable unless anticipated beforehand. Jefferson and Burr, in fact, received the highest, and the same number of votes. The Constitution provided that a tie was to be broken by the House of Representatives, voting by states; and in this manner Jefferson finally was elected. The Federalist opposition, however, came near to thwarting the intention of the victors by maneuvering Burr into the highest office; and before the next election came around any repetition of the difficulty was made impossible by an amendment to the Constitution specifying that thereafter electors should in all cases "name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president." With the vice-president thereafter being separately selected, the character of that office underwent a decided change. Thenceforth, the second place on the ticket was awarded largely without regard to the individual's capacity to be president.

MACHINERY FOR NOMINATING CANDIDATES— THE NATIONAL CONVENTION

Nominations become a necessity

The next significant development had to do with a matter for which the framers of the Constitution made no provision, that is, the nomination of candidates. As originally set up, the electoral system did not contemplate "candidates" at all. When, however, political parties arose, their main object forthwith came to be to capture the presidency. To do this, they must concentrate their support at election time upon a given individual, which, in turn, they could do only if such individual, or candidate, were agreed upon in advance. Thus arose the need for machinery for making the selection in advance of the regular election.

From congressional caucus to national convention

The first device hit upon was the caucus composed of the (national) senators and representatives of a given party; and it was employed steadily from 1800 to 1824. There were, however, serious objections to it. The caucus acted only by assumed authority; it provided little or no voice for party members in states in which the party was in a minority; and it gave members of the legislative branch an influence in selecting the chief executive which they clearly were not intended to have. The caucus fell from favor when in 1824 it refused to endorse Andrew Jackson. In 1831 both the National Republican (Whig) and Anti-Masonic parties turned to popularly chosen nominating conventions, already employed usefully in many state elections. The Democrats fell into line with a convention of their own in 1832. Many political leaders,

including Webster and Calhoun, opposed the new method on the ground that it gave too much power in party matters to the rank and file. Nevertheless, by 1840 the national convention became the generally accepted means of putting both candidates and platforms before the voters; and such it has remained.

Arrangements for conventions: time and place

The national conventions of the two major parties today, and likewise of such minor parties as have built up durable organizations, are held on call of the national party committee. A year or more preceding a presidential election, the committee meets (commonly in Washington in the case of the Republicans and Democrats), decides upon the place and date of the coming convention, and authorizes the party organizations in the states and territories to see that delegates and alternates are chosen in accordance with an apportionment set forth in the call. Until 1956, the Republicans typically met first and the Democrats several days later. In 1956 and 1960, the reverse occurred. A serious effort was made to shorten the campaign in 1956 by holding the conventions in August instead of late June or early July, but in 1960 both parties returned to July meetings. The plans already formulated for 1964 are for a Republican convention in mid-July and a Democratic one in Atlantic City in late August. The national committees are strongly pressured by business interests of many of the large cities to select their cities as convention sites. Eager for the advertising and certain of large sales to delegates and visitors, the city representatives typically offer substantial contributions to the party treasuries to win approval. The national committees are, however, concerned about more than donations. They must keep an eye on the adequacy of hotel and convention facilities and they seek to gain any partisan advantage they can by selecting cities where the convention enthusiasm will assist the party or a particular candidate. Chicago and Philadelphia have been the most popular convention sites but St. Louis, Cleveland, and Baltimore also ordinarily receive consideration. The West Coast has grown in popularity recently: the Republicans met in San Francisco in 1956 and will meet there again in 1964 and the Democrats in Los Angeles in 1960. Each party determines for itself how its convention will be constituted.

Convention membership

1. Earlier arrangements

The first national conventions had no regular plan of membership at all but it was soon learned that without a plan partisans from nearby states and cities would swamp the convention. The earliest plan was quite simple: each state was assigned as many delegates as it was entitled to electoral votes (one for each member of both houses of Congress). In 1852, the Democrats doubled the number assigned to each state, probably to allow more persons to participate in the choice. The Republicans followed the same plan in 1860. This remained the plan of both parties until modified in this century.

2. Weaknesses

Weaknesses in the traditional system for apportioning delegates were revealed most clearly in the Republican party. The states of the Solid South repeatedly sent to Republican national conventions delegates who really represented no consequential party strength. The Republican delegates from the South were, in practice, representatives of a small group of national office-

holders appointed by Republican presidents. A Republican president could, therefore, and did, usually, control these patronage-delegates and thus was able to wield a powerful influence in the convention. Theodore Roosevelt certainly used these delegates to help bring about Taft's nomination in 1908. When, however, Taft used the same device in 1912 to achieve his own renomination, the party was badly split. Roosevelt, now a strong contender and the clear choice of many rank-and-file Republicans where they had any say in the delegate selection, denounced the system by which Taft controlled the convention and took his followers out of the party into a new Progressive party. This move cost the Republicans the election and convinced many of the leaders that something would have to be done about the southern delegations. Beginning with the convention of 1916, the Republicans began paring down the relative strength of the southern delegations with some paring occurring as recently as 1952. The method used by the Republicans has been to make the number of district delegates contingent upon a minimum Republican voting strength and to grant bonus state delegates to Republican states.

3. Republican modification

The system adopted by the Republicans in 1952 and still in use provides:

4. Present apportionment systems:

a. Republican

State Delegates (at-large)

1. Four from each state.
2. Two additional for each congressman-at-large (if any).
3. Six additional from each state casting a majority of its votes for the Republican nominee at the last presidential election or electing in the intervening election a Republican senator or governor.
4. Six from the District of Columbia, three from Puerto Rico and one from the Virgin Islands.

District Delegates

1. One from each congressional district casting 2000 or more votes last time for the Republican presidential candidate or for the Republican congressional candidate in the intervening election.
2. One additional from each district casting 10,000 votes or more for the Republican candidates in either election.

b. Democrat

The Democrats, with party strength more evenly distributed throughout the country, were able to operate without too much friction on the old basis until 1940. In this party, however, the southern Democrats were underrepresented compared to those in New England. In the convention of 1936, when the rule requiring a two-thirds vote for nomination was repealed, the northern supporters of the repeal agreed to reward solidly Democratic states by instituting the system of bonus delegates. The repeal of the two-thirds rule greatly weakened the influence of the South over the Democratic nomination and the bonus system was introduced partially to offset this. The Democrats seem to be under continuing pressure to increase the number of those attending conventions. A modest provision of two bonus delegates was begun in 1944 and increased to four in 1948, but in 1952 the rules were modified to protect any

HOW THE REPUBLICAN APPORTIONMENT SYSTEM WORKS

Delegations from Selected States 1960

State	Total Delegates	Delegates at-Large	District Delegates
Alabama	22	4	18
California	70	10	60
Illinois	60	10	50
Mississippi	12	4	8
New York	96	10	86
South Carolina	13	4	9
West Virginia	22	10	12

state from loss as a result of Congressional reapportionment. Then in 1956 every state was authorized as many delegates as it had in 1952 plus four more if the state had gone Democratic for president or in the interim for senator or governor. For 1960, a complex plan was devised granting two and one-half delegate votes for each representative and senator and one-half vote for each national committee member but providing that no state might have fewer votes than it had in 1956. The Democrats have also awarded delegates to the territories.

HOW THE DEMOCRATIC APPORTIONMENT SYSTEM WORKS

Delegate Votes from Selected States 1960

State	Total Votes	Maximum No. of Delegates
Alabama	29	58
California	81	162
Illinois	69	138
Mississippi	23	46
New York	114	228
South Carolina	21	42
West Virginia	25	50

5. Numbers

Speaking strictly, the composition of a national convention is defined in terms of votes, rather than of delegates. In Republican usage, the distinction has been one without a difference, each delegate having one vote. In Democratic usage, however, many states and territories send delegates in excess of their quota of votes, each delegate in such case casting only a fractional vote. In later days the practice, motivated usually by desire to provide good convention seats for the "boys from home," developed into a serious abuse.

On complaint of officials in charge of seating arrangements, the 1940 convention decreed that thereafter no state might send delegates in excess of twice its quota of votes; and delegate attendance fell sharply. In 1952, the convention in violation of its own rules seated oversize delegations from six states, and the total roll was 1642 delegates to cast 1230 votes. In 1960, 3042 delegates were authorized to cast 1521 votes. The Republicans in 1960 had 1331 delegates and votes. With one alternate standing ready to fill in for each delegate, the two national conventions are obviously not of "deliberative" size.

SELECTION OF THE DELEGATES

Rise of presidential primaries

Delegates to the national convention were, in the formative years, chosen in a variety of ways—by mass meetings, by caucuses, by district and state conventions, and by party committees. Gradually each party settled upon a fairly standard system. The Democrats, giving great emphasis to the state as the basic unit of representation and expecting the delegations from many of the states to act as units in the proceedings, usually selected their delegations by means of a state convention or a state central committee. The Republicans, much less concerned about state solidarity, preferred to select district delegates in congressional district conventions and state-wide delegates in state conventions. When, however, the direct primary began sweeping the country, the application of this procedure to delegate and presidential candidate selection became an important public issue. The first application of the direct primary procedure to the selection of the delegates was made in Wisconsin in 1905. Thereafter the idea spread rapidly and by 1916 more than half of the delegates of the major parties were designated at primary elections by direct vote of the people. In 1912, the Republican convention undertook to withhold seats from delegates chosen in this way on the grounds that the primary procedure was contrary to the party rule requiring convention selection. This position did not prevail against the state laws requiring primary selection.

The spread of presidential preference primaries

The application of the primary method to the designation of presidential candidates proved somewhat more complex and it was not until 1910 that Oregon first provided on the primary ballot an opportunity to the voters to express their preferences among presidential aspirants. The Democratic platform of 1912 urged every state to adopt a *presidential preference primary* and the Progressive platform urged a constitutional amendment which would make it compulsory. President Wilson in his first message to Congress asked for legislation which would allow presidential and vice-presidential candidates to be nominated by direct vote of the people and would thus relegate the conventions to platform-making agencies after the candidates had been selected. The presidential preference primary in this period became linked to the national-convention delegate primary (presidential primary) and shared in its rapid spread over the nation. After 1916, the movement, however, lost momentum and several states which had adopted either or both of the primary

procedures abandoned one or the other. The primary in either form has made few gains since that time.

In the conventions held in 1960 fewer than half of the delegates were selected in some form of primary or were committed by some popular vote on presidential aspirants. These delegates came from 17 states and the District of Columbia. The systems by which delegates were elected and preferences expressed may be classified as follows:

1. Direct election of unpledged delegates and no popular vote on aspirants—New York (district delegates only), Alabama (Democratic delegates only)
2. Direct election of unpledged delegates and a separate nonbinding vote on aspirants—Illinois (district delegates only), Pennsylvania (district delegates only), District of Columbia, West Virginia, Nebraska
3. Direct election of delegates who may be pledged to a particular aspirant and a separate non-binding vote on aspirants—New Hampshire, New Jersey, Massachusetts
4. Direct election of delegates who may be pledged to a particular aspirant and no separate vote on aspirants—Florida, South Dakota
5. Direct election of delegates who must be pledged to a particular aspirant—Ohio, Wisconsin, California
6. Direct election of delegates who may be pledged to a particular aspirant and a separate binding vote on aspirants—Oregon
7. Direct vote on aspirants which is binding on delegates but no vote on delegates—Maryland, Indiana

Selection by party organizations

Most of the state delegates to the two conventions in 1960 were selected by party procedures which did not include any type of general, public, primary election. In most of these states, the delegates were selected by district or state conventions or both; in a few states, the delegates were selected by the state party committee. In many of the convention states, popular participation in selecting the delegates to the local or state conventions was widespread. In several, there was little real opportunity for rank-and-file participation. The nonprimary selection procedures differ widely from state to state.

Future of the primary system

The campaigns and conventions of 1952, 1956 and 1960 awakened a new interest in the presidential preference primary, stimulated discussion of its value in many parts of the country, and led to several proposals for strengthening and extending it. It is appropriate, therefore, to review the successes and failures of the primary system as applied to delegates and presidential candidates. Despite the apparent lack of enthusiasm by state lawmakers since 1916 for the primary procedure in delegate selection, it is still vigorously defended in the states where it exists. State party leaders tend to prefer the convention method of selection because it is more of a party operation than a public one and thus party leaders are likely to be more influential in determining the result. The advantages of convention selection are perhaps best exhibited in states like New York and Illinois where both methods are used. The convention selection of the state-wide delegates in these states makes it possible to

provide places in the delegation for important party leaders—the governors, for example—who do not wish to contest such places in a public election. The primary in which delegates are selected and which offers no opportunity to vote on presidential candidates does not, it is argued, attract voter interest to the same degree as the presidential contest.

Controversy over the preference primary

The real controversy concerns the desirability of giving the voters an opportunity to participate directly in the selection of the presidential nominees of the parties. A secondary controversy concerns the best method for voter participation: the election of delegates pledged to a particular aspirant or a direct vote on the aspirant. The fear of those who strongly oppose direct voter participation is that the voters are in no position to assess the abilities of candidates to unite the party and to make a broad appeal to the nation. Voter sentiment is likely to be divided among many regional candidates, local "favorite sons," and representatives of large interest groups. Only a convention, runs the argument, can reconcile conflicting interests and select a candidate who will unite the party. Experience indicates that such a candidate may not be a willing one and may not, therefore, be in active contention for primary endorsement. Neither of the candidates in 1952 was an active or a willing seeker of public support in every major sector of the nation. Where preference primaries are now used, not all of the candidates compete. In general, candidates enter state contests only when they think they can win and stay out of contests where they might lose. Thus the voters in many primary states are not able to select among all of the aspirants. The preference primary system is best suited to advance the fortunes of avowed candidates and these, say the critics, are not always the ones that the nation needs or wants. On the other hand, the popular preference system opens the door to candidacies which might otherwise be impossible. President Kennedy certainly won his way to the nomination in 1960 in great part because of his successes in the primaries. If the system of pledged delegates is used as a vehicle for voter participation, the convention may find that no candidate has a majority and no delegate can change his vote. The costs in money and energy for a nation-wide primary campaign for presidential aspirants is forbidding. The presidency is already difficult enough without requiring nine or ten months of arduous campaigning to reach it. None of the present primary systems make any provision for the selection of the vice-presidential candidates or for writing a party platform.

The supporters of preference primaries argue that if the primary system is good for all other state and national offices it is good for the presidency. Popular participation will tend to prevent boss-dominated conventions and will open the presidential contest to the "fresh-air" of public opinion. There is nothing deliberative about the conventions, say the critics. They are too big, too noisy, too expensive, and too tumultuous to do as adequate a job of selection as their supporters pretend. Although variation of procedure from state to state has some advantages, the nation ought to stipulate a minimal procedure which will allow the voters to express their wishes in the matter of candidates in every state.

THE NATIONAL CONVENTION AT WORK

Surroundings

By whatever method selected, the delegates to the two major national conventions are largely professional politicians. Most of them are holders of public office or of party post. Included in the delegations are many of the most prominent state leaders—governors, senators, representatives, mayors, state legislators, and county leaders. The convention meets in a large hall capable of seating more than 15,000 people, with the delegates seated by states on the main floor and the alternates directly behind them. The press is accorded, typically, a very large section to the right and left of the speaker's platform and the galleries accommodate the interested public. Radio and television carry the proceedings to virtually every corner of the nation. The atmosphere of a convention is noisy and hectic. The hall is ordinarily jammed, making it difficult to move about. There is a buzz of conversation in the air except during major speeches and at tense moments in the procedure. Every interval of the official program is filled with music by band, organ, or vocalist. Demonstrations in behalf of various candidates interrupt the proceedings periodically —especially during the nominating speeches—and hired noisemakers and cheer leaders whip the delegates and galleries into frenzied outbursts of movement and noise. The whole proceedings get entirely out of control of the presiding officers at times and sometimes for an hour or more at a stretch. The aisles, rest rooms, snack-bars, and lobbies are frequently crowded with caucuses as leaders negotiate and compromise and reconcile conflicting views. There is nothing in the outward show that resembles deliberation. All of the real issues are usually threshed out behind the scenes, in hotel rooms, restaurants, headquarters suites, and anywhere men can hold private conferences. The convention city also acquires the frantic air of the hall. The hotels housing the delegates and the headquarters of the parties and candidates are seething masses of people. Banners, music, streamers, and noisemakers of all types fill the lobby and corridors with noise and confusion. At the candidates' headquarters, skilled persuaders hand out their wares to public, press, and politicians. Soundtrucks, bands, balloons, and entertainers fill the streets and stimulate flagging emotions. Hundreds of thousands of dollars are poured out in an effort to exhibit the candidates as personifications of the American way and as certain winners in the election contest. Appeals are made to every level of emotion and reason. It is easy to mistake all of this froth for the real decision-making process. The delegates are more or less immune to such frenzied appeals and they sort and weigh chances and choices usually with the calm sagacity of skilled players of the great American game.

Temporary organization

Ordinarily the conventions last four or five days—a few have dragged on for more than a week. On the first day, the meeting is called to order by the chairman of the national committee who, after the prayer and the reading of the official call for the convention, announces to the delegates the temporary convention officers agreed upon by the national committee. This slate of

officers is virtually always accepted by the convention. The temporary chairman then takes the rostrum, perhaps after a recess for some oratorical warm-ups, and delivers the "keynote" address to the delegates and to the world. The "keynote" speech is a cry to close ranks and prepare for battle and for ultimate triumph. The record of the party and of its great leaders past and present warms the delegates to the tasks ahead and the despicable record and potentiality of the opposite party puts the convention in fighting trim. The rules of the previous convention are then adopted temporarily and the convention committees are organized.

The committees

During the next day or two, the convention marks time with oratory and music while the committees do their work. Both national conventions assign certain functions to four great committees. These are (1) credentials; (2) permanent organization; (3) rules and order of business; and (4) platform and resolutions. Each is composed of one delegate from each delegation (named by the delegation) except the fourth which has two delegates (one man and one woman) from each state. Typically, the chairman of the delegation supplies the names to the convention officers. The committees are obliged to report to the convention at the conclusion of their deliberations and the next major order of business is to receive these reports. The committee on rules submits a set of rules governing convention procedure, delegate apportionment and selection, and the composition and powers of the national committee. Typically, these are the same rules as have previously been in effect, but from time to time changes will be proposed. The report is usually approved with little or no debate. The committee on permanent organization submits a slate of officers to direct the convention for the remainder of the sessions. This too is usually accepted, although there have been contests on this question as the managers of rival candidates have sought to place in the chair officers sympathetic to their candidates. The permanent chairman can wield great power in close contests by his rulings on points of order and by his recognition of those who may speak to the convention. The credentials committee prepares a permanent roll of delegates entitled to sit in the convention. For most delegates at most conventions there is no problem of determining who may rightfully participate, but every convention has some contested seats. The Republican convention, especially, has been troubled for several decades by credentials contests in the southern delegations. The party is so small, its organization so fluid, and the selection procedures so informal in the Deep South that contests are almost unavoidable. In 1952, for example, rival delegations appeared from Texas, Louisiana, Mississippi, Georgia, and Florida. The fight over these delegations was the highlight of the convention and the success of the Eisenhower forces in seating their delegates as against those of Senator Taft influenced the result of the convention. In 1952, as in some previous years, the recommendations of the credentials committee were not wholly accepted by the convention. Usually, however, the committee report is approved without debate and without a call of the roll.

When the permanent officers are installed, the permanent chairman cus-

Platform adoption

tomarily delivers an address of the "keynote" type but usually more restrained. The convention is then ready to receive the proposed party platform from the platform committee. Typically, a small drafting committee designated by the national committee from among prospective members of the platform committee has been at work for some days before the convention assembled preparing a draft of a platform. Hearings have been held to allow interest groups to urge their programs and the leading candidates have been solicited for their views. Working day and night in the first few days of the convention the committee will then whip into final shape a platform to be read to the convention. Platform writers are skilled craftsmen of the "glittering generality" and the "emotion-filled symbol," and most controversies within the party are resolved in favor of platitudinous noncommitment. Much labor, however, is poured into the exact platform language on controversial subjects. The convention almost invariably accepts the committee's proposals, although occasionally it has done so only after heated debate. As approved by the convention, the platform of a major party is likely to be about 10 pages long and cover a large number of subjects of national policy. On some matters the platform will be relatively clear and specific; on others it will be general and vague. The words *sound, stable, peace, prosperity, reasonable, fair, just,* will be used over and over again. The party's vast achievements will be extolled and those of the other party indicted. The platform is not so much an outline of proposals as a bid for support. It is invariably overshadowed by the announced views of the presidential candidates and is read in its entirety by very few people. Rightly viewed, it is but one of the less important guides to what this party or its candidates will do if entrusted with power.

Nomination of candidates

At last, by the third or fourth day, the convention arrives at its main objective, the nomination of candidates. The secretary calls the roll of states, beginning with Alabama, and each delegation, in its turn, has an opportunity to place a "favorite son" or other person in nomination. If the delegates of a state which stands near the top of the list choose to do so, they may yield to a delegation which under alphabetical order would not be called until later. This opportunity to get a candidate's name officially before the convention in advance of others, and to touch off a demonstration in his behalf, is believed by some managers to be advantageous. From two or three to upwards of a dozen names may be presented, each in a vigorous, eulogistic, and sometimes flamboyant nominating speech followed by briefer seconding speeches by delegates carefully picked to give an impression of widely distributed support. No effort is spared by either the orators or the delegates and spectators favoring a given candidate to whip up enthusiasm for him. At the proper psychological moment, delegates and alternates may break forth with all manner of vocal and mechanical noise, seize flags and standards and start parading around the hall, and plunge the assemblage into pandemonium from which it can be extricated only when the enthusiasts have reached a state of exhaustion and hour or more later. Rarely are such demonstrations genuinely spontaneous.

They are staged according to careful prearrangement and usually fail in their presumed purpose of sweeping the convention off its feet.

Voting on the candidates

When, finally, all of the names have been presented, the convention proceeds to ballot. The roll of states is called again, and each delegation, through its chairman, announces its vote. In both parties, votes as reported may be unanimous for a given candidate or may be divided among two or more. Republican tradition favors full freedom for delegations to divide and to have their vote so recorded, except only as limited by instructions received in presidential primaries. Democratic tradition, however, has been different. Reflecting the states'-rights antecedents of the party, and yielding the practical advantage of greater power and importance for a state in a convention proceedings, a "unit rule" has been favored under which a state convention may require a delegation to cast its votes in a block for a single candidate. Even if no such requirement is imposed, a delegation may itself, by majority vote, determine how the votes of all of its members shall be recorded. This practice is not imposed by the national convention; state conventions or delegations may invoke it or not as they choose. The national convention will, however, recognize and enforce it when ordained by a proper state party authority. It is usually employed by some states, especially southern ones.

The Democratic "unit rule"

The Democratic "two-thirds" rule abandoned

Until fairly recently, another important difference between Republican and Democratic procedure was that whereas a simple majority of all votes cast was sufficient to nominate in a Republican convention, the Democrats (from as far back as 1836) required two-thirds. This latter rule frequently was responsible for convention deadlocks, and sometimes—as in 1924—prevented the party's strongest candidate from receiving nomination. In 1936, when President Roosevelt was about to be renominated at Philadelphia without opposition and no candidate's chance would be in any way affected, the historic two-thirds requirement was rescinded, with nominations thenceforth to be by simple majority. This change in Democratic practice amounted to a sharp reduction in the influence of the southern wing of the party over the nominations. Under the old "two-thirds rule" the South had exercised a veto over candidate selection. Since the death of President Roosevelt, the power struggle between the northern and southern wings of the party has repeatedly broken out into the open at the national convention. In 1948, a portion of the southern Democrats seceded and founded a "Dixiecrat" party, and in 1952 formal unity was preserved only by the skillful maneuvering of the presiding officers. In 1956 and 1960 rival candidates were offered in several southern states. The South has sought to gain bargaining power by offering a southern candidate and by threatening to bolt. In 1960, unity was preserved by making the leading Southern candidate (Senator Lyndon Johnson) the party's Vice-Presidential nominee.

The balloting

After the votes of all of the states have been recorded and counted, the result is announced. Sometimes—especially when a president is being renominated—a single ballot suffices. But often the votes are so divided among a number of candidates that no one obtains the requisite majority and addi-

tional ballots must be taken. These usually follow in quick succession as the leaders try to force a decision. Sometimes, however, a recess is called between ballots to allow the candidates' managers more time to maneuver. Typically, the "favorite sons" drop out early in the balloting and the contest centers around two or three strong candidates. During these hours, the managers work tirelessly dickering with the leaders of delegations, making promises, and bringing outside pressure to bear in an effort to capture a majority. Eventually some one of the contestants (or perchance a "dark horse" agreed upon behind the scenes) emerges a victor. Sometimes the balloting (and bartering) is very prolonged, the record being the nomination of John W. Davis by the Democrats in 1924 on the 103rd ballot, after a deadlock lasting nine days. With a Democratic candidate, however, no longer obliged to muster a two-thirds vote in order to win, there hardly will be another experience so trying.

Nomination for the vice-presidency

The nomination for the presidency having been made, the weary delegates hurry their labors to an anticlimactic conclusion. A candidate for the vice-presidency is still to be named; and the same procedure—roll call, nominating and seconding speeches, and balloting—is followed. But the contest usually is not very keen, and a decisive vote is soon reached. As a rule, the grounds on which the nomination is made (sometimes largely by the presidential nominee and always with his assent) leave a good deal to be desired. The prize—such as it is—may be used to placate an important element in the party that has lost in the fight over the presidential nomination or over the platform, or to reward a "favorite son" who has thrown his support to the winning presidential candidate, or to enhance the chances of capturing a pivotal state. It will usually be bestowed also with a view to balancing the ticket: an eastern presidential nominee commonly calls for a western vice-presidential nominee; a dyed-in-the-wool conservative ordinarily must be counterbalanced with a man of known liberal views, or vice versa. Every sort of consideration, indeed, may contribute to the decision except one, the qualifications of the person nominated to become president if anything should happen to the president.

The convention's closing acts

One more task, purely formal yet necessary, remains: the party's national committee must be elected, consisting of a man and woman from each state and territory,[1] and charged with carrying on the coming election, looking after party interests during the ensuing four years, and arranging for the next national convention. With all members designated (in theory "nominated") either by state conventions or primaries, by state committees, or by state delegations, election by the national convention, however, is a mere gesture.

Since Franklin D. Roosevelt got his first campaign off to a dramatic start in 1932 by climbing into an airplane at Albany and a few hours later ascending the convention rostrum at Chicago to accept his nomination, old-style

[1] The Republican Committee by rule adopted in 1952 also now includes as ex officio members the state chairman of the party in each state which has a Republican governor or a Republican majority of the states' members in both houses of Congress, or which cast its electoral vote for a Republican president at the last election.

notification ceremonies have gradually been dispensed with by both major parties. Successful candidates now signify their acceptance in an address at the convention itself. The convention thus ends on a new call to battle and an eloquent statement of faith by the candidate.

THE PRESIDENTIAL CAMPAIGN

Machinery

Although the conduct of a national campaign involves thousands of party workers, central direction is ordinarily provided by the national committees. Shortly after the conventions, the new committees meet and organize for the great effort ahead. A chairman is selected to manage the campaign, nominally by the committee but actually by the presidential candidate. Headquarters are established or enlarged to house the hundreds of employees added temporarily and, frequently, regional offices are established in key cities. Subcommittees are created to co-ordinate publicity, fund-raising, speaker activities, and the like. Individuals are assigned to direct all of these processes in collaboration with the committee or under the immediate direction of the chairman. Campaign biographies of the candidate are prepared; "textbooks" are compiled for ready reference by local and state party workers, containing the platform, important speeches, statistics, speech material organized by subject to support the party position on the issues of the campaign, and biographical data on the party candidates; leaflets and brochures of many kinds are prepared, and slogans and mottoes are manufactured for the occasion. Arrangements are also made to co-ordinate campaigns for state and local offices with the congressional and presidential campaign. Since the limitation on total spending of a national campaign committee was enacted in 1940, more and more use is being made of auxiliary and semi-independent committees to supplement the work of the national committee and to serve as vehicles for the expenditure of funds beyond the ceiling established for any national committee. Auxiliary organizations are used also to reach voters and financial supporters that the regular party organizations do not reach: women, for example, "independents," supporters from the opposite party, ethnic groups, professional people, labor, even intellectuals.

Funds

The combined costs of all the campaign activities of a single party in a national election certainly exceed $20 million and probably exceed $50 million. Raising this money is one of the most trying and most difficult of tasks for the campaign organization, and a great deal of effort must be put into it right down to the closing hours of the campaign. In fact, the fund-raising frequently goes on after the election to pay off deficits piled up during the enthusiasm of the campaign. Experience suggests that both parties rely upon the substantial gifts of a relatively small proportion of their supporters. As has been suggested earlier, attempts to limit expenditures in campaigns have been uniformly unsuccessful as have attempts to limit the amount any person may contribute.

A considerable portion of the money now spent goes for the purchase of radio and television broadcasting time and for the preparation and distribution

"Literature" and broadcasts

of party literature. The amount spent for broadcasting has been increasing relatively and absolutely in recent years and there are many indications that television, in particular, will be the major campaign vehicle in the future. The quality and character of the literature and the broadcasts vary widely. Party money is spent on everything from one-minute spot announcements to the televising of a formal oration by the candidate and from windshield stickers to full-length book biographies. More and more, parties are relying upon the cumulative impact of advertising through every medium and less and less upon elaborate, formal, and hortatory speech-making. The use of television also tends to reduce the relative amount of formal speech-making. Much of the campaign "literature" reaches the voter only through his favorite newspaper or from his receiving set.

Strategy and tactics:

Through the years, professional politicians and seasoned campaigners have developed an elaborate folklore on the art and strategy of campaigning. Little of this has ever been verified scientifically and much of it perhaps never will be. Experts in the matter are usually much more certain after the election is over than while the campaign is in progress. The character of a national campaign, however, can hardly be understood except in terms of those "rules of the game" which the campaigners follow. In most campaigns, in the first place, great stress is placed on the personality of the candidates, and this usually far overshadows the issues of public policy which may be involved. Each side attempts to build a picture in the eyes of the public of a personality which coincides with the supposed inner wishes of the electorate. This picture will, of course, vary with the times. In 1932, the Democrats were anxious to depict their candidate as daring, aggressive, and uninhibited by respect for tradition. More frequently, the candidate is cast in the role of the defender of the best traditions of the American past, as a man who knows the value of his American heritage. The Horatio Alger formula set the style of the "people's choice" for many years: the self-made hero, product of a harsh rural or small-town environment, a boyhood close to the soil and a manhood of successful achievement in competition with the sophisticated city "slickers." It is now wearing thin: great wealth is no longer a drawback nor is urban upbringing; and foreign travel is desirable. The voters, it is believed, choose more easily and more readily among personalities than among programs. The candidate's personality must also, however, symbolize an approach to the issues of the day: "normalcy," New England shrewdness, engineering efficiency, champion of the forgotten man, eager fighter for honest government, popular military genius. The real personality of the candidate is invariably swallowed up by the mythical hero which the publicists have carefully constructed for the campaign.

1. The candidate

2. The issues

Much thought and effort is given by the campaigners to the selection of the issues or themes of the campaign. What in the record should be played up and what ignored? Of the many evidences of dissatisfaction in the electorate, which are the deeper and more decisive? In recent years, the strategists have

paid close attention to the results of public-opinion sampling polls in determining what impresses the electorate. In 1952, the Republicans felt that their best issues were the Korean stalemate, communists in government, and corruption. In 1956 and 1960, the Republicans stood on the slogan, "peace and prosperity." In 1956 and 1960, the Democrats cried out against complacency, demanded that the people rise to the challenge of the times.

3. Offense or defense

One of the perennial campaign questions is how to treat the opposition: attack them or ignore them. Franklin Roosevelt was a master of pretending complete indifference to his opponent. Dewey tried this in 1948 and failed with it. Eisenhower generally ignored his opponents and was successful. Usually the "outs" are forced to more aggressive attacks than the "ins." An incumbent president can frequently ignore his opposition more successfully than they can ignore him. A common device is to appoint a lesser party figure to debate the opposition and to answer their charges, and thus keep the presidential candidates above the debate. A great many politicians believe, however, that you can never catch up with your opponent's charges and, therefore, the best thing to do is to make no attempt to answer but rather to charge him with something else.

4. The strategy of superior place

The dream of every campaign manager is to make his candidate the center of the campaign. He would rather have a lot of campaign oratory directed against his candidate than to have him ignored. An ideal situation from this point of view was one achieved briefly by Woodrow Wilson in 1912 when Taft and Roosevelt were both attacking him and he was presenting his program to the people. Every candidate was thus discussing Wilson. How to achieve this goal is another question and on this the campaigners differ sharply among themselves. They all agree, however, that the candidate must act and talk as if he were confident of winning. No doubts on this score must ever be allowed to appear in the literature or in the words or actions of the candidate. In recent years the statistical experts in the party headquarters supply the press and public with a great deal of "scientific" data which proves their assertions of victory. Jim Farley's accurate forecast of the 1936 election result—that the Democrats would carry every state except Maine and Vermont—remains up to this time, however, the only occasion in which the "scientific" extravagance of partisan forecasts was sustained by the voters.

5. The illusion of victory

6. Concentration in doubtful states

The electoral college method of counting the vote for president and vice-president has considerable influence in campaign planning and execution. Presidential campaign efforts are usually concentrated in "doubtful states" and in states with a consequential electoral vote. President Eisenhower and Vice President Nixon, for example, are two of the few Republican candidates to invade the South; most of them have written it off as hopelessly Democratic. Democratic candidates avoid it because it is certain, as they do much of New England and the Great Plains because they are so strongly Republican. By far the largest effort in money, organization, and candidate speaking appearances is ordinarily made in New York, Indiana, Ohio, Illinois, Michigan, California,

New Jersey, and, in recent years, Pennsylvania and Texas. Few experts think Nixon was wise in 1960 to campaign in every state.

The televised debates of 1960

The campaign of 1960 introduced a new dimension into campaigning with four great televised debates between the two candidates. Although extensive use was made of television in the campaigns of 1952 and 1956, all of the programs had been offered under partisan direction on time purchased at great cost for the purpose. The broadcasters, under some fire because of their alleged indifference to concepts of public service, offered to stage these programs free provided Congress would waive the rule of the Federal Communications Commission requiring them to offer equal time to the 14 other minor party candidates for the presidency. Congress by statute suspended the rule for the campaign of 1960. Representatives of the broadcasters and the candidates then negotiated the terms under which the programs would be presented. Generally, the candidates were allowed a few minutes for set speeches and then were questioned by representatives of the press under carefully controlled time-limits for their answers. Each candidate was permitted to comment on the answers of the other. The time thus donated by the broadcasters would have cost the two parties about $2 million if purchased in the traditional way. The best estimates place the audience for one or all of the debates at 115 to 120 million persons, the greatest listening audience ever assembled for any program of any type. Many analysts and opinion surveyors believe that Kennedy's showing was an important factor in his final victory. It can hardly be said that the debates did much to clarify the issues of the campaign. The rigid time limits made thoughtful responses on complex questions, such as farm policy, Quemoy and Matsu, civil rights, etc., impossible. They did project to the voters the personalities of the two candidates and showed their behavior under great stress. It is hard to suppose that candidates in the future will be able to avoid the face-to-face debate provided Congress suspends the "equal time for all candidates" rule in the future.

Value of campaign

For all of the planning, thought, money, time, and energy given to a national campaign, there is a growing body of evidence suggesting that it changes very few votes. A vast majority of American voters—perhaps as many as 80 per cent—cast their votes in November exactly as they would have cast them in June or July before the campaign got under way. If true, does this mean that campaigns are useless? Not at all, say the politicians. Elections are always decided by a relatively small percentage of the voters. Furthermore, one of the tasks of a campaign is to infuse the supporters of a party with enough enthusiasm to bring them out to the polls on election day. Apathy is the dread disease of the body politic and especially of the traditional supporters of a party. Only the intense excitement of a campaign will bring to the polls the 68 million voters who came out in 1960. Furthermore, the campaign stimulates the party organization, infuses it with a renewed sense of purpose, tests the merit of its functionaries, and attracts to it new blood and talent without which it would soon wither and decay. Strong parties are essential to our system, it is argued, and campaigns make strong parties.

CASTING AND COUNTING THE ELECTORAL VOTES

Presidential electors

What happens after the last local "spellbinder" has descended from the rostrum, the last national "hook-up" has brought the leading candidates' appeals to the voter at his fireside, and the last rosy forecast has been given out by an at least outwardly confident party chairman? Early in the campaign, party conventions, primaries, or committees (as determined by the legislature) in each state made up the respective "slates" of presidential electors. Each party designates as many electors as the state is entitled to, that is, one for each senator and for each representative in Congress. It is for these men and women that the voters actually cast their ballots on election day, although they may think of themselves as voting for the president and vice-president. This is true legally even though the voters may not know the names of the electors for whom they are voting, and though in a majority of states their names do not even appear on the ballot. Today, in every state, the voter casts his ballot for as many electors as his state is entitled to and the winner of the state contest captures the entire electoral vote of that state.

"Minority" presidents

A majority of electoral votes is necessary to victory—unless achieved through election by the House. But this does not prevent us from having "minority" presidents, that is, presidents who (speaking strictly, the electors who chose them) received fewer than half of the total popular votes cast. As a matter of fact, we have had 11 such—two of them at two different times each. Lincoln, in 1860, obtained more popular votes than did any one of his competitors, but nevertheless polled half a million less than a majority. Wilson, in 1912, received 2 million more popular votes than did his nearest competitor, Theodore Roosevelt, yet only 42 per cent of the total. In both of these cases, the opposition was divided. President Kennedy received 49.7 per cent of the popular vote in 1960. The same thing can happen even if there are only two major tickets in the field. Hayes was elected over Tilden in 1876, although his popular vote was about 300,000 smaller; and Harrison triumphed over Cleveland in 1888, although with 100,000 fewer votes. All that a candidate needs in order to obtain the full electoral vote of a state is a plurality of the popular vote. An opposing candidate may have swept the states which he carried by heavy pluralities and thus gained a large number of popular votes. But, lacking the requisite number of electoral votes, he nevertheless goes down to defeat.

This circumstance accounts for the fact, previously alluded to, that campaign managers are likely to concentrate their efforts in large "doubtful" or "pivotal" states. Party managers are not likely soon to forget that Kennedy captured the electoral vote of Illinois (27) by only 10,000 votes, of New Jersey (16) by only 22,000 votes and of Texas (24) by only 46,000 votes.

Casting the electoral votes

The theory of the Constitution is that the electors are officers of their respective states, and it was on this account that the states were left free to determine how they should be chosen. The place where each group meets

within its state is fixed by the legislature thereof (normally, the state capital); and if the electors receive any remuneration, it must come out of the state treasury. A national statute of 1934, however, requires that they meet in the respective states and cast their ballots on the first Monday after the second Wednesday in December following their election. And the Twelfth Amendment enjoins that the voting be by ballot; that presidential and vice-presidential candidates be voted for separately; that distinct lists be made up showing all persons supported for either office, with the number of votes received by each; and that these lists, signed and sealed in duplicate, be sent to the president of the Senate (nowadays actually to the head of the General Services Administration for transmission to the Senate's presiding officer) at the seat of the national government. As evidence of their power to act, the electors must also transmit their certificates of election bearing the signature of the governor.

The electoral count as now carried out

With rare exceptions, of course, the counting of the electoral votes is a mere formality; the country knows two months in advance precisely what the figures will be. On the day fixed by law—formerly the second Wednesday in February, but now the sixth day of January—the members of the two houses gather in the hall of the House of Representatives, with the president (or president *pro tempore*) of the Senate in the chair, and with four previously designated tellers—a Democrat and a Republican from each house—ready to tabulate and count. The person receiving the largest number of votes for president, provided the number is a majority of the whole number of electors chosen, is declared elected; and similarly in the case of the vice-presidency.

Provision in case of lack of a majority

In the event that no candidate for president receives a majority, the election is, of course, thrown into the House of Representatives, where each state has one vote, bestowed as the majority of the state delegation determines.

Some recent safeguards

Notwithstanding all the constitutional and statutory regulations on the subject, it still is possible for the country to come up to the expiration of a presidential term with no president-elect ready to be inaugurated. Not only may the choice itself still be hanging fire, but a person duly elected may have died before the inauguration date, or may have failed to qualify (as, for example, by refusing to serve). Providing belatedly for such contingencies, the Twentieth Amendment, adopted in 1933, specifies (1) that in case of the death of a president-elect, the vice-president-elect shall become president, and (2) that if at the time for inauguration a president-elect has not been chosen or has failed to qualify, the vice-president-elect "shall *act as president* until a president shall have qualified." Conceivably, however, the same situations might arise as to both president-elect and vice-president-elect; and for this contingency the amendment authorized Congress to make provisions by law—which, in a Presidential Succession Act of 1947, it has done.

PROPOSED CHANGES IN ELECTORAL COLLEGE

More than once, the mode of electing the president and vice-president

POPULAR AND ELECTORAL VOTE FOR PRESIDENT
1960
Major Party Candidates

State	Popular Vote		Electoral Vote	
	Kennedy	Nixon	Kennedy	Nixon
Ala.	318,303	237,981	5*	
Alaska	29,809	30,953		3
Ariz.	176,781	221,241		4
Ark.	215,049	184,508	8	
Calif.	3,224,099	3,259,722		32
Colo.	330,629	402,242		6
Conn.	657,055	565,813	8	
Del.	99,590	96,373	3	
Fla.	748,700	795,476		10
Ga.	458,638	274,472	12	
Hawaii	92,410	92,295	3	
Idaho	138,853	161,597		4
Ill.	2,377,846	2,368,988	27	
Ind.	952,358	1,175,120		13
Iowa	550,565	722,381		10
Kan.	363,213	561,474		8
Ky.	521,855	602,607		10
La.	407,339	230,980	10	
Maine	181,159	240,608		5
Md.	565,808	489,538	9	
Mass.	1,487,174	976,750	16	
Mich.	1,687,269	1,620,428	20	
Minn.	779,933	757,915	11	
Miss.	108,362	73,561	†	
Mo.	972,201	962,221	13	
Mont.	134,891	141,841		4
Neb.	232,542	380,553		6
Nev.	54,880	52,387	3	
N.H.	137,772	157,989		4
N.J.	1,385,415	1,363,324	16	
N.M.	156,027	153,733	4	
N.Y.	3,830,085	3,446,419	45	
N.C.	713,318	655,648	14	
N.D.	123,963	154,310		4
Ohio	1,944,248	2,217,611		25
Okla.	370,111	533,039		7‡
Ore.	367,402	408,060		6
Pa.	2,556,282	2,439,956	32	
R.I.	258,032	147,502	4	
S.C.	198,129	188,558	8	
S.D.	128,070	178,017		4
Tenn.	481,453	556,577		11
Texas	1,167,932	1,121,699	24	
Utah	169,248	205,361		4
Vt.	69,186	98,131		3
Va.	362,327	404,521		12
Wash.	599,298	629,273		9
W.Va.	441,786	395,995	8	
Wis.	830,805	895,175		12
Wyo.	63,331	77,451		3
Totals	34,221,531	34,108,374	303	219

* Six electors ran unpledged and cast their votes for Senator Byrd.
† An unpledged group of electors won over those pledged to the two candidates and cast Mississippi's 8 electoral votes for Senator Byrd.
‡ One Oklahoma elector cast his ballot for Senator Byrd.

Present shortcomings

has been pronounced the weakest point in our American system of government. Over the years, it is true, improvements have been introduced by the Twelfth and Twentieth Amendments, by statutes like the Electoral Count Act, by state legislation such as that removing the names of electors from the ballot (presidential short ballot), and by party regulations like those now governing the apportionment of delegates to the national conventions. Passing over faults of the nominating process, one finds the plan of election criticized on several grounds. (1) The electoral college no longer serves the sifting purposes for which it was designed, and as a mere recording machine has become useless. (2) The unit system under which a candidate captures all of a state's electoral votes merely by polling a state-wide popular plurality is unfair to sections of a state carried by a different party. (3) Occasionally, a candidate wins election with only minority popular backing. (4) The present system exaggerates the electoral importance of the large cities in the pivotal states and, therefore, of disciplined pressure-group blocs. (5) In the absence of state laws so requiring (and these exist only in a few states, such as California and Oregon), there is no iron-clad guarantee that electors chosen in the states will vote for the presidential and vice-presidential candidates receiving the largest popular vote in their states. Formerly, this last situation was not a matter of much concern; in over a century and a quarter, only two electors chosen to vote for the candidates of a given party ever ignored their mandate and actually voted for different ones. The confused position of the South in the election of 1948, however—marked by legislation in Virginia empowering a state convention to instruct the state's electors *not* to vote for the regular party nominees, by an unsuccessful attempt in Alabama to compel the state's 11 electors, chosen to support the States' Rights candidates, to switch to Truman and Barkley, and by the persistence of one Tennessee elector in voting contrary to the state popular vote—brought this previously neglected angle of the electoral system sharply to the fore. In the election of 1960, one elector in Oklahoma, elected on the Nixon slate, cast his vote for Byrd, and in Alabama, a mixed slate of electors was presented to the voters. Congress has repeatedly considered, since that time, several constitutional amendments on the subject.

Principal proposals

Proposals for betterment have been many. Some of them start from the premise that the people should elect directly, with no intervention of either personal electors or electoral votes, and from this advance to the suggestion either (1) that the country be thrown into a single grand contituency, with the people in the mass electing directly, by plurality or majority, without reference to state lines, most recently supported by Senators Morse (Ore.), Smith (Me.), and Mansfield (Mont.) or (2) that voting continue on a state basis, but with election by popular pluralities in a majority of states. The first suggestion ignores all considerations of state interest and pride, and would increase the need for a uniform national suffrage and election law which could not easily be obtained. The second, opening a way for a number of smaller states to swing an election by means of only a minority (perhaps very small) of the nation-wide popular vote, is palpably objectionable. Every plan now receiving

serious attention presumes the retention of ultimate choice by electoral rather than popular votes, the only questions being as to how such votes shall be allotted and whether they shall literally be "cast" by actual persons or be only abstractions mathematically calculated from the popular vote. Three main propositions in this vein have been made. (1) Abolish the electoral college and simply translate state-wide popular plurality votes into state quotas of electoral votes, all going in each state (as now) to the plurality candidates. A constitutional amendment of this purport twice narrowly failed to secure the necessary two-thirds vote in the Senate in 1934. Except for dropping out the electors, this plan would merely write into the Constitution what we already have, without touching the heart of the controversy, that is, getting away from a candidate's securing all of the electoral votes of a state simply by polling a state-wide popular plurality. To accomplish this major purpose (along with others), we have had two principal proposals, differing chiefly in the manner of proportioning electoral votes to popular votes. (2) Continue choosing one elector at large in each state, by plurality, for each senator and for each representative-at-large (if any), but choose all others—as was the common practice in early days—district by district, so as to make possible (and in most cases probable) a division of a state's electoral votes among different candidates. This plan has been supported recently by Senators Mundt (S. Dak.), Morton (Ky.), and Thurmond (S. C.). (3) Discard electors, let the people vote directly for president and vice-president, translate popular votes into electoral votes, and allot a state's electoral quota among the candidates in proportion to the state-wide popular votes polled. This plan has been supported recently by Senators Lodge (Mass.), Kefauver (Tenn.), and Daniel (Texas).

The major arguments raised against the district system of electing presidential electors are: (1) district lines are easy to gerrymander; (2) campaigning might be concentrated in a few marginal districts; (3) splinter parties by concentrating effort in a few districts might swing the election into the House of Representatives. Those raised against the plan of allocating electoral votes in each state on the basis of popular vote are: (1) a "minority" president would still be possible; (2) it would weaken the two party systems by allowing small parties to gain electoral votes and thus prestige. Many persons also say that the present system has served us well and there is no necessity for changing it.

Reform by state action unlikely

Any state might now, if it chose, institute the district plan, or indeed any other plan for proportioning popular to electoral votes—so long as electors were retained. The states already, therefore, have it in their power to deal, at least in piecemeal fashion, with the main problem involved in the whole matter. The same considerations of interest and pride (chiefly the increased political weight accruing from an undivided block of electoral votes) which originally induced one after another of them to give up the earlier district plan may be counted upon to frustrate any attempt within their own boundaries to revive it or anything resembling it.

RESULTS OF THE PRESENT SYSTEM IN TERMS OF PRESIDENTIAL FITNESS

Thirty-five different men have attained the presidency—27 by being elected directly to the office and eight by succeeding a deceased chief executive. In exercising their electoral function, what sort of record have the people achieved? How do the presidents that they have chosen measure up in terms of capacity, vision, diligence, and other qualities of statesmanship?

An uneven record

Many years ago, Lord Bryce included in his classic treatise, *The American Commonwealth*, a chapter entitled "Why Great Men Are Not Chosen President." He did not mean to imply that none such is ever chosen. But, looking back over a line of 20 presidents who had served the nation in its first 100 years, our friendly English critic could not see that the people had shown any consistent disposition to elevate even their strongest men (leaving aside the somewhat elusive quality of "greatness") to the highest office in their power to bestow. Through a century and a half, American presidents, another foreign observer affirms, have for the most part been mediocre when compared, for example, with British prime ministers during the same period. The judgment seems severe. There have been inferior prime ministers and able presidents. It is true, however, that many of the ablest American statesmen have never been elevated to the presidency and have witnessed this high office bestowed on inferior colleagues. Hamilton, Gallatin, Marshall, Clay, Webster, Calhoun, Burton, Sumner, Hay, Blaine, Root, Sherman, and Robert Taft, to select a few giants of the past, although dominant in their parties were passed by in favor, typically, of less influential and, in many cases, of less able men.

Party responsibility for selection

It is useless to wonder whether the original plan of the Constitution would have produced better results. The rise of the party system and the spread of democracy doomed the arrangement almost from its inception. It is to the exigencies of party politics that we must look to discover why and how presidents are selected. The voters in November can pick among two or three candidates, but the party organizations screen the field to narrow the choice. This is not to say that if a big democracy is going to have an elective chief executive at all, there is any better method of choosing him; nor certainly to imply that it would be practicable for choices of such magnitude to be made in any way other than through the instrumentality of parties. It is merely to state a basic fact: that the few persons *who* ever have a chance under our system to become president get it only when, and because, parties give it to them.

Some factors in "availability"

The considerations and circumstances making a man "available"—the "logical choice"—as a party candidate, and thereby narrowing the field of contenders, are not always such as to guarantee that he will be a strong president. There is, of course, no single formula, or pattern, for presidential timber; the same person might be wholly acceptable to a party under one set

of conditions and not at all so under another; everything depends on the character of the times, the prevailing public temper, and many other things. Experience indicates, however, that certain qualities or characteristics are likely to play a major role in making a candidate "available." (1) He should have demonstrated capacity for getting the voters to vote for him, that is, he should have run successfully for an important public office. (2) He should have attained his electoral successes preferably in a "pivotal" or "doubtful" state or section, especially one which the party must almost certainly carry to win the election (this rules out the statesmen of the South, the Plains, and Republican New England). (3) He must be sufficiently regular in his party affiliation to be regarded as reliable on party matters by the leaders. (4) He must be well enough known nationally to have some following outside his own state and yet not be identified with a particular region, cause, or program which is offensive to some other area (this rules out many important congressmen who have been obliged to vote on controversial issues). (5) He must have a group of loyal, devoted, and able supporters who can manage his campaign for him and carry on negotiations with other leaders which he, personally, can never do. (6) He might well have had military experience (12 of our presidents have had military titles). (7) Until 1960 it was supposed that a Catholic could not get elected. The best route to the presidency is from the governor's chair in New York, Ohio, Illinois, or other populous state where party strength is evenly divided between the two major parties. Congress has produced few able candidates as has the cabinet. In this respect 1960 was unusual in that most of the aspirants were senators. Typically, the giants of the legislative halls have had to take positions on too many public questions in their careers and have on each occasion alienated an important sector of the party or the electorate. Luck is also an important factor in president-making. Strong candidates, emerging at the same time in the same party have on several occasions battled one another out of the race at the convention and opened the door for a "dark horse" less well known than either—Lowden and Wood in the Republican convention of 1920 paved the way for Harding, and McAdoo and Smith prepared the path for Davis as the Democratic nominee in 1924. These are some of the factors which have brought to the presidency men of mediocre talent and have kept out of it their abler compatriots. Nevertheless, a system which has produced Washington, Jefferson, Jackson, Polk, Lincoln, Cleveland, Theodore Roosevelt, Wilson, and Franklin Roosevelt cannot be written off as a hopeless failure. It certainly works as well as the participants (the voters) have any right to expect.

One final word is necessary. The office of president, with its awesome responsibilities and its solitary dignity, has accumulated a tradition and a prestige through the years that lift the men who fill it beyond their realized talents. Men try to live up to the marks set by their illustrious predecessors. The ambition of thousands of politicians, although attained by few, its influence raises all to loftier conceptions of the public good.

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II

THE NATIONAL GOVERNMENT

A. ORGANIZATION, POWERS, AND PROCEDURES

9

The Structure and Organization of Congress

HAVING CONCLUDED A SURVEY of the constitutional basis of the American system of government and the democratic processes by which it is operated, we turn now to a consideration of the organizational structure through which legitimate power is exercised by our national government. It is appropriate to begin our discussion with the Congress. Not only is the legislature provided for first in our Constitution, but it may be said to have a certain primacy in any republican form of government. It can claim with some color of truth to be closest to the people and it is the major repository of power to make and declare public policy and to provide the means for its achievement.

THE BICAMERAL PATTERN

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.—Art. I, Sec. 1

Why two houses were established

With the exception of the Continental and Confederation Congresses and the legislatures briefly established by Vermont and Pennsylvania, the entire political experience of England and of colonial and revolutionary America confirmed the view that a legislature ought to consist of two houses. If a popular assembly were to be provided, a second chamber representing sectional or substantial vested interests ought clearly to review its deliberations. The framers of our Constitution made this decision early in their deliberations and never seriously considered changing it. The compromise by which the

federationists were mollified by representing states as such in one house and the nationalists by representing people in the other merely confirmed the wisdom of an arrangement already regarded as indispensable and provided a convenient basis for organizing the two houses upon different principles. In this way, the framers could be assured of some antagonism between the two bodies which would result in mutual restraint as well as accommodation.

General acceptance of the two-house system

The arrangement, although never entirely free of criticism, has become an accepted and approved part of the American scheme. Most of the criticism has come from those who decry the deadlocks, delays, duplications, and diffusion of responsibility which two equal and independent authorities tend to induce. All levels of government at one time or another imitated the national legislature but virtually all cities and one state, Nebraska, have abandoned the bicameral plan and gone over to the one-house legislature, partly as a result of the frustrations alluded to by the critics. Some criticism has come also from those who deplore any organizational arrangements which mitigate or obstruct the clear will of a numerical majority of the electorate as expressed by their representatives. In any event, there are now few serious suggestions to abandon the two-house system in the Congress. A great many competent authorities see it as a positive source of strength to our republic, making possible the acceptance of national authority over an area as vast, as varied, and as populous as that of the United States.

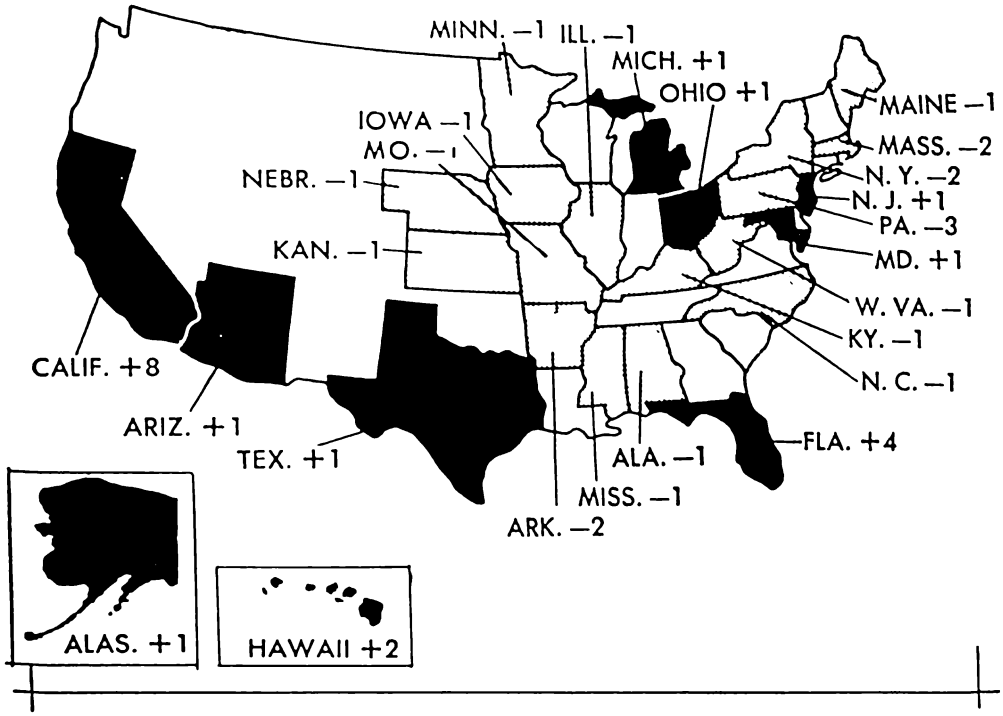
REPRESENTATION IN THE HOUSE—THE DISTRICT SYSTEM

> Representatives . . . shall be apportioned among the several States . . . according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The actual enumeration shall be made . . . within every term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative.—Art. 1, Sec. 2, cl. 3 as amended by Art. XIV

Reapportionment and increasing the size of the House

Although the Constitution does not expressly require a redistribution of the seats in the House of Representatives to accommodate that body to changes in population revealed by the decennial census, that is clearly what was intended. Until 1920, the Congress never failed to readjust its membership each decade. With the exception of that of 1842, every decennial readjustment up to World War I had been achieved, however, only by substantial increase in the total number of representatives. By the turn of the century, apprehension was gaining that the House was becoming too large for effective deliberation. Given the great mobility of our people, if a limit on the size of the House is to be achieved, some states and, of course, some representatives would have to give up seats. This the state delegations in both houses were understandably reluctant to do. Unable to agree either to increase the

CHANGES IN REPRESENTATION IN THE HOUSE OF REPRESENTATIVES UNDER THE REAPPORTIONMENT OF 1961



size of the House or to take seats away from some states, the Congress after 1920 did nothing for several years.

Present method of reapportionment

Before a census would reveal exactly which states might gain or lose and how much, the Congress in 1929 provided for a "permanent" system of reapportionment which would discourage any further growth in its own membership and would obviate the necessity for any further congressional action on the subject. This act, as amended in 1941, has served as the basis of reapportionment since that time. Under it, (1) the size of the House is fixed at 435;[1] (2) after each census, the Bureau of the Census prepares for the president a table showing the number of inhabitants of each state and the number of representatives to which each state is entitled; (3) the president transmits the information to Congress; and, (4) the proposed distribution becomes effective 15 days after it is sent to Congress unless Congress enacts a different distribution. Up to this time, Congress has allowed the proposed arrangement to take effect without modification. In the reapportionments since 1929, the western

[1] At the time of admission of Hawaii and Alaska, the House was temporarily increased to 437, but reverted to 435 after the decennial reapportionment of 1961.

coastal states and Florida have consistently gained seats at the expense largely of New York, Pennsylvania, Illinois, and the Plains states.

The single-member district system

For the first half-century of our national life the method of choosing representatives was determined by state legislatures. Some chose to have them elected by single-member districts, others on a state-wide (at-large) basis. In the apportionment act of 1842, Congress required every state entitled to more than one representative to divide the state into districts of contiguous territory, each entitled to elect one representative. This language was retained in all subsequent actions by the Congress. The requirement that the districts be composed also of compact areas was added in 1901 and thereafter until 1929. The present act, however, omits the requirement that the districts be composed of compact and contiguous territory and modifies the single-member district requirement by authorizing general (at-large) election of some or all of the representatives under specified conditions. Even when the earlier rules applied, however, Congress made no effort seriously to enforce them upon the states.

Superiority of the district system

In spite of the qualifications and modifications mentioned, the single-member district system is predominant in practice and is firmly fixed in the American system of government. No one seriously expects that it will soon be abandoned. Unless some form of voting is used which will guarantee minority representation in connection with the state-wide form of representation, the single-member district system is decidedly the better of the two systems. It tends to assure representation to a wider variety of groups and interests, and thus to strengthen the representative character of the lower house. The district system as it now operates, however, is not without its difficulties, and the House of Representatives elected by this system is far from a perfect reflection of the national population for which it speaks.

Problems of redistricting

The major problems of the present system spring from the great difficulties—political, emotional, and geographical—of drawing the district boundaries, a job which is assigned to the state legislatures. There are two kinds of impulses that color the views of state legislators on this subject: (1) the hope of partisan advantage from drawing the lines in a particular way; and, (2) the fear, by rural and small-town legislators, of granting to the rapidly growing urban areas the representative strength to which their numbers entitle them. Obviously, it is not possible to have districts which are perfectly equal in population and which also pay some regard to local governmental boundaries. Thus inequality will occur to some extent in the most objective and impersonal efforts to draw the lines. State legislators typically, have no strong impulse to be either objective or impersonal when drawing the boundary lines of the congressional districts.

Gerrymandering

The practice of drawing district boundary lines with a view to partisan or factional advantage is known as gerrymandering. The method is to spread the known support for your party or faction over as many districts as possible and to concentrate the known support for the other party into as few districts as possible. Few redistricting laws have been passed by state legislatures which

do not bear evidence of some manipulation of lines for partisan purposes. Some episodes, however, have been much more flagrant than others.

Effect of urbanization on redistricting

Virtually every census for the past century has revealed the continuing movement of the American people from farm to city. Every state legislature has, therefore, been repeatedly confronted with the necessity, if districts are to be kept reasonably equal, of increasing the number of seats in the urban areas and, since 1929, of decreasing the number in the rural areas. In most of our state legislatures the rural and small town areas are grossly overrepresented in terms of population, and the rural legislators have been and are now reluctant to augment the strength of the urban contingent in Congress. Frequently this cleavage has been aggravated by the fact that one party, usually the Democrats, has been predominant in the large cities and another party in the countryside. This reluctance has produced redistricting in which the districts were still quite unequal in size (the largest district, Texas 5th, had in 1962, 951,000 and the smallest, Michigan 12th, had 177,000), partial redistricting only, and, in some cases, no redistricting at all (Colorado has not redistricted since 1921). Rural areas are, in consequence, somewhat overrepresented in the House of Representatives. Rural overrepresentation also stems from the constitutional requirement that each state have at least one representative. Thus Nevada, with a total population of only 290,000, is entitled to a representative, although the average district contains 410,000.

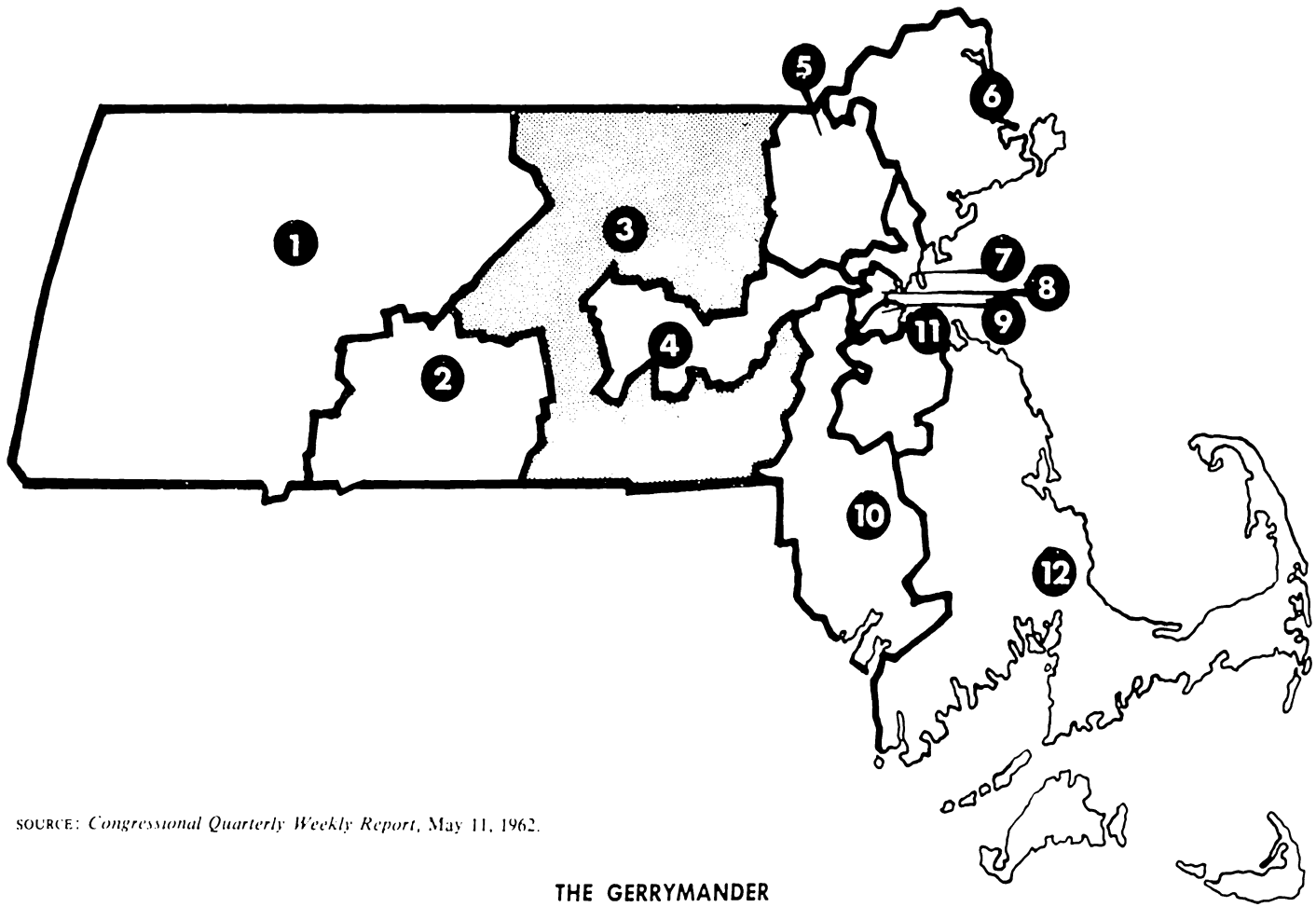
Various presidential efforts to achieve greater equality of congressional districts have not been successful thus far. It now appears likely, however, that the Supreme Court will enter the fray. Scheduled for decision in 1964 are two cases attacking extant apportionment systems under the principles enumerated in the state legislative district case of 1962.

REPRESENTATION IN THE SENATE—STATE EQUALITY

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote.—Art. I, Sec. 3, cl. 1, as amended by Seventeenth Amendment

Undemocratic character of the Senate

The Senate is not troubled by the problems of the district system. Representation in it is not and was never intended to be in any sense related to population. Every state, large or small, populous or not, rich or poor, industrial or agricultural, is entitled to two senators. And it may not be deprived of its equality with the others except with its own consent. The Senate is a federal institution. It is not a democratic one, at least insofar as democratic principles require an equality of representation for people as people. Until the Constitution was amended in 1913 to provide for the popular election of senators, it was not democratic in any respect. The tide of democracy which swept over and modified the American constitutional system during the last century left the federal character of the Senate untouched. To some adherents of the demo-



SOURCE: *Congressional Quarterly Weekly Report*, May 11, 1962.

THE GERRYMANDER

cratic faith, the fact that about 20 per cent of the population of the United States can control a majority of the senators remains a conspicuous failure of the American system. The Senate, of course, was not designed by democrats but by constitutionalists intent upon preserving and strengthening the American Union.

THE SELECTION OF MEMBERS OF CONGRESS

Regulated by state law

The manner of electing senators and representatives is largely regulated by state law and thus varies in many details from state to state. Experience in this matter has been little different from that of electing all types of public officers in the United States, and at the present time the predominant mode is nomination by direct primary and election by secret, partisan ballot at the same time as many other public officials are chosen. Congress has exercised its constitutional authority to regulate the election of its members by requiring: (1) the single-member district system for representatives (1842); (2) the secret ballot (1872); (3) the election everywhere to take place on the Tuesday after the first Monday in November of any even-numbered year. The Congress has also enacted regulations governing campaign expenditures in national elections. The qualifications for voting in these congressional elections are established by state law also, but the Supreme Court has held that the right to vote for members of Congress is not conferred by the states but rather is one of the "privileges and immunities" of citizens of the United States protected by the Fourteenth Amendment. Disputed elections of members of Congress are ultimately decided by the House or the Senate.

The adoption of popular election of senators

The most important change in the method of selecting members of Congress was the adoption in 1913 of direct popular election of senators in place of selection by state legislatures, which had been the practice up to that time. Whatever may have been the advantages which characterized legislative selection, toward the end of the last century it fell increasingly into disrepute. Recurring deadlocks left some seats vacant for several years; the preoccupation of state legislators with the selection of senators interfered with the discharge of their state and local responsibilities; concern by the voters for the legislature's selection led to election of state legislators on no other basis except their promised support of a particular candidate. The Senate was widely charged with being filled with the minions of powerful (and at the moment unpopular) interests which browbeat, bribed, and intimidated state legislators into choosing rich men who were not really representative of the state. The swelling enthusiasm for democratic processes instilled in many the conviction that legislative election was undemocratic and ought to be abandoned. The Senate finally, though reluctantly, concurred and the Seventeenth Amendment was added to the Constitution.

Results of popular election

The effects of this change cannot easily be measured. The expectation of its sponsors that money would play a less important role in elections has certainly not been realized. Legitimate expenditures for individuals campaign-

ing over an entire state are probably greatly in excess of what might have been spent to influence a state legislature. Excessive, perhaps illegitimate, expenditures have been made on several occasions. The change in the character or quality of the senators has not been appreciable. Certainly there was no abrupt change in personnel. Contrary to expectation, re-elections have been more numerous than under the old system. State legislatures have clearly been made freer to concentrate on the tasks of state government than they were before and deadlocks have become impossible. If under the old system an occasional plutocrat bought his way into the Senate to satisfy purely personal ambition, under the new one the demagogue and the windbag probably get in more readily than before. If, however, our senators today are not demonstrably better than they once were, they are not demonstrably worse as the opponents of popular election predicted. Taft, Douglas, Fulbright, Millikin, Russell, among recent senators, are probably as able and as honest as any that the Senate of the past century can show.

Term

The term of senators is six years and this puts each senator in a much different position than a representative. He is able to devote himself for several years to his senatorial responsibilities without constant anxiety about reelection. He serves through several sessions of Congress and is able to acquire a great deal of understanding and experience before he is obliged to stand before the voters of his state and ask for a vote of confidence. Many senators serve more than one term and periods of service extending to 18 or even 24 years are not uncommon. Continuity of personnel is also obtained by the constitutional arrangement for the election of only one-third of the membership every two years.

QUALIFICATIONS FOR MEMBERSHIP

> No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the Unitied States and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.—Art. I, Sec. 2, cl. 2

> No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.—Art. I, Sec. 3, cl. 3

Qualifications added by usage

Many decades of political experience have resulted in the addition by custom and usage to the bare constitutional requirements. It is virtually a universal requirement that representatives be residents of the district for which they sit as well as of the state in which it is located. In some sections of the country, it is almost indispensable that an individual be a Republican and in others that he be a Democrat, in order to seek election with any hope of suc-

cess. Every district has by this time a large number of unwritten qualifications which constitute "availability" in a candidate for the national legislature. These are so varied, however, that no safe generalization is possible. Suffice it to say that simple compliance with the age, citizenship, and residence requirements does not "qualify" a person for Congress.

Qualifications imposed by the two houses

The two houses of Congress, furthermore, have each chosen to exercise their prerogative of judging the qualifications of those who present themselves for membership by excluding individuals on grounds unrelated to the constitutional specifications. The House in 1900 refused to seat Brigham H. Roberts of Utah on the grounds that he was a polygamist. Victor L. Berger of Wisconsin was excluded in 1919 because he had been judicially convicted of obstructing the war effort. In both instances there were members of the House who argued that this procedure was unconstitutional and the proper course was to seat such individuals and then, if they were deemed unfit for membership, expel them. It takes only a majority vote to exclude and a two-thirds vote to expel, and the critics of the two individuals preferred, and successfully persuaded the House to prefer, the easier method. The Senate, on its part, has accepted "questionable" members after some debate on the grounds that the constitutional method is expulsion. Reed Smoot of Utah (1903) and William Langer of North Dakota (1941) were both seated although under attack. On the other hand, in 1928 it refused to seat Frank L. Smith of Illinois and William S. Vare of Pennsylvania on the grounds that they had exceeded by a great deal the legal limit on campaign expenditures in their contests for election. Grave doubts still exist among members of Congress and students of the propriety and legality of the imposition by the two houses of additional qualifications.

CONGRESSIONAL PERSONNEL

The typical congressman

What kinds of men and women are our lawmakers in Washington? They are not "average" Americans in most respects, but rather well above the average in terms of education, age, and means. A study made of a recent Congress may be taken as fairly typical of that body in modern times. It revealed that: (1) the average age of our representatives is 52 and of senators 58, well above the average of the population generally; (2) the lawmakers are well rooted in the districts which they represent by birth and long residence; (3) they are affiliated with one or another of the major religious faiths in about the same proportion as the people generally; (4) 88 per cent attended college or a professional school or both; (5) many of them had substantial prior political experience in state and local government as legislators, governors, mayors, district attorneys; and, (6) a majority are lawyers. In addition to the law, the other professions had some representation as did the world of business and finance. Few members were themselves farmers and none were laborers.

This summary indicates clearly that our legislators come largely from the upper middle class economically and socially. The typical legislator is a

county-seat lawyer, serving his third or fourth term, comfortable but not rich, a church member, a leader in his community and region, but not well known outside it, a member of one of the fraternal orders, and, more and more frequently, a veteran.

THE ROLE OF POLITICAL PARTIES IN THE CONGRESS

Parties in the Congress

It is impossible to understand the character and conduct of our national legislature without an appreciation of the powerful influence of political parties in its organization. Sometimes called the "invisible government" of the Congress, the party apparatus, developed outside the Constitution, nevertheless dominates the formal institutions of congressional leadership. All but a small handful of the nation's legislators have come to Congress bearing the label of one or the other of the two great parties. Elected under the sign of the elephant or the donkey, the members profess a certain loyalty to these two great political organizations and to their aims and programs enunciated during the campaign. One of the two parties will normally command the support of a majority of the members of each house and will take possession of the formal positions of authority and leadership; the other, although a minority and therefore not obliged to assume any responsibility for what is done by the Congress, is nevertheless by usage and tradition entitled to certain rights and privileges. Loyalty to these party organizations is a necessary requisite to the achievement of position, influence, and prestige in the legislative process, and this loyalty provides the only consequential bond which unites the party members and fuels the machine of party government.

The party conference or caucus

The font of authority for the agencies of party government is the party caucus or conference. All of the members of each party in each house comprise the party caucuses of the two parties in the House and Senate. Thus all of the Republican members of the House of Representatives comprise the Republican conference of the House. The party conferences always assemble prior to the convening of each new Congress and elect the officers and functionaries of the parties for the Congress and also agree on the party candidates for the major posts to be determined by the legislature. Thus, the House conferences will designate their choices for speaker, clerk, and so on, and the Senate conferences their choices for president *pro tempore*, secretary, and sergeant. Beyond this, the party conferences rarely meet. They prefer to entrust decisions thereafter to their designated agents. However, when rifts occur which threaten a major breakdown in party loyalty or when the leaders are unable to reconcile differences within the group on major legislative matters, the conferences may and do assemble and try to give new direction to the party apparatus. The practice of determining a party position on legislation by the caucus is a last resort. Leaders seek to avoid it at almost any cost and the members dislike it intensely. For one reason, it is next to impossible to enforce the caucus decision on reluctant members. The Republicans rarely even try. The Democrats, in the House at least, have a caucus rule which purports to

bind the members to support a caucus decision reached by a two-thirds vote. The rule admits of certain exceptions, and enforcement has rarely been strict. We see, then, that the party caucuses select both the leaders of the party machinery and, in the case of the majority party, the chief officers of the House and Senate and they also exercise some, but not much, control over legislative programs. In the main, the latter object is achieved by the leaders whom the caucuses entrust with such powers as they command.

SENATE CONFERENCE MEETING

ANNOUNCEMENT OF DEMOCRATIC CONFERENCE MONDAY, FEBRUARY 15, 1960

Mr. MANSFIELD. Mr. President, I wish to make the announcement to the Senate that there will be a Democratic conference on Monday morning, February 15, at 9:30, at which time we will discuss the President's budget, the joint economic report, and the matter of interest rates. This will serve as a notice to the Democrats that a meeting will be held at that time on that date to cover these particular subjects.

SOURCE: *Congressional Record, Senate*, Feb. 9, 1960, 2327.

Agents of the caucus:

One of the major agents to which the caucuses entrust the power and responsibility for the achievement of party goals is the policy committee. This committee was created in 1946 as part of a general reorganization of the Congress and was intended to replace the steering committee which had functioned for many years previously. The Democrats in the Senate, however, continue to use their steering committee for the purpose of assigning their members to standing committees. The Democratic steering committee is elected by the party conference, consists ordinarily of 12-15 members and meets only at the beginning of the session or when a death or resignation creates a committee vacancy which the party is entitled to fill. Although the legislation of 1946 creating the policy committees fixed the membership at seven, neither party has hewed to the letter of the law. The Republican Policy Committee now includes 13 senators and the Democratic Policy Committee nine. The members are selected in each case by the party conferences. Each party makes an effort to represent the major regions of the nation and the major factions in the party, although not necessarily in proportion to voting strength in the Senate or to population or party vote in the region. Typically, these committees have been composed of the most respected and experienced legislators in the two parties.

1. The steering and policy committees

These two committees meet frequently and, in the case of the majority committee, select bills to be given floor consideration, decide the time when they might be taken up, and in general, formulate positions on some measures which they hope and believe their party colleagues will support. Neither committee has ever really determined policy or formulated a legislative program for the party.

The House of Representatives has never formally created any policy

committees. In 1949, the Republicans converted their steering committee, but this was unofficial and no staff and no funds were provided. This committee is composed of 27 members selected by the committee on committees, four ex officio members (the floor leader, whip, conference chairman, and chairman of the congressional campaign committee), and the Republican members of the rules committee. The Democratic Steering Committee, created in 1933 and revitalized in 1962, is composed of 18 members representing a similar number of geographical regions and six ex officio members. Each of the 18 area representatives is selected by the Democratic representatives from that area. The Republicans have used their policy committee with some frequency in the last few years, but not really to lay down a policy for the party. The Democrat leadership has not relied on the steering committee to any degree.

2. The floor leaders

The party conferences in each house designate floor leaders to direct the legislative programs of the two parties. In the House of Representatives, the majority leader plans the business of the House, offers the necessary motions and resolutions to keep his party's bills moving through the legislative process, announces the intentions of his group toward future legislative business, speaks frequently in debate on behalf of his party and often on behalf of the national administration. He is, after the speaker, the second in command of his party's legislative campaign. His favorable opinion is almost indispensable to the passage of important legislation. His power and influence over the operations of the lower chamber is exceeded only by that of the speaker, and he may expect to succeed to the speakership upon the death or resignation of the incumbent as long as his party possesses a majority of the House.

The majority floor leader of the Senate occupies a position similar in most respects to his counterpart in the House. His functions and responsibilities are identical but, typically, his personal influence is not as great because of the more individualistic, less regimented nature of the Senate. On the other hand, the Senate majority leader has neither a powerful presiding officer nor a powerful rules committee with which he must share some of his power. He does, however, use the policy committee, of which he is a member, a little more often than his counterparts in the House. The Republican party in the Senate assigns different senators to preside over the party conference, to be floor leader, and to head the policy committee. The Democrats expect their floor leader to serve in the other posts also.

The minority leaders of the two houses have nothing like the responsibility of the majority leaders. Their party cannot expect to have a legislative program in any positive sense. As leaders of the opposition, they direct the floor strategy of their followers, attacking, criticizing, delaying the majority's program, or at least those parts of it which they are unwilling to support. In frequent conferences with the majority leaders, they seek to gain appropriate representation in parliamentary institutions and adequate time for the minority to present its views in debate. They also strive, usually successfully, to obtain from the majority leaders commitments as to the ensuing course of legislative business so they can advise their members and plan their tactics. When

LEGISLATIVE PROGRAM

Mr. DIRKSEN. Mr. President, I wish to ask the distinguished majority leader whether he can acquaint us with the program for the remainder of the evening and for tomorrow, and what he contemplates will occur next week.

Mr. MANSFIELD. Mr. President, it is the hope that we can finish consideration of the Federal aid highway bill tonight. It is my understanding that the Senator from Indiana does not anticipate a yea-and-nay vote on his amendment. It is my further understanding that the manager of the bill likewise does not anticipate a yea-and-nay vote.

If we can complete our work within a reasonable time—say by 8 o'clock—we shall consider adjourning until 12 o'clock tomorrow. Then there will be no controversy of any kind. Several Senators wish to make speeches upon very important subjects. We might consider the measures on the calendar to which there is no objection.

In other words, there will be a short session, with no votes, and then the Senate will adjourn from Friday until Tuesday, at which time we shall consider the proposed reorganization plan, as already agreed to; the Department of Agriculture appropriation bill; and other measures which might be ready for action at that time.

THE FLOOR LEADER AT WORK

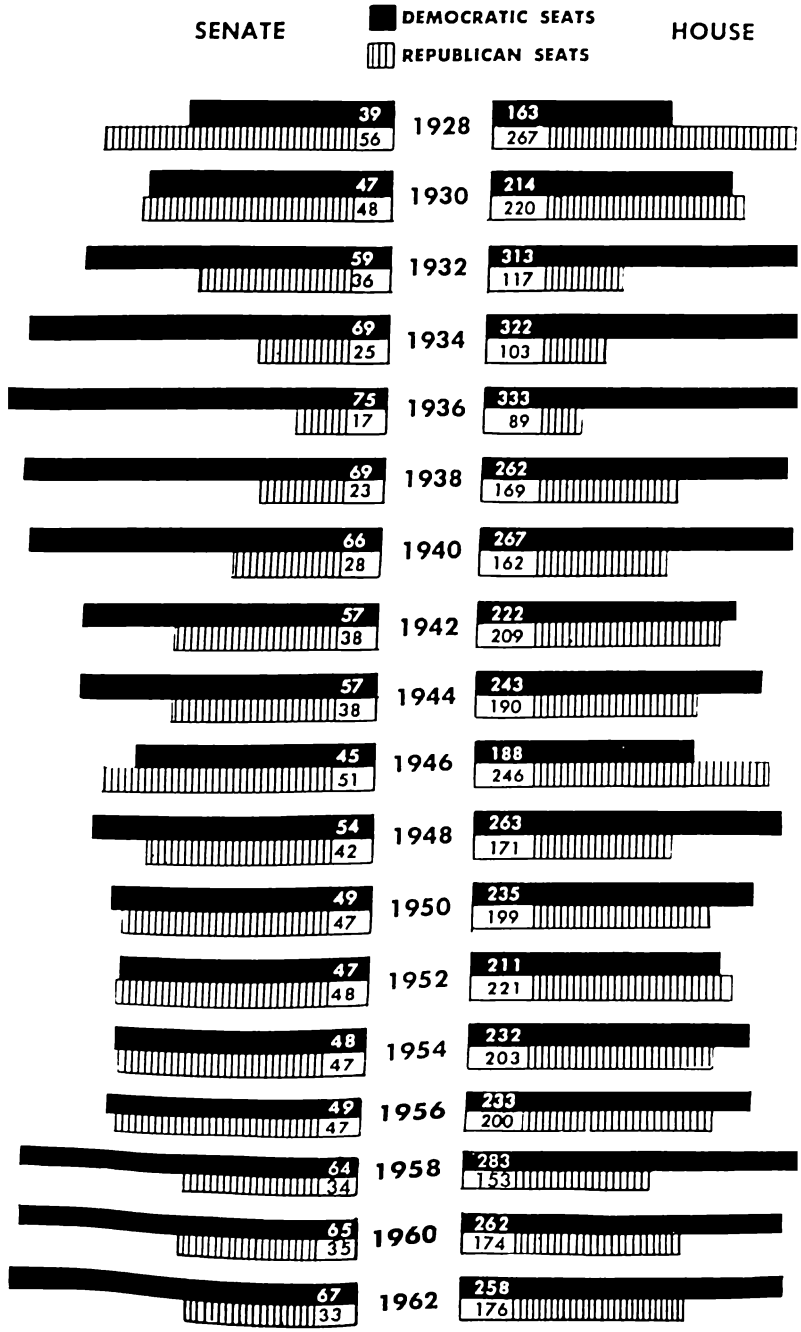
SOURCE: *Congressional Record, Senate*, June 15, 1961, p. 9826.

he party majority shifts in either or both houses, of course, the minority lea rs may expect to succeed to the speakership in the House and to the majori loor leadership or presidency *pro tempore* in the Senate.

The floor leaders for each party in each house have been aided, sin bout 1900, by assistant floor leaders usually called whips. These individua re selected by the party conferences, typically on the recommendation of t loor leaders. These whips act for the floor leaders when the latter are oblig o be absent from the chambers. The major duty of the whip is to canvass t iews of the members of his party on issues before the Congress and to advi he floor leader how many votes he can count on, on any given item of legisl ive business. Another duty of the whip is to see that the voting strength of h party is fully brought to bear on every significant legislative decision. In t House, the whip ordinarily appoints several assistants to aid him in canvassi opinion and in mustering the members to important roll calls. The secretari o the policy committees in the Senate perform many of the functions of assis nt whips.

One final and very important agent of the caucus is the committee o committees. This group performs the difficult and delicate task of selectir he party membership for each of the standing committees. The House R publican Committee on Committees consists of one representative from eac tate having Republican representation. Each state Republican delegation s ects its own member. Each member of the committee has as many votes a here are Republican representatives from his state. The House Democrat Committee on Committees is the Democratic delegation on the Ways an

MAJOR PARTY STRENGTH IN CONGRESS, 1928–62



Divisions of seats based on election results of the respective years. Seats won by minor parties account for the fact that figures do not always total the full membership of the Senate and the House. 100 percent for Democrats and Republicans combined.

Means Committee and this is designated by the caucus. The Senate Republican Committee on Committees ordinarily consists of from six to nine senators appointed by the chairman of the Republican conference. The Senate Democratic Steering Committee serves as its committee on committees.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

> The House of Representatives shall choose their Speaker and other officers. . . . – Art. I, Sec. II, cl. 5

From presiding officer to director

Of the formal institutions of leadership provided by the Constitution and by the rules of the two houses, by far the most important is the speaker of the House of Representatives. This office had had a long history in the English House of Commons before it was transported to the colonial legislatures and from there to the legislatures of the states and of the nation. The powers adhering to the post were never very precisely defined, and almost two centuries of experience have made of the speakership a very different office from its contemporary counterpart in the British Parliament. The speaker is the most powerful single individual in the House of Representatives in determining the legislative product of that body; whereas in England the speaker is simply an impartial presiding officer and has little or no influence on legislation. The power and influence of the speakership in the American system is the product of the rapid expansion of the size of the House, the continuous increase in the complexity of its business and the growth in influence and importance of the informal party government. All of these created a demand for leadership and direction. The speaker, with his party majority behind him and from his strategic post of presiding officer, gradually gathered to himself the powers of direction, some have said of dictation. The major instruments of speaker dominance had been achieved gradually, but by 1910 had collectively constituted a formidable array. In the first place, the speaker appointed the members of all standing committees as well as of all special or select committees of the House. The fate of legislation in the lower house was, and still is, so completely determined by the standing committees that the power to determine the membership of these committees is probably the most important authority in the Congress. Originally the committees had been staffed by vote of the whole house, but the power had slipped gradually into the sole hands of the presiding officer. Secondly, the speaker was chairman of the most powerful of the standing committees, the rules committee. This small committee, consisting at the time of only five men, completely dominated the progress of legislative business on the floor of the House. In the next place, the speaker successfully asserted and exercised the power to refuse to put motions offered by members which he considered dilatory or obstructive. Finally, the rules endowed the speaker with complete control over floor participation of individual members through his right to "recognize" members and their inability to address the House unless recognized.

The attack on the speakership in 1910-11

The dominion of Speaker Cannon was so complete and his own policies so at variance with that of many of the members even of his own party that a long-simmering revolt against "the system" boiled over in 1910, and a coalition of insurgent Republicans with the Democratic minority succeeded in capturing control of the House long enough to deal the speakership a heavy blow. The speaker was removed from membership on the rules committee. In 1911, the power to appoint standing committees was vested in the whole House by the same coalition. These actions deprived the office of two of its most important weapons, and the speaker has never been quite so powerful since.

Powers of the modern speaker

Although weakened by the changes of 1910-11, the speaker is still the most important and most powerful member of the House. He presides over all sittings of the House, appoints those who take his place when he must be absent, preserves order and decorum, "recognizes" members desiring to speak, signs all acts, resolutions, writs, warrants or subpoenas ordered by the House, interprets and applies the rules, decides points of order (questions of parliamentary procedure raised by members), puts questions to a vote, determines the outcome of most unrecorded voting, appoints all special, select, and conference committees, and assigns bills to the various standing committees. As a member of the House, he may speak in debate and vote on all questions before the House. He is not, however, required to vote except in case of a tie or when the House is voting by ballot.

The power of recognition

Among this imposing array of powers and responsibilities the power of recognition may be used to illustrate the role of the speaker in directing the lower house. Under the rules of the House, any member desiring to speak for any purpose must address the chair and be recognized by it. The speaker has the sole authority to accord the necessary recognition. By his refusal to recognize a member seeking the floor, the speaker can influence the course of business. If he knows that a member is seeking the floor to offer motions which might delay or sidetrack business which the speaker wants pushed forward, he refuses to "see" him when he rises. It should not be inferred that the speaker will ignore the minority. Ordinarily, he allots to their adherents a fair share of the debating time, but he is under no obligation to allow them to interfere with the majority program. The speaker is also able to inquire the purpose for which members seek the floor and thus cannot easily be caught off guard by an unanticipated parliamentary maneuver. Debate on legislative measures is customarily controlled by the chairman and senior minority member of the standing committee to which a bill was referred and these men apportion the time for each side. The speaker customarily accepts these arrangements and by rule the two leaders must be allowed the floor. In summary, through the power of recognition the speaker can influence the course of legislative business but is not free to dominate debate.

The power to halt obstruction

The speaker is now accorded by the rules the powers asserted earlier by Speaker Reed to refuse to put dilatory motions and to count as present all members who, in fact, are present whether they answer to their names or

not. Both of these grew out of minority tactics to delay and obstruct majority legislative action.

Partisanship

The House of Representatives has come to expect that the speaker will use his enormous power and influence to aid his party. Although the speaker is expected to preside in a judicial manner and to be as fair as the rules permit to the minority, he is an important leader of the majority party and is expected to use his influence in behalf of its legislative program. We have already observed that the speaker, although formally elected by the whole House, is actually the leader of the majority party and is designated for his high office by the members of the party in caucus. In his office, the formal leadership and the informal party leadership are combined. It is because he has his party behind him that he is able to exercise the influence over the proceedings that he does.

Qualifications of the speaker

Neither the Constitution nor the rules establish any qualifications for the office of speaker. He does not even have to be a member of the House. Every speaker, however, has been a representative. Furthermore, every speaker, at least for the past half century, has been a member of long service. The average service of the speakers since 1896 has been more than 22 years. Seniority is not rigidly adhered to in the selection, and the speaker has not always or even typically been the member of longest service. He has, however, been one of the most experienced members of the House and, from this fact alone, has stemmed a considerable part of his influence. Like the chairmen of the standing committees, the speaker is likely to come from a "safe" district and, therefore, to emerge from a political environment quite different from that which produces the president.

THE PRESIDING OFFICERS OF THE SENATE

> The Senate shall choose their other officers, and also a president *pro tempore* in the absence of the Vice President. . . .
> —Art. I, Sec. III, cl. 5

The vice-president

There is no counterpart in the Senate to the speaker of the House of Representatives. The regular presiding officer of the Senate is the vice-president of the United States. He is not a leader emerging from the operations of the Senate and, therefore, has not typically enjoyed either the power or the influence of the speaker. He has all of the normal powers of presiding officers, but he is not designated by the majority caucus. He is not a member able to take the floor and argue for his party's program. He does not ordinarily bring to the post many years of continuous service in that body. The rules of the Senate are not designed to enhance the powers of its leaders. A vice-president is influential in the deliberations of the Senate, and some have been, only if he personally can by his experience and ability command such influence.

The president *pro tempore*, with whom the vice-president shares his presiding functions and who is selected by the Senate itself, comes a little closer

The president *pro tempore*

to the speaker. Even he, however, is ordinarily overshadowed by the majority floor leader and typically exercises nothing like the speaker's influence. Only since 1890 has the post been a continuing one, and only in part of the period since then has it been an influential one. The reasons for the relative weakness of this post lie in the smaller numerical size of the chamber and the added stature that this gives to each senator. Senators are apt to be exceedingly jealous of their prerogatives. They are not easily led and on many occasions will not be led at all, even by someone of their own choosing. The president *pro tempore* is but one of several leaders of the majority party in the Senate. His is nevertheless an office of considerable power, prestige, and perquisites and it is vigorously sought after. Like the speakership, it is a partisan office and is used to forward the program of the majority party.

THE COMMITTEE SYSTEM OF THE HOUSE AND SENATE

Development of the committee system

Legislative bodies the world over achieve more careful review of proposed legislation and save the time of the members by referring most matters brought before them to committees for study and report. Nowhere, however, do these committees play such a dominant part in shaping the legislative product as in the American Congress, and especially in the House of Representatives. The development of an elaborate system of standing committees to which are referred almost every piece of legislative business took several decades but by the latter part of the last century it had become customary to assign each member of the House and Senate to one or more of the standing committees and to refer all legislation upon introduction to one of them.

Types of committees

In addition to the standing committees, the House still makes use of committees of the whole. It also continues, as does the Senate, to make some use of special and select committees. At present each house, for example, has a select committee on small business. At one time investigations were undertaken very largely by special committees, but since the reorganization of 1946 which sought to make special committees unnecessary this has not been true. The Congress has occasionally created special or select committees which include representatives of both houses. These are called joint committees and may be established by resolution or by statute. Typically, they are entrusted with a mission which it is felt cannot or will not be carried out effectively by the standing committees. Sometimes they are charged with investigations, occasionally with supervising some aspect of congressional business, such as printing or the Library of Congress. Some statutes, which have sought closer co-ordination between the legislative branch and the executive branch in a particular field of national affairs, have provided for a joint committee for this purpose, for example, the Joint Committee on Atomic Energy and the Joint Committee on the Economic Report (of the president). Another type of congressional committee is the conference committee, about which more will be said in the next chapter. All of these special, select, joint, or conference committees are appointed by the presiding officers of the two

houses. While they may, and do on occasion, achieve great prominence, their influence ordinarily is minor compared with that of the standing committees.

Standing committees:

The pressure of increasing legislative business and of members for greater recognition and perquisites tends to multiply the number of standing committees, and this multiplication tends to produce overlapping and duplication of committee jurisdictions. Periodically, the Congress has had to reduce the number and clarify the missions of its standing committees. The most substantial effort in this direction was made by the Congressional Reorganization Act of 1946. This act, as later modified, is the basis of the committee system of the present Congress.

1. Number and size

STANDING COMMITTEES 88TH CONGRESS, 1963

House of Representatives		*Senate*	
Agriculture	35	Aeronautical and Space Sciences	15
Appropriations	50	Agriculture and Forestry	17
Armed Services	37	Appropriations	27
Banking and Currency	33	Armed Services	17
District of Columbia	25	Banking and Currency	15
Education and Labor	31	District of Columbia	7
Foreign Affairs	33	Finance	17
Government Operations	31	Foreign Relations	17
House Administration	25	Government Operations	15
Interior and Insular Affairs	33	Interior and Insular Affairs	17
Interstate and Foreign Commerce	33	Interstate and Foreign Commerce	17
Judiciary	35	Judiciary	15
Merchant Marine and Fisheries	31	Labor and Public Welfare	15
Post Office and Civil Service	25	Post Office and Civil Service	9
Public Works	34	Public Works	17
Rules	15	Rules and Administration	9
Science and Astronautics	31		
Un-American Activities	9		
Veterans Affairs	25		
Ways and Means	25		

2. Assignments per member

In the unreorganized Congress, most members of the two houses served on several committees. In the House, however, only a few members had more than one major assignment. On occasion, therefore, a few members in each house might have influential positions on two or three committees and thus possess unusual personal power. The reduction in committees was accompanied by an attempt, largely successful, to limit each member in the House to but one committee. Senators are generally restricted, under the new scheme, to service on not more than two committees. The result has been a more even distribution of the work load among members of the two houses.

3. Selection of committee members

Although members of Congress are formally elected to the standing committees by vote of the house to which they belong, actually this vote is but a ratification of the selections made in private conference by the committee on

committees of each of the two parties in each house. The rivalry for committee posts is intense and the distribution of committee seats is one of the most difficult chores in the Congress. In the House of Representatives especially, the power, influence, and legislative success of each member is largely determined by his committee assignment. Almost his entire participation in the legislative process will stem from his committee work. Therefore, members are all keenly anxious to obtain posts on the more important committees and particularly on those which handle the problems of greatest concern to the districts which they represent. Many years of experience in the troublesome field of committee assignments have induced the two houses to evolve a very rigid but unwritten code to govern the process. Major weight is assigned to length of continuous service. Once assigned to a particular committee a legislator may confidently expect to advance up the ladder of precedence as long as he continues to be elected by the voters. The only major exception to this rule involves members who are willing to sacrifice seniority on minor committees to gain seats on major committees. The job of the selecting agencies thus resolves itself into: (1) determining the number of posts to be filled on each committee; (2) assigning newly elected members to the committees; (3) taking care of as many of those who have already served on each committee as the total party membership on the committee permits; and (4) accommodating as many as feasible of those who are interested in or are obliged to shift from one committee to another.

Party strength on committees

The number of seats to be assigned to each party on each committee is worked out by the majority party leaders, usually in consultation with the minority leaders. Traditionally, the posts on all but one or two key committees are assigned to each party in proportion to the relative strength of that party in the chamber concerned. Thus, if the Republicans have 55 per cent of the representatives they will take 55 per cent of the posts on most of the committees of the House and assign 45 per cent to the Democrats. The majority party usually insists, however, that it have a disproportionate representation on the committees on rules, ways and means, and appropriations. This is to enable it so to control these committees that a coalition of minority party and insurgents from the majority which might throttle the majority program would be hard to form. Independents and members of third parties fare poorly in committee assignments. If they are taken care of at all, it is usually by the majority party.

4. Committee chairmen:

a. Selection

The most coveted post on each standing committee is the chairmanship. This post, although formally filled by vote of the House or Senate, goes automatically to the majority member of longest continuous service on that committee. Only a major failure by a member to support his party, in a presidential campaign, for example, or in voting to organize the House of Representatives, is likely to induce the party selection committees to pass over him in designating the chairman.

b. Power

The power of the chairmen of the committees is so great that it has allowed them repeatedly to defy their own leaders with impunity and to stifle

programs demanded by the White House and by the floor leaders. It is not easy to account for their influence, for it is compounded of many bits of power. The chairman, in the first place, can reward and punish the members of his committee. He appoints the subcommittees and designates those who will participate in the debate for the committee majority. The chairman can usually prevent a meeting of the committee if he doesn't want one and can invariably control the agenda when the committee does meet. He also controls the hiring of most of the staff. Much of his power stems from tradition rather than rule, but it is a tradition that most congressmen support, presumably in anticipation of the day when they will be chairmen and entitled to the privileges of these offices. The chairmen have, of course, attained their relatively great power and influence largely since 1911, when appointment by the speaker was abolished and the method of election instituted under cover of which the seniority system became so firmly entrenched.

Criticisms of the seniority system

The developing power of the committee chairman and the method by which they are selected has given rise to an increasing volume of criticism of the system. There is no demonstrable correlation between seniority and competence, say the critics. There is a demonstrable correlation between seniority and a "safe" constituency. Those districts or states dominated by one party or by one strong interest are likely to return the same congressmen again and again. Those districts where the party battle is intense and the interests divided are likely to change congressmen frequently. Thus, their representatives and senators never achieve seniority. The close districts, say the critics, are the more decisive in national campaigns. The self-determined leaders of Congress may be, and frequently are, the critics allege, out of step with the main currents of public opinion in the nation. Young, able, and ambitious legislators are not given opportunity fully to utilize their talents and grow restive in the grip of seniority. In this way, legislative talent is wasted and discouraged. Of course, if the chairmen were not so powerful, the problem would not be so acute.

Defense of the system

The answers to these criticisms put forth by defenders of the existing arrangements are: (1) they have served the nation well, that is, there is no real breakdown of the legislative process; (2) they guarantee that the Congress will be dominated by men of experience; (3) they provide an impersonal and objective standard for determining precedence and one that avoids personalities, bitterness, and manipulation, all of which would destroy the loyalty and co-operation which make legislation possible; and (4) no one, not even the Joint Committee on the Organization of Congress which labored so manfully at the problem of improving the Congress, has yet suggested a better plan that is acceptable to most congressmen.

5 Committee staffs

Each of the standing committees has a commodious office with a secretarial and clerical staff, more or less elaborate files, and occasionally a library. One of the more widely heralded reforms of the Reorganization Act of 1946 was the provision of a professional staff for each of the committees. It was anticipated that each committee might employ, on a nonpartisan basis, from two to four "experts" in one or more of the fields of public policy within the

purview of the committee. These persons would be able, it was felt, to collect and interpret data for the committee and to analyze the problems presented for its consideration. While nonpartisanship has not been as conspicuous in the employment of experts as some had hoped, and the change in party domination of the committees has been accompanied by shifts in staff, nevertheless a great deal more continuity and expert assistance has been brought to the aid of committee deliberations than previously.

RULES COMMITTEE OF THE HOUSE

How the rules committee controls debate in the House

The impressive powers of direction of the speaker and the majority floor leader of the House of Representatives are shared with the Committee on Rules. Although this committee is concerned primarily with legislative procedure, it has become so influential in determining the way in which the time of the House will be spent that in this way it is able to influence what finally is passed. In the last quarter of the past century the practice of proposing special orders to govern the course of floor debate on a piece of legislation took its present form. This practice constitutes the most important of its present repertoire of privileges and responsibilities. Most of the important bills emanating from the other standing committees must now go to the rules committee for clearance if time is to be found for their consideration. The rules committee, if it approves, may clear the way for floor consideration by bringing in a special order. If adopted by the House, the order, in the form of a resolution, establishes the time for debate and allots a share of it to the majority and one to the minority. Without the aid of a special order, legislation of many types, even though approved by the standing committee which considered it, is likely to languish on the calendar and never be taken up at all. The competition for place on the calendars is so intense, there are so many more bills received than can be debated, that the power to provide for the immediate consideration of a bill regardless of its order on the docket is of great importance. Through this procedure, the committee can demand changes in a bill as a condition for bringing it to debate, can even insist on a whole new bill, and can effectively stop consideration of a bill of which it does not approve. It can also limit floor debate, prevent amendments except those offered by the committee in charge of the bill and can set aside points of order which might be raised. From 1949-51, as a result of pressure from dissident elements in both parties, the power of the rules committee was weakened by the adoption of a rule which made it possible, though difficult, for a standing committee chairman to bring a bill to the floor despite the opposition of the rules committee. Unsuccessful attempts to reinstate this limitation on the powerful rules committee have been made at the beginning of each Congress since 1951. The only other way that a bill can be pried out of a reluctant rules committee is by a discharge petition signed by 218 members of the House. As we shall see, this is a virtually unworkable procedure.

TAX RATE EXTENSION ACT OF 1961

Mr. SMITH of Virginia. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 330 and ask for its immediate consideration.

The Clerk read as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7446) to provide a one-year extension of the existing corporate normal-tax rate and of certain excise-tax rates. After general debate, which shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be considered as having been read for amendment. No amendment shall be in order to said bill except amendments offered by direction of the Committee on Ways and Means, and said amendments shall be in order, any rule of the House to the contrary notwithstanding. Amendments offered by direction of the Committee on Ways and Means may be offered to any section of the bill at the conclusion of the general debate, but said amendments shall not be subject to amendment. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

A SPECIAL ORDER OF THE RULES COMMITTEE

SOURCE: *Congressional Record, House*, June 8, 1961, pp. 9080-9081.

The Senate has no counterpart to the rules committee. The time of the Senate is very largely determined by the members themselves; debate is thus freer and more extensive.

CONGRESSMEN AND THE INSTITUTIONS OF LEADERSHIP

It must be a great shock to a new member of the House of Representatives who comes to Washington, frequently from a position of influence in his small state legislature, to find how insignificant he is in the Congress. He ranks at the bottom of any committee, even a minor one, to which he may be assigned. He is rarely allowed to address the House. In fact, he usually can speak, and even then briefly, only when a bill from his committee is before the House and when he has been assigned a role in the debate by his chairman. On many of the major questions of the day he gains his knowledge, like any ordinary citizen, by reading the newspapers. Only after he has served a few terms is he recognized as a lawmaker by Washington society, administrative

agencies, and the nation's press. And only after he has served several terms is he able to assume a position of influence.

Domination of the House by its leaders

About 30 or 40 men dominate the activities of the House of Representatives, firmly directing the proceedings, controlling the debate, and determining the extent and character of the participation of the other 400 members. This handful of leaders are invariably men of long experience in the processes of the lower house. Ordinarily they command the support of their majority party colleagues. Periodically, however, the leaders, partly because they tend to represent "safe" districts, lose touch with the sentiment of the nation and of many of their fellow representatives. Revolts against the leaders and the institutions of leadership have occurred and these have provoked sharp criticisms of the House "machine" as repressive, ruthless, arbitrary, and essentially undemocratic. No system of leadership comparable to the ministry in parliamentary democracies is provided by the American Constitution. The president, although frequently giving important direction to the Congress especially on large matters of grave support, is outside the legislature and not in a position to provide intimate direction of its processes. Self-developed institutions of leadership have arisen in response to imperative needs, but according to no preconceived plan and largely as the exigencies of party politics have determined. Over the years, as the size of the House has grown and the complexities of legislative problems increased, the power of the leadership has become more and more firmly seated.

The situation in the Senate

At the other end of the Capitol, in the Senate, the situation is quite different. The institutions of leadership, although impressive, sit lightly on the backs of the senators. The business proceeds at a more leisurely pace, debate is more spontaneous and also more discursive, and program and procedural decisions are based on consensus among a fairly large portion of the members. The traditions and the rules of the Senate are sensitive to the position and perquisites of the individual senator and of the minority. Whereas the House, typically, disposes of a major piece of legislative business in about five or six hours of floor discussion, the Senate will require several days. Every senator that wants to usually can make his contribution to the debate. If the House is widely criticized because of its cursory disposition of significant bills, the Senate is condemned for the opposite. A determined minority can bring the legislative process almost to a complete halt in the upper house. The final product of senatorial deliberations is much more likely than that of the House to bear the stamp of a large number of members representing many different points of view. In weighing the criticisms of the lack of effective organization or leadership in the United States Senate it should be borne in mind that at a typical session of Congress, the Senate will dispose of as much major legislation as the House.

The difference explained

The sharp differences between the two houses in respect to the matters under discussion may be explained by (1) the smaller size of the Senate; (2) the longer terms of the senators; and, (3) the fact that the senators are likely to be important party leaders in their home states.

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10

The Legislative Process

Forms of legislative action

CONGRESS AT WORK is engaged in making law and thus legislation is its typical product.

The grist of the legislative process may take at least five different forms: (1) *bills,* which are instruments of general legislation effective when properly passed (passed in the same form by both houses and signed by the president) upon all those individuals to whom applicable and of which there are two major kinds: (*a*) *private* bills for the benefit of a particular person, place, or institution; (*b*) *public* bills dealing with individuals or situations by classes or groups; (2) *joint resolutions,* which resemble bills in almost every respect except that they are commonly used only for the guidance of those charged with administering the laws and contain unusual or subordinate legislation; (3) *concurrent resolutions,* which are not submitted to the president and are not laws, therefore, in the sense that they have no application outside of Congress and which are used to express attitudes, opinions, or intentions that the two houses share; (4) *simple resolutions,* which deal with the affairs of one house only and have no effect beyond the halls of that chamber and which typically express some purpose, policy, or attitude of that house; and, (5) *orders,* which embody the commands or requests of one house typically on procedural matters and which, like simple and concurrent resolutions, are not submitted to the president.

Types of laws

A *bill* is introduced into either house for consideration and when passed by either house becomes an *act.* If both houses enact it and the president signs it, it then becomes a *law* or a *statute.* Some of the bills which the Congress considers are designed to make or declare new law; others, to amend,

supplement, clarify, revise, codify, consolidate, or repeal existing provisions of law; and still others not at all to make or modify the law which governs us but to appropriate money, assign duties, or give directions to executive, judicial, or legislative agencies.

Same procedure used for all types

Except that there are important differences in the way private bills are handled, essentially the same procedures are used to deal with all of the different forms and types of legislative action. Therefore, an adequate grasp of the legislative activity of a Congress may be obtained by tracing the main steps which a bill takes on its path to the law books.

Constitutional limits to legislative authority

Before we begin the discussion of legislative procedure, we need to remind ourselves that the power of Congress to make laws is not unlimited. Unlike the legislatures of most other democratic states, our national assembly is restricted in its lawmaking function to the subjects especially entrusted to it by the Constitution. Every measure which it can validly enact must be based upon some authorization, express or implied, in the Constitution. Furthermore, the fact that Congress has been invested with authority to legislate on a given subject does not of itself exclude the states from acting on the same subject. Some powers are expressly denied to the states and others by their natures tend to preclude state action, but between these two extremes is a vast field of legislative authority which is or may be occupied both by the nation and the states. While most of the authority conferred upon the Congress by the Constitution may be exercised or not at the discretion of that body, some of the constitutional grants are mandatory. For example, it is the duty of Congress to call a convention to amend the Constitution whenever the legislatures of two-thirds of the states petition it to do so. However, there is probably no legal way that Congress can be compelled to perform an obligatory task if it is unwilling or unable to do so. The courts have repeatedly refused to intervene in such cases on the grounds that they have no means of executing a decision in favor of congressional action.

"Emergency powers"

Many programs in the past three decades aimed at combating the depression or the external enemies of the nation, have been popularly described as stemming from the "emergency powers" of Congress. Legally there are no such powers. The Constitution makes no distinction between "normal" and "emergency" situations in its grant of power to Congress. The Supreme Court has said that "emergency does not create power." Nevertheless, the periods of profound national crisis of our history have repeatedly called forth the exercise of powers not normally exercised, or the exercise of long-used powers in novel ways. Emergencies thus stimulate new congressional activities and conceptions, but legally these, to be valid, must all be traced to the constitutional powers of the Congress.

Importance of the rules of procedure

We need also to note that the entire lawmaking process is controlled by an elaborate and technical system of rules which have been developed over many decades and which are of great importance in determining both the character and the product of legislative activity. It would not be easy to overstate the importance of proper procedure in our national legislature. In the

first place, procedural questions can easily and do frequently consume a heavy share of legislative time which is already inadequate to the great responsibilities which rest upon the Congress. Secondly, much of the debate and discussion over matters of considerable import turns on proper procedure. Thirdly, the rights of minorities to speak, to criticize, to propose alternative courses of action, rights which are essential to representative democracy, find their chief protection in the rules of procedure. Finally, the power of the majority to act, to deal decisively with the problems of the day, is supported and protected by the rules. A perfect balance between the power of the majority to act and the right of the minority to speak is rarely achieved at any time by any set of rules. In the Congress, the rules of the House lean a little heavily to the support of the power of the majority and those of the Senate to the support of the rights of the minority.

INTRODUCTION OF BILLS

How bills are introduced

It is amazingly simple to introduce a bill into Congress. In the House of Representatives a member inscribes his name on a copy of it and deposits it in a box ("the hopper") on the clerk's desk. In the Senate, a member must first be recognized by the presiding officer, typically during the period when routine business is transacted (the "morning hour"), then announce the introduction of the bill, sometimes with a statement of explanation, and finally send it to the desk of the secretary. Any bill may begin its legislative career in either house except that bills raising revenue are required by the Constitution to begin in the lower house. Once introduced, a bill continues "alive" during the life of the existing Congress or until sooner disposed of. In a subsequent Congress the bill, to be considered, must be reintroduced.

Authorship of bills:

Because bills are introduced by members of the Congress and bear their names, it should not be supposed that these members conceived the ideas set forth in the bills or drafted them in the proper legal terminology. Congress is not to any appreciable extent an originating body. In the first place, a very large and increasing proportion of the major public bills introduced originate in the executive branch. Frequently these "administration" bills are in fully drafted form. The fact that no member of the administration can, as in parliamentary democracies, directly introduce measures has proved no serious obstacle to executive initiative in the American system, since a representative or senator can always be found to sponsor the introduction. Typically, the bill is given for introduction to the appropriate standing committee and introduced through it.

1. The executive branch

2. Private interests

In the second place, bills originate with persons or organizations entirely outside governmental circles. There are literally thousands of groups and individuals who aspire to change the laws of the land benevolently to their interests or to the objectives of their group. Many of these persons and groups are served by legal counsel or legislative representatives (lobbyists) who cast their desires in the form of a bill or bills and offer them to friendly legislators

Union Calendar No. 16

83rd CONGRESS
1st Session

H. R. 1

Report No. 50

IN THE HOUSE OF REPRESENTATIVES

A BILL

To extend the authority of the President to enter into trade agreements under section 350 of the Tariff Act of 1930, as amended, and for other purposes.

83rd CONGRESS
1st Session

H. RES. 170

IN THE HOUSE OF REPRESENTATIVES

March 17, 1953

Mr. Patman submitted the following resolution; which was referred to the Committee on Armed Services

RESOLUTION

Resolved, That the House of Representatives does not favor sale of the facilities as recommended in the report of the Rubber Producing Facilities Disposal Commission.

83rd CONGRESS
1st Session

H. CON. RES. 72

IN THE HOUSE OF REPRESENTATIVES

February 2, 1953

Mr. Hartung submitted the following concurrent resolution; which was referred to the Committee on Armed Services

CONCURRENT RESOLUTION

Whereas the preservation of democratic institutions everywhere demands united action by the world's leading democracies; and

Whereas the North Atlantic Treaty has already committed its members to "contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions", and to "encourage economic collaboration between any or all of them"; and

Calendar No. 8

83rd CONGRESS
1st Session

H. J. RES. 159

IN THE SENATE OF THE UNITED STATES

January 28, 1953

Ordered to be placed on the calendar

JOINT RESOLUTION

Authorizing the President to employ the Armed Forces of the United States for protecting the security of Formosa, the Pescadores and related positions and territories of that area.

FORMS OF LEGISLATIVE ACTION

for introduction. Since introduction is so easy and the legislative sponsor assumes no particular responsibility for the contents of the measure, every year thousands upon thousands of such bills are introduced into Congress. In a large number of cases, one must hasten to add, the congressman and his colleagues have no intention of passing or even of seriously considering measures of this type. Of course, the more powerful interest groups are able, in many cases, to procure consideration of their bills and sometimes even passage. The largest share of these bills of private origin are private bills for the benefit of particular persons, places, or organizations, although the volume of this type has been reduced as a result of the changes in handling certain matters enacted in the Legislative Reorganization Act of 1946. The large numbers of measures introduced, however, clutter up the committee dockets and the calendars of the two houses and contribute mightily to the time and expense of the legislative process.

At the present time about 10,000-15,000 bills and resolutions are introduced into a session of Congress of which perhaps 500-1000 are enacted in some form.

Drafting bills

Casting legislative ideas into statutory language is a difficult and highly technical undertaking. Few members of Congress or private individuals are able to perform this task without competent advice. Each house provides bill-drafting service for its members through an Office of the Legislative Counsel.

COMMITTEE CONSIDERATION

Referral to a standing committee

Upon introduction, all bills are given a number (e.g., H.R. 144 or S. 177), printed, distributed to the members, made available to the interested public, and referred to one of the standing committees. In the case of private bills, the sponsoring senator or representative indicates on the bill the committee to which it should be referred and these instructions are frequently observed in both houses. Public bills are assigned under the direction of the presiding officer in each house, typically by the parliamentarian. In view of the fact that the subject-matter jurisdictions of the several committees still overlap somewhat and the fact that long and complex bills may involve subjects pertinent to several committees, the discretion of the presiding officer is occasionally exercised personally. Rarely is a bill sent to more than one committee or divided among two or more. The membership of either house possesses ultimate authority by majority vote to change the assignment made by the presiding officer and occasionally will direct the withdrawal of a bill from one committee and send it to a different committee. The committee to which a bill is assigned may be sympathetic or it may be hostile, and thus the discretion of the presiding officer and the occasional directions from the chamber sometimes determine the fate of the measure.

Importance of the committees

Both houses have come to expect that the committees will give thorough study to every "deserving" proposal and will then recommend to the parent chamber what should be done. Although there has been a great increase in

this century in executive influence in legislative matters, the standing committees are the most important devices by which the legislators stamp their own imprint on legislation. The committees actually go much farther than just to stamp it with their approval or disapproval. They mold or cast the bill into a form which they believe will be acceptable. Certainly, most of the thoughtful and detailed analysis which is given to legislative proposals is given to them by the standing committees. And if the spectator in the gallery, especially of the House of Representatives, is disillusioned by the poorly-attended, superficial and perfunctory debate in the chamber, he needs to remind himself that the Congress performs its central legislative duties in the committee rooms. In the Senate, the committee work does not so completely overshadow the general consideration of measures by the entire membership, but even in the upper house it is a rare thing for a committee recommendation to be rejected. The character of the legislative product is determined as much, perhaps more, by what the committees reject as by what they accept or modify. Of the thousands of bills introduced and of the scores, even hundreds, referred to any major committee, only a few are given any serious study. Most bills end their legislative careers in the "inactive" files of a standing committee; the committees are under no obligation to report on every matter referred to them and they never do.

Sources of information:

Upon receiving a measure which is deemed worthy of consideration by the chairman or, in some cases, by a majority of the committee, the committee has then to decide what to do with it. Commonly, at present, such a measure is referred to a subcommittee for study and recommendation, and the whole committee does not hear of it again or participate in the deliberations upon it until the subcommittee reports and recommends a course of action to the whole committee. Whether in fact considered by a subcommittee or by the whole committee, the first requisite for thoughtful analysis is information on the subject covered by the measure. Under the influence of the legal profession, from which a majority of congressmen are drawn, the committees have tended in the past to rely heavily on one or more public hearings to elicit the necessary data. Lawyers are habituated to the idea that justice is best served by public trial in which each of the contestants seeks by every ethical means to present his side in the best light. Out of this combat a skillful judge or attentive jury are supposed to sift the essential facts. Of late, however, the defects in the hearing system for eliciting information have become more and more apparent, and the committees are not using the hearing for this purpose but rather to influence public opinion or executive action or to discover the nature of public attitudes on the measure, especially of those most directly affected. The weaknesses of the hearing system are that all of the needed data is not necessarily made available and that frequently only the proponents of the measure ever appear. The opponents expect the congressmen to protect their interests. Public hearings are still used extensively by the committees and are valuable legislative aids but not solely, or even mainly, to supply necessary information.

1. Public hearing

2. Lobbyists

Much valuable data and opinion are supplied to the committee members by lobbyists, or legislative representatives as they prefer to be called, representing those who are in favor of or opposed to the particular measure. Some of this is done through carefully prepared statements and exhibits offered during the public hearing on the measure. Much of it, however, is done in private conversations with committee members. It is hard to imagine how committees and congressmen would carry on without the lobbyist. There are many kinds of information about the conduct of particular types of business enterprises or labor unions or professions for which no data comparable to that which they can supply is readily available. A great deal of the data they give Congress is accurate, reliable, and useful. It is also, of course, onesided. This is not necessarily harmful if the other sides are also supplying data.

3. Executive agencies

A very great part of the information upon which congressional committees base their decisions has always been supplied to them by the executive branch of the government. From the first reports of Alexander Hamilton, as secretary of the treasury, on public credit and on manufacturing to the most recent report of the Defense Department to the Armed Services Committees, the executive branch has made its great store of information and experience available to congressional agencies, usually but not necessarily at the request of a committee. In these days, in which complete legislative programs may be drafted by the executive and sent to Congress, the executive departments are at great pains to see that the committees considering these programs are amply supplied with the data necessary to reach the "proper" conclusion. The interest of the executive in the result of legislative activity has, however, repeatedly aroused the suspicion of many congressmen that they can not rely entirely on the executive departments as their major or especially as their single source of information. Where else, however, might they turn for data on such subjects as national defense?

4. Investigations

Many pieces of legislation reach the Congress as a product of a more or less thorough investigation conducted by the Congress itself through a special or a standing committee, by the Congress and the executive jointly, or by the executive branch alone. Ordinarily these investigations are reported fully and the legislative measures arrive in the committee accompanied by elaborate charts, exhibits, tables, and explanatory material. In these situations, little more data is really required.

5. "Expert" assistants

Through the years many congressmen have felt the need for sources of information of their own, independent of the executive branch, independent of the lobbyists, and not limited by the hearing procedure. It was for this reason that the Legislative Reference Service was established in the Library of Congress in 1914. Its program has slowly developed and in 1946 it achieved statutory recognition and substantial expansion. This Service consists of a professional staff of recognized experts in a large number of fields of legislative interest whose knowledge and research skill and experience are available to supply congressmen and committees with data in which they have expressed

an interest. In excess of 51,000 inquiries are now received from Congress and handled annually by the Service. Legislators and committees ask it for everything from a detailed memorandum on the contents of a bill to a chart showing the trend in the production of cotton.

The Legislative Reorganization Act of 1946, which provided the expansion in the Legislative Reference Service, did not stop with that in its effort to supply the need for disinterested data. As we have noted in an earlier chapter, it provided for "expert" assistants for each of the standing committees to aid them in reviewing the proposals submitted for their consideration. This particular action virtually ended a previous committee practice of borrowing "experts" for this purpose from executive agencies. It did not, however, completely solve the problem, since about half of the "experts" seem to be partisans of one degree or another.

Alternative forms of committee action

In private sessions, the committee considers alternative courses of action it may elect to follow. It may approve the bill as it stands and recommend its adoption by the chamber. This is very unusual. It may propose a number of amendments which change portions of the measure before it and then recommend the measure for passage with the amendments added. It may rewrite the bill completely, preserving only the number and title, and present the rewritten measure as a substitute. Finally it may reject the bill. In the latter case, ordinarily the committee takes no further action. But if it approves the bill with or without amendments or in substitution form, it then prepares a report to this effect and seeks an opportunity to acquaint the whole membership with its recommendations. The chairmen of the committees, since 1946, are under obligation to report any approved bills "promptly."

Forcing bill out of committee

The ease with which a committee can kill a bill simply by not reporting it has been a subject of considerable controversy in the Congress. It is easy to see how, given the method of selecting committee members, a committee decision on some measure might not reflect the desires of a large portion of the membership in either house. One of the changes made in the House in 1910 coincident with the attack on the speaker was the establishment of a procedure by which the House itself might pry a bill out of a hostile committee. This "discharge rule" has gone through various changes since its enactment, but as it now stands a committee may be discharged from further consideration after it has had the bill at least 30 days and by a discharge motion signed by 218 members. This motion for discharge must be on the calendar at least seven days and is in order only on certain days of each month but it is privileged business and must be disposed of. The "seven-day" period is to allow the committee an opportunity to report the bill out on the floor if it cares to do so. The discharge procedure, although it depends primarily on the wishes of a majority of the members, is difficult to operate and is rarely used. Most members of Congress are apparently reluctant to upset the prerogatives of the standing committees and the desires of the leaders.

A MOTION TO DISCHARGE A COMMITTEE

MOTION TO DISCHARGE COMMITTEE

MAY 21, 1956.

TO THE CLERK OF THE HOUSE OF REPRESENTATIVES

Pursuant to clause 4 of rule XXVII, I, Hon. WRIGHT PATMAN, move to discharge the Committee on Rules from the consideration of the resolution, House Resolution 414, entitled "A resolution providing for the consideration of H. R. 11, a bill to reaffirm the national public policy and purposes of Congress in the laws against unlawful restraints and monopolies, and for other purposes," which was referred to said committee February 28, 1956, in support of which motion the undersigned Members of the House of Representatives affix their signatures, to wit:

SOURCE: *Congressional Record, House*, May 21, 1956, p. 7734.

CONSIDERATION OF BILLS BY THE HOUSE OF REPRESENTATIVES

A House standing committee reports a bill which it has considered favorably by returning it with its report to the clerk of the House. The clerk lists it on one of three "calendars" depending on its nature. Revenue and appropriation bills are placed on the Union Calendar; public bills not involving taxation or expenditure are placed on the House Calendar; private bills are placed on the Private Calendar. Bills are placed on these lists in the order in which they are reported and once on the list remain there throughout the two years of a Congress unless they are taken up and acted upon. The original purpose of these calendars was to regulate the order in which the House would consider the measures which its committees recommended to it. And on certain days as well as at certain times during the daily session the business on one of the calendars is appropriately considered. However, the volume of legislative business has become so great and the calendars consequently so congested that the order is never rigidly adhered to and the House usually adjourns with a lot of unconsidered measures still on the calendars. Revenue and appropriation bills can be taken up at almost any time if the member wishing to get them before the House can gain recognition, but the bills on the House Calendar ordinarily can get before the House only with the aid of a special order from the rules committee. The chairmen of committees wishing to report bills, try to get the rules committee to accept them and intercede on their behalf by special order. It is from this situation that the rules committee derives its important influence on legislation. Conferences and negotiations among the leaders really determine which bills will be taken up and when.

An important share of the legislative business of the House of Representatives is conducted by means of the device of committee of the whole. The Union Calendar is made up of bills which are considered by this committee (revenue and appropriation measures) before they are considered, technically speaking, by the House of Representatives. The committee of the whole is

simply the entire membership of the House sitting as a committee; but as a committee it operates under simpler, less rigid, and less demanding rules than does the House itself. Only 100 members constitute a quorum (the minimum number necessarily present to transact business) in place of the 218 in the House. Debate is governed by a rule which allows only five minutes to each speaker. There can be no time-consuming roll calls, since voting is always orally or by rising or by tellers, and there are no records kept of how any member voted. Certain types of dilatory motions, such as one to refer the matter back to the committee or to postpone consideration of it, are not allowed. At the conclusion of the debate the committee "rises," reports through its chairman back to the House, and then the House acts on the committee's actions. This device, the motion to create which is ordinarily in order, enables all fiscal measures to be considered line by line for amendment by the entire membership under circumstances which allow maximum participation and critical debate. The House in committee of the whole reveals itself in its best light with many members participating, short and pointed speeches, and quick decisions.

The three readings

It is customary to describe Anglo-American legislative procedure as involving three formal readings for each legislative proposition. This is an accurate description only in a very loose sense. The first reading occurs upon introduction and is not a "reading" at all. The title is simply entered in the records. When the bill emerges from the standing committee it is given its second reading, either in committee of the whole or in the House itself. This may be and occasionally is an actual reading of the bill line by line with opportunity for discussion and for amendments to be offered. If, however, the bill is being considered under a "closed" special order of the Committee on Rules, it may not be amended from the floor. Ordinarily these "closed" orders are used for complex tax bills. The conclusion of this stage of legislative consideration is a vote on the question "Shall the bill be engrossed (i.e., reprinted as amended) and read a third time?" If the vote is favorable, the bill is then brought before the House again and is given its third reading. This reading is by title only, no further amendments are in order, and the debate, if any, is only on the whole bill as it stands. The conclusion of this phase is a vote on final passage. If the vote is favorable, the bill is signed by the speaker and sent to the Senate or, if it has already been passed by the Senate, to the president. This formal order of procedure here outlined may, of course, be rudely set aside by unanimous consent, by special order of the rules committee, or by suspension of the rules.

Limits on debate in the House

The chief contrast between the procedure in the House of Representatives and that in the Senate is the limitation upon debate in the House. Normally debate occurs in the House only during the second reading and even this debate is sharply curtailed. Over the years the House has evolved a number of devices which restrict debate, and the most important of these are: (*a*) special orders of the rules committee which fix the total time for consideration of the bill and allot it between the proponents and opponents; and (*b*) the "previous

question" rule which since 1811 has authorized a motion for the previous question to be made at any time during debate (except in committee of the whole) and which if adopted requires the House to vote immediately on whatever is pending. The motion itself is not debatable and may not be laid on the table. Debate in committee of the whole is limited by the five-minute rule and in the House it is limited by the rule that no member may speak longer than one hour. Typically, the time of debate is fixed in advance by the leaders and either by special order or by "gentleman's agreement" an equal amount of time is given to each side. The chairman of the standing committee reporting the bill ordinarily controls the time of the majority and designates the members of his committee who will speak for the proponents. The ranking minority member opposing the bill usually controls the time of the opponents. Tables placed about half-way up the aisle on either side of the chamber are used by the two teams to assemble their papers and documents for the debate. If any time remains after the two teams have made their respective contributions, members of the House who are not members of the committee may participate. This is unusual. The effect of all of these rules and customs is to make dilatory and obstructive tactics by the minority very difficult. About the only dilatory devices which are readily available are "quorum calls," roll-call votes, and demands that the clerk (in committee of the whole) actually read every word of a long bill.

CONSIDERATION OF BILLS BY THE SENATE

Differences between House and Senate procedure

After a bill is passed by the House, it is certified by the clerk and delivered to the Senate. There it begins a journey which is quite similar to that it has already traversed in the lower house and to that traveled by a bill which originates in the Senate. There are, however, some striking differences in the procedures of the two houses when the bill emerges from the standing committee. The Senate uses only two calendars: the "Calendar of Business" on which all bills and resolutions are placed in the order in which they are reported; and the "Executive Calendar" on which nominations and treaties are placed. The Senate no longer uses committee of the whole except for the consideration of treaties. Furthermore, the Senate has few special devices for moving bills off the calendar onto the floor. There is, in the Senate, no powerful rules committee to step in with a special order bringing a bill before the chamber. The calendar listings are followed fairly closely, therefore, except that by unanimous consent measures may be taken out of order. The most notable difference in the two houses, however, is the relative freedom of debate in the Senate. By custom, supported in part by rule, debate in the Senate is virtually unlimited. There is no time limit on speeches; there has been no "previous question" procedure since 1806. There is no requirement that the speaker must talk on the question. As long as any member has anything to say on the matter before the chamber, whether pertinent or not, debate cannot easily be halted.

Filibustering

The great freedom of the individual senator to participate in the discussion on the floor of the chamber has provided minorities with one of their most potent weapons—the filibuster. When legislative time is precious, for example, when adjournment is near or when appropriation authority is expiring and money bills must be voted, a handful of members can get the floor and by spelling one another (yielding the floor to each other) can halt legislative business until their terms are met. There is no rule like that in the House requiring the senators to speak to the question and these talkathons sometimes range over the whole field of human endeavor. Prior to the adoption of the "Lame Duck" Amendment (20th) in 1933, the Senate was most vulnerable to this tactic in the closing days of the short session. The Senate had to adjourn by March 4, for its life would then expire. The absence of a binding adjournment date since that time has strengthened the procedure against filibustering but has not made it impervious. There have been at least 10 significant filibusters in the Senate since 1933. This surrender of command of the Senate to a few senators at critical times in various sessions has provoked sharp criticism of the Senate rules. This is government by minority, charge the critics, and sometimes a small minority at that. Surely the majority should be allowed to act after a decent amount of debate. The major, although not exclusive, use of the filibuster in the past decade has been by southern senators to defeat various types of proposed legislation aimed at discriminatory practices against Negroes.

The closure rule

The device most widely considered as a remedy for this alleged defect in senatorial procedure is some form of closure rule. In 1917, as a result of a successful filibuster against President Wilson's proposed legislation for arming America's merchant vessels against German submarines, Wilson induced the Senate to adopt the current rule which can be used to limit debate. This rule (XXII) authorizes 16 senators to submit a motion for closing debate on any matter pending before the Senate and, after two calendar days, this motion must be put by the presiding officer and a vote taken on the question: "Is it the sense of the Senate that the debate shall be brought to a close?" If two-thirds of the senators present vote for closing the debate, each senator is thereafter entitled to speak one hour and then the debate ends. This is obviously a very mild form of closure. It had been invoked successfully only four times and had been tried at all only 19 times prior to 1949. Amendments to the rule in 1949, while eliminating many dilatory motions (e.g., to approve the Senate journal), nevertheless made the closure motion itself debatable and thus subject to filibuster. Closure motions have been offered on five occasions from 1950 to 1962; four have been easily defeated; the fifth, involving the communications satellite bill in 1962, was adopted.

Present controversy on the rule

The argument about the Senate closure rule is more vigorous today than ever. The recent use of the filibuster to frustrate attempts to legislate nationally on racial discrimination has stimulated many groups with whom this legislation is popular to a concern over the Senate rules. The Democratic party, whose leaders include both southerners and the dominant figures in the large-city

political organizations where anti-discrimination legislation is popular, has been torn by bitter dissension on this issue. Thus far, despite vigorous efforts at the opening session of the Senate in each of the last few Congresses, the Senate has been unwilling seriously to modify its rules on the subject of freedom of debate. On the contrary, many of the Senate leaders contend that despite the time consumed by filibuster the Senate does as well as the House in getting through its legislative agenda—in five recent Congresses, for example, it passed more bills and resolutions than the House—and that the frequently used device of "unanimous consent," by which the members agree in advance to limit speeches and vote at a certain time, serves every desirable need of the Senate. Finally, the protagonists argue that opposition to filibustering by some senators is largely insincere, since they do not hesitate to use the device when their own interests are threatened.

CONFERENCE COMMITTEES

Resolving conflicts between the two houses

A bill which passes both branches of Congress in identical form is sent to the president for signature. The Senate may, however, amend a House bill, the House may amend a Senate bill, and each of these actions occurs frequently. Unless one house will recede from its position and concur with the changes made by the other, a deadlock occurs which somehow must be broken. The device by which disagreements between the two houses on specific pieces of legislation are reconciled is the "committee of conference," appointed for each legislative measure in dispute. So frequent are these disagreements, especially on major legislative proposals, that the conference committee is a standard fixture of the American legislative process. One-third to one-half of all the public bills, including virtually all of the important ones, have in recent years been referred to conference committees at the appropriate stage of their legislative careers.

The conference committee at work

The rejection by one house of the views of the other house on certain items in a bill or resolution under consideration is almost invariably accompanied by a request for conference. The request having been agreed to—and it is never refused—the presiding officer of each house names from three to nine members of his house to meet with those named by the other to attempt to reconcile the differences. By custom, the presiding officers name the chairman and ranking minority member of the standing committee which considered the bill, plus others from each side who have figured prominently in the debate and who, typically, are also members of the same standing committee. The views of the majority of the chamber are always represented by a majority of the "managers" named to represent that house in the conference. The minority view, however, is always accorded some representation. The two sets of managers then meet and discuss the points at issue, seeking by compromise to arrive at something acceptable to both houses. Agreement must be reached under the rules by a majority of each group voting separately, so that the fact that one house occasionally names more managers than the other is

of no consequence. Sometimes the task of reconciliation is easy and is performed in a few hours; sometimes it is difficult and requires days, weeks, even months to reach agreement. If no agreement can be reached, the bill fails or a new committee may be named to try again. Generally, agreement is reached and the proposals of the committee are accepted by both houses. It must be added that the rules and the customs of the two houses confer upon these conference committees an unexpected amount of power to determine the final form of legislation. The reports of conference committees are highly privileged in both houses and thus have the right of way over most other forms of legislative traffic. The reports of the committees must be accepted or rejected as a whole. They may not be further amended. Each house has got to take the dose compounded by the conference or go without any medicine. The deliberations of the conference committees are secret and unrecorded. They ordinarily hold no hearings and listen to no outside testimony. Finally, the bill—or those parts of the bill in dispute—which emerges from the deliberations of the committee may not resemble the view of either house and may, in fact, contain matters never before considered exactly in that form by either house. The conference committee is also an arena of continuous struggle between the two houses for legislative supremacy. The customary assumption that the Senate is predominant in conferences is not borne out by studies of these committees.

THE PROBLEM OF LOBBYING

The increase in interest-group activities

Interest groups and their legislative representatives have become an established feature of the American political landscape. Providing a different kind of representation for the citizens, supplying the legislature with much necessary data, initiating countless proposals for public consideration, these groups undoubtedly render a unique service to, and provide a significant voice for the participants in democratic government. Their activities on the national scene are not, however, an unmixed blessing. Their information tends to be one-sided; their objective is usually economic gain; their methods are occasionally devious; and their influence disproportionate to their numbers. Statesmen and students alike have been troubled by the problems of special-interest representation in the legislative process as the scope and scale of their operations has multiplied. Today more than 400 national organizations maintain more than 1000 paid agents in the national capital and spend uncounted millions of dollars to influence the course of legislation and the public attitudes which lie behind the legislation. In spite of numerous attempts to make the lobbyist a respected and indispensable adjunct to democratic lawmaking, the name is still an epithet and connotes some kind of wrongdoing. About three-fourths of the states have enacted laws designed to curb lobbying activities and to disclose its objectives. None of these efforts has been wholly successful and few of them have achieved anything substantial. In Washington, the matter has received intermittent attention over several decades, but

the House of Representatives has typically stifled efforts at regulation initiated by the Senate. The two houses did finally compel utility lobbyists to register in 1925 and agents of foreign interests in 1928, and in 1926 compelled agents of shipping interests to record the objects of their activities. Not until 1946, in connection with the general reorganization of the Congress, were the two houses able to agree on a procedure for dealing with lobbying.

The Regulation of Lobbying Act of 1946

The system finally adopted by the Congress is based very largely on the practice of several of the states. The fundamental premise of the Regulation of Lobbying Act is that undesirable behavior by interest groups and their agents can best be controlled by publicity rather than by prohibition. Lobbyists are required to register with the clerk of the House and the secretary of the Senate and to disclose in their registration the association or individual by whom employed and how much paid. Quarterly thereafter, each registered lobbyist is required to file a statement of receipts and expenditures, including the purposes for which the sums were expended. Tabulations of these reports are published in the *Congressional Record* to apprise all interested persons of the facts. Furthermore, the law requires any organization which solicits or receives contributions to support its legislative activities to give annual public accounting of these contributions and the expenditures made from them. Failure to comply with the law may result in fine, imprisonment, or suspension of the privilege of lobbying.

Results

In practice, the registering and reporting provisions of this law have supplied the public with more significant information about the extent and scope of lobbying than has ever before been available. The enforcement of the law has, however, been embarrassed from the beginning by the uncertainties and obscurities in the law itself. In an effort to exclude organizations who lobby rarely or only incidentally to the regular and major purposes of the organization, the law covers only those whose "principal purpose" is to influence legislation. Many of the most energetic and extensive national organizations operating in Washington claim that the law does not apply to them because lobbying is not their principal purpose. Further, the Supreme Court has held that the law applies only to direct dealings with members of Congress and does not require reports on funds expended on propaganda directed at the voters. The law, of course, does not in fact regulate lobbying and certainly has not and was not intended to curb it. It merely brings certain types of information about lobbying out into the open where the public can, if it wishes, scrutinize it.

THE LEGISLATIVE INVESTIGATION

As an important, some would say indispensable, adjunct of its responsibilities for the conduct of the national administration and for the development of legislation the Congress relies extensively on the legislative investigation. The investigative procedure has been widely used for the development of data and the revelation of opinion on national problems for the purpose of pro-

pounding a legislative solution. Its major use, in the past decade at least, has been to bring to light the conduct of public employees and administrative agencies. The investigation has become one of the major ways by which the committees of Congress hold the administration accountable to the Congress and to the public for its conduct of affairs. In time, energy, expense, and publicity, the investigating activities of recent Congresses, for example, rivaled their legislative activities. Investigations of administrative behavior have been conducted by both the regular standing committees and by special committees designated for the purpose. The Legislative Reorganization Act of 1946 contemplated the use of regular standing committees, and since its enactment, special committees have been used sparingly. Several notable inquiries have been directed by joint committees of the two houses and, in a few cases, members of the executive branch and representatives of the public have been invited to serve with the legislators.

The use of the investigative procedure

Of the more than 800 investigations conducted in our national history, several have been outstanding in bringing to light and correcting egregious misconduct within the administration. Both the Teapot Dome oil reserve scandal of the Harding era and the income tax administration scandal of the Truman regime, to select two of this century, have been aired by this method. In the broader uses of the investigative power to inform legislative policy, there have also been many of lofty purposes and far-reaching accomplishment: the studies of immigration, lobbying, munitions manufacturing, stock exchange operations, conservation, monopoly in industry, the organization of Congress, and the organization of the executive branch of the government are examples from this century which come readily to mind. The investigative function, however, has not uniformly achieved its maximum potentiality. Although many, perhaps most, have been well intentioned and seriously pursued, some have had only personal or partisan malice as their stimulus and campaign ammunition or personal aggrandizement as their object. As the Congress has relied more heavily upon investigation in an attempt to redress the balance of power lost to the executive branch during this century, the difficulties and criticisms have increased.

Problems arising from use of investigative function:

In the first place, the field of inquiry has extended in recent years to the political sentiments and loyalties of numerous individuals and groups in American society, including teachers, preachers, writers, movie stars, labor union executives, and others. One standing committee of the Congress—the House Un-American Activities Committee—has no other major function. In many cases, these inquiries have borne no apparent relevance to contemplated legislation or to administrative indiscretion. They have had as their apparent major purpose the enlightenment of the public, and as a subsidiary purpose the discrediting of certain opinions and of those who hold them. Many persons have argued that the scope of congressional investigation is, or ought to be, confined to the legislative and administrative responsibilities of that body and that committees have no right to invade personal privacy except under the impetus of grave policy-making enterprises. The courts have increas-

a. Scope of the inquiries

ingly been urged by reluctant witnesses to declare some limits on the scope of these inquiries and on the procedures by which they have been conducted. It is now generally conceded that the powers of investigation are not unlimited. The Supreme Court summarized the matter thus in a recent case:

> The power of the Congress to conduct investigations is inherent in the legislative power. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic, or political system for the purpose of enabling the Congress to remedy them. . . . But broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.

In the same case the Court condemned the mission assigned by the rules of the House of Representatives to the Committee on Un-American Activities as ambiguous. "No one could reasonably deduce from the charter the kind of investigation the committee was directed to make," said the Court. After a change in personnel, however, the Court in later cases agreed that the investigation of Communist activities was a legitimate and authorized purpose of the Committee and that if the questionee is explicitly told the relevance of the questions he is being asked to the Communist activity under investigation and the questions are relevant to such an inquest, then the investigation is legitimate and witnesses may not properly refuse to answer. The Court continues, however, to scrutinize the conduct of the Committee with great care. The Court has also suggested that serious questions of free speech might be raised by investigations into propaganda activities under the guise of inquiring into lobbying.

b. Televising of committee hearings

Secondly, the congressional investigating process during the early 50's took place amidst an inordinate amount of publicity. Newsreel and television cameras and radio microphones, not to mention crowded spectator areas, became the standard environment for many of the hearings. The opportunity that this provided for political adventure by those who direct the inquiries stimulated competition among legislators for strategic posts from which to launch personal campaigns and created concern for the abuse of the hearing process to serve these personal ambitions. Criticism of the practice of making spectacles of these inquiries had mounted to the point that Speaker Rayburn early in 1952 and as long as he was speaker, ruled that meetings of the committees of the House of Representatives could not be broadcast, televised, tape-recorded, or photographed by moving picture cameras unless and until the rules of the House were changed specifically to authorize these practices. In the interim his successor, Speaker Martin, allowed each committee to decide the matter for itself. Speaker McCormack has followed the Rayburn rule.

c. Fair procedures for witnesses

The third problem that has arisen in connection with recent inquiries and the publicity surrounding them concerns the status and rights of persons who appear before the committees. Traditionally, congressional committees have admitted many kinds of testimony under a variety of conditions. They have

not been bound, nor have they wished to be bound, by the rules of the judicial branch in these matters. Many legislators have felt that judicial procedures which include elaborate rules on accreditation of witnesses, admissibility of evidence, and rights of the accused are too restrictive for the type of information which committees hope to elicit. Concern for a "fair" trial and for the position of the "accused" is out of place in legislative halls, they would argue. We are not trying anyone; we can invoke no criminal penalties against anyone, save to compel testimony or to initiate proceedings against perjury. The labeling of individuals as subversive, the identification of them with unpopular and unorthodox opinions, or the recounting of their youthful indiscretions, argue those who are concerned for the witnesses, is or may be more damaging to them individually and socially than conviction of a crime. Their reputations can be placed under a cloud and their employment prospects seriously curtailed. Under these circumstances, say the critics, a more judicial attitude ought to be introduced and rules of procedures adopted which will prevent hearsay evidence, which will allow a person to confront and question those who assail him, and which will provide an opportunity for those who are attacked to appear and answer the attack. Several committees (really subcommittees conducting inquiries) have actually modified their rules to take account of these criticisms. The House of Representatives early in 1955 amended its rules to provide more uniform procedures for its investigating committees, to abolish one-man hearings, and to afford greater protection for individuals called to testify. The Rules Committee of the House since 1955 has also been reviewing projected investigations.

d. Compulsion of testimony from private citizens

The fourth problem relates to the extraction of testimony from unwilling witnesses. Persons from whom information is sought are not always disposed to cooperate. Gradually, however, the Congress, with the support of the judiciary, has gathered authority to employ compulsion. Any duly constituted committee now has power to subpoena witnesses and administer oaths, to require the production of books, papers, correspondence, contracts, or other records deemed relevant, and to invoke judicial aid, if necessary, to obtain them. Persons refusing to answer questions properly put to them or refusing to produce records or papers may be cited by either house for "contempt of Congress." During the period 1947-52, for example, 155 persons were cited for contempt, 100 of them witnesses before the House Un-American Activities Committee. Testimony before congressional committees may lead to prosecution by the Department of Justice for perjury as well as for contempt. The celebrated case of Alger Hiss, former official of the Department of State, convicted of perjury arising out of testimony before the House Un-American Activities Committee, is an example of this type of action.

With more and more frequency, witnesses before congressional committees have been claiming the protection of the Fifth Amendment and refusing to respond to questions which, if answered, they plead, might tend to incriminate them. So frequently has this plea been raised that Congress in 1954 enacted a law granting to its committees the authority to grant immunity from

prosecution to a reluctant witness to compel him to testify. This law requires, however, the notification of the attorney general and the approval of a District Court and also stipulates that such grant must be requested by a two-thirds vote of the full committee membership.

e. Compulsion of testimony from public officials

Thus far our discussion has centered about the problem of obtaining information from a balky or un-cooperative private individual. A very different kind of problem arises out of the various attempts by committees of Congress to obtain papers and documents or testimony from the executive agencies or officials of the government. On the one hand, there is no doubt about the constitutional right of Congress to inform itself on the conduct of the executive branch. On the other hand, presidents, beginning with Washington, have regarded themselves as entitled to refuse to open their personal files for congressional inspection and even to throw the cloak of immunity around any department or agency if they believed that the public interest would be served by so doing. Thus far, at least, the president has successfully asserted the powers claimed. The legal rights of the two branches have never been fully adjudicated. The Congress has in every case stopped short of citing for contempt any official who has refused on executive order to honor a subpoena. The net legislative result of a prolonged inquiry in 1958 into government secrecy by a House Special Subcommittee on Government Information was the amendment of an ancient statute conferring power on department heads to control the custody, use, and preservation of records. The amendment simply declared that the act of 1789 could not be cited as authorization for withholding information.

THE NONLEGISLATIVE FUNCTIONS OF CONGRESS

Enacting laws, while perhaps the most important, is not the sole function of the Congress of the United States. The several nonlegislative functions reveal the extent to which the framers of our Constitution departed from any rigid theory of separation of powers but rather linked the various organs of government together in such a way that they cannot easily be fit into the categories of power recognized in theoretical political science.

1. Constituent
2. Electoral
3. Executive
4. Judicial

We have in earlier chapters referred to the essential role of Congress in amending the Constitution and to the part it plays in electing the president and vice-president. We shall in a later chapter discuss the executive functions of treaty-making and appointments which the Senate shares with the president. It is appropriate here, however, to enlarge upon the judicial function of removal of civil officers.

a. Impeachment

In order to furnish the legislative branch with a shield to protect itself and the people against treasonable and criminal officials who might by some mischance make their way into the highest offices of the nation, the framers endowed the representatives with the historic power of impeachment and the senators with the power to try those thus accused. The House of Commons had for some centuries exercised the power of impeachment and, while it had

fallen into disuse during the Tudor period, it had been revived under the Stuarts and was a potent weapon in the Parliament's struggle with the Crown. Under the Constitution, the president, vice-president, and all civil officers of the United States are made subject to impeachment and removal. The grounds upon which such action may validly be taken are restricted, however, to grave criminal offenses. This is not a procedure to be invoked because of political disagreements, incompetence, or unethical conduct. Any member or group of members of the House of Representatives may prefer charges against an official. These are referred either to the Judiciary Committee or to a special investigating committee. The committee reports its findings to the House; and, if the majority votes to impeach, "articles of impeachment" setting forth the grounds for removal are drafted. Managers are appointed to represent the house in presenting the case against the official in the Senate.

b. Trial

The Senate has no choice, once the procedure has gone this far, but to hear the case. A day is appointed for the hearing, the accused is furnished with the "articles" upon which he is to be tried, and when the appointed time arrives the Senate converts itself into a court to determine the fate of the accused. The chief justice of the United States presides over the trial of a president. For all other officials the regular presiding officer of the Senate directs the proceedings. The accused is allowed counsel, and testimony, his as well as that of witnesses for or against him, may be heard. At the close of the case, the Senate votes secretly on the charges. A two-thirds vote is necessary for conviction. Anything short of this is acquittal. The penalty is removal from office, to which may be added disqualification forever in the future from holding "any office of honor, trust, or profit under the United States." Once removed from office, the individual may be tried and convicted in an ordinary court if he has committed an indictable offense.

Whatever may have been the experience of our English ancestors, the impeachment and removal powers of Congress have not proved very formidable in dealing with the executive branch. Only 12 officers, most of these judges, have been impeached in our national history and only four of these convicted. President Johnson, however, escaped removal by a single vote. The difficulty with the impeachment process is that it is designed only for grave offenses, and few of our national officials, happily, have been flagrant offenders against the laws of the land.

5. Representing constituents before the executive branch

Of all of the nonlegislative functions of the Congress none is more burdensome nor more time-consuming than the function of representing individuals and groups before the government at Washington and informing them about its operations. Every day brings to each congressman scores of letters, dozens of phone calls and telegrams, and several callers from the home district or state. Many, perhaps most, congressmen spend more working time running errands for their constituents, explaining the meaning of governmental requirements or policies to them, and adjusting conflicting interests between constituents and administrative agencies than they do in discharging their legislative responsibilities. As our government has grown larger, more com-

plex, and more pervasive, this part of a congressman's job has become more demanding. Many lawmakers complain bitterly that they are unable to grapple intelligently with the great and forbidding questions of our times because they have to give so much of their energy to this "errand boy" work.

The demands upon a member of Congress for special and benevolent intercession with the executive agencies are numerous indeed. In a small portion of the cases they are highly improper. Although most are routine requests for information or pleas of unnecessary hardship, some are for undeserved privileges or favors. Few congressmen are in a position to weigh fairly the merits of the petitioner's claims and equitable administrative behavior is not well served by the sporadic and irresponsible intervention of legislators. Every administrative agency of any size has to maintain a sizable staff just to process congressional inquiries. Congressmen, furthermore, are in a position to punish by deprivation of funds administrative indifference or resistance to their importunings. On the credit side it may be observed that congressmen act on these matters as humanizers of the vast impersonal machinery of government. If some of them ask for favors that are undeserved, all of them do much to obtain favorable acceptance of administrative activities by explaining to their people the need for the rules or regulations under which they are fretting. The representative duties of congressmen also have a healthy influnce on administrative behavior, bringing to the attention of top executives callous, arbitrary, or capricious decisions by their subordinates and revealing the sources and character of popular discontent with their agencies. The legislative activities of the Congress are strengthened by the revelations of defects in existing programs which come in a congressman's mail. The typical congressman feels that he can neglect this function only if he is willing to give up his chances of reelection.

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11

The President and Congress

"Presidential" and "parliamentary" democracies compared

THE MOST STRIKING DIFFERENCE between the government of the United States and those of most other democratic nations in the world today is the relation between the executive and the legislature. In the parliamentary democracies (Britain, France, Canada, Italy, Sweden, etc.) the executive is inseparably yoked to the legislature. Prolonged disagreement or conflict between the two is impossible. The ministry or cabinet is drawn entirely or very largely from the legislature and remains in possession of the effective executive authority only so long as it commands the confidence of that body. Substantial disagreement results either in a new ministry or a new legislature. The parliamentary system is intentionally designed to guarantee harmony of the two central agencies of democratic government and to fix responsibility for the conduct of the government clearly and firmly upon the majority party or coalition of parties. The American presidential system, on the other hand, with its independently elected executive serving a fixed term and without power to dissolve the legislature, deliberately creates a gulf between the two branches, disperses responsibility for the conduct of national affairs and invites, if it does not encourage, mutual antagonism and the need for accommodation. The American system suffers under these disadvantages in their most acute form when, as on numerous occasions in our history, the Congress has come under the domination of a party or a faction espousing a program quite at variance with that of the president or his party. The parliamentary system, on the other hand, leads to the decline of importance of the parliament as it tends to become a creature of the ministry or to the frequent change of ministers wherever party coalition is required to form a majority.

Development of American presidency:

The framers of the American Constitution would have made little sense out of the arguments of the twentieth century on the proper legislative role of the president. Familiar with the colonial and state experience of gubernatorial-legislative dealings, frightened by the excesses of the legislatures, and versed in the theories of Locke and Montesquieu, these statesmen contrived a chief magistracy which they hoped would be above the factionalism of representatives and equipped to deal firmly with their ambitions. The modern form of cabinet responsibility to the parliament had not yet clearly emerged even in the British constitution. Parties in their modern form were unknown, and factional politics, the eighteenth-century equivalent of modern party politics, was reprehended. It was not executive domination or direction of the legislature that the framers anticipated, but legislative domination of the executive.

1. The view of the framers

For a few years after the establishment of the national government it seemed as if the relations between executive and Congress would evolve in about the same way as in England, where the modern cabinet system was taking shape. Alexander Hamilton, from his post as secretary of the treasury, strove skillfully to make himself first minister, Washington a sort of constitutional monarch, and the Congress a reviewing body for policies and measures formulated by the cabinet. This development was halted by the emergence of organized political parties. Hamilton's opponents rallied around Jefferson and Madison and, operating from the Congress, asserted the independence of the legislative branch and eventually wrested control even of the executive away from the Hamilton group. Jefferson as president maintained the appearance of legislative autonomy, although achieving executive direction in fact by intrigue and manipulation of his partisans in the Congress. When the presidency came into less skillful hands, presidential initiative in legislation subsided. Congressional dominance of policy formulation was strengthened also by the assumption by the legislature of practical control over the selection of the chief executive.

2. Washington to Jackson

The development of the modern presidency begins with the Jacksonian era in which legislative control of presidential nominations was swept away and out of which emerged the modern nominating convention. This action removed the last obstacle to genuinely popular selection of our chief magistrate. The Jeffersonians and Federalists had already stultified the electoral college system by their organization of broadly national political parties. The election of the president by popular and partisan processes paved the way for his emergence as a "tribune of the people" and encouraged him to assert his position as representative of the whole people against the sectional and local representatives of the Congress. Almost a century, however, was required to realize the contemporary presidential position. The pull toward presidential leadership in the field of legislation, although erratic in force, has been persistent in direction. Chief executives learned that they and they alone were held accountable for the redemption of campaign pledges and for the realization in public policy of the programs to which they and their party had com-

3. Jackson to Kennedy

mitted themselves. The fulfillment of these responsibilities demanded that the chief executive attempt to influence the Congress. Although Congress had meanwhile developed its own institutions of leadership, none of these sufficed to overcome its sectional and centrifugal tendencies. None of its institutional arrangements, further, achieved real co-ordination of the two houses. Furthermore, its preference for seniority as the major determinant of leadership tended to increase the likelihood that its leaders could not rightly interpret the will of the nation. As Woodrow Wilson wrote in 1908:

> The nation as a whole has chosen him [the president], and is conscious that it has no other political spokesman. His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people. When he speaks in his true character, he speaks for no special interest. If he rightly interprets the national thought and boldly insists upon it, he is irresistible, and the country never feels the zest of action so much as when its president is of such insight and caliber. Its instinct is for unified action, and it craves a single leader.

Wilson's views remind us that the White House has also been occupied in this century by Theodore and Franklin Roosevelt, both of whom interpreted their responsibilities as did Wilson. All three of these men left an indelible impression on the office of president of the United States. To theirs must be joined the names of Abraham Lincoln and Grover Cleveland who, in their own ways and in an earlier age, added to the groundwork laid down by Andrew Jackson. Today, national policy as expressed in legislation is a joint product of president and Congress. The chief executive has become also chief legislator.

Criticism of the modern presidency

The historical tendencies which produced the legislative position of the modern president have not been universally admired. Plenty of people now and in the past have not liked what was happening. The charge of dictator has been hurled at every one of the presidents who sought to direct the legislative process. And it certainly must be admitted that, whatever view the framers may have taken of the ultimate position of the president, there is little in the Constitution that foreshadows his contemporary role. Experience confirms also the view that much of what has been said about the president's legislative position depends, in fact, on the personality and ability of the individual who occupies the office. Presidents have achieved influence over the legislative process when they were able as well as willing to do so. Presidents have varied also in the vigor with which they have sought congressional support. Several presidents since Jackson have been content to defer to the Congress. There is a partisan complexion to this debate. Since the Civil War, the Republican party seems to have preferred for the highest office men who were likely to respect the prerogatives and autonomy of the Congress. The Democrats have tended to support avowed protagonists of the view that it is

the duty of the president by every fair means to influence, if not to direct, the legislative process.

Executive legislative relations not finally fixed

It seems clear that the relations between the president and Congress have not achieved their final form. The balance between the two is shifting and unstable and subject to the accidents of personality. The trend toward executive leadership in legislation has been persistent and unmistakable, but it has been achieved largely outside the formal constitutional arrangements and at the expense of traditional conceptions of separation of powers and checks and balances. American constitutional democracy has yet to work out an agreeable method for achieving proper co-ordination between these two great branches of our government.

CONSTITUTIONAL BASIS OF THE PRESIDENT'S LEGISLATIVE ROLE

> He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. . . .—Art. II, Sec. 3

The Congress and the president, although constitutionally separated, are not completely isolated one from the other. Despite the general injunction that "all legislative powers" are vested in the Congress, the president is expressly assigned several important powers and responsibilities in connection with the formulation and enactment of legislation.

1. Control over sessions of Congress

The Constitution confers a modest and relatively inconsequential power on the president to control the sessions of the national legislature. The power to adjourn sessions in case of disagreement has never been exercised and the power to call either or both houses into "extraordinary" or "special" session is rapidly falling into disuse. The Twentieth Amendment obviated the need for such sessions by changing the congressional calendar so that the Congress would be in session ready to receive the program and to act upon the appointments of a newly-elected chief executive. Almost the only present need for a special session would be a serious domestic or international crisis requiring immediate legislative action and arising in the fall or early winter after midsummer adjournment of a regular session.

2. Messages to the Congress:

The constitutional directive to the president to inform the Congress on the state of the nation and to recommend measures for its consideration is a duty rather than a power, but it has proved over the years to be of some consequence in influencing legislative behavior. The time, place, and manner of fulfilling this responsibility is, of course, discretionary with each president. It long ago became customary, however, for the president to transmit at the opening of each session of Congress a comprehensive statement of his views

on all matters requiring legislative attention and on the kind of legislation which it ought to enact to meet each situation. Washington and John Adams appeared personally before joint sessions of the two houses to deliver their important messages. This practice, abandoned by Jefferson and his successors, was revived by Woodrow Wilson, and since Franklin Roosevelt has become standard procedure. The increasing utilization of radio and television broadcasting in our political life has enhanced the importance of these annual addresses. Today the "State of the Union" message of the president is an address to the people of America and of the world as well as to the Congress of the United States. It is a solemn occasion of state, and modern presidents have grasped the advantages that the spectacle offers for dramatizing their aims and policies. This appeal to the people is, in fact, a procedure of increasing usefulness and importance in gaining congressional sympathy and support for the president's recommendations.

a. "State of the Union" message

b. Other messages

In recent times the "State of the Union" message is followed in quick succession by the president's annual budget message—required by the Budget and Accounting Act of 1921—and by the economic report of the president—required by the Full Employment Act of 1946. Both of these messages, probably because of the statistical character of their contents, are invariably delivered in writing rather than in person. In such cases, the messages are actually read (usually in a monotone) to the houses by their clerks and consequently do not capture national attention in anything like the degree that those delivered in person do. In addition to these, every modern president has sent numerous special messages to Congress at various times in any session. Ordinarily, these deal each with some special subject and are designed and timed to push some item on the president's legislative agenda a little nearer final passage. Sometimes these messages accompany reports embodying extensive investigations or studies by or on behalf of the executive branch. On unusual occasions the president will deliver a special message in person. This is especially true if the subject is of overwhelming importance or if the need for immediate congressional action is imperative. President Eisenhower, for example, delivered in person in 1957 his message on the troubled situation in the Near East even before his annual message.

Effects of the messages

The effect of the messages of the president upon national legislation is hard to measure. Congress is under no legal obligation to follow the president's lead. It is free to act or not to act and, if it acts, to act in accord with or directly opposite to the president's stated wishes. The objective of the president himself is not always immediate legislative action in the form suggested. He may be using the message to stimulate public interest without desiring immediate action. He may, in fact, be willing to accept a more moderate form of action than he has outlined. He may be warning a foreign nation of possible American reaction to its prospective behavior. He may be interpreting or summarizing American views for the benefit of the rest of the world or of some important part of it. Whether the president succeeds in any or all of his stated or intended purposes depends on a number of factors unrelated to the

messages. The constitutional duty to inform the Congress of his views has become an opportunity to convince both Congress and people of his wise leadership, but we must continue our analysis of the relations between president and Congress if we are to discover how or why he succeeds or fails in getting the Congress to adopt his suggestions.

3. Proposal of legislative measures

The Constitution directs the president to recommend specific measures for the consideration of the Congress. This might be construed as an invitation to the president to assume leadership of the legislative process. Not all of our chief magistrates have so regarded it, however, and the pattern of executive leadership established by Washington through Hamilton and by Jefferson was followed only by Jackson, Polk, Lincoln, and Cleveland in the last century and not completely even by them. In this century, however, Theodore Roosevelt, Woodrow Wilson, Franklin Roosevelt, Harry Truman, and John Kennedy have all aspired energetically to enhance the influence of the presidency. A large proportion of the major bills which crowd the calendars of a modern Congress originate in the executive branch. More and more commonly, messages are accompanied by or are shortly followed by bills designed exactly to achieve the president's desires. Although the Congress freely edits, amends, and modifies these measures, nevertheless at final passage many of them still carry numerous marks of their origin. It may be pleaded that this has been, thus far, a century of crises calling forth unusual presidential energies and that when more "normal" times return presidential initiative will subside. However this may be, our chief executives now believe that they are expected to devote their major energies to devising the laws which Congress ought to pass and then trying to get Congress to pass them. When the time for a public reckoning occurs, every modern president has been anxious to exhibit an impressive record of legislative achievement.

4. Direction in the field of finance

Among the many areas of congressional concern, the national finances bring the president and Congress into the most intimate and mutually dependent relations. The Congress has never developed an effective agency of its own for attaining co-operation between the two houses or for formulating fiscal policy for the government as a whole. It has come, therefore, to depend almost entirely upon the initiative of the president in this field, typified by the annual budget message.

THE VETO POWER

The veto

Largely as a reaction against the unrestrained concentration of power in the legislatures of the revolutionary state governments, the authors of our Constitution endowed the president with one of his most impressive legislative powers: the power to veto bills and resolutions of the Congress. Although the president must proceed indirectly by suggestion and innuendo to obtain the approval of the Congress for what he wants, he is equipped to deal firmly and forthrightly with what he does not want. Despite the broad language of the constitutional grant, embracing as it does even resolutions and orders, the Con-

ess through the years has carved out a small sphere of legislative authority e from presidential oversight by the use of the concurrent resolution described in the previous chapter. At the same time, the Congress has probably rrendered more than it needed to by its own dilatory and complex procedures hich expose a large share of its measures (those passed in the last few days a session) to the absolute veto provided in cases where adjournment prents reconsideration by the Congress of a vetoed measure.

THE VETO

CIVIL FUNCTIONS APPROPRIATION BILL—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 226)

The SPEAKER laid before the House the following veto message from the President of the United States:

To the House of Representatives:

On August 28, 1959, I returned to the Congress without my approval H.R. 7509, a bill making appropriations for civil functions administered by the Department of the Army, certain agencies of the Department of the Interior, and the Tennessee Valley Authority, for the fiscal year ending June 30, 1960, and for other purposes.

H.R. 9105, which is now before me, is identical to H.R. 7509 in all respects (including the 67 unbudgeted projects which will ultimately cost our taxpayers more than $800 million), except that each individual project and appropriation item has been reduced by 2½ percent. This only change not only fails to meet any of the objections I outlined in my message of August 28, 1959, accompanying H.R. 7509 but in addition could have the effect of impeding orderly work on going projects and result in an increase in cost instead of a saving.

Therefore, for the reasons outlined in such previous message, I am returning H.R. 9105 to the Congress without my approval.

Because the time before the probable adjournment of Congress may be too short to allow for deliberate reconsideration by the Congress of my objections, the Congress might well enact a continuing resolution, effective until January 31, 1960, so that work in progress may proceed in an orderly way.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *September 9, 1959.*

OURCE: *Congressional Record, House*, Sept. 10, 1959, p. 17451.

When confronted by a bill or joint resolution, the president may constitutionally take any of four courses of action. (1) He may sign it, and it then ecomes a law. (2) He may hold it for the prescribed time (10 days) and, if ongress is still sitting, it will become law without his signature. This is an nusual course for a president to adopt and it rarely occurs. But occasions ave arisen when a president was unable or unwilling to make up his mind bout a measure in the period. Some presidents have also used this procedure hen they disliked certain measures but felt that a veto would be useless or nwise politically. (3) If Congress should adjourn during the 10-day period,

the president may by inaction veto the measure. This "pocket veto" is absolute; it cannot be overridden by the Congress. Furthermore, it does not require the president to make any explanation of his disapproval. Although some presidents, notably Franklin Roosevelt, have offered explanations of their decisions to the public or to the Congress, most presidents have welcomed the opportunity offered by the pocket-veto procedure quietly to kill a measure without explanations which may be embarrassing politically. Many bills are halted on their path to the statute books by this procedure, as a result, especially, of the habit of Congress of passing a disproportionate number of its enactments during the closing days of the session. (4) The president may veto the bill outright and return it to the proper house of Congress with his statement of reasons for disapproval. Such a course of action requires the Congress to reconsider its position on the measure in question and, if the required support of two-thirds of the members of each house can be mustered behind the measure, it may be repassed and become law without presidential signature.

The use of the veto power:

Hamilton in *The Federalist* predicted that the veto would be employed cautiously and infrequently and that most presidents would use it too little rather than too much. He proved a good prophet for the period prior to 1865. Since that time the veto has been used with increasing frequency and vigor. The turbulent era of Reconstruction, accompanied as it was by bitter dissension between the president and Congress, witnessed the first really vigorous exercise of the veto power, if one excepts the administration of Andrew Jackson.

1. Frequency

2. Scope

More important than the increase in mere numbers of vetoes has been the change in presidential attitude on the scope of the veto power. Until Jackson, the veto power was used not to express presidential disapproval of the merit or wisdom of an enactment, but to question the constitutionality of it or to halt it because of technical errors. Jackson, however, employed the veto to stifle measures which he felt were unwise, even though he conceded they were constitutional and were properly drawn. Since 1865 our presidents have tended to follow Jackson rather than Washington, Jefferson, Polk, and the others. It is now generally conceded that the veto is properly used to express disapproval of any kind and to any degree of policy or legality, of technicality or of procedure, on major issues and on minor ones. President Eisenhower vetoed the Natural Gas Act of 1956, for example, because he did not like the lobbying activities accompanying its passage, although he approved of the substance of the bill. The result has been to make the president a more potent factor in legislation than he was during the greater part of the past century.

3. Influence

This should not be taken to mean that in recent decades the veto has been employed loosely and without adequate grounds. On the contrary, it is typically employed reluctantly and only after considerable reflection. It means that presidents have come to rely more certainly on their own views of the needs and aspirations of the people. Furthermore, the output of the Congress has

THE USE OF THE VETO 1789-1962

President	Total Vetoes	Regular	Pocket	Vetoes Overridden
Washington	2	2	0	0
Madison	7	5	2	0
Monroe	1	1	0	0
Jackson	12	5	7	0
Tyler	10	6	4	1
Polk	3	2	1	0
Pierce	9	9	0	5
Buchanan	7	4	3	0
Lincoln	6	2	4	0
Johnson	28	21	7	15
Grant	92	44	48	4
Hayes	13	12	1	1
Arthur	12	4	8	1
Cleveland	414	304	110	2
Harrison, B.	44	19	25	1
Cleveland	170	42	128	5
McKinley	42	6	36	0
Roosevelt, T.	82	42	40	1
Taft	39	30	9	1
Wilson	44	33	11	6
Harding	6	5	1	0
Coolidge	50	20	30	4
Hoover	37	21	16	3
Roosevelt, F.	631	371	260	9
Truman	250	180	70	12
Eisenhower	181	79	102	2
Kennedy	20	11	9	0

increased markedly in the past several decades and thus more bills and resolutions come under presidential scrutiny. Many presidential vetoes have been widely popular and few presidents have suffered serious election reverses because of them. Furthermore, relatively few presidential vetoes have been overturned by the Congress. In practice, therefore, the direct, messaged veto tends to become very nearly an absolute veto.

Reform of the veto power

Periods of acute tension between the president and Congress have produced criticism of the presidential veto. Some have proposed that the veto power be weakened by requiring only a simple majority to repass a vetoed measure and others have proposed strengthening the power by requiring the support of two-thirds of the entire membership, rather than of those present, to repass a measure over presidential objection. Neither of these suggestions is currently receiving any serious attention. The most serious contemporary criticism of the veto power is that it does not extend to items or parts of bills, especially appropriation bills, but embraces only the whole measures. Most states have equipped their governors with item-veto power in reviewing appropriation measures in an effort to achieve more responsibility and sobriety in the

The item veto

spending of public funds. Their experience has commended this reform to many observers of and participants in the national scene. As matters stand, the president has no effective veto power over appropriations. Confronted with one of the major annual appropriation bills passed by the Congress, the president must accept it or risk exposing one whole program of public services to extinction for lack of funds. Since he has to have appropriation authority to conduct the government or any part of it, he ordinarily must accept whatever Congress sends to him. His discretion is reduced further by the fact that such bills ordinarily reach him quite late in the session, sometimes after Congress has adjourned, and thus there is no opportunity to repass a necessary appropriation, even one more nearly in line with the president's desires. Congress is, therefore, free to add sums to the appropriations suggested by the president without on many occasions adding to the national tax program to meet the obligation thus incurred. In addition, the argument runs, Congress has repeatedly added sections to appropriation bills which dealt with other aspects of public policy or administration and which it knew the president would disapprove if presented to him in any other way. These "riders" have been condemned by almost every president as an attempt to evade the constitutional system of checks and balances.

Opposition to the item veto

The reasons offered by the opponents for their refusal to accede to presidential requests have been: (1) That such a grant would add greatly to the president's legislative power, allowing him, for example, to discriminate among the appropriations to favor his friends and punish his enemies, and that the balance of power has already been tipped too far in the presidential direction; (2) that experience in some states indicates that the effect of such a veto might well be to increase rather than to decrease legislative irresponsibility, that is, legislators would fall into the easy habit of pleasing everyone by voting extravagant sums, knowing that the executive would veto them, and thus transferring to him the onus for so doing; (3) that, in view of the fact that the president already has the power to recommend the budget, if he could veto congressional additions to his suggested program, then Congress would be completely powerless in the field of national finance.

One of the difficulties in the debate over the presidential item veto is the continuing disagreement among statesmen and scholars alike as to the best way to accomplish this reform. Some, including the two presidents who recommended it, have held that an item veto could be conferred by the Congress by writing the pertinent language into each appropriation bill. Others, including several senators, have held that a constitutional amendment is the only valid way to achieve the change. President Eisenhower in 1955 selected a novel way of handling the "rider" problem. He announced in signing a major appropriation bill that the department needed the funds but that he intended to ignore certain provisions of the bill which he held to be unconstitutional. A final observation on the item-veto debate: it seems quite unlikely that the Congress would enact the appropriations in their present form if the president's veto

power were extended to items. The proponents of an appropriation which might draw presidential censure would certainly be sagacious enough to combine it with an item that the president could not or would not veto.

EXTRACONSTITUTIONAL DEVICES TO ACHIEVE PRESIDENTIAL INFLUENCE IN LEGISLATION

The role of the president as a lawmaker is by no means confined to the powers and duties specifically mentioned in the Constitution. If one is to gain a real appreciation of the power and influence of the American presidency, it is necessary to consider the numerous practices devised by energetic presidents outside the Constitution and now accepted parts of the repertoire of our chief magistrate.

1. Threat of veto

Influence may be exerted not only by using the veto power but by threatening to use it. If a president allows congressional leaders to believe that he will veto a particular measure if it is presented to him in the form contemplated, he may be able to achieve changes before final passage and thus influence the final form of the measure. By indicating that he will veto a given measure in any form, he may be able to prevent its passage and even its introduction. Theodore Roosevelt, in many respects the father of the modern presidency, was the first president who admitted using this technique extensively and also the first to proclaim its use publicly. Since Roosevelt, the threat of veto has become a familiar tool of presidential intervention. No chief executive in modern times has employed it as extensively as Harry Truman. It is necessary to add that on several occasions, notably in the Truman era, the threat only succeeded in stiffening the resolution of the Congress to proceed on its intended course regardless of presidential hostility.

2. Use of patronage

Every president has at his disposal a very large number of favors which he may dispense to legislators and their friends and supporters. The discriminating distribution of these favors is perhaps the chief behind-the-scenes source of presidential influence in Congress. These favors range from administrative benevolence toward certain interests in the home district of the congressman to the appointment to national office of persons recommended by members of Congress. The distribution of public offices in this way is ordinarily referred to as patronage, although in the broad sense the word may be used to embrace any type of favor granted for political or partisan advantage. Although the extension of the civil service merit system of appointment to the national public service has gradually reduced the number of positions which any president may fill by partisan methods, there are still several thousand posts which change occupants with each change in the political character of the national administration. Virtually all of these positions require senatorial confirmation and it is this procedure which encourages congressmen to urge the claims of their friends to posts in their own states or districts. By withholding such appointments from fellow partisans in Congress, the president is in a strong position to bargain for their support of his legislative policies. These matters are

rarely handled by overt threats or definite bargains, but members of Congress are not indifferent to the advantages which accompany the position of supporters of presidential policies. We have the word of a former president (Taft) that the control over legislation arising from the president's appointing power is great. This particular extraconstitutional device is obviously most effective in the first months of a term of a new president. Once most of the posts are filled by a new administration the president's bargaining power is reduced. The fact that presidents have typically experienced a declining influence on the Congress as their term has progressed partially reflects this. Presidents have customarily striven to get as much of their program as possible out of the first Congress that they deal with and before all of the job plums have been distributed. Jobs for friends, however, are only one kind of presidential favor which can ease the political life of a legislator. As we have noted, constituent pressure brings every member of Congress into daily communication with agencies of the executive branch. The presidential blessing opens the doors of powerful administrators to congressional importuning much more readily than might otherwise be the case. At any rate, a legislator who incurs outright executive hostility is likely to find many obstacles in the way of serving his and his constituents' interests the way he would like to serve them. A congressman, on his own, has relatively few favors to bestow.

3. Personal conference and persuasion

Still another source of presidential influence is personal conference. While it is true that in our system the president does not appear on the floor of either house of Congress or participate in the debate, this does not prevent him from achieving the same objective privately in consultation with members of the Congress. Every modern president's visiting list has contained the names of numerous legislators, and he has felt bound to spend a fair portion of his working hours persuading, cajoling, threatening, and pleading with legislators for support. From early in his first administration, Franklin Roosevelt made systematic use of a weekly conference with the leaders of his party in the Congress. This practice has been continued by his successors. At these meetings the president receives reports on the status of legislative business and of his measures in particular and indicates his wishes concerning the matters pending before the Congress. Presidents also call into conference the influential members of a committee which is considering one of their measures and by whatever arts of persuasion they can command try to get the committee to act favorably on their requests. It is not at all unusual for members of Congress during the course of debate to indicate that they have recently discussed the pending issue with the president and to indicate to their colleagues what the executive's views are. And these views, so reported, are likely to be influential.

4. The "presidential lobby"

The president does not have to carry the immense burden of dealing with Congress and congressmen alone. He has under his direction what is sometimes called "the most powerful lobby in Washington." A large share of the work of persuading and of explaining administration policies and programs is, in fact, carried on by his subordinates in the executive departments and agen-

cies. Virtually every one of these great organizations maintains close and continuing relations with the Congress. The secretaries, bureau chiefs, and other top administrators spend much time appearing before committees, conferring with party leaders, and interpreting their programs to individual members of the legislature. Each of the great departments and many of the independent agencies have a staff of officials who do little else than coordinate departmental or agency relations with the Congress. The president himself ordinarily assigns one of his own administrative assistants to keeping track of his dealings with the Congress, and in the Bureau of the Budget another group of officers undertakes to review all bills emanating from the executive branch and to screen out those not consistent with current presidential policy. All of this activity is clearly indispensable to the effective operation of our national government but it is also widely criticized as an abuse of administrative discretion, especially when views are urged upon the Congress that the Congress or the critic is reluctant to adopt.

5. Cultivation of popular support

None of the devices thus far described is quite so useful to the president as energetic and articulate public support. Members of Congress are most sensitive to the views of their constituents, and if the president is strong with the voters he is likely to be successful with the Congress. Realizing this, presidents court public approval in every way they can. Some, of course, are much more adept at it than others. All have unequaled opportunities for publicity. We have noted how the messages and addresses to Congress are more and more commonly directed beyond the Congress to the people who support it. To these may be added the many addresses that presidents are called upon to give on occasions of state and to various influential groups throughout the nation, the consultations which are held with influential leaders of opinion, letters addressed to private individuals but intended for public consumption, "fireside chats" on the radio, and carefully prepared television programs. All of these are and can be used to build and maintain a public opinion that Congress dare not ignore. The attention lavished on the president by newsmen is, perhaps, unequalled elsewhere in the world. His every movement and utterance is reported. A crowd of reporters follow him wherever he goes and no aspect of his personal life escapes attention. Much of this is not by his design but the result is that his personality more fully dominates the news on public affairs than in any other nation in the world and his ability to use this publicity for constructive ends is unmatched by Congress.

The presidential press conference

"The White House," said Theodore Roosevelt, "is a bully pulpit." The "gospel" as there expounded is carried to the nation today largely by means of the press, the radio and television. Special mention is, therefore, appropriate of the use of these media by the president to achieve the support he needs. The presidential press conference is one of the most effective contemporary devices of presidential politics. The practice of meeting regularly with the representatives of the press and submitting to their direct questioning was initiated by Woodrow Wilson. He abandoned it for the prepared release when the United States entered World War I. President Harding revived it but proved unequal

to the task of handling direct questions skillfully and required the advance submission to all questions in writing. This practice reduced the publicity value of the conference but it was continued by Coolidge and Hoover. Franklin Roosevelt cast the press conference in its modern guise. He had a shrewd sense of publicity and achieved the maximum in public sympathy and understanding through his semiweekly conferences. Presidents Truman, Eisenhower, and Kennedy have attempted to continue the Roosevelt practice but each of them has met the press less regularly and less frequently. With recent presidents, the conference has become more wide-ranging in coverage. None has liked to close off a line of questioning by saying "no comment." Eisenhower, further, opened his conference to news and television cameramen. President Kennedy has followed most of the Eisenhower practices. Franklin Roosevelt also pioneered in using the radio to reach the American people, largely through his famous "fireside chats," and proved one of the most skillful of modern practitioners of radio broadcasting. Truman and Eisenhower have attempted to follow the Roosevelt pattern but neither has been as effective. Presidents Eisenhower and Kennedy have sought public support by televised addresses.

THE PRESIDENT AS PARTY LEADER

Presidency strengthened by role of president as party leader

The relations of the president with the Congress and the effective employment by him of the constitutional and customary forms and techniques described are colored and influenced by the fact that the president is the leader of his party. The emergence of the president as a party leader has been one of the major contributing factors to the contemporary legislative role of the chief executive. Chosen as a party candidate to head a government operated under a party system, the president surrounds himself with advisers of his own party, consults chiefly with the leaders of his party in Congress, unites to his the interests of his fellow partisans in the legislature through patronage, and depends primarily on the loyalty and support of the members of his party in Congress for the realization of his legislative program. The president represents his party throughout the nation as his colleagues in Congress cannot. The country looks to him, much more than to the Congress, to fulfill the pledges made by his party. Under these circumstances, he is bound to claim, ordinarily successfully, direction of the party's national machinery. He selects, while still a candidate, the chairman of the national committee and frequently reviews the appointments of other dignitaries in the party apparatus. He suggests and sometimes even dictates planks in the national platform on which he expects to campaign. He is consulted and his views may be decisive on all important questions of national party policy.

Influence on Congress from party leadership

As leader of his party, the president derives an additional lever to pry his program out of the Congress. He succeeds to a very great extralegal power to reward and to punish individual legislators of his party. He can exert great influence in such party decisions as the distribution of campaign funds among the states and representative-districts, the issues that will be played up in the

campaign, the local and state leaders who will be aided and encouraged. As the chief campaigner of his party, the president can take the stump or not in aid of his congressional colleagues. He can endorse the congressman to the voters of his district or withhold his approval. All of these courses of action are likely to influence the election prospects of a member of the legislature. A few presidents, notably Franklin Roosevelt, have even gone so far as to campaign openly against hostile legislators of their own party. However, many professional politicians believe that a president dare not go this far. He is more likely to hurt himself than his opponent, for the voters tend to resent the intrusion of outsiders into local campaigns. In any event, this procedure has rarely accomplished the desired object. In sum, most congressmen are keenly aware of the great advantages to be gained politically from supporting presidential measures.

Party complexion of the Congress influences presidential success

It should be apparent from this discussion that the president's relations with the Congress, including his influence on legislation, depend upon the party situation in the Congress. Confronted with a Congress dominated by the opposite party, few of the techniques of partisan leadership are likely to prove effective in winning congressional support. In these circumstances, and they have been all too frequent, the president's role as party leader is rather an embarrassment than an aid to his legislative aspirations. The presidency is the best prize of the American party struggle and the congressional leaders of the rival party are always strongly tempted to resist presidential advice in order that by discrediting his influence they can capture his office. The most favorable situation for presidential influence is for the White House to be newly occupied after an impressive election triumph which includes a strong majority in both houses of Congress. Midterm congressional elections have normally diminished presidential influence. Commonly, the president's party loses ground in these elections and even when his party retains control, its legislative members do not feel quite so keenly the ties with a chief executive who has not been in the campaign himself. Furthermore, as we have noted, the job patronage will be all dispensed. The lowest point in the ebb and flow of presidential leadership is when it becomes clear that the president will not seek reelection. Both party and congressional leaders then seek identification with a new leader.

CONTROL OVER THE PRESIDENT BY CONGRESS

Constitutional controls

The continuing gain in the influence of the president upon the Congress and the impressive array of constitutional and customary devices for making this influence effective should not be interpreted to mean that, as between the two branches, influence flows only in one direction. Congress in its turn is capable of bringing powerful influences to bear upon the president. Few of the powers of the president can be exercised without money, and for every dollar of executive branch expenditure, the president must depend on the Congress. If the president shares the legislative power of the Congress, the Congress, as we

have seen, shares the executive and administrative power of the president. He and his deputies are ordinarily obliged to make an accounting of their stewardship in connection with the annual review of appropriation requests and his departments and agencies are periodically brought under critical scrutiny by the investigating arms of the Congress. The organization of the executive departments and commissions, the powers entrusted to them, and the procedures used by them are all dictated in more or less detail by congressional enactments. Except in the field of foreign affairs, the president must rely upon Congress for virtually every major change in public service, program, or policy. Even in the field of foreign affairs, the president must get senatorial approval of his treaties, congressional assent to war, and congressional approval of any financial support required for any international understanding. Finally, in extreme circumstances, the president can be impeached and removed from office by the Congress.

Extra-constitutional controls

Congress is not powerless either in those day-to-day dealings between the two branches which have developed outside the formal constitutional specifications. If senatorial confirmation of his appointments gives the president an opportunity to reward his congressional supporters, it also results in congressional selection of the incumbents in many executive branch posts. If the position of party leader endows the president with substantial influence upon the electoral success of his party members in Congress, it also requires him, more often than not, to accept and even to support members of his party whom he may find personally obnoxious and who may very well be working to accomplish the defeat of his most cherished ambitions. If he can cultivate popular support by the press, radio, and television, congressional committees have shown themselves quite adept at capturing national attention with these devices, commonly when they are investigating the national administration. Furthermore, Congress is so organized that even if the president achieves great influence over the rank and file of his party, a few hostile leaders can still defy him with impunity and effectively frustrate legislative action.

In sum, directing our national government is jointly the responsibility of the president and the Congress. Neither is in a position completely to dominate the other. The realization of public opinion in national action requires genuine co-operation between the two.

PROPOSALS FOR IMPROVING LEGISLATIVE-EXECUTIVE RELATIONS

Adoption of the parliamentary system

The boldest way of seeking greater harmony and unity between Congress and the president would be to abandon our historic principle of separation of powers and frankly go over to the British parliamentary system. The president would then become a titular chief executive with only formal and ceremonial functions like the British king. The actual executive would be a cabinet drawn from the majority party in Congress and directing both legislation and administration. Congress would then serve a fixed term only if the cabinet so decreed, for the executive would have to be able to dissolve the legislature in case of

disagreement and call for a new election. The Senate would have to be radically reconstructed and demoted to a subordinate and largely suspensive role. One needs only to recite the major changes involved in copying the British system to reveal how visionary and impractical any such proposal is. Not only are the American people wholly unprepared for anything so drastic, but the size and complexity of our society and the sectional character of our political parties make it unlikely that the system would really serve our needs.

Floor privileges for cabinet members

Most of the admirers of the parliamentary solution to the problem of legislative-executive relations have sought rather to modify the American presidential system by grafting on to it some of the features of cabinet government that might be most readily assimilated. Perhaps the mildest suggestion is that the heads of executive departments be extended the privilege of the floor in both houses of Congress for the purpose of giving information, answering questions, and engaging in debate but not voting. This would allow, it is argued, the administration to defend itself directly and before the entire membership and would obviate the back-door procedures which are now used to accomplish the same end. The position of the administration and the reasons therefore could be stated openly and forthrightly and need not be relayed second-hand to the Congress. Much of the current investigating activity of congressional committees might be obviated if the legislators could ask questions directly of the department heads. It is hard to see, however, how a cabinet member could say anything that had not been cleared with the president beforehand and, therefore, there would be little spontaneity of discussion.

A cabinet of congressional members

Presidents Taft and Wilson favored a plan under which, when selecting department heads, the chief executive should take most or all of them from among senators and representatives, the persons chosen retaining their seats and positions in the Congress. This would bring the two branches much closer together than the more modest proposal of giving the cabinet floor privileges. It would still, of course, leave the president outside of the legislature and free as now to accept or reject the advice of his counselors. A constitutional difficulty to this proposal is the specification that civil officers of the United States are ineligible to membership in Congress. This is probably not, however, an insurmountable barrier. Another difficulty in this suggestion would arise when the president and Congress are of opposite parties.

Presidential powers of dissolution

One school of thought holds that the real key to harmony in the cabinet system is the power of dissolution of the legislature possessed by the ministry. Believing that the most critical juncture of presidential-congressional relations is when the Congress rejects all or most of the president's program, these analysts recommend that the president be empowered to call a new congressional election. The people would then decide the controversy by their votes. The logic of this view is that if the voters returned a Congress still opposed to the president's policies, the president should resign. Some writers and statesmen have recommended that if a midterm election goes against his party and his program, the president ought to resign in any event. It is hard to see how the dissolution power could be integrated to the staggered terms of the sena-

tors. Another suggestion is that all members of Congress be elected for the same term and at the same time as the president. This would virtually guarantee that the same party would dominate both branches at any given time.

A legislative-executive council

Several students of the problem suggest that the wisest course is to disturb the existing institutional arrangements as little as possible but regularize and formalize the relations between the leaders of the Congress and the president and his advisers. One proposal along this line would organize the chairmen of a reduced number of standing committees into a legislative council or cabinet to meet frequently with the president to coordinate legislative programs. Another proposal would organize a council of eleven members of each house and three members named by the president to screen all proposed legislation and to consult directly with the president. The combination of legislative council of committee chairmen and president's cabinet into a grand council for formulating public policy is yet another suggestion. The joint committee on the organization of Congress suggested four policy committees, one for each party in each house, which would formulate the legislative programs of the respective houses and parties. The two majority party policy committees would meet regularly with the president. The failure of the House of Representatives formally to create the contemplated committees and the great difference between how these committees in the Senate actually work and how they were expected to work has not made these reforms fruitful.

Priority for administration measures

One school of thought feels that the role of the executive branch as the major initiator of legislation ought to be recognized and accepted. Change the rules of the two houses, these men argue, and assure clear priority to administration measures. In fact, when the president has a working majority of his party in both houses, something very like this happens anyway. When he does not, no amount of priority could probably get his program accepted.

Although the prospects for immediate adoption of any of these proposals are not bright, the very existence of so many suggestions reveals a wide-spread notion that further improvement of our constitutional arrangements is both possible and necessary. Meanwhile, the incumbents of the presidency have been attempting to establish on an informal basis the type of consultation and cooperation in executive-legislative relations which will more nearly achieve the desired goals.

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The Presidency

> The executive power shall be vested in a President of the United States of America. He shall hold his office during a term of four years. . . . Art. II, Sec. 1

THE PRESIDENT OF THE UNITED STATES of America is, without question, the most powerful elected executive in the world. He is at once the chief formulator of public policy as embodied in legislation, leader of a major political party boasting thousands of functionaries and millions of adherents, chief architect of American foreign policy and spokesman for this nation before the world, director of one of the most gigantic administrative machines ever created, numbering over 2,000,000 civilian employees organized into 65 separate jurisdictions and expending more than $90 billion annually, commander-in-chief of more than 2,500,000 men in uniform equipped with the latest weapons of offense and defense, and ceremonial head of the government of the United States. And his power and responsibility are increasing. It may seem ironic that a nation so mistrustful of officialdom and so certain of the corrosive effects of political power should construct such an office. However, the president falls heir to these powers by the peaceful suffrages of his countrymen and he holds them for but a short time.

The president the most powerful elected executive in the world

Given the great apprehension of American revolutionary leaders of executive power, it is difficult to believe that the modern presidency is a deliberate creation of the founding fathers. The major decision of the Constitution-makers was that we should have a single executive. The remaining characteristics of the office are largely the product of practical political experience. Like

The Constitution a poor guide to present office

the British cabinet system, it is not to the sagacity of a few solons but to the pragmatic adjustments to time and circumstance by ordinary statesmen that we owe the institution of the American chief executive. To no part of our American system is the Constitution so poor a guide. Custom and usage have wrought the office far more than constitutional prescription. The development of the presidential office has, nevertheless, remained firmly anchored to the provisions of the Constitution.

The constitutional convention and the presidency

The principal designer of the constitutional president was James Wilson, who argued skillfully and frequently for a single executive, independent of the legislature. No problem bothered the framers quite so much as the executive; they repeatedly postponed action when firm decisions were impossible and reversed decisions already made. Not until the closing days of the convention did the presidency finally take its ultimate form, and only after a majority vote had been recorded and rescinded for legislative election and after the proponents of a plural executive, or at least of an executive council to assist the president and share his powers, were beaten down for the last time. In fact, so preoccupied were the framers with these two questions and with the question of eligibility for reelection that the powers and duties of the executive office were inadequately debated and summarily handled. What is meant by "executive power"? Why were some "executive powers" listed in Article II and others omitted? What should be the role of the "officers in each of the executive departments"? The debates in the constitutional convention throw little light on the framers' intentions. Only experience has yielded answers to these questions.

THE OFFICE OF PRESIDENT

The third-term problem resolved

The decision of the constitutional convention for a four-year term with no limitation on the number of terms any individual might serve, in preference to a single seven-year term, turned out to be largely unacceptable to many of our nation's leaders. The first president was willing to serve only two terms, although he probably could have been reelected. The third president, Jefferson, declined to serve more than eight years as a matter of principle. He steadily opposed indefinite reeligibility of the chief executive. Madison and Monroe both bowed out after eight years and Jackson, who undoubtedly could have been reelected, vigorously supported Jefferson's precedent. Thus an "anti-third-term tradition" was established which lasted until Franklin Roosevelt successfully sought a third term in 1940 and then a fourth term in 1944. Roosevelt's departure from tradition called down upon his head a great storm of criticism and abuse and encouraged his opponents staunchly to reassert the tradition. Soon after his death and following a Republican victory in the congressional elections of 1946, an amendment to the Constitution limiting presidential tenure was laid before the states. Aided by growing antipathy toward President Truman, then serving his second term, the forces pushing the amendment finally achieved ratification by the thirty-sixth state (Nevada) early in

1951. The Twenty-second Amendment makes it hereafter impossible for any person to serve as president of the United States for more than two terms.

Presidential qualifications

At the time that an individual assumes the office of president, he must, according to the Constitution, be at least 35 years of age, have lived in the United States 14 years, and be a "natural born" citizen of this country. In accordance with the Twelfth Amendment, the vice-president must also have these three qualifications. Here again, the constitutional specifications are practically of small importance in determining presidential eligibility. All of those qualities which make up what we have described earlier as "availability" in a potential candidate are the decisive determinants.

Salary and allowances

Although Benjamin Franklin argued eloquently on the corrupting allure of wealth and against any presidential emoluments, the president has been paid a generous salary from the beginning of our national life. The Constitution expressly protects him from congressional attack or embrace through his pocketbook—a favorite colonial device for dealing with recalcitrant British governors—by providing that his salary may be neither increased nor diminished during his term of office. He is also forbidden to receive any other emolument from the United States or from any state. This has not, however, prevented his being supplied with an executive mansion, a suite of offices, a secretariat, a yacht, an airplane, a private Pullman Car, a fleet of automobiles and special entertainment and expense funds. George Washington's salary was fixed by the first Congress at $25,000. Today the salary is $100,000.

THE POWERS AND DUTIES OF THE PRESIDENT—A GENERAL VIEW

Constitution not clear on executive powers

Exactly what powers the Constitution confers or the framers intended to confer upon the president is anything but clear. Controversy has buzzed around this subject throughout our national life and the clamor has by no means abated. Demonstrably, the framers wanted firmness and vigor in the executive without autocratic domination. These are qualities imparted to an office by an individual, however; not to the individual by the office. To make the executive the servant and not the master of the subjects has ever been the goal of constitution builders, and the history of tyranny testifies to the almost insuperable difficulties in the road of such endeavors. Perhaps the framers were content to allow time and experience to decide the major contours of executive authority in the American system. Perhaps this would have happened in any event, no matter in what language they had finally depicted the presidential power. They did, however, fall below the high standard of lucidity and consistency which characterizes most of our Constitution when they came to describe this high office. On the one hand, *all* executive power (not the power *herein granted* as in Article I) is conferred upon the president; and on the other, specific powers of an executive character—to appoint officers of the United States, to be commander-in-chief, to grant pardons, to make treaties, to take care that the laws be faithfully executed—are also conferred. Furthermore, the Congress is endowed with the power to make "all laws which shall be necessary and

proper for carrying into *execution*" the powers granted to it. Does the Constitution mean that the president has some executive powers in addition to those specifically mentioned? Does it mean that the president must look to Congress to provide not only the means but the authority to act when, for example, rebellion, industrial violence, depression, national catastrophe or war threatens the stability of our institutions and the happiness and security of our people?

Two conceptions of executive power:

If we allow for variations in detail, two broad and competing conceptions of presidential power emerge from the debates engendered by circumstance, personalities, and constitutional obscurity. Hamilton, Madison (before he became president), Jefferson (while he was president), Jackson, Polk, Lincoln, Cleveland, Theodore Roosevelt, Wilson, Franklin Roosevelt, Truman and Kennedy have supported the view that presidential power is broader than the specific items enumerated, that it is not completely dependent upon express congressional authorization, and that, although it should be carefully confined normally, the existence of a critical or emergency situation justifies the most vigorous and independent exercise of all of the force and authority that the chief magistrate can command. In this view, the Congress, the courts, and the people of the time have generally concurred. Theodore Roosevelt best expressed this view when he labeled the president "the steward of the people" and insisted that it was not only his right but his duty to do anything that the national welfare required unless it was expressly prohibited by the Constitution or the laws.

1. Broad view

2. Limited view

President Taft, in *Our Chief Magistrate and His Powers*, sums up the opposite view:

> The true view of the executive function is, as I conceive it, that the president can exercise no power which cannot be reasonably and fairly traced to some specific grant of power or justly implied or included within such express grant as necessary and proper to its exercise. Such specific grant must be either in the constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest.

To this view, many of our chief executives, for example, Buchanan, Grant, Harding, and Coolidge, the Congress and occasionally the courts have also intermittently subscribed.

Precedents for the broad view of presidential power

The exponents of the broad, rather than the limited, view of presidential authority largely molded the office of the presidency as it stands today. They established most of the significant precedents. They defined the functions. They inspired their successors. They also stimulated the vigorous assertion of the opposite view and invited reaction and retreat when they thrust too far beyond the ground already occupied. The landmarks in the evolution of presidential power are: Washington's proclamation of neutrality in the Franco-British war; Jefferson's decision to acquire the Louisiana territory, although he believed there was no constitutional authority for such an acquisition; Jack-

son's resolute annihilation of the Bank of the United States despite its strong congressional support, and his strong determination to prevent the secession of South Carolina; Lincoln's assumption of virtually plenary power to deal with the southern "rebellion" with or without congressional authorization, in consequence of which and without express grant of Congress he raised armies of volunteers, appropriated money from the Treasury, suspended the execution of the writ of habeas corpus, issued the Emancipation Proclamation, and restored states occupied by the Union armies (many of his actions were, to be sure, later validated by the Congress); Grover Cleveland's determination to repress industrial disorder with national troops in the Pullman strike despite the opposition of the governor of the state concerned; Theodore Roosevelt's dramatic intervention in the coal strike of 1902 and his assertion of the "stewardship" conception of the presidential office; Wilson's successful assertion of the president's complete responsibility for direction of American participation in World War I, although he acted on the basis of congressional assignment of power; the Supreme Court's decision in the Myers case supporting the view that the president's removal power is unrestricted; congressional delegation to Franklin Roosevelt of great powers to deal with economic depression and to direct the American effort in World War II; Truman's assignment of American forces to battle in Korea under the United Nations without express congressional authorization; the movement of national troops into Little Rock, by Eisenhower and into Oxford and Tuscaloosa by Kennedy against the wishes of the Governors of the states concerned; the imposition of a naval blockade of Cuba by Kennedy to force the removal of Soviet missiles.

Precedents for the limited-power concepts

The Congress and the courts have provided most of the precedents for the more limited view of presidential power. The Senate by resolution denounced Andrew Jackson's actions against the Bank of the United States as unconstitutional—a resolution which it later expunged. Lincoln's "dictatorship" was bitterly assailed from Capitol Hill and so were the actions of the Roosevelts and Wilson without, however, any official action. Andrew Johnson's attempt to assert Lincoln's powers without Lincoln's skill brought him within one vote of removal from office. The Supreme Court has declared against presidential assumption of power on several occasions. The most recent occasion for Court declaration on this weighty subject represents a rebuff to presidential claims. President Truman in 1952, in an effort to halt a threatened steel strike which he claimed would jeopardize our national defense effort, ordered the Secretary of Commerce to seize the steel factories and to operate them. The President based his order on his power as commander-in-chief of the armed forces and the "executive power" of the president, admitting that no congressional authority for such an action could be found. When the steel companies sought to prevent the seizing of their properties, the Court held that in the absence of congressional authorization and in view of the fact that Congress had clearly intended not to grant such authority, the constitutional provisions governing executive power and power as commander-in-

Steel seizure case

chief conferred no such power on the president. The lawmaking power, said the Court, is entrusted to the Congress alone in "both good and bad times."

From this cursory review of attitudes and precedents on presidential authority, it is clear that no precise delineation is possible. Periods of vigorous assertion of presidential power have been followed by periods of congressional or judicial enforcement of limitations on presidential ambitions. On the whole, however, the office has become stronger with the years and the broader view of presidential authority has been the more enduring one. A more complete view of the authority vested in the president obliges us to look next at the detailed assignments of power made by the Constitution.

POWER AND RESPONSIBILITY TO ENFORCE THE LAWS

> . . . he shall take care that the laws be faithfully executed, . . .—Art. II, Sec. 3

Law-enforcement power

The presidential oath of office obligates him to protect and defend the Constitution and the Constitution itself solemnly enjoins him to enforce all national laws (by implication this includes treaties and ordinances). A great many of the laws of Congress expressly confer upon the president or upon his subordinates in the executive branch specific powers of enforcement. Some laws confer powers which may be exercised at his discretion or at the discretion of his subordinates. The sum of these constitutional and statutory grants is the enforcement power of the presidency at any given time.

Presidential assistance in law enforcement

For discharging this lofty responsibility the president has virtually the entire facilities of the executive branch, including the thousands of officials and employes working in the numerous agencies of which it is constituted. One particular agency, the Department of Justice, is charged with the general responsibility for law enforcement, notably of those criminal laws the enforcement of which is not specifically assigned by the Congress to some other national agency. As an alternative to the use of troops, agents of the Department have also been used to halt violence. Attorney General Kennedy ordered a large number of U. S. marshals into Birmingham, Alabama in 1961 to "assist" local law enforcement officers in preventing attacks on the bus loads of "Freedom Riders" then touring the South in the interests of desegregation. The Governor (Patterson) of the state did not request this assistance and the Congressional delegation vigorously protested the procedure.

Suppression of disorder

The president has also under his command the armed forces of the nation and even those of the states if and when called into national service. The president's power to employ military force in the enforcement of national laws has steadily increased through the years as a result of congressional action and of presidential initiative. It now seems clear that such power is not wholly dependent on congressional authorization nor, in cases of internal disorder, on the invitation of the governor or legislature of any of the states. If the president

can validly assert that the disorder threatens the performance of any national function, the safety of national property, or the flow of interstate commerce, he can intervene with force to restore order whether the governor or the state legislature wants him to do so or not. Supporting this view, the Supreme Court said, "The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted to its care." The use of troops in Little Rock in 1957, in Oxford in 1962 and in Birmingham and Tuscaloosa in 1963 are recent actions illustrating the scope of presidential authority. In the first case, a reluctant President felt compelled to intervene with force when the Governor of Arkansas (Faubus) called out the state militia to prevent compliance with a national court order to desegregate Central High School in accordance with a plan for admitting Negroes carefully worked out by the local school authorities. The President asserted that "the powers of a state governor may not be used to defeat a valid order" of a national court. In the second, the Governor of Mississippi (Barnett) attempted to obstruct the admission of a Negro to the University of Mississippi. Even while rioting was in progress, President Kennedy pled for obedience but made it clear that his obligation was to implement the orders of the courts with whatever means were necessary. In Birmingham, the Governor of Alabama (Wallace) expressly requested that the situation be left to the local authorities. No rioting surrounded the effort to enforce the court-ordered admission of Negroes to the University of Alabama at Tuscaloosa but Governor Wallace attempted personally to obstruct their entrance.

Limitations on enforcement power

As awesome as the president's responsibility for law enforcement may be and as broad as some presidents and courts have found his power to be, in practice there are numerous restraints, legal and political, upon his ability to fulfill such responsibilities or to exercise such powers. Whatever reservoir of enforcement power may be found from time to time to exist in the constitutional mandates unsupported by specific statutory authorization, normally the president must look to Congress to prescribe his exact authority to enforce any given law, for the procedures by which such enforcement is to be achieved, and for the penalties which may be invoked against transgressors. Whether or not he is dependent upon Congress for the power, he is certainly dependent upon it for the personnel and supplies, that is, the money, to do the job. The president is also dependent upon the quality of the national public service, most members of which he did not hire and, in practice, cannot fire. His appointment and his removal powers are circumscribed in many ways, as we shall observe in the next section of this chapter. The lieutenants upon whom the president must largely depend for the enforcement of any law are not, in every case, bound to him and to him alone by an unbroken chain either of authority or of communication. The president inherits not only most of the people upon whom he must depend, but the organization of these people into bureaus and departments with all the institutional traditions that these organizations have

accumulated through the years. Most presidents have found that they are supporting these institutions and the men who occupy them much more often than these are supporting the president.

Executive rule-making powers and its limits

The power of enforcement necessarily entails large powers of discretion. In applying general laws to particular circumstances it is essential that enforcement agencies decide what the law means in these varying circumstances. From this necessity has flowed an increasingly broad stream of presidential direction in the form of executive orders, ordinances, rules, and regulations which are in plain fact laws made by the executive. Congress has repeatedly, especially in the last half-century, established national policy in very broad terms and assigned to the executive the power to achieve these broadly stated objectives by uttering detailed rules and regulations. This discretionary power, essential as it is to effective law enforcement, is limited by congressional power to recall the delegation or to spell out the details, contrary to presidential policy. On the other hand, the presidential directives frequently come under the scrutiny of the courts. And when called upon in law enforcement, the courts have the final say as to what the law is.

Law enforcement and public opinion

The effectiveness of law enforcement depends in the final analysis on the attitude of the public toward the law in question. The many futile attempts to enforce the Volstead Act of 1919 (the law designed to give effect to the Prohibition Amendment) illustrate the great difficulties in the path of presidential fulfillment of his constitutional duties in the face of a hostile or lethargic public opinion. Furthermore, a great and growing number of national policies set forth by Congress and president cannot really be achieved by enforcement in the sense of seeking out and punishing violators. They can be achieved only by methods which are essentially educational and noncoercive. The needy aged, for example, cannot be properly cared for by a program based mainly upon uncovering those wrongfully receiving public support. The "enforcement" responsibilities of the president in these types of programs can be fulfilled only with adequate public understanding and support.

POWER TO APPOINT AND REMOVE PUBLIC OFFICERS

> . . . he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.—Art. II, Sec. 2, cl. 2

Scope of the president's appointing power

That the president is solely responsible in law and in the polling booth for the conduct of the far-flung national administrative machinery is a truism of American law and politics. His ability actually to direct the administration

is dependent upon a variety of personal, political, and legal conditions. Not the least of these is the scope of his power, legally and practically, to hire and fire the individuals who compose the national civil service and the cadre of national officers who guide them. The Constitution clearly circumscribes the president's appointing authority of individuals in the executive branch in several ways. Except for members of the diplomatic service and judges of the Supreme Court, the officers to which presidential appointment may extend must be created by the Congress. The authority to create an office carries with it the power to establish the duties of the office and the qualifications of any individual who may occupy it. Congress has, in practice, set forth such qualifications of many kinds, geographical, political, personal, and professional. Congress, furthermore, may vest the appointment of "inferior" officers—and, by and large, the Congress has decided which are "inferior" offices—in department heads as well as in the president. In fact, the Congress has assigned the appointment of more than 85 per cent of the 2,300,000 civilian employees of the executive branch to department and agency heads and has limited the freedom of the department heads by the requirements of the merit system. The direct appointing power of the president now extends to about 25 thousand national officials. However, any particular incoming president may be able to fill only about 6000, but these include virtually all of the top-ranking posts in the official hierarchy—secretaries, assistant secretaries, some bureau chiefs, commissioners, agency directors. The president's hand does, therefore, reach those who appoint the others and who give them their orders and assign them their duties. Many students of the American system, it is necessary to add, feel that the president's appointing power is still too extensive and that if he were confined to appointing only two or three hundred of the major executives this would be ample for the purpose of achieving the kind of directional authority which he ought to have. Presidents for years past have complained bitterly about the unconscionable burden of appointments cast upon them. This was especially the case before the extension of the merit system throughout the civil service.

Senate participation in appointments

One of the most important limitations of presidential authority is the prescription that the Senate must be consulted on his selections. Except in those few cases (there are about 375 such posts) where Congress has vested the power in the president alone (e.g., the officers of his own immediate staff), all presidential nominations must be confirmed by majority vote of the Senate before appointment may be made. In practice, the Senate has tended to divide presidential appointments into two classes with respect to the character of its participation. It has been customary for the Senate to approve, almost as a matter of course, the president's choices for the highest positions in the executive branch. It has come to be recognized that the heads of the great departments and agencies are the principal advisers of the president—the departmental heads compose his cabinet—and that he bears direct responsibility for all of their acts and relies upon them to direct the agencies in keeping with his policies. He should, therefore, have the widest range of free-

dom in selecting them. Although there has been serious opposition on several occasions to the president's choices, only nine nominees for cabinet posts have ever been rejected. The president's designees for subordinate executive posts, for Supreme Court judgeships, and for diplomatic posts are contested somewhat more frequently, but even these are normally not seriously challenged.

Recess appointments

In skirmishes with the Senate over executive posts, the president is fortified by his power to make recess appointments without senatorial approval. A few presidents have used this procedure to keep men in office of whom the Senate disapproved. Of course, the Senate is more likely to be sympathetic to presidential wishes when his party is in the majority.

"Senatorial courtesy"

There is another class of presidential appointment, however, about which the Senate is not nearly so deferential. Several thousands of the posts filled by presidential appointment are not major executive posts at all and are positions in the field service (regional offices outside Washington, D. C.). These include collectors of customs, certain positions in government corporations, U. S. district attorneys and marshals, and judges and court functionaries of the lower federal courts. The appointment process for these positions is normally dominated by partisan considerations and the sum of these posts constitutes the job patronage of any given administration. Senatorial confirmation operates in this category of presidential appointment to enforce upon the president the nominees of his fellow partisans in Congress. For those posts located in states where at least one of the senators is of the same party as the president, that senator's approval of the appointment is almost mandatory. The Senate has a deeply-rooted tradition that it will rally to the support of any senator in the circumstances described and reject any nominee not acceptable to him. This tradition is called "senatorial courtesy" and is typically invoked by a senator declaring that the nominee is personally obnoxious to him. For posts which are located in congressional districts, the members of the House of Representatives of the president's party expect to be consulted and this practice too may be enforced upon the president by the senators. In states not represented by a senator of the president's party, the president is obliged for party reasons and by tradition to rely on suggestions from the state party leaders, typically the national committeeman. In sum, the president has not much real freedom in making appointments to the vast majority of posts which he is entitled by law to fill. The actual selections are made by party supporters in the House and Senate and by party leaders in the state where the jobs are located. We have already described how, by the skillful use of this patronage, the president may gain support for his legislative program from the Congress and thus compensate in a sense for the restrictions upon his appointing power.

The president's removal power

The ability of the president to get the vast national administrative service to march to his tune is strongly influenced by the scope of his power to dismiss those who disobey his orders, impair the efficiency of the service, resist his program, or neglect their responsibilities. Obviously the constitutional impeachment process is not designed for this purpose. Since the Constitution

is otherwise silent on the dismissal of government officers, does the president have this power or does the Senate share responsibility for dismissal as it does for appointment? Can the Congress by law prescribe the procedure for firing employees and officers of the national government? This problem arose early in the life of the Constitution and while many of the framers were still alive. Madison persuaded his fellow statesmen of the time that the removal power, insofar as officials in the executive branch are concerned, was part of the executive power and of the power to enforce the laws which the Constitution entrusted to the president alone. On another occasion, however, Madison did say that Congress might create certain types of offices—not wholly executive in character—for which some different removal procedure might be established. Until 1867, the Madison doctrine of presidential removal authority was generally accepted in law and practice. In that year, however, and as an incident to the acrimonious contest between Congress and President Johnson, the Congress passed over his veto a Tenure of Office Act which provided that the president could not remove without the concurrence of the Senate any official whose appointment the Senate had confirmed. This measure was partially repealed in 1869 and wholly expunged in 1887, but another act passed in 1876 established the same principle for postmaster appointments. Several decades later, President Wilson, probably deliberately, violated the Postmaster Act and called the constitutionality of the limitations into question. The Postmaster (Myers)—later his estate—carried the matter to court and in 1926 the Supreme Court, through the mouth of Chief Justice (former President) Taft, declared in favor of the Madison doctrine that the removal power belonged to the president and could not validly be restricted by the Congress in the manner described.

The Myers Case

The decision of the Court in the Myers case, because of its sweeping assertion of presidential power, caused immediate concern for the tenure of officials appointed to commissions, such as the Interstate Commerce Commission, which Congress had endeavored to exempt from direct presidential domination. This aspect of the problem was brought to the court for judgment about a decade later when, in 1933, President Roosevelt dismissed William S. Humphrey, a Republican member of the Federal Trade Commission, whose policies did not agree with those of the President. In doing so, the President made no pretense about adhering to the statutory requirements concerning the tenure of members of the "independent commission." In this case, the Court went back and picked up the other part of the Madison doctrine and held that Congress had the power to establish agencies in the executive branch which were not exactly executive in function and that it could clothe these with a certain immunity from presidential direction. The independent regulatory commissions are of this type, said the Court, and Congress was acting within its power when it specified the terms ("inefficiency, neglect of duty, or malfeasance in office") upon which commissioners may be removed. In a later case the court said that even if Congress does not expressly provide for re-

The case of the independent commission

moval, if the nature of the agency is such that it was clearly intended to be exempt from presidential direction, the president may not remove an incumbent.

Removal of "inferior officers"

The power of the Congress to prescribe dismissal procedures for the "inferior officers" has long been recognized. Since 1883, Congress has gradually extended the protections of merit system tenure to these offices, and thus for all practical purposes the president's power to dismiss merit system employees is sharply restricted. In the absence of legislative provision, however, the president may remove inferior officers at his discretion.

Congressional removal power

Congress has frequently and by a variety of methods attempted to remove or to force the president to remove officers of the executive establishment, and these efforts suggest that the president's authority in removal must be viewed also from a different vantage point: the role of Congress in removals. In 1924, the Senate by resolution called upon President Coolidge to request the resignation of his secretary of the navy in consequence of his relation to the naval oil reserve scandal. The President strongly repelled the notion that this was any of the Senate's concern and took no official recognition of the request. By statutory provision, one officer of the government, the Comptroller General of the United States, may be removed from office before the end of his term only by joint resolution of the two houses of Congress. The rationale of this law, as set forth in an act of 1945, is that this officer is peculiarly a subordinate of the legislature. The easiest and least debatable procedure available to the Congress for ousting administrative officers is to abolish their positions. In 1952, for example, the Truman Wage Stabilization Board was abolished because of congressional disapproval of its findings in the steel-labor controversy and a new board with similar functions created. Another method tried by the Congress is to specify qualifications for positions which the incumbents do not possess. The Congress has also tried, unsuccessfully, to deny salaries to particular administrators of whom it disapproves. Finally, the Senate has sought, also unsuccessfully, to recall confirmations of appointments of officials.

POWER AS COMMANDER-IN-CHIEF OF THE ARMED FORCES

> The President shall be commander-in-chief of the Army and the Navy of the United States and of the militia of the several States, when called into the actual service of the United States.—Art. II, Sec. 2, cl. 1

Effect of military responsibilities on the office of president

Among the many factors which have contributed to the aggrandizement of the office of president, none is more important than his military and diplomatic responsibilities. The three presidents—Lincoln, Wilson, Franklin D. Roosevelt—who piloted this nation through its major wars extended the scope of presidential authority beyond any other holders of the office. In this century especially, wars both hot and cold have centered responsibility for the peace

and safety of the nation more firmly in the presidency than has been true in any other era save that of the Civil War. The security of this nation depends in great measure upon the maintenance of a firm military posture of readiness and upon the skillful operation of our diplomacy abroad. In both of these areas of governmental activity, the president is uniquely in the focal position. The country looks to him rather than to Congress or courts to save the day.

"War powers" of the president

The constitutional basis for the president's military authority is the assignment to him of the position of commander-in-chief of the forces. If to this be added his constitutional responsibility for law enforcement, we have virtually the entire legal framework upon which has been erected the towering structure of what Lincoln called the "war powers" of the president. Until Lincoln's day, it was quite generally assumed that the duty of commander-in-chief vested the president with purely military powers, such as to deploy the armed forces, to order their internal management, and to appoint and dismiss their officers. Lincoln regarded his constitutional duties as including far more than this. He was obliged, he said, to save the nation and to suppress insurrection and as commander-in-chief he must do whatever was required to serve those ends. Lincoln did ask the Congress subsequently to ratify most of his acts, which the Congress did. However, he acted upon the view that the initiative and responsibility were his and that as commander-in-chief he was peculiarly responsible for preserving public order and combating insurrection. The presidents charged with the conduct of the two world wars of this century have assumed that Lincoln's view of presidential power to deal with rebellion is also applicable when the country is fighting a foreign enemy. Franklin D. Roosevelt, for example, in a message to Congress in 1942 dealing with the Emergency Price Control Act, invited the Congress to take action to stabilize wages and prices but, he said, "in the event that the Congress should fail to act, and act adequately, I shall accept the responsibility and I will act." "The President," he went on to say, "has the powers, under the Constitution and under congressional acts, to take measures necessary to avert a disaster which would interfere with the winning of the war."

The "cold war" and presidential authority

The "cold war" of the present era has stimulated the application of the Lincolnian doctrines to hostile situations where no war has been formally declared, as in Korea. Our obligations under the United Nations charter can, of course, be cited as adequate legal grounds for assignment of American troops to Korea without express congressional approval. The deployment of American troops as "technical assistants" to the French-native forces in Indo-China and later to Thailand was a presidential decision unsupported by United Nations resolution or specific congressional enactment. The Steel Seizure case alluded to above represents a setback for the most sweeping assertion of the authority of the commander-in-chief, but the power of the commander to deploy American troops anywhere in the world (Berlin, for example, where President Kennedy strengthened our troop deployments in 1961) is still widely accepted. President Eisenhower, however, usually tried to associate Congress

with any major decision to commit American forces abroad as in the Formosa crises of 1955 and 1958 and the Mid-East crisis of 1957. In the Cuban crisis of late 1962, President Kennedy imposed the naval blockade to halt arms shipments to the island and to force the removal of missiles and jet bombers largely on his own authority. Congress had, however, with little or no presidential urging, earlier passed a resolution authorizing the use of the military, if necessary, to prevent Castro influence from spreading in this hemisphere or from threatening American security. Kennedy asked for and got authority from the Congress to order units of the Ready Reserve into active duty. In summary, the extent of the power of a president when acting as commander-in-chief is mainly undefined, but that it is considerable no one now doubts.

THE PARDONING POWER OF THE PRESIDENT

> . . . and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.—Art. II, Sec. 2, cl. 1

Scope of the pardoning power

The power to exempt individuals from the punishment ordained for the offenses of which they have been convicted is one which has been associated with the chief executive in Anglo-American law for many centuries. The framers of our Constitution simply borrowed the practice from England. It should be noted that the president's power extends only to individuals convicted of national crimes and that it may not be used to veto congressional convictions resulting from impeachment. The pardoning power has come to embrace the power to diminish the punishment, for example, by commutation of sentence, or to delay its application by reprieve, as well as to cancel it entirely. Although the Supreme Court at one time said that the effect of a full pardon is to make the offender, in the eye of the law, "as innocent as if he had never committed the offense," the power is now regarded as not quite so sweeping, and judicial cognizance may be taken of a conviction even though the individual was pardoned.

INSTITUTIONS OF PRESIDENTIAL LEADERSHIP—THE CABINET

Need for presidential assistance

The sum total of the powers and responsibilities of the President of the United States, when added to the aspirations of those who occupy the position, is a crushing burden of work and care. It is almost too big a job for any mortal being. Two of the last eight presidents (Harding and Franklin D. Roosevelt) have succumbed under the tremendous strain while still in office, a third (Kennedy) was felled by an assassin, and a fourth (Wilson) was stricken with paralysis and emerged from the presidency broken in body and spirit. The life of a fifth (Coolidge) was undoubtedly shortened by his presidential anxieties. Twice during his service, a sixth (Eisenhower) was felled by serious heart attacks. Strange as it may be that men willingly seek such an office, it is

stranger still that they are able to bear up under the stresses and worries of it and to perform in it as well as they have done.

It should be obvious to any thoughtful student that the president cannot do all the things he is supposed to do or carry all the weight of affairs he is required to carry without help. However solitary and self-contained the office of president may seem to be in law and in the eyes of the throng, the president, himself, is quite dependent upon his assistants, high and low, for the effective discharge of his responsibilities. It is not too much to say that the quality of presidential assistance and the organizational arrangements through which it is brought to the aid of presidential decision are major determinants of presidential success. More than this, they make it possible for one human being somehow to fill the presidency.

Origin of the cabinet

Among the institutional arrangements for presidential assistance none is more interesting or less helpful than the cabinet. The office of president was designed by the fathers of the American Constitution with great misgiving that any man could be found to whom could safely be entrusted such power and responsibility. Many proposals were made to share presidential burdens with a council of some kind. None of these proposals was ever adopted. The cabinet, as we know it, grew up outside the Constitution and unknown to the law. President Washington looked first to the Senate to share some of his burdens and to offer him timely advice and then to the Supreme Court. He was rebuffed by each of them in turn. And, finally, when the House of Representatives discouraged the appearance of his departmental heads in the midst of their deliberations, he was forced to turn in upon the resources of the executive branch. Washington came to rely entirely on his own subordinates, the heads of the four executive departments, for advice and assistance and thus the cabinet was born. Hamilton's effort to model the institution into an agency of collective responsibility somewhat like the later British model was unsuccessful. Throughout the decades the cabinet has remained a purely advisory body.

The cabinet is what the president makes it

As the years have passed, the traditions and customs of the cabinet have become more and more settled. These settled traditions, however, concern the membership, the relative rank of the members, and the formalities of meeting. Few decisive traditions have been established regarding the purpose of the cabinet, the subjects of its deliberations, or the regard which must be given to its decisions. Cabinets have been and are now whatever the president chooses to make of them. Some presidents, Pierce, Buchanan, and Harding, for example, consulted their cabinets at every turn and ordinarily acted upon their recommendations. Eisenhower relied on his cabinet a good deal more than his immediate predecessors and during his illnesses it came very close to being an agency of collective responsibility. Others have ignored their cabinets. Jackson, preferring to lean upon personal friends and political aides, discontinued cabinet meetings altogether. Lincoln is reported to have polled his cabinet on a critical issue of the day and finding all opposed to his own opinion, nevertheless decided in favor of his own proposal. Wilson and Franklin D. Roosevelt leaned lightly on their cabinets, they rarely submitted any major policy ques-

tions to the meetings. The following passage from the most recent and most comprehensive study of the operation of the executive branch ever made states rather exactly the modern position—or lack of it—of the cabinet: [1]

> The members of the cabinet are the primary advisers to the president. He is free to select them, to decide the subjects on which he wishes advice, and to follow their advice or not as he sees fit. The cabinet as a body, however, is not an effective council of advisers to the president and it does not have a collective responsibility for administration policies. That responsibility rests upon the president. The cabinet members, being chosen to direct great specialized operating departments, are not all fitted to advise him on every subject.

Meetings

Cabinet meetings are ordinarily held once or twice a week in a special room in the White House expressly designed for the purpose. The president and the heads of the ten executive departments sit around a large oval table, the president in the middle and the others flanking him in order of rank. The vice-president is commonly in attendance, as on many occasions are heads of some of the large agencies which do not have departmental status. Proceedings are informal; there are no rules of debate; no minutes are kept; and, rarely are any votes taken. Under President Eisenhower, however, a regular agenda was prepared in advance for the meetings, a secretary to the cabinet was established, and decisions taken were noted and efforts made to see that they were properly implemented. President Kennedy, although he retained a special assistant to serve as cabinet coordinator, relied on his cabinet very little. Meetings have been irregular and infrequent. Traditionally, the matters discussed were those introduced by the president and very commonly included party and campaign problems as well as problems of a legislative, executive, or administrative character. These discussions, at best, bring out useful information and opinions, clarify the issues, and promote morale among the top executives of the administration. Almost never do they culminate in decisions on policy by mere show of hands.

Influences on cabinet appointments

It might well be asked why the cabinet has developed the way it has. Surely a president could only strengthen his position and lighten his cares by sharing some of his responsibility with the cabinet, by leaning on them for advice and guidance, and by utilizing more fully the very considerable administrative and political talents which every cabinet contains. Furthermore, the senatorial power of confirmation provides no great barrier to cabinet unity and loyalty. The Senate has, as we have noted, accorded unusual freedom to the president to make his own selections. The answer to the question appears to be that, although the Senate has left the president largely free to make his own appointments, the political traditions of the nation have not left him free

[1] *Report to the Congress by the Commission on Organization of the Executive Branch of the Government*, "General Management of the Executive Branch" (Washington, D. C., 1949), 17-18. One cannot repress the notion that this passage was written by the chairman of the commission, former President Herbert Hoover.

to gather around him a group of advisors upon whom he can certainly depend for loyal support. When a modern president comes to choose his cabinet he is obliged to take account of many factors other than personal loyalty and dependability. Most presidents have felt that the cabinet must be an instrument of party harmony and that, therefore, the various factions and regions which are influential in party councils must be represented in it. The men and groups over whom the president climbed on his way to the nomination have got to be placated in the interests of presenting a united front to the people and a strong claim upon the party's followers in Congress. In some instances, the managers of the successful candidate have even promised cabinet appointments to some men in order to win their support in the party convention. Only on rare occasions have presidents stepped outside their parties to name men of slight political influence or men identified with the other party.

Cabinet not fitted to share presidential burdens

Each president has tried to make his cabinet as broadly representative as he can, with someone from the West (usually to head the Department of the Interior); someone from the South; someone from the group he is trying to detach from the other party (Eisenhower's appointment of Martin Durkin, the Democrat leader of an A.F.L. union, for example); someone from labor, from agriculture, and from industry. The aspirations of almost every major group in the body politic are recognized in some way by the cabinet selections. Under these circumstances, a president is surrounding himself with men and women whose loyalty to him and enthusiasm for his program is not always whole-hearted. Secretary Chase, in Lincoln's cabinet, spent much of his time trying to unseat Lincoln and capture the presidency for himself. Bryan was never really sympathetic to Wilson's pro-Allied foreign policy. Hoover rose to the presidency from a cabinet post under circumstances which did not endear him to Coolidge. A cabinet seat (the postmaster generalship), furthermore, is customarily reserved for the chairman of the party's national committee. Thus, we see that when a president calls his cabinet together for the first time he will discover as he looks around the table, men whom he did not know at all until a few days or weeks ago, men whom he has every reason to distrust, men with whom he will never be able to agree on any matter of fundamental policy. Only here and there will a familiar face of a true friend and well-wisher appear. It is for these reasons that many presidents have preferred to seek advice elsewhere and to confine cabinet discussion to questions of party policy or to anecdotes and trivia.

Cabinet qualifications

It should not be supposed from what has been said that presidents are utterly indifferent to the competence, administrative or technical, of the individuals appointed to cabinet position. The attorney general is always a lawyer; the secretary of the treasury is frequently a financier; the secretary of agriculture is a member of some agricultural organization. Perhaps an increasing proportion of individuals are selected for their special knowledge and experience of the matters with which their departments deal. In the main, however, these qualifications are secondary in importance to the ones already discussed.

THE EXECUTIVE OFFICE OF THE PRESIDENT

The most effective institutional arrangement for lightening the president's load and helping him to get through his daily chores is a product of the last three decades. It is the staff assistance provided through the Executive Office of the President. This institution is a product of the first of the two great studies of this generation of the operation of the executive branch of the national government: the Report of the President's Committee on Administrative Management (1937).

The creation of the Executive Office of the President

Until well into this century, the president relied almost entirely on the departments for bringing to him timely reports, carefully conceived recommendations, answers to the questions propounded by his visitors, his correspondents, and his legislative colleagues, and estimations of the future. His own staff included only a private secretary to handle his visiting list, his mail, and his directions, some assistants to help in processing the mail, and an executive clerk to direct the various employees of the White House. Through personal contacts, cabinet meetings, and directives, the president tried desperately to co-ordinate and give direction to the movements of the growing complex of agencies which comprise the executive branch. This responsibility added to his other cares impelled him to labor far beyond the powers of most persons. The first major device for equipping the president to take a broad, superdepartmental view of his responsibilities was the Bureau of the Budget, created in 1921. Although placed at first in the Treasury Department, this Bureau nevertheless became a tool of presidential direction and its director the major financial adviser to the president. In 1928, the number of secretaries to the president was increased to three and the work of his office compartmentalized into correspondence, reception of visitors, economic research, legislative matters, and press relations. His purely ceremonial military aides were replaced at this time by distinguished officers able to advise the president on grave military questions. The tremendous expansion of governmental services and staff incident to combatting the depression engulfed the president in a new flood of papers, people, and programs demanding his personal attention. "The President needs help," said the Committee on Administrative Management in 1937. The president should have at his command a staff of assistants who can be his eyes and ears and bring to him the data necessary to inform his judgment. This staff, said the Committee, should consist of men "in whom the president has personal confidence and whose character and attitude is such that they would not attempt to exercise power on their own account." Furthermore, the Bureau of the Budget should be brought directly into the presidential entourage.

Components of the Executive Office:

Pursuant to these recommendations and to the Reorganization Act of 1939, the modern Executive Office of the President was created by Executive Order in 1939. Under the roof of the Executive Office was established the White House office, embracing the personal secretaries and newly-created

assistants to the president and their staffs. Under President Johnson, the White House office now consists of approximately 300 employees, the most important of whom are a press secretary; a correspondence secretary; an appointment (calendar) secretary; a special legal counsel; military aides from the three armed services; a personal physician; an executive clerk; special assistants dealing with legislative relations, speech writing, "cold war" planning, science and research, national defense, and other subjects. President Eisenhower had a chief-of-staff directing the activities of all of the others in the office but President Kennedy abandoned this practice. President Truman made a practice of holding daily conferences with his chief lieutenants in the White House office at which time the day's duties were reviewed. The President gave directions to each man and received from each advice on the upcoming matters of the day. President Eisenhower relied heavily on his chief-of-staff to coordinate all of his aides of the White House staff. These men, in each administration, have been the presidents' own selections and have had a compelling influence on what and who are brought to the attention of the "boss." All except the most influential men in national life who set out to capture the president's ear end up by seeing one of his assistants.

1. The White House office

The Bureau of the Budget was transferred from the Treasury Department to the Executive Office by executive order and its functions expanded to embrace not only fiscal policy but general administrative management in the executive branch. Its function of screening all departmental and agency proposals for legislation was broadened and strengthened at the same time. The present Bureau, with its 1000 employees, is the key planning agency for the nation's finances, and because of its proximity to the chief executive himself is able to exercise a profound influence on all departmental programs and policies, as these must be supported by adequate financing.

2. Bureau of the Budget

The Full Employment Act of 1946 added a new unit to the president's office when it created the three-man Council of Economic Advisers. This agency was and is charged with keeping its fingers on the pulse of the American economy, advising the president on the state of the nation's economic health, and preparing periodic reports for him to submit to the Congress on the subject.

3. Council of Economic Advisers

As an outgrowth of the struggle for unified direction of the defense forces and of the strategy of the nation, two important cabinet committees were created and practically, although not formally, made a part of the executive establishment. The National Security Council and the National Security Resources Board, established in 1947, were designed to improve the ability of the president to coordinate military and diplomatic policies and military mobilization policies and industrial and resources programs. The staff of the National Security Council is part of the Executive Office of the President.

4. National Security Council

Controversy over the proper direction and the assignment of the responsibilities for American efforts in space precipitated by the Russian Sputnik led to the creation in 1958 of the National Aeronautics and Space Council in the

5. National Aeronautics and Space Council

Executive Office. Like the National Security Council, this is essentially a Cabinet committee headed by the Vice-President and charged with coordinating the space program.

6. Office of Emergency Planning

The chairman and staff of the National Security Resources Board were, in 1953, consolidated with the director of defense mobilization into the Office of Defense Mobilization. In 1958, it became the office of Civil and Defense Mobilization and in 1961, the Office of Emergency Planning. The present office now serves as the principal planning agency for all matters relating to current and future efforts to prepare the American economy for war and for rehabilitation in case of attack.

7. Office of Science and Technology

The rapid growth of the research efforts of the national government contributed to the formation in 1962 of the Office of Science and Technology in the Executive Office of the President. The Director is the science adviser to the president and coordinates scientific programs with the welfare and defense needs of the nation.

Executive Office grows in usefulness

The new Executive Office has seemed so exactly to fit the needs of the times that it has grown steadily in importance and utility in the past decade and a half. Surrounding the president, as it does, with a "palace guard" of devoted servants and multiplying by several-fold his ability to breast the waves of reports, orders, problems, and advice rising from the bureaus, offices, and agencies of the vast administrative sea, it provides the most effective support to the president of the United States. This was perhaps most clearly revealed by the way the office functioned during Eisenhower's illness. The presidency has thus become not a man but an institution. Its occupant reads a very small portion of all the written matter he receives; he writes an insignificant number of the papers he signs; he prepares almost none of the messages and speeches he delivers; he sees a fraction of those who would consult with him. Only thus can a mere man today "execute the office of president."

Continued efforts to aid the president

Despite the impressive successes of the Executive Office, few statesmen or students are wholly satisfied that the presidency is still within human capacity and that the American genius for organization has yet solved the problems of coordinating the efforts of the huge executive establishment. Each year brings a new spate of proposals for improvement. Ex-President Hoover believes we need a second vice-president, appointed by the president and responsible to him, to whom might be delegated a large part of the routine chores. Governor Rockefeller (New York) has proposed a deputy president. Ex-President Eisenhower, father of the chief-of-staff system in the White House, is believed to favor a first-secretary above the Cabinet and below the president. Ex-President Truman and a subcommittee of the Senate, headed by Senator Jackson (Wash.), opposed these solutions. A study undertaken for the Jackson group suggests the need for a national research organization to undertake long-range studies of foreign and military policies and a planning staff in the Executive Office to evaluate programs and policies for the president.

THE VICE-PRESIDENCY AND PRESIDENTIAL SUCCESSION

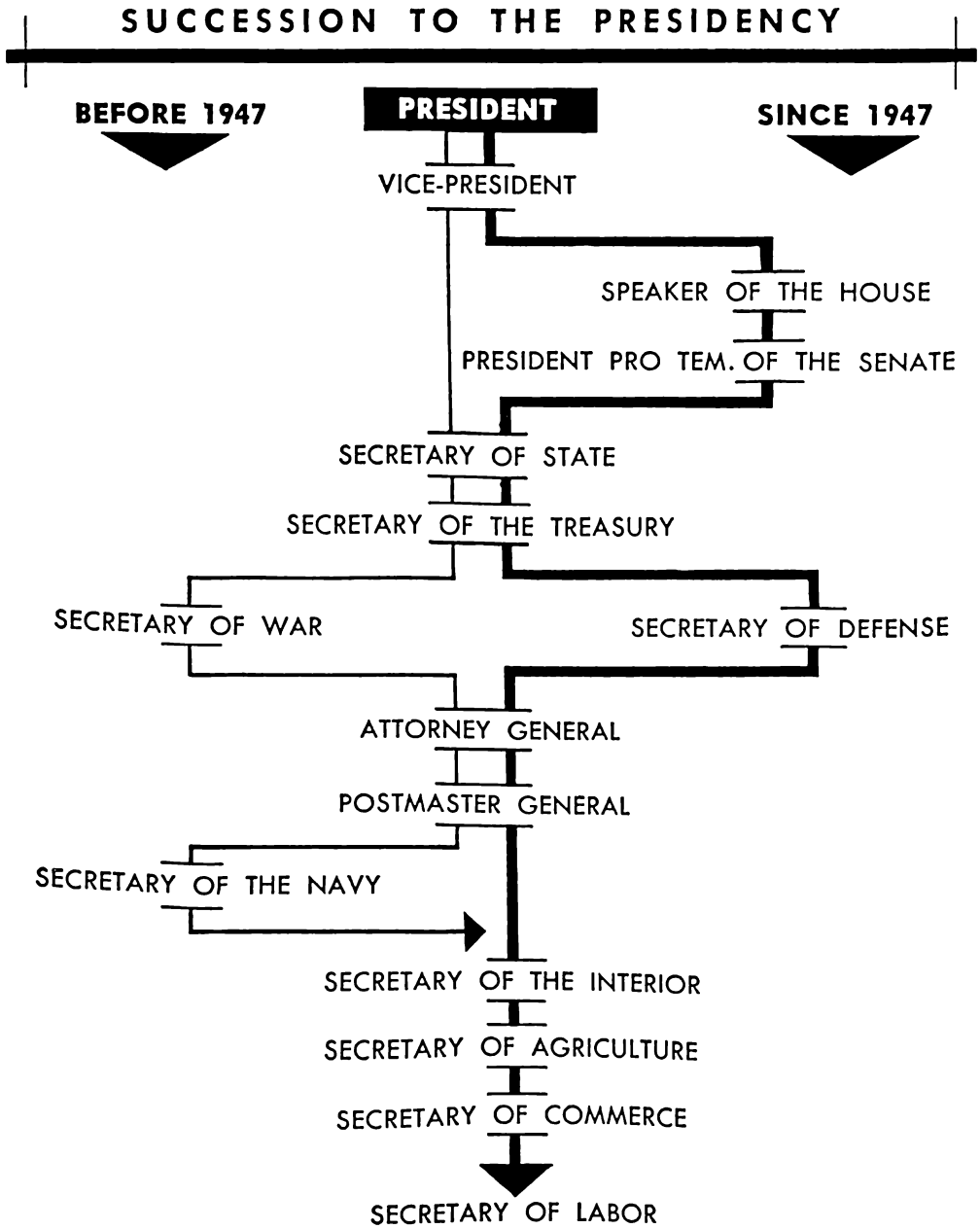
Office of vice-president

The vice-president of the United States has no constitutional function except to preside over the Senate and to assume the office of president in the case of the death, resignation, removal, or disability of the incumbent. As presiding officer of the Senate he is not a member of that body, has no vote except when a tie occurs, and participates in the deliberations only informally, if at all. As heir-apparent to the presidency, he is an executive officer of the government potentially rather than actually. Since 1836, the only occasions upon which the vice-president has succeeded to the office of president have been the result of the death of the president. Eight presidents have died in office and a like number of vice-presidents have assumed the presidency. No president has resigned; none has been removed. No president has been incapacitated to such an extent and for so long a period as to lead to the assumption of his duties by the vice-president. Such a transfer was, however, seriously discussed when Garfield lay dying for two months, stricken by an assassin's bullet, when Wilson suffered a paralytic stroke which held him in bed for weeks, and when Eisenhower had a heart attack in the fall of 1955 and a mild "stroke" in the fall of 1957. Eisenhower's illness, in part, precipitated a considerable effort to find a statutory or constitutional remedy for the present situation in which the president alone is really the sole judge of his own disability. No formula agreeable to both the White House and Congress has as yet been found. President Eisenhower in 1958 and President Kennedy in 1961 entered into agreements with their respective vice-presidents by the terms of which the vice-president is to become "acting" president in case of presidential disability until the disability is ended. If the president is unable to communicate then the vice-president may make the determination of disability himself after "appropriate consultation."

The role of the vice-president

The rise of the party system, the passage of the Twelfth Amendment providing separate voting for president and vice-president, and the rarity with which presidents have dropped the reins of power have combined to reduce the office of vice-president to comparative insignificance. The result is that candidates for this office are not selected with the same care as presidential candidates. Many worthy and experienced statesmen have, in fact, refused to be considered for the nomination. The candidates are in practice selected by the presidential candidate himself to balance the ticket, that is, to appeal to regions and interests with whom the presidential candidate is not identified. The vice-president has, in consequence, proved hard to fit into the chain of command or the framework of responsibility in the executive branch. Although it would appear reasonable that the vice-president be kept informed of the policies and plans of the administration, Calvin Coolidge was the first vice-president regularly to attend cabinet meetings. This custom has by now become fairly well established. The cabinet meeting, however, is not the most effective

institutional device for keeping the vice-president informed. A succession of vice-presidents, Garner, Truman, Barkley, Nixon, and Johnson, selected from the Senate, have uncovered new uses of the office. These men proved valuable intermediaries between the president and the Congress. Nixon and Johnson have also played active roles in foreign affairs and served the president as special emissaries abroad on several occasions. When, on November 22, 1963, President Kennedy was cruelly felled by an assassin's bullet, the coun-



try was indeed fortunate that the vice-president, Lyndon B. Johnson, could bring to his accession to the presidency long and highly responsible service on Capitol Hill, and a knowledge of the inner workings of the administration unmatched by any previous vice-president. Perhaps the vice-presidency is at last coming to share some of the burdens of the president.

Arrangements for presidential succession

There is no assurance at any given moment that there will be a vice-president to assume the presidential duties. Vice-presidents may also die, resign, be removed, or become incapacitated. The Constitution authorizes Congress to provide for this contingency by "declaring what officer shall then act as president." The most recent enactment by Congress on this subject (1947) regulates the matter as shown in the diagram.

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13

The Organization and Procedures of the Executive Branch

THE NATURE AND IMPORTANCE OF ADMINISTRATION

Administration and the American system

JUST AS THE CHARACTERISTIC ACTIVITY of the Congress is legislation, that of the executive branch is administration. Governmental administration is the attempt to realize in practice the policies established by Congress and the president. The spirit of the American system of government is that public policies will be determined by elected representatives of the people, although it may be necessary to employ nonpolitical technicians to carry them out. However, the line which separates policy determination from policy execution is neither precise nor stable. Many laws and executive orders leave a great deal of discretion to the technicians; many technicians are able to exert powerful influence upon the formulation of the laws and orders. The chief of the national administration faces both ways—in collaboration with Congress he is policy determiner, and in collaboration with the executive agencies he is policy executer. The Congress on its part does not confine its attention to policy alone; it is constantly involved in administration. Thus, in practice, there is a large twilight zone between the two spheres of governmental activity in which administration and legislation are inseparably intertwined. That policy in our system of government should be determined by politically responsible officials who must account to the voters for their conduct represents, therefore, both an aspiration which must be earnestly sought and an achievement which has largely been realized.

The importance of administration in the vitality of the American system of government has only recently thrust itself upon the awareness of the Ameri-

can people. As a people we have tended to assume that legislation is the prime corrective of all ills of the body politic. We have a greater penchant for passing laws about things than almost any other people on earth. Only in the past half-century have we been gradually brought to the realization that passing wise laws, as difficult as that is, is easier than having them economically and effectively administered. Many of us still do not appreciate that the laws are no better than their administration. What is more, there are many problems, foreign and domestic, that cannot be solved by laws, and some type of administrative procedure is the only method available to the government to deal with them. During much of the nineteenth century, administration was regarded as the legitimate booty of political party struggles and its aim to sustain the victors in their triumph. Almost any citizen of mature age and average mentality could administer virtually any program decided upon by the policy determiners, it was thought. Woodrow Wilson pioneered in directing the attention of the American people and their leaders to the importance of good administration. Interest gradually increased, and since about 1920 administration at all levels of government has become the subject of extensive research, writing, and experimentation. The result of this interest has been increased understanding, and this, in turn, has produced a remarkable improvement in the administration of governments of all kinds.

Importance of administration

Improvement in administration has not kept pace with the problem

GROWTH OF THE NATIONAL GOVERNMENT

Date	No. of Civilian Employees	Expenditures
1790	350	$4,269,027
1801	2,100	9,394,582
1816	6,327	30,586,691
1831	19,800	15,247,651
1861	49,200	66,546,645
1881	107,000	260,712,888
1901	256,000	524,616,825
1921	562,252	5,115,927,690
1941	1,370,110	12,710,629,824
1951	2,879,000	44,632,822,000
1961	2,441,000	78,900,000,000

As rapidly as administrative reform has followed administrative reform in the past decades, it is doubtful if improvement has kept pace with the problem. Like the swelling mushroom of an atomic explosion which soon dwarfs all other features of the horizon, national administration has burgeoned into a swelling cloud of money and employees by comparison with which Congress and the courts are but specks on the national landscape. None of the changes through the years in the government of the United States is quite so startling or quite so consequential as the tremendous growth of the executive branch.

In point of cost, volume of activities, and numbers of people employed, the "big government" of which so much is heard these days is really "big administration." Can an enterprise of this magnitude be managed by ordinary human beings? Can it effectively deliver the services and solve the problems which are expected of it? Can it somehow be paid for without exhausting the resources and the economic health of the nation? Can its technical skills and organizational energies be harnessed to the cart of constitutional democracy? Can the people's representatives really hold the reins? These are the more important of the problems raised by the growth of this young giant.

THE STRUCTURE OF THE EXECUTIVE BRANCH

Importance of proper organization

One of the determinants of whether the vast array of officials and employees who comprise the executive branch can, in fact, be brought under the directing will of the president and his aides and under the general supervision of the Congress is the way in which they are organized to perform the tasks assigned to them. The need for organization is, of course, a product of the size and complexity of the operation, and the importance of proper organization tends to increase directly with growth. Direction of the modern executive branch of the national government would be unthinkable unless the individuals who comprise it were grouped into units on the basis of some rational pattern. Skillful administrative organization aims at assigning duties to groups of employees in such a way that each group has a clear and consistent mission and that the group commander can be held for the performance of that mission. It seeks to bring all units into due subordination through an unbroken chain of command to the chief executive. It strives to relate the size of the unit and the resources at its command to the size of the task assigned to it. Failure to observe any one of these precepts of good organization may well frustrate the intention of president or Congress. However, faithful adherence to these precepts will not of itself produce good management, for an organization can be no better than the people who serve in it.

The department

The traditional organizational unit of the executive branch is a single-headed department to which has been assigned a more or less homogeneous group of programs aimed at a major section of national governmental responsibility. The directing head is commonly called secretary and is, typically, a member of the president's cabinet. This organizational pattern was established by the Confederation Congress and its continuance was assumed by the framers of the Constitution. Prior to 1870, the Congress showed little disposition to assign new executive functions to any other type of agency; each new or enlarged responsibility was customarily assigned to one of the existing departments. This attitude has been modified in the years since 1870, but there is still a strong tendency to find a home for any newly established operation in one of the departments. Those charged with administering programs in nondepartmental agencies rather persistently strive for departmental status. There is an aura of permanence and maturity about the department form of organization

which makes it the model in an ideal as well as in a historical sense of executive branch organization.

Characteristics of departmental organization: 1. Political direction

The 13 departments (10 of cabinet rank) of the contemporary executive branch exhibit numerous variations in structure and operation. There are, however, enough common characteristics to allow useful generalizations. In the first place, the top management of all of the departments consists largely of partisan politicians, appointed for political reasons ordinarily from the ranks of the president's party. This politically-oriented management staff includes the secretary, the under-secretary, the assistant secretaries, the legal counsel, the director of public relations, some of the bureau, office, or division chiefs and the more important aides of each. Experience has convinced most presidents and members of Congress that the enforcement of responsibility to the voters upon the permanent staffs of the departments requires not only a politically responsible secretary but a cadre of political assistants commanding all of the main channels to him of information and authority.

2. Centralization of authority in the department head

On the whole, authority and responsibility for departmental management are concentrated in the office of the department head. Each department head is subject to the general direction of the president and holds most of his power subject to that direction. Within his domain, however, he is a miniature president. The authority of the department head typically includes: (1) the power to appoint subordinate officials and employees, virtually all of them in accordance with the practices of the civil service merit system; (2) the power to remove subordinates appointed by himself, again subject to the tenure provisions of the merit system; (3) the power to issue binding rules and regulations for the conduct of departmental business and, in many instances, for the purpose of supplementing legislation administered by the department; (4) the power to decide appeals from the decisions of departmental subordinates not only on departmental matters, but, in many instances, in matters affecting private citizens; (5) the power to issue formal or informal orders to all of the component units of the department governing the work performed by each. Together with this authority is complete responsibility to the president, the Congress, and the public for the conduct of the department. The department head is expected to represent the views and interests of the institution he directs before the president, the cabinet, and the Congress. He is also expected to represent to the department the policies and desires of the president. He is expected finally to support the president and his party on all occasions.

3. Hierarchical arrangement of subordinate organizational units

The component organizational units of each department are, typically, arranged in hierarchical pattern by virtue of which the authority of the department executive permeates throughout the organization in a more or less unbroken chain of command. There is no standard nomenclature for designating the major organizational units in a department, but the most frequent title is bureau. To each bureau is assigned a more or less homogeneous group of department functions and services. The head of each bureau ranks next below the top-management staff already described. A substantial and increasing proportion of these bureau executives are career civil servants protected by

the merit system. The bureaus, in their turn, are subdivided into divisions, branches, and sections, proceeding down the ladder of administrative authority.

4. Congressional control of departmental organization

The organization of the typical executive department, including the names, numbers, and functions of the bureaus is largely determined by statute. Department executives are not free to arrange the pieces to suit their own estimate of departmental needs. Many of the bureaus, in fact, had legal status and traditions long before the departments of which they now are parts were established.

Outside the 13 executive departments are a number of single-headed organizations directly under the president called agencies or administrations. They possess every characteristic of departments save one: the head is not traditionally a member of the president's cabinet. In recent years, however, the major agency heads have in fact attended cabinet sessions. The precedent for this type of executive agency was set with the establishment by the first Congress of the Postmaster General's office in 1789. And from time to time since that date Congress has elected to house a new function in an agency of this kind because it has not wished to increase the size of the cabinet or because it has hoped that the function would not become a permanent one or because it has felt that it was not sufficiently important to justify departmental status. Contemporary examples of this type of agency are the Veterans Administration, the Housing and Home Finance Agency, and the General Services Administration.

Other single-headed agencies

The "independent" regulatory commission

The third type of executive agency, the "independent" regulatory commission, is a product of the last 80 years and is an incident to the increasing governmental intervention in the economy which has characterized that period. The prototype of this new form of organization is the Interstate Commerce Commission created in 1887. The typical commission is a plural body of from five to 11 members appointed by the president for overlapping terms of from five to nine years. Typically, no more than a majority may be members of one party and the members are not subject to the unrestrained removal power of the president. Subordinate to the commission itself is a staff of career civil servants who assist it in the performance of its duties. The commission is, therefore, the executive head of the agency directing by order and by regulation the work of numerous subordinates. It is also a rule-making agency, just as are many of the department heads. However, a large portion of its rules, much larger than those of the typical department, are binding upon that part of the public which comes under its regulatory authority. Finally, the commission is an appellate tribunal, hearing and determining a large number of cases arising from the decisions of referees or trial-examiners who are, at least nominally, its subordinates. These cases involve, typically, the application of commission-made rules to private firms. To such an agency, typically, has been entrusted the regulation of some private enterprise sector of the national economy which Congress has determined to bring under detailed government scrutiny. The power to regulate has ordinarily been entrusted to these commissions in the broadest possible terms and has extended, for many private eco-

nomic institutions, to the prices charged the consumer and to the profits of the owners. Because of the singular power over these economic institutions entrusted to commissions, Congress deliberately sought to protect them from the kind of partisan political direction which the single-headed department or agency is designed to facilitate. The combination of legislative (rule-making), executive, and judicial powers which the commissions possess also suggested that the powers should be exercised in a relatively nonpartisan environment. The procedures which Congress has directed to be used to accomplish the desired regulation, furthermore, tend to make these commissions more directly responsible to the courts than to either the president or to the Congress. The location of these agencies in the executive branch, however, has meant in practice that they have not wholly escaped the influence of presidential direction. It should also be observed that neither their powers nor procedures are unique —they can be found also in departments. In other words, the Congress has not adhered to a consistent pattern in assigning responsibilities among the various types of executive branch organizations. There are always many factors, personal as well as political, which color any legislative decision as to the proper agency to entrust with any particular function.

Nonregulatory commission

The executive branch also houses a number of boards and commissions which have no consequential regulatory responsibilities. There are numerous reasons, in addition to those discussed, for using multi-membered agency directorates to preside over national programs or services. In some cases, it is highly desirable to ensure representation of various sections, economic interests, or social groups in the composition of the directing body. This is particularly true where the functions are largely advisory, as in the case of the Tariff Commission. It is also true where the functions are investigative, as in the Commission on Organization of the Executive Branch of the Government. Another compelling reason for the use of boards is the desire to avoid one-man responsibility and to insure that decisions will be taken only after various views have been canvassed. The most important nonregulatory commission at present is the Atomic Energy Commission and the principal purpose in creating this type of agency to develop atomic and thermonuclear weapons and power generators was to place this program on a nonpartisan footing as far as possible.

Corporation: 1. Development

The two world wars of this century, the expansion of American national interests in foreign countries, and the depression of the 1930's stimulated governmental programs essentially similar to those which had been or were being performed by privately owned business concerns. In order to provide a "businesslike" atmosphere for the administration of these programs and to provide somewhat greater flexibility in their fiscal administration than the traditional government bureau possessed, the corporate form of organization was established in the executive branch. Although a corporation was first used by the Congress in 1791 to provide a United States Bank, the modern government corporation is a product of the twentieth century. There are now more than 80 of these corporations in existence and their combined assets are some-

what more than $30 billion. Most government corporations are, at least nominally, attached to one of the departments or agencies. The extent of the control over their activities which the department head derives from this attachment is uncertain and ill-defined. A few of the corporations, notably the Tennessee Valley Authority, are independent establishments in name and in fact. Many of these corporations were created by presidential directive rather than congressional enactment, and all of them enjoyed for a time a great measure of real autonomy over the spending of the earnings arising from the sale of their services. All of them are, however, arms of the government. It owns them, supplies most of their capital, defines their functions, and regulates their procedures. Like business corporations, virtually all of the government corporations have boards of directors and under them general managers.

2. Control

Growing criticism of these agencies for their alleged independence of congressional and even of presidential direction led the Congress in 1945 to bring them under more systematic scrutiny. The Government Corporation Control Act of 1945 provides that only Congress may create them in the future, subjects their finances to scrutiny by the Bureau of the Budget and the General Accounting office, and requires them to administer their personnel more nearly in accordance with civil service merit system procedures.

THE CONTINUING NEED FOR REORGANIZATION

The proper and effective organization of the executive branch is not something that can be achieved with finality. The public, through the Congress and the president, constantly demands new services or expansions in older ones. Emphasis shifts from one function to another as changes occur in domestic or international conditions. Presidents, department heads, commissioners, and bureau chiefs change and each subtly molds his organization to suit his own interests, ambitions, and conceptions. Like any other institution built of human hopes and fears, the organization of the executive branch is a dynamic, not a static thing. It will be different tomorrow than it is today. The consequence of these factors is that the organization of the executive branch is in constant need of attention if the purposes of the government are to be realized and its principles observed.

Growing criticism of executive organization

As our nation became increasingly aware of the importance of administration, criticism began to be heard from congressmen, journalists, administrators, students, and taxpayers that the organization of the executive branch was not adequate to its tasks. Congress, which dictates the structure of the executive branch, could be brought to act but slowly, despite the prodding of Presidents Taft, Wilson, and Hoover. It became clear that only the president had both the will and the information to achieve effective organization of the executive branch and to keep the organization in tune with changing circumstances. President Franklin D. Roosevelt was the first modern president entrusted by Congress with organizational authority over his own domain. This was in 1933

and few changes were made by executive order before the power expired in 1934. Then in 1936, after dozens of new agencies had been created to combat depression and promote human welfare and the executive branch was more topsy-turvy than ever, and after the President had been firmly established in his second term by a tremendous popular plurality, he named a Committee on Administrative Management to survey the organization of his branch of the government. The report of this Committee, a landmark of its kind in the annals of government, led the Congress to assign to the president the power to achieve a reorganization of the executive branch. The power was, however, granted only for two years and several agencies of the executive were exempted from its provision. The most important achievement under this act was the reconstruction of the president's own office described in the previous chapter. New grants of authority, largely confined to war agencies, were voted in 1941 and 1945 but durable achievements were few.

Committee on Administrative Management

The triumph of the Republican party in the congressional election of 1946 ushered in a new era of administrative reform under the auspices of a party bent upon cutting the executive branch down to more "manageable" size. The Congress this time took the initiative and created and generously financed a Commission on Organization of the Executive Branch of the Government. This body, headed by ex-President Hoover, prepared and submitted to the Congress and to the President in 1949 the most comprehensive analysis and report on the subject in our history. It would be impossible even to summarize the 288 separate recommendations made by the Commission. Like its predecessors, this group insisted that authority to reorganize the executive branch must be vested in the president, and Hoover took the stand to support the broadest possible grant of such power to President Truman. With this impressive support the Congress in 1949 voted the most sweeping reorganizing power ever granted to a president. No agencies were exempted from the president's authority as had been the case in all previous acts. However, the Congress insisted that the power must be limited as to time and provided for the expiration of such power on April 1, 1953. Congress also insisted that it must retain a veto on all presidential proposals as it had done in previous acts. In most previous acts, a presidential proposal could be killed by a concurrent resolution of disapproval passed by both houses within a specified time limit. In the act of 1949, a presidential plan could be nullified by a resolution of disapproval passed by a majority of the membership of either house within 60 days of its submission. President Truman during his term of office submitted plans to Congress and took other actions within his power to achieve about half of the Commission's recommendations. President Eisenhower continued the effort. The reorganization authority under the Act of 1949 was extended repeatedly and for his entire service. A second Hoover Commission was established in 1953 and in a new series of reports in 1955 charted new paths for the future. A new department, Health, Education and Welfare, was created. President Kennedy also has been granted reorganization power by extension of the

Hoover Commission

Reorganization Act of 1949

The Second Hoover Commission

Act of 1949 until 1963. He has achieved a few successes, although most of his efforts to reorganize the independent commissions have been thwarted by Congress.

The task of adjusting the organization of the executive branch is never completed. Although Congress has up to now insisted on placing time limits on the power of the president in this matter, it may well become by regular extension a normal attribute of presidential authority.

THE GROWTH OF MANAGEMENT SERVICES

The difference between line functions and management services

Another consequence of the tremendous growth in the size of the executive branch has been the growth of those parts that facilitate management and provide services for the rest of the organization. Students and administrators customarily distinguish among the functions of an organization those that have directly to do with the purpose of the organization—called *line* functions—from those that serve purely internal needs—called variously *staff, overhead, auxiliary, housekeeping,* or *management service* functions. The men who work in the local post office sorting and delivering the mail, the soldiers in a combat division, the social workers calling upon the disabled, all of these are engaged in line functions. Those who keep the accounts of the Post Office Department, or administer the personnel procurement program, or handle the publicity of the department are engaged in management services. Some entire agencies and many bureaus are, in the modern executive branch, engaged in management service rather than line functions, and every agency has a substantial portion of its employees engaged in such functions.

Specialization and the growth of management services

Specialization of function and the development of techniques for each specialty are widely regarded as important keys to American industrial efficiency. Carried over into public administration, this conception has contributed to the growth of the managerial services. Fiscal administration, purchasing, personnel administration, legal advisement, public relations direction, space allocation, statistical analysis, procedures analysis, program planning, operations analysis, among others, are now considered the proper domain of technicians especially skilled in these functions and are separately and centrally organized in many of the large organizational units of the executive branch. The top executive staff of each department, agency, or administration, and of many bureaus and divisions includes these specialties and provides them to the rest of the organization.

The control exercised through the service functions

Although most of the expert practitioners of these managerial service functions profess the conception that these functions and processes are subservient to the line responsibilities of the organization, in practice these management assistants frequently influence and occasionally dominate the agency. These service functions are almost universally practiced quite near the seat of authority, whereas the line functions are often largely discharged at some field station or office miles from headquarters. Although it is undoubtedly true that the effective management of the executive branch would be impossible without

central controls over and standard procedures for accounting, personnel transactions, and supply procurement, the growth of these functions in size, importance, and influence has created new difficulties in communicating the aspirations of the Congress and the president for effective public service throughout a large and far-flung organization. This growth has also reduced the proportion of the tax dollar which goes directly into alleviating distress, defending the nation, protecting the lives and property of our citizens, and husbanding our natural resources.

The public demand for internal controls over administration

It is but just to add at this point that the American people are themselves partly responsible for the controls exercised by the administrators of management services. Through Congress and the president, they have insisted that line administrators should not be allowed to hire and fire freely but should be required to observe the rules of the civil service merit system. They have also sought to achieve a higher standard of honesty of public officials by requiring that certain procedures (public bidding, for example) be observed whenever supplies or equipment are purchased by government agencies. They have insisted that the most rigorous audit be made of fiscal transactions and that unrelenting vigilance be exercised by corps of accountants on the expenditure of public funds. All of these requirements and many others enacted into law by Congress or imposed by executive order have contributed to the growth in numbers and influence of those officials who administer these laws and orders in the executive branch. Nowhere in our system of government is the public distrust of officialdom so patent and its consequences so clear. A large portion of the executive branch is expected to spend a good deal of time and money checking up on the rest of the branch.

ADMINISTRATIVE PROCEDURES

The procedures used by the executive branch to accomplish its objectives are as varied as the trees of the forest. They do not as readily lend themselves to classification and explication as those used by the courts or by the Congress. The success of any public program may well depend, however, on the procedure used to achieve it.

1. Detection and prosecution of law violators

It is convenient as well as instructive to regard executive branch methods from the vantage point of the amount of coercive authority or sanction associated with them. Throughout history, government has been closely identified, in the eyes of the governed, with coercive power. Traditionally, the method of public executives is arrest and the vehicle the police. The enforcement of law everywhere has had as its ultimate sanction fine, imprisonment, corporal punishment, death, or banishment. The detection and prosecution of law violators remains to this day one of the primary methods of executive government. Many governments, however, and particularly modern democratic ones, have tended to lay increasing stress on the prevention of antisocial behavior rather than the punishment of those found guilty of it. This objective requires far more complex and subtle methods of administration than does the traditional

method of arrest. Furthermore, in the American system of government the state and local authorities, rather than the national executive, deal with most offenders against the traditional criminal laws. The Treasury Department's Secret Service and Coast Guard, the F.B.I. and the military police in the armed services, are almost the only real police forces in the national executive establishment. The Department of Justice through the district attorney in each judicial district is the chief prosecutor of offenders against national laws brought in by the various police officers of the executive branch.

2. Litigation

The offices of the courts are used extensively by the executive branch in civil litigation as well as criminal prosecution. The sanctions associated with litigation are impressive and include the assessment of costs, damages, and the expenses of the litigation itself. They are not so drastic, however, as those associated with criminal prosecution. Litigation is used by the government to collect money owed it by taxpayers or by contractors or for purchases of its services. It has also been relied upon heavily, although with indifferent success, to curb the development of monopoly in industrial organization and to enforce administratively determined orders upon business or labor organizations. Most administrators avoid litigation like the plague because of the expense of and the time consumed in judicial processes.

3. Adjudication

A third coercive method widely used by the modern executive branch is adjudication. This is essentially a judicial procedure developed within the executive branch in order to achieve specialization of interest and greater flexibility than the regular court procedures provide. The independent regulatory commissions are the major, although not the exclusive, practitioners of adjudication. Typically, the process consists of advocates for the regulatory authority on the one hand and defenders of the regulatee on the other presenting their diverse views on the proper rates or services of the enterprises in question before a plural body which adjudges the case and issues appropriate orders. Most of the decisions thus reached by executive branch adjudicators are reviewable by the national courts. The process is similar but not identical to administrative legislation which is also practiced by these same agencies and consists in supplementing broad statutory policies by specific rules binding upon the regulated enterprises. Adjudication is applying these rules to specific individual situations.

4. Inspection and licensure

Inspection accompanied in many instances by licensure is a fourth coercive method used extensively by the national executive. This is a genteel police method which frequently has as its purpose the achievement of proper conduct by the inspectee rather than his punishment for improper behavior. Government inspectors are used extensively to achieve proper working conditions in factories subject to national regulation, safety on board ship and in interstate transportation, safe and sanitary meat and food products moving in interstate commerce, safety in mines, and numerous other public purposes. The requirement of a license for the operation of or practice of some profession, vocation, or business enterprise adds the convenient sanction that, without criminal proceedings, the license may be revoked for violation of the laws

governing the matter. In virtually all situations where licensure and inspection are used, the government has determined a minimum standard of conduct, cleanliness, health, or safety which it seeks to achieve throughout the nation. The inspectors attempt to make certain that the standard is observed.

5. Education

The change in the functions of the executive branch associated with the industrialization of the nation and with the attempt to insure a fairer distribution of the products of the national economy have accentuated those executive activities which are not coercive and which do not rely in the last analysis on the power of the government to punish transgressors. A high standard of public health, for example, can be achieved only if individuals voluntarily change their habits and customs. The improvement of agricultural production in which the government has played such a conspicuous role has been achieved largely without coercion of any kind. Education and exhortation rather than compulsion are coming more and more to be major methods of the national administration. They constitute its chief procedures as it seeks positively to improve the environment both physical and social for the welfare of its citizens. Education as here used is a broad term involving every type of persuasion from publishing brochures to operating demonstration farms and includes: official exhortation; visitation by expert consultants, such as public health nurses, county agricultural agents, or social workers; operation of experimental laboratories; development of voluntary codes of business or advertising practice; organization of scientific conferences, and thousands of other similar activities not excluding the instruction of young people in classrooms. The teacher must thus be placed beside the policeman as the great executive agent of modern American government. Not only are educational procedures the major reliance of agencies like the Department of Agriculture and the Public Health Service, they are also more and more widely used to supplement, if not to replace, the methods of prosecution, litigation, adjudication, and inspection. The railroads of the United States are directed almost as much by informal nonlitigious conferences between railroad operators and I.C.C. agents as by the formal procedures for which that commission is so well known. It is fair to add that the educational methods seem to work best when accompanied by the power ultimately to invoke sanctions against those who do not respond to persuasion.

6. Research

The executive branch of the government is not only engaged in transmitting information and urging individuals to better practice; it is also heavily engaged in discovering information. Research has become a large concern of the national administration. The conquest of disease, the improvement of our military striking power, the expansion of agricultural productivity are but a few of the continuing objects of research by scientists under the direction of the national executive. The national government is today the leading research institution in our country.

7. Negotiation

War is the ultimate compulsive method for conducting the foreign relations of any nation. Eschewing this, it must rely on the noncoercive method of negotiation to serve its interests beyond its shores. The practice of diplomacy accompanied the rise of the national state and has been a traditional function

of states for several centuries. The method of negotiation, while practiced extensively by the Department of State, is by no means confined to it. The Departments of Defense, Commerce, and Agriculture, for example, are extensively involved in our foreign relations. The processes of negotiation, which are essentially the dealing across the table of equals, are also used in internal matters, for example, to achieve peaceful settlement of labor disputes, to purchase land for public use, and to determine state-national responsibilities in connection with grant-in-aid programs.

This brief catalogue by no means exhausts the repertoire of executive agencies in attempting to realize public policies. It does, however, point up the fact that the executive is not only an enforcement agent and that new government functions require new methods for their successful administration.

PERSONNEL ADMINISTRATION

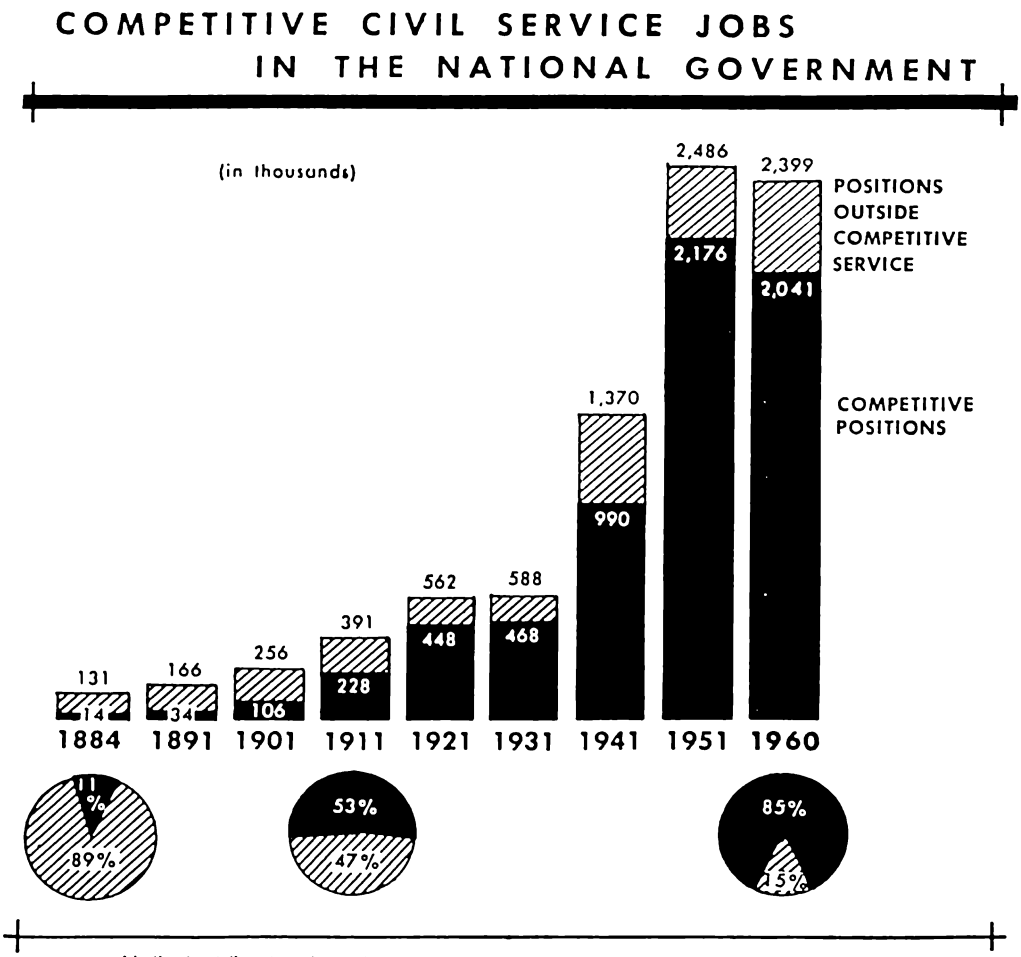
Importance of proper personnel selection

The quality of administration of the national government depends, in the last analysis, on the quality of the officers and employees of the executive departments and agencies. Effective organization, appropriate procedures, and suitable authority are secondary to the ability of the individuals who comprise this vast institution. The survival of the American system of government may well depend upon its ability to attract and to hold the ablest members of our society. No system of administrative audits, no amount of congressional investigation, no inspirational leadership from the president could quite compensate for mediocre, unimaginative, or time-serving public employees. Certainly a decisive determinant of the responsiveness of the executive department to the principles of the American system of constitutional democracy is the character and ability of the men and women who comprise it.

Civil service reform

For a generation or more after the national government was organized, the selection of public employees was largely based on character and fitness. The rise of political parties, the limited resources of many of their functionaries, and the exigencies of campaigning soon fastened the spoils system of partisan selection upon the national administration. Throughout most of the past century, it was the predominant mode of selection. Every change in the presidency was accompanied by a wholesale replacement of public officers and employees. Despite the stubborn defense of its supporters and the strong arguments which could be mustered in its behalf, the system nevertheless fell into increasing disrepute after 1865. It was widely associated with the politics of graft and favoritism. Public-spirited reformers, organized in The National Civil Service Reform League, pressed their attacks with increasing vigor. Finally, when the nation had been stirred by the assassination of President Garfield by a disappointed place hunter, the modern merit system of selection was established.

The Civil Service Act of 1883 provided that admission to certain positions would henceforth be solely on the basis of open, competitive examina-



SOURCE: U. S. Civil Service Commission.

tions of a practical character testing the abilities of the applicant for the position sought. A bipartisan Civil Service Commission was established to administer the examinations and to police the service against wrongful removal, partisan selection, or unauthorized campaign solicitation from or electioneering by employees covered by the law. As enacted, the law extended only to 14,000 positions or about one-tenth of the total executive branch. In the years since 1883, the provisions of the act have been extended by statute and executive order to virtually the entire branch. Today all but 350,000 out of 2,400,000 are filled under its provisions. Of those outside the competitive system, however, a great majority are in the Foreign Service, the F.B.I., the Central Intelligence Agency, and other agencies with very high standards of merit selection. Not many more than 20,000 posts may be filled by partisan procedures.

Establishment of the merit system

The primary object of the Civil Service Act of 1883 and the later amendments, executive orders, and new statutes extending its provisions throughout

the executive branch has been to promote appointment on the basis of tested capacity and to assure those thus appointed reasonable security during proper performance of their duties.

Appointment under the merit system

The opportunity for appointment has, however, always been limited by law in ways not necessarily related to merit. Applicants must be citizens; there must be some apportionment of appointees among the states; veterans are given preferences of various kinds; and there must be no taint of subversive activities or associations on the part of prospective employees. Furthermore, heavy, although not exclusive, reliance is placed on tests of various kinds designed to measure knowledge of the duties of the position to be filled. Experience has indicated that tests of general rather than special knowledge are likely to be more effective in bringing able and well-educated young people into the government.

Protection of employees from partisan influences

Although every employee is liable to disciplinary actions at the hands of some superior authority, every effort has been made to protect merit system employees from partisan or capricious dismissal. Until 1939, dismissal could not be based on political opinions but cold-war emergencies have produced "loyalty" requirements aimed at eliminating from the service those of "subversive" or "tainted" associations. Merit employees are also forbidden to take active part in political campaigning or in the management of party affairs.

THE ENFORCEMENT OF RESPONSIBILITY

The American system of government is built upon an abiding hatred for bureaucracy and a deep-seated distrust of officialdom. It is not surprising, therefore, that the growth of the national executive has been viewed with concern in many quarters. Is it possible, the critics ask, for such an army of public officials with such a large share of the national income at their disposal to submit to direction from the voters and their representatives? Will they not rather seek to dominate the Congress by favors and the public by propaganda? How can the executive agencies, manned as they are largely by persons with permanent tenure, be made responsible to the elected officials and responsive to public opinion?

Presidential direction

The principal safeguard against the rise of an irresponsible bureaucracy built into the executive branch itself is the position of the president. The elected presidency is essentially a political office responsible to the voters and vested by the Constitution with the executive power. By custom of long standing, presidential direction of the executive agencies is supported by a cadre of his political lieutenants at the helm of each agency and in command of the major channels of authority and communication. The top management of each agency changes office with each change in the national administration and thus, fresh from an election triumph, can be said to enjoy the confidence of the public. Only the independent commissions are insulated against this kind of direction. The authority of the political managers of the executive branch is weakened in practice by their inexperience and by their lack of technical com-

petence. They must perforce rely upon the experienced technicians of their agencies for guidance. Traditionally, this guidance is supplied fully and freely regardless of the political views held by either individual. For this too is part of the American tradition, that the professional civil servant will serve any master placed over him by vote of the people.

Congressional oversight

The second great safeguard against government by technicians is the constitutional and customary powers of the Congress. Money may not be spent by executive agencies except on the basis of congressional appropriation. Each year the administration must pray Congress to grant the funds necessary for its programs and each year must, in consequence, account to the Congress for its conduct. This great power of Congress is weakened in practice by the enormous complexity of the financial structure of the national government and, in consequence, by the fact that few congressmen are familiar with more than a small portion of the total appropriations. It is nevertheless quite an impressive power in molding executive agency policy. The Congress prescribes not only the programs and policies which the administration will pursue but also the organizational structure and the procedures for pursuing them. The practices of Congress in exercising this power have tended to weaken presidential direction of his own branch and tend to diffuse responsibility for performance. They nevertheless represent a real brake upon agency expansion and agency indifference to public desires. The Senate, as we have seen, participates in the appointment of numerous offices in the executive branch. Through the power of investigation the Congress may review the conduct of any executive agency in which it is interested. No legislative process is held in such great fear by the executive branch as the investigating one. None has been so abused by the Congress nor been so effectual in cleaning out a corrupt or incompetent agency.

Judicial review

There is an impressive body of opinion in the United States, held mainly by members of the legal profession, that the principal safeguard against the rise of an irresponsible bureaucracy is the power of the national courts to review the acts and decisions of officials of the executive branch. Under the American system of jurisprudence most of the actions, threatened or accomplished, of administrators are reviewable by ordinary courts of law. This review customarily extends to the validity of the law on which the action is based as well as to the action itself. This type of control over administrative behavior is designed to assure conformity to constitutional prescriptions regarding personal and property rights and regarding the allocation of governmental powers between the nation and the states and among the several branches of the government. Judicial review is a device for assuring not responsiveness to democratic processes but obedience to the Constitution. It is intended to make men subservient to laws, not necessarily to other men who happen to enjoy public confidence.

The practice of judicial review of administrative decisions is much less clear cut than the principle. Congress has from time to time endowed administrative agencies, notably the independent regulatory commissions, with powers of a judicial character (referred to by the lawyers as *quasi-judicial*).

It has also attempted to limit the power of the courts to review certain types of administrative actions. It has conferred lawmaking power on many agencies confined only by the most general standards.

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14

The National Judiciary

> The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.—Art. III, Sec. 1

A separate national system of courts

THE CROWNING DEFECT of the Articles of Confederation, declared Alexander Hamilton in *The Federalist*, was "the want of a judicial power"; and in planning a "more perfect union" the framers of the Constitution asserted in the preamble their purpose to "establish justice" and went on in Article III to place full judicial power alongside of executive and legislative power as one of the three main pillars of the national authority. In so doing they prepared the way for the establishment of a system of national courts, separate from the state courts, and deriving its existence and jurisdiction solely from the Constitution. When to these provisions the framers added (Art. VI) that this Constitution and the laws and treaties made under it were to be the "supreme law" of the land, binding judges in state courts, regardless of the provisions of state laws or constitutions, they laid the foundation for a national court system superior to all other courts and obliged to interpret and apply the supreme law in a uniform manner throughout the nation.

SCOPE OF THE NATIONAL JUDICIAL POWER

Nature of "judicial power"

Judicial power has been defined as the power to decide "cases" and "controversies" in conformity with law and by the methods established by the law. The important words in this definition are *cases* and *controversies*. Unlike the

president and the Congress, courts do not initiate actions; they dispose of matters brought before them on the initiative of outsiders. They are powerless to influence the conduct of government except as they rule for or against the executive branch when it is one of the parties to a contest or as they construe the laws and orders uttered by the other branches as an incident to determining the relative merits of the claims of the litigants. In a system of government based upon a written constitution, however, the ultimate power to declare what the constitution means in any given situation is a very important power indeed whether it is exercised incidentally to the discharge of some other function or not.

The nature of the judicial function was determined early in our national history when the Supreme Court decided that it could not give legal advice either to the president or to Congress. Its only function was to decide lawsuits properly brought before it. In deciding lawsuits, the courts must say what the law is that must be applied to any controversy before them and this obligation requires that they interpret statutes, treaties, executive orders, constitutions, and judicial precedents. The other branches of the government are constitutionally obliged to defer to the views of the courts. Under our system, a court is entitled to have its decisions reviewed and perhaps reversed only by a *higher court*. Judicial power has also come to embrace the authority to support valid findings of administrative agencies with orders which can be ignored only at the peril of fine or imprisonment for "contempt of court." The national courts have, however, acquiesced in allowing what they regard as questions of "fact" to be determined in some situations by agencies of the executive branch and questions which are "political" to be determined with finality by either or both of the other two coordinate branches of the government.

It would be quite wrong to suppose on the basis of what has been said that national judges have no other function save presiding over legal contests. Our national courts have become increasingly the managers of important business enterprises through their power in bankruptcy proceedings, for example, to appoint receivers responsible to them for the management of assets pending the outcome of litigation. Many judges thus find themselves engaged in the operation of railroads, mines, and factories and obliged to deal with all the problems of these enterprises which harass business executives. The rehabilitation and correctional programs of the Federal Bureau of Prisons involve the judges in the affairs of prisoners sometimes for many years after trial and conviction. The national judges, like their counterparts in the states, marry and naturalize individuals as well as perform many other functions which are called judicial but are not necessarily litigious.

It should be clear at this stage of our study that the national government created by the Constitution has only enumerated powers. This is true of the national courts as well as of the legislature. Jurisdiction, the power to hear and to determine, is conferred upon the courts only over certain kinds of cases and controversies. The state courts have jurisdiction over all others and even over some that the national courts may try. The national judicial authority is ex-

tended by the Constitution to certain classes of cases on the basis of the subject matter of the controversy and to other classes on the basis of the status of the parties concerned. The first class includes (1) all cases in law and equity arising under the Constitution, laws, and treaties of the United States, and (2) all cases of admiralty and maritime jurisdiction. Whenever in any law suit a legal right is asserted which is based upon some provision of the Constitution, national laws, or treaties, the case may be tried in the courts of the United States. Admiralty and maritime jurisdiction has to do with offenses committed on shipboard and with contracts which must be executed on the high seas or on navigable waters of the United States. Prize cases are also included in the scope of national judicial power.

1. Nature of the controversy

The category of cases assigned to the courts of the United States because of the status of the parties includes: (1) all cases affecting ambassadors and other public ministers and consuls; (2) controversies to which the United States is a party; (3) controversies between two or more states; (4) controversies between citizens of different states; and (5) controversies between a state, or the citizens thereof, and foreign states, citizens, or subjects where the state is the party plaintiff.

2. Status of the parties

The assignment of certain classes of cases to the courts of the United States by the Constitution does not of itself confer power over all of these matters. Rather the Constitution specifies the limits beyond which power may not be conferred, and Congress may or may not endow the courts with all of the power within the constitutional limits. Congress thus possesses the authority to limit the jurisdiction of the courts. Congress originally conferred only a portion of the jurisdiction. Throughout most of the last century Congress gradually added to the jurisdiction until it had conferred all that the Constitution contemplated. In this century the jurisdiction has been somewhat contracted. In several types of cases, for example, Congress has prescribed that the amount in controversy must exceed a certain sum before the litigants may use the national courts.

Congressional power over jurisdiction

Much of the jurisdiction which has been conferred by the Congress is shared with state courts. The national courts, in other words, do not have exclusive authority over it. In general, only in cases in which the United States or a state is a party (unless the action is between a state and one of its own citizens), or which involve the representatives of foreign governments, a crime against the United States, or admiralty, maritime, patent, copyright, or bankruptcy laws, do the courts of the United States have complete and exclusive jurisdiction. In virtually all other types of cases to which the judicial power extends, the plaintiff may begin his case in either a state or a national court.

Jurisdiction shared with state courts

KINDS OF CASES TRIED

The types of actions brought in the courts of the United States fall into the two broad categories, civil and criminal, into which are classified the

actions brought in the state courts as well. With a few unusual exceptions, the same courts and judges handle both types of cases.

1. Criminal actions in the courts of the United States

The criminal actions brought in the national courts represent a small proportion of the total number of criminal prosecutions in this country. The vast majority of all criminal offenses are state offenses and the offenders are brought to the bar by state and local enforcement officers and are tried by state judges. The only concern of the national courts with these cases is to enforce upon state courts the guarantee of a fair trial which has been construed to be required by the Fourteenth Amendment. Authority to try criminal actions in the first instance is lodged in the courts of the United States only for offenses against the United States or against the laws of the United States as defined by Congress and the Constitution. The Constitution mentions only piracy, counterfeiting, treason, violation of international law, and offenses in the territories and dependencies of the United States. Congress, however, typically prescribes penalties for violation of the laws it enacts and thus the United States Code includes, among others, such crimes as mail fraud, smuggling, sabotage, and election fraud, which are clearly incidental to its powers to establish post offices, regulate imports, wage war, and regulate national elections.

2. Civil actions

The most numerous category of actions tried in the national courts are civil actions, usually between two private parties but frequently with the United States government as one of the parties. Civil actions ordinarily arise out of civil wrongs, called torts, and breaches of contract. Torts include such wrongful actions as trespass, property damage, negligence, libel, and assault.

a. At law

In settling civil disputes the national courts apply state law as well as national law. Cases which get into the national courts because of the diversity of the citizenship of the parties, for example, may involve only the application of state law. This state law may be either statutory (enacted by a state or local legislative body) or common law (the system of judge-made law brought to America from England and modified here by the decisions of American judges and by legislation).

b. In equity

The national courts also have equity jurisdiction, the power to interpret and apply the law of equity to appropriate civil actions. Equity is a branch of Anglo-American jurisprudence which developed side by side with the common law and as a supplement to it, designed to provide substantial justice in a large number of situations to which the strict application of the forms of action and procedures of the common law would result in unnecessary hardship. The typical redress, for example, available under common and statutory law is money damages and it is granted only after the wrongful action has transpired and the injured party can show his "wounds." Equity jurisdiction provides legal remedies for many situations in which money damages are not appropriate or come too late to be helpful. Thus the court of equity may issue orders (writs of injunction) which forbid certain actions which would cause immeasurable or irreparable damage if committed. The court of equity may issue decrees of "specific performance" requiring a party to a contract to live up to his bargain, for example, by delivering the race horse he promised when the

other party is willing to pay the money and thus a damage award would be useless. To the ordinary citizen the distinction between law and equity is of no major consequence; both are administered in the same courtroom by the same judge, sometimes on the same day. Lawyers, however, frequently prefer equity to civil law procedures because there is no jury in equity and because the procedures are less hedged about by technical formalities.

c. In international law

d. In admiralty law

We have noted that the national courts administer statutory law, the common law, and the law of equity. They also administer international law—the law among nations based upon treaties, agreements, and other types of international understandings—and admiralty law—the law of the high seas and navigable waters of the United States based upon the technical rules of an admiralty code developed over many centuries by English and American legislatures, courts, and administrative agencies.

Legal procedure for trying cases

The procedure used by the national courts in trying all of these different types of cases is largely devised by the courts themselves. The Constitution, as we have seen, prescribes a number of requirements for criminal actions designed to protect individuals from unfair or unwarranted prosecution and conviction. The Congress has from time to time regulated the procedure by statute and many of the present rules are incorporated in the United States Code. The power to make rules governing civil procedure in the courts of the United States has repeatedly, however, been delegated to the Supreme Court, and in 1940 a similar power over criminal procedure was delegated to this body. In formulating its rules, the Court relies heavily on advisory committees representing both bench and bar.

STRUCTURE OF THE NATIONAL JUDICIAL SYSTEM

The national judiciary comprises three levels of tribunals. All of these have been established by Congress and none except the Supreme Court is specifically mentioned in the Constitution.

1. District courts

The lowest level of courts is the district or trial courts. The 50 states are divided into 87 districts for the purpose of providing a trial court within easy reach of litigants. Each state embraces at least one district. Each of these courts is manned by from one to 24 judges, depending mainly on the volume of litigation but also, of course, on the pleasure of Congress. Whatever the number of judges, each holds court separately, except for certain unusual occasions, and the chief justice of the United States may (since 1922) transfer judges temporarily from one district to another to assist in relieving accumulated backlogs of cases. Virtually every judge is aided by a law clerk in reviewing the legal problems presented for his consideration and the staff of the court also, typically, includes clerks who preside over the records and calendars; reporters who take the proceedings; criers; and other functionaries. Attached to each district is a district attorney who, under the direction of the Department of Justice, conducts criminal prosecutions, a marshal who executes the

orders and serves the papers of the court, a number of referees in bankruptcy and commissioners who hold preliminary hearings in criminal cases.

Jurisdiction

The volume of business brought to the district courts is large; approximately 100,000 cases are handled yearly. All offenses against the laws of the United States are tried there. These criminal cases are given priority by the courts and the dockets are normally up-to-date. All civil actions arising under the Constitution, laws, or treaties of the United States ("federal questions") may originate in the district courts as may all cases based upon the "diversity of citizenship" of the parties, but in both types of cases the amount in controversy must exceed $10,000 for the national courts to have jurisdiction. The original jurisdiction of the district courts extends also to a variety of civil actions regardless of the amount involved, for example, cases in admiralty, bankruptcy proceedings, patents, copyrights, postal laws, and nationally protected civil rights. Despite the addition of a large number of new judges the disposition of civil actions in the district courts is seriously delayed. For some time these courts have been about a year behind in their dockets. Most cases begun in the district court also end there. But appeals may be taken from their decisions to the courts of appeals and in a few cases, for example, where the district court has held an act of Congress unconstitutional, directly to the Supreme Court. The district courts, themselves, have no appellate jurisdiction. Cases appealed from the decisions of state high courts go directly to the Supreme Court; they do not start all over again at the bottom of the national hierarchy.

2. Courts of appeals

The intermediate courts of appeals which today handle the great bulk of appellate work in the national judicial system did not achieve their present status until 1911. For most of the past century, circuit courts shared original jurisdiction with the district courts and handled some appeals. Originally one justice of the Supreme Court was assigned to each circuit into which the nation was divided, and together with the district judges held circuit court. The rapidly mounting dockets of the Supreme Court gradually made this duty of the judges more and more impractical and the confusion of having two courts of original jurisdiction led the Congress finally in 1891 to create nine circuit courts of appeals. These new courts divided the appellate work with the Supreme Court. In 1911 the circuit courts were at long last abolished, leaving the district courts virtually all of the original jurisdiction of the national judiciary. Since 1948, the intermediate courts created in 1891 have been designated simply "courts of appeals." The nation is now divided into eleven judicial circuits, including one for the District of Columbia, with a court of appeals in each. Each court is composed of from three to nine judges and at least two are required to consider any case.

Functions

With every form of original hearing excluded, the work of the courts of appeals consists in hearing appeals from the decisions of the district courts within the respective circuits and of enforcing the determinations of national regulating agencies such as the Federal Trade Commission and the National Labor Relations Board. Appeals are carried to these courts from the district

courts as a matter of right and the judges have little or no discretion in the matter. In keeping with the long-term trend of relieving the Supreme Court of much of the burden of appellate work, the decisions of the courts of appeals are final in the vast majority of the cases brought to them. Review of the decisions of courts of appeals by the Supreme Court is largely at the discretion of the latter and occurs in few cases. Only in cases in which the appeals court holds a state statute contrary to the Constitution, laws, or treaties of the United States does appeal lie to the Supreme Court as a matter of right. In all others appeal is at the pleasure of the Supreme Court.

3. The Supreme Court

At the top of the system stands our most august tribunal, the Supreme Court of the United States. In its infancy this tribunal showed little or no promise of becoming the powerful institution it now is. President Washington found it difficult to keep the six judgeships filled with able men. Under Chief Justice Marshall (1801-35), however, the power and prestige of the Court grew by giant strides. His great decisions establishing judicial review and enlarging the authority of the central government over the states provided the basis of the centralizing tendencies which have characterized our system ever since. Under his guiding hand the Court not only served notice on the states of its determination to strike down every local obstruction to the achievement of union but informed the other two branches of the national government of its intention to hold them to their proper functions. Through many periods of weakness as well as strength, the Court has developed into our most independent agency of power, the one most removed from popular influence.

a. Development

Originally, the Court was composed of a chief justice and five associate justices. The total number, as fixed by Congress, has since been as high as 10, although for about a century now it has been nine. All who have served at least 10 years may retire on full salary at age 70. Although receiving slightly more pay, the chief justice has no more legal weight or influence in deciding cases than any of his associates. He presides over the sessions of the Court, assigns to his associates the task of writing the Court's opinions, and writes many of them himself. He appoints members to serve on committees which revise the rules of procedure and has many administrative duties in connection with the whole judicial system.

b. Membership

Regular and public "terms," or sessions, of the Court are held annually in the new Supreme Court building adjacent to the Capitol, beginning on the first Monday in October and ending at the close of the following May or June. Six justices must be present at the argument of a case, and any decision must be concurred in by a majority of those hearing the matter—in other words, by at least four justices. If a majority cannot be obtained for a decision, a rehearing may be ordered, but an evenly divided court on a question of reversing a lower court has the effect of upholding the earlier decision. During a typical term of court, about 1200 cases are considered and about 100 written opinions issued.

c. Sessions and quorum

Americans commonly think of their government as built on plain republican principles and as lacking the pomp and circumstance of European

d. How the Court works

institutions. A view of the Supreme Court in operation will quickly dispel this myth. Ensconced in its Greek temple, the Court marches daily to its task at high noon, announced to the standing audience by cries of acclaim. Seated in high-backed chairs at an enormous elevated "bench," behind them marble columns and red velour drapes, the black-robed justices hear the polite and honorific diction of learned pleaders. These counselors, dressed in morning clothes, supplement their elaborately printed briefs with oral arguments from a central lectern well below the level of the seated dignitaries. Occasionally the worshipful attention of the ten score of spectators is aroused as a justice addresses a question or two to the earnest pleader. A century ago the chamber of the Court rang with the orotund and interminable rhetoric of Webster and Calhoun, who argued and pleaded with the Court not for hours but for days. The press of business, however, has compelled counsel to put more in the brief and less in the delivery, and oral argument is now limited to one hour. Arguments are heard on a series of cases and then the Court recesses for research and reflection. Traditionally, conferences of the justices are held on Saturdays and it is at these meetings that the Court arrives at its decisions. When a point of view is finally agreed to by the requisite majority, the Chief Justice if he agrees with the majority designates some member of this group to write the opinion of the Court. After review by others, the opinion is read at an ensuing Monday sitting of the Court and becomes a part of the documentary history of the American system of government.

e. Concurring and dissenting opinions

The opinion of the Court ordinarily sets forth the line of reasoning by which the justices arrived at the conclusion. One or more members of the majority may have arrived at the same decision by a different line of argument and may be impelled to present a "concurring" opinion which supports the decision but offers different grounds. The minority, if any, has the privilege of presenting its views to the public in one or more "dissenting" opinions. Occasionally these have stimulated more concern than the majority opinion and, in some cases, the Court has swung around to accepting as decisive the arguments of the dissenters. All of the opinions are a part of the record and are published by the government in a series of volumes called *United States Reports*, prepared under the supervision of a Court reporter.

f. Jurisdiction

Cases come before the Supreme Court in one of three ways: (1) by original suit; (2) by appeal from the decision of a lower court; and (3) by certiorari or discretionary review of a lower court decision. The three are of very unequal importance. By far the largest share of cases get before the Court by certiorari. The original jurisdiction of the Supreme Court is set forth in the Constitution and includes cases affecting the representatives of foreign governments and cases in which a state is a party. Its jurisdiction is exclusive, however, only in controversies between two or more states and in actions against representatives of foreign states. It also has original but not exclusive jurisdiction in actions brought by ministers of foreign states, in controversies between the United States and a state, and in actions by a state against aliens or against citizens of another state. This jurisdiction may be regulated and has been by

Congress as to its exclusive character but it may not be validly enlarged except by constitutional amendment. The only part of this original jurisdiction which has proved significant is that involving suits by one state against another.

Certiorari procedure

The right of appeal to the Supreme Court is sharply limited and extends only to those few categories of cases already mentioned which have been decided by the highest state courts, the courts of appeals, and the district courts of the United States. Even in these cases the right of appeal is not absolute, for the Court may dismiss an appeal if the question involved is "insubstantial." With increasing frequency the Court has been doing just that. Most cases are brought to the Court by certiorari procedure. The history of this aspect of the judicial system has been one of progressive expansion of the Court's certiorari or discretionary jurisdiction and contraction of its "obligatory" jurisdiction. The rules of the Supreme Court indicate that review of lower court decisions by certiorari procedures is to be granted only when there are special or important reasons for it. Some of the circumstances which induce the Court to review are: (1) that the case involves an important principle of constitutional or statutory construction; (2) that the case involves a conflict of interpretation of law among the courts of appeals; (3) that a state high court has decided a "federal question" of substance not before determined by the Supreme Court and probably contrary to the tenor of Supreme Court decisions. In general, the Supreme Court is thus relatively free to select from among all of the cases urged upon it only those cases upon which it wishes to pronounce. Typically, it now rejects from 70 to 85 per cent of all requests for review by certiorari, frequently without any explanation of its reasons. Despite assertion of the judges that denial of certiorari means only that fewer than four judges thought the case ought to be heard, many members of bar, bench, and public interpret denial as support of the lower court's decision. Thus even the negative aspects of the work of the Court may have far-reaching implications. The figures already cited indicate that even with its crowded docket the Court decides a small proportion of the total number of cases which enter the courts of the United States or which might arise from the high courts of the states.

JUDICIAL INDEPENDENCE AND ITS LIMITATIONS

Compensation and tenure

While deliberately interlocking the executive and legislative branches of the government by numerous checks and balances, the Constitution's framers designed the judicial branch to enjoy a high degree of independence. It is most unlikely that our national courts could have successfully asserted the power to review the actions of the other branches had they not occupied a position from which they were hard to control. The constitutional cornerstones of judicial freedom are: (1) that all national judges "hold their offices during good behavior," and (2) that their compensation may "not be diminished during their continuance in office." The latter provision, intended to protect them from a

hostile Congress, has always been observed to the letter. The life tenure provisions has normally been observed also.

Courts gain independence also from the fact that the Congress has always had a large complement of lawyers among its members. Lawyers by training are accustomed to defer to the pronouncements of judges. Our people, too, have approved the freedom accorded our courts as is demonstrated by the strong disposition of the voters to return judges to office again and again when, as in the states, they have the opportunity of electing them. The successful assertion of the power authoritatively to construe the Constitution, and thus to prescribe the limits on the powers of the other branches of government, has provided the courts with a potent weapon to resist any aggressive thrusts in their direction by Congress or the president. At the same time, no valid power is lodged in any other branch to construe or limit the power of the courts. None of its decisions can be appealed; none of its members can be easily intimidated by threats of removal. The late Chief Justice Stone once remarked that the only check on the Supreme Court is the judges' own "sense of self-restraint."

Limitations:

1. Impeachment

The courts are not, however, perfectly free. There are some important limitations on the actual and potential power of the national judiciary. In the first place, it is possible to remove a judge from office. He may be impeached for and convicted of "treason, bribery, or other high crimes and misdemeanors." In other words, a national judge is subject to the same procedure as other national civil officers. Although the constitutional impeachment procedure is largely unworkable except for the most flagrant cases of official wrongdoing nevertheless it has been used against judges more than against any other officials. In all, nine members of the judiciary have been impeached and four convicted.

2. Congressional control over the structure of the courts

In the second place, Congress has relatively large powers to create courts, determine the number of judges, fix their salaries, and establish the range of their jurisdictions. This means that Congress can abolish courts (except the Supreme Court), reduce the number of judges, and curtail the number and kinds of cases they may hear. In practice, Congress has influenced or attempted to influence the decision of the Supreme Court by increasing the number of judges on that bench in order that enough "right-minded" new ones might be appointed to alter the anticipated decision. It has also deprived the Supreme Court of its appellate jurisdiction in a given class of cases because it anticipated a "bad" decision on an issue it regarded as vital. Both of these things occurred during the Civil War-Reconstruction period and, of course, are not typical of the relations between the two branches. They are illustrative, however, of what an aroused Congress, presumably supported by public opinion, can do. The creation in 1801 of a large number of new judgeships and then the appointment of partisan Federalists to them in order to ensure continuing control over at least one branch of the government by a party which had been repudiated at the polls, and the subsequent abolition of most of these posts by the Jeffersonians, is an illustration from our earlier history

of congressional and executive attempts to influence the judiciary for partisan purposes. Most of the recent changes in the structure of the court system have been relatively free of this type of motivation. The attempt by President Roosevelt and his followers in Congress in 1937 to achieve a more "sympathetic" Supreme Court by legislative reconstruction was defeated by the Congress. The remarkable change in the outlook of the Supreme Court which accompanied the controversy has, however, usually been regarded as a victory for the President in the real war despite the loss of the battle in the Congress.

3. Partisan considerations in appointments

The major influence of the political and responsive branches of the government over the judiciary stems from the method of selection of judges. The Constitution provides that national judges are to be appointed by the president, by and with the advice and consent of the Senate. From the first development of factions in our government, presidents have been strongly motivated to select men of their own faction or party to serve on the national bench. Many of our chief executives have also been deeply concerned not only with the political affiliation of their nominees but with their constitutional philosophies. It should be clear to the student of our institutions that the Constitution does not always speak for itself in clear and unmistakable language and even our wisest statesmen have differed about what it means. Presidents appear to desire that their appointees to the bench agree with them on fundamentals. There have, of course, been exceptions and presidents have on occasion, willingly or unwillingly, elevated to judgeships illustrious men of the opposite party or of contrary constitutional views. These are exceptions, however, not the rule. It is interesting to note that prior judicial experience has rarely been considered an essential qualification for appointment.

There are two important considerations which mitigate the effectiveness of presidential influence over the judiciary. Once appointed, as many presidents have learned to their chagrin, the judge obtains life tenure and thus safe from presidential ire, may change his mind about some of the issues. Secondly, few presidents get an opportunity to appoint as many as a majority of the members of the Supreme Court. Furthermore, the Senate has got to be considered in the appointment process. The dominant party in the Senate is probably as interested as is the president in naming "right-thinking" judges to the bench. It occasionally happens that the president and the Senate do not agree. The president has to select an individual who will also be acceptable to the leaders of the Senate. In the lower courts of the United States, the president is narrowly confined in his appointing prerogatives by the practice of "senatorial courtesy." National judgeships are now customarily regarded as patronage for the senator or other state party leader in whose state the court is located. Under these conditions, new appointments to the lower and intermediate courts of the United States are invariably made from loyal supporters of the party in control in Washington. It goes without saying that the fitness of the individual for judicial office will not always be weighed as carefully as it might be. It is curious to note that despite the political and even partisan influences on the selection

of judges, our courts are still widely supposed to be free of the taint of partisanship.

4. Enforcement of court processes

We have already explained that the courts must rely on others to bring them the business that they get. The executive branch, for example, brings all criminal cases and a large number of civil actions. More important, however, is the fact that the courts have no substantial enforcing agency even for their own decisions. They must rely on the executive branch to back up their orders if the recipients are unwilling to respect the commands of the United States marshals who serve the courts' papers. An uncooperative president has been able on a few occasions to frustrate the authority of the Court by refusing to be diligent in enforcing its decisions. The most famous example of this was the refusal of President Jackson to enforce against a recalcitrant officialdom of the State of Georgia (1831-32) a decision of the Supreme Court abrogating an attempt by the state to ignore its treaty obligations to the Cherokee Indians. A good illustration from modern times of the great difficulties in the way of enforcing a controversial decision is the effort to achieve desegregation of races in the public schools discussed earlier in this volume. The prestige and independence of the judiciary may thus be compromised by executive inaction or indifference and by Congressional or local opposition.

THE SUPREME COURT AND JUDICIAL REVIEW

In deciding cases and controversies, all courts are obliged to consider whether the legal claims at issue are based upon laws which are consistent with relevant constitutional provisions. It thus becomes the most important and distinctive function of the Supreme Court of the United States to pass finally on the constitutional validity of state laws, state constitutions, laws of Congress, and executive actions. In performing this function it stands as the guardian of the boundaries which separate the legitimate powers of the three branches of the national government as well as those which separate the powers of the national government as a whole from those of the states and of the people. The origin of this function of judicial review and its importance in strengthening the national government in relation to the state have already been discussed. We have noted that the Constitution itself does not expressly confer this power on the Court and there have always been those who regarded its exercise as sheer usurpation. But from John Marshall's day to this it has become a settled part of the American system of government and most statesmen throughout our history have regarded it as not only a desirable but a necessary concomitant of a written constitution and a scheme of limited government with divided powers. Our people have also largely accepted it and even have acclaimed it. It is one of the unique contributions of the people of the United States to the art of constitutional self-government.

Judicial review of state action

Since the jurisdiction of the Supreme Court has come to be largely discretionary, the great majority of cases which the Court now hears involve the constitutionality of some action by some branch of the national or a state

government. The review of state action stands upon a somewhat different basis, insofar as its effect upon our constitutional system is concerned, than the review of national actions. In earlier days this was the form which judicial review customarily took, and long lists of state laws and even some state constitutional provisions have been struck down by the Supreme Court as contrary to the Constitution of the United States. It is hard to imagine how any major principle of government could be uniformly applied throughout the United States unless some national agency performed this function. Furthermore, the fact that the Supreme Court is a national agency has meant that the states'-rights doctrine has never received consistent support from it. Finally, in exercising a review of state action, the Court has been able to thwart encroachment by the state legislatures and executives on the national authority. This was one of the major problems of the first half-century of our national life.

Review of national laws and acts

The review by the Supreme Court of congressional and presidential actions is of a different magnitude. In these cases, the Court is dealing with allegedly coordinate branches of government. Its determination to hold these as well as the states to their proper spheres of power may, and occasionally has, brought it into conflict with those who claim the right resulting from election to give effect to popular demands. The other branches, it may be added, can assert also the duty to interpret the Constitution themselves. The other two branches are equipped by the Constitution, as we have already seen, to influence considerably the character and methods of the Court. For these and other reasons, the Supreme Court has been much more reluctant to declare congressional statutes and presidential actions contrary to the Constitution than it has state actions. Until 1865, the Supreme Court declared only two acts of Congress unconstitutional; since that time it has upset several dozen more, but still a small number compared to the number of state laws it has overturned.

How judicial review operates

Perhaps a more vivid conception of how judicial review operates can be gained by some concrete illustrations. In 1897, the legislature of New York passed a law limiting employment in bakeries to 60 hours a week and 10 hours a day, presumably on the theory that baking was a kind of industry in which longer employment was unhealthful and the products might be thus made more dangerous to the consumer. After several years, an employer, Lochner, was accused of and indicted for violating this law. He was convicted of the offense in the state trial court and his conviction was upheld by the highest state court, despite the pleas of his attorneys that the law in question violated the Constitution of the United States. He appealed his case to the Supreme Court of the United States on the basis of this plea and as a matter of right since the state court had found the law valid. Five of the nine justices of the Supreme Court held that this law deprived bakery employees of their freedom (to contract their labor as they pleased) guaranteed against state deprivation without "due process of law" by the Fourteenth Amendment. Four justices held that the state law was valid and that the "due process" clause contained no such guarantees as the majority inferred. Thus, Lochner was relieved of

any penalty; the Court declared, in effect, that it would not punish anyone brought before it for violation of this particular New York law, and the law thus became unenforceable. This was done on the basis of five justices finding something in the Constitution that the other four could not find.

In 1943, the Congress adopted as a provision in an appropriation act that no funds available under any act of Congress should be used to pay the salaries of three individuals named unless before November 15, 1943, the President should procure senatorial confirmation of their appointments. The three named men had been the subject of attack by the House Committee on Un-American Activities and had been accused of subversive activities against the United States. They were serving as "recess" appointees and the effect of the language of the act was to force their removal from office. The three men instituted action in the United States Court of Claims to recover salary they alleged was due them because of wrongful dismissal. The court ruled in their favor and the case was certified to the Supreme Court. A majority of the Court held that the section of the appropriation act in question constituted a bill of attainder, which they defined as a legislative act which inflicts punishment without trial, and therefore violated the constitutional prohibition of such bills (Art. I Sec. 9). Two justices held that the men were entitled to back salary but that the congressional action was not a bill of attainder, since it did not adjudge the men guilty of any offense. In this decision, the three men won back pay and the Court, in effect, said to Congress, you cannot remove officials whom you dislike from national office by this procedure.

Effect of a decision invalidating a law

It will be noted in these examples that the Court did not veto or annul either the New York statute or the act of Congress. It declared, rather, that in situations like those which confronted it, it would not enforce the laws against persons who rightfully sought its protection. State and national authorities make their own inferences from these decisions as to how the Court might regard similar laws or actions. Furthermore, the Court's action may come many years after the law was originally passed. The legal doctrine in the matter of validity is that every law is presumed to be constitutional until otherwise declared by a court in a proper case and that the burden of proof is on those who question its constitutionality.

Attacks on and defense of judicial review

It should not be surprising to the observer of our political institutions that on numerous occasions the decisions of the Supreme Court have been unpopular and have attracted wide criticism. Abraham Lincoln campaigned for United States senator and, in part, for president on his assertion that a Supreme Court decision (Dred Scott's case) was unwise, illogical, politically motivated, and ought to be overturned. Critics of the Court have frequently asserted that the judges are deliberately frustrating popular will on the basis of their own personal and partisan views, that the judges are ignoring underlying technological, economic, and social changes in our society which have changed the meaning and importance of legal or political conceptions, and that despite the presumption of validity a majority of one on the Court can and does overturn laws which their colleagues believe to be reasonable. The judges themselves habitually disclaim any disposition to do anything but apply impersonal and

objective legal principles to the problems presented to them. Thus Mr. Justice Roberts said:

> It is sometimes said that the Court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty—to lay the articles of the Constitution which is involved beside the statute which is challenged and to decide whether the latter squares with the former. All the Court does, or can do, is to announce its considered judgment upon the question. . . . This Court neither approves nor condemns any legislative policy. Its difficult and delicate task is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution, and having done that its duty ends.

Few students of the activities of the national judiciary accept the Justice's statement as a wholly satisfactory explanation or defense. If the matter were so simple, they argue, few cases would ever be brought. The Constitution is ambiguous in many places and the judges necessarily bring to the task of clarifying the unclear a great many preconceptions as to the "real" nature of our political system. A large number of the constitutional controversies concern matters on which the Constitution is silent and toward which the framers could have had no intention since they could not possibly have foreseen the problem. In order to perceive an intention where none exists, it is necessary for the viewer to bring a great deal of mental and emotional equipment to the task. Many members of the Court itself have never subscribed to the Roberts' theory. Justice Holmes, in the Lochner case already described, said:

> This case is decided upon an *economic* theory which a large part of the country does not entertain. If it were a question of whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of the majority to embody their opinion in law. . . . The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. . . . A constitution is not intended to embody a particular economic theory, whether of paternalism . . . or of *laissez faire*.

The modern Supreme Court is not too sympathetic with the Roberts' doctrine; many of its more recent decisions contain references to social and economic facts and opinions which are quite outside the more traditional concern for precedents and legal authorities. Times change and so do justices. The Court is not infallible and its views of constitutional questions may be and have been altered. But that it is a maker of law and not merely a discoverer of it, and that it exercises a profound influence upon public policy few would now dispute. However this may be, it has retained its hold upon the loyalty of the American people as a whole. They believe that it ought to exercise the powers that it does exercise and they, and their elected deputies, defer to its opinions

and respect its detachment. Its critics of yesteryear, when it was smashing attempts to regulate business, are its friends of today when it is striking sledge-hammer blows against all forms of discrimination in defense of its conception of the civil liberties of the American people.

SPECIAL AND LEGISLATIVE COURTS

"Constitutional" and "legislative" courts

The courts of the United States thus far described are the principal repositories of the judicial power conferred by the Constitution. They have been established by Congress under Article III of the Constitution and are the closest approximation which the national government has to courts of general jurisdiction. In establishing them Congress has been controlled by the provisions of the Constitution relating to judicial tenure and compensation. Congress has, however, created a number of other courts, some incidentally to certain of its enumerated powers. These are special courts and most of them are referred to as "legislative" courts by virtue of the relative freedom of Congress in creating them to prescribe terms of office for the judges and to endow them with nonjudicial functions.

Court of Claims

At least two of these special courts have, however, been specifically designated as constitutional courts by the Congress. The Court of Claims was created in 1855 under the power to appropriate money to pay the debts of the United States. It was authorized to hear and adjudicate claims of private persons against the government and to report its findings to Congress or to the department concerned. Since 1887 it has also heard suits against the United States for breaches of contract and since 1946 (Federal Tort Claims Act) suits for injuries caused by negligent or wrongful behavior of a government employee. In order to clarify the confused status of this court, the Congress in 1953 declared it to be a court established under Article III of the Constitution.

Court of Customs and Patent Appeals

The Court of Customs and Patent Appeals—created in 1910 under the power to regulate commerce and to regulate patents and authorized to decide questions arising under the customs, patent, and trade-mark laws largely through the review of decisions of the Customs Court, the Patent Office, and the Tariff Commission—was declared a constitutional court in 1956.

Customs Court

Court of Military Appeals

Territorial courts

The "legislative courts" now include (1) the Customs Court, created in 1926 out of the Board of United States General Appraisers under the power to regulate commerce, and authorized to review decisions of customs collectors and appraisals of imported merchandise; (2) the Court of Military Appeals, created in 1950 under the power to make rules for the government of the armed forces and authorized to review decisions of courts-martial; and (3) territorial courts, created on various occasions under the power to administer the territories of the United States and including district courts in Guam, Puerto Rico, the Virgin Islands, the Canal Zone, and the District of Columbia. All of these territorial district courts except that in Puerto Rico have, in addition to regular national jurisdiction, jurisdiction over all those matters which in the states belong to state courts.

Administrative courts

All of these legislative courts, except those in the territories, may be accurately labeled also as administrative courts dealing as they do with questions between private persons and government agencies. In this sense they are an exception to the general rule of Anglo-American jurisprudence that cases arising out of the administration of laws shall be adjudicated by the regular courts.

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B. FUNCTIONS AND SERVICES

15

Government and Business

THE PURPOSE OF GOVERNMENT in the American ideology is to serve the people over whom it presides. The state is not an end in itself with a purpose and a destiny distinct from that of the persons who comprise it, as many European thinkers have held and rulers have practiced. The American believes the state is an agency for fostering the safety and welfare of individuals and has no other object. It is fitting, therefore, that we now turn from how the government is organized to what it does. In its programs we find the justification for its existence and a basis for determining its effectiveness.

Government and the maintenance of economic prosperity

Among the vast array of national programs, past and present, none has commanded more widespread interest nor more persistent attention than maintaining a high level of economic well-being among our people. There has never been a time when the government was indifferent to the health of the economy. To be sure, opinions have differed widely through the years on how best to achieve prosperity. Policies appropriate to one stage of our economic development have not necessarily been useful or acceptable at other stages. Various sectors of the national economy, even today, expect and receive different kinds of treatment and our statesmen are pulled and hauled about by the unremitting pressure of organized economic interests. Business, agriculture, and labor have each sought benevolent governmental attention to their problems. The result of these differences of view and of interest has been that the government has never followed a wholly consistent theory of political economy and it does not do so today. An appreciation of the scope and diversity of governmental economic policies and programs may best be obtained

by considering in turn the relations between the government and business, agriculture, and labor.

BUSINESS IN THE AMERICAN SCENE

Earlier attitudes

For a good while after our national government was founded, the climate of economic opinion in which it operated was distinctly Hamiltonian. A strong government, it was considered, had been made possible by the influence of business in framing and adopting the Constitution. Its principal support in the future would be the business elements. Government, in turn, should foster private enterprise by providing facilities, removing impediments, even granting an occasional subsidy. And from such alliance of government and business —with free competition among industries keeping the prices of products within the reach of consumers—would flow a prosperity spreading throughout the body politic. That government, however, should undertake any general regulation or control of business interests, operations, and practices would have seemed, in the prevailing state of mind, quite undesirable. The country's development, it was believed, would be best served by allowing full scope for competitive private enterprise.

The different situation today

Even in the earliest days, however, there was some dissenting opinion. Looking upon agriculture rather than business as the bulwark of national strength and well-being, Jefferson and people of his persuasion were not averse to seeing business placed under occasional restraint when the two interests clashed. The Hamiltonian concept of the right of business to go its own way was vigorously reaffirmed by the triumphant Republicans of the post-Civil War era. Gradually, however, it was modified and in this century has been thoroughly revised. Not only does the national government nowadays encourage and promote business in a multitude of ways not conceived of in Hamilton's and Jefferson's time, but it has itself become heavily involved in business on its own account. In addition it has swept a mighty regulating arm over virtually the entire field of private or semiprivate commercial, industrial, and financial activity, fixing conditions of competition, forbidding practices held socially undesirable, and, under copious legislation associated initially at many points with the New Deal, controlling production, prescribing minimum wages and maximum hours, requiring collective bargaining, and prohibiting false or misleading advertising of commodities and securities. During World War II, a peak was reached when industrial establishments were, in effect, told what they might manufacture, when access to necessary materials was scaled according to priorities, and when the prices at which products might be sold were placed under ceilings prescribed from Washington; and even though such wartime controls were later taken off, business continued under broader peacetime national regulation (not to mention much regulation also by the states) than in any earlier period of our history. The experience of the "Great Depression" convinced most statesmen of modern America that the private enterprise system will not of itself maintain business prosperity and the national

government must keep its hand on the economic pulse of the nation ready at any time to administer stimulating medicine. It is not too much to say that the primary domestic concern of the president is the health of the national economy and that he and his colleagues give this matter a great deal of thought and attention at all times.

Reasons for the change

Four related developments have contributed to this great change. (1) The first is the vast expansion of business entailed by the rise of modern industry. As late as the Civil War, American society still was predominantly agrarian; industrial production was limited and largely of the household type; industrial units outside of the home were mostly small mills and factories, owned by individuals or small companies and independently operated; "business" consisted largely of trade, transportation (by turnpikes, canals, and later railroads), banking, land deals, and some mining. After the Civil War, however, the country moved rapidly into its present industrial era, characterized by the modern factory system with its power-driven machinery, its assembly lines and other mass-production techniques, its standardization of products, its wage system, its growth of cities; and business became predominantly the manufacturing and distribution of goods to national and international markets. (2) A second development, closely associated, was the rise of large—eventually huge—business corporations. Before 1870, the industrial corporation hardly existed outside of textile manufacturing in New England; after that date, as enterprise expanded and the economies and other advantages of the corporate way of doing business were more clearly perceived, corporations multiplied in a score of fields and mounted to amazing size and power—familiarly illustrated by the great structures associated with the names of Carnegie and Rockefeller in the domains of steel and oil. From days of small and isolated business enterprises serving largely local needs, with little or no pyramiding of managerial authority, the country moved into a period of vast concentrations of enterprise and capital, with corresponding consolidation of management and with all of the possibilities of manipulation and monopoly inherent in such a situation. Of the 120,000 manufacturing firms in the United States, about 375 own more than half of all the corporate assets. (3) A third factor was the interstate and even international economic empires inevitably resulting. The great corporations (and indeed many lesser ones) drew their capital from investors over the entire country, shipped their products to every state and foreign land, maintained branches and plants in different states and territories, and over the years developed business undertakings and procedures of such scope and character that if they were to be regulated at all, it could be only by a government with nation-wide authority. (4) Finally, in some respects most important of all, has been the shift of public attitude and opinion from the laissez faire of a century or more ago to the present view of governmental responsibility as embracing the distribution of economic well-being by positive intervention in behalf of the public interest. Crowning this development, too, has been the Supreme Court's change of mind within the past 25 years on the scope of national economic

power. After long insisting upon a rigid line of separation between commerce and manufacturing, with the commerce clause denied any application to the latter, the justices have at last brought all manufacturing, mining, lumbering, and the like, insofar as having any interstate or international aspect, within the definition of commerce, thus sharply increasing the potential and actual scope of business regulation from Washington.

A general view of government-business relations

It is impossible today to characterize the entire field of government relations with business by any simple rubric like laissez faire or socialism. The picture is far too complex for that. Intermingled throughout our economy are: (1) private ownership and private operation, illustrated by the railroads and most other utilities, most banking, oil production, steel and textile manufacturing, and most life and fire insurance; (2) public ownership and public operation, illustrated by the postal service and by a long list of government corporations like the Commodity Credit Corporation, the Inland Waterways Corporation, and the Tennessee Valley Authority; (3) private ownership and government operation, as seen in the federal reserve system; and (4) public ownership and private operation, less common but illustrated by publicly built and owned munitions plants operated by private companies during World War II. While public ownership and operation have been on the increase sufficiently to cause many people to worry over a trend toward socialism, there is far more private and far less public economic enterprise than in any other major country. In particular, the American system contrasts with not only (*a*) the totalitarian U.S.S.R. with its collectivization of virtually all industry and business, but even with (*b*) democratic Great Britain, which under a socialist Labour government from 1945-51 has seen the coal, transportation, gas and electric, and other top industries "nationalized," and with (*c*) equally democratic Scandinavian countries with their mixed, "middle-way," economies in which the governments have a controlling interest in most major economic enterprises. Finally, our penchant for private ownership and management has stimulated our heavy reliance upon governmental regulation of privately owned and operated business organizations and procedures. Broadly, public ownership and operation is the European way, private ownership and operation, with public regulation, the American way.

The unity of business interests

The upshot is that, just as in the cases of labor and agriculture, the national government now controls as well as assists (even if it also sometimes harasses) business in ways unheard of only a generation or two ago. Before certain of these are pointed out, however, two influential elements in the situation require mention—first, the solidarity of business as a force in our national life, and second, the influence of business upon government itself. There is no way of knowing precisely how many people in this country are now engaged in business. The number has been estimated at between 6 and 8 million, depending upon what is considered "business." But in any case the gamut runs all the way from the independent corner grocery to the industrial or financial colossus like the Du Pont Company or General Motors counting its assets in billions of dollars. At first glance, there is little unity in the picture. Small busi-

ness contends with big business; independent dealers fight the chains; railroads do battle with bus and air lines; high-cost producers seek political protection against low-cost producers; some manufacturers want protective tariffs, importers want none; New England textile interests combat newer interests of the kind in the South; competition is bitter within industries and between industries; scores of trade associations do whatever they can to get favors and advantages for their own industries, localities, or regions.

THE PULSE OF THE ECONOMY

Economic Indicators

WEEK ENDED AUG. 24, 1963

WEEKLY COMPARISONS

	Latest Week	Prior Week	1962
Commodity index	92.2	92.2	92.6
*Money in circulation	$ 35,850,000	$ 35,879,000	$ 34,003,000
*Coml, indl, agric loans	$ 36,613,000	$ 36,536,000	$ 34,598,000
Steel operating rate	57†	56.9	55.5
Steel production (tons)	1,742,000	1,748,000	1,616,000
Motor vehicle production	19,706	29,721	7,469
Daily oil production (bbls.)	7,661,110	7,634,210	7,283,710
Freight car loadings	576,657	559,714	582,627
*Elec Pwr output, kw-hr	18,053,000	18,713,000	16,838,000
Business failures	387	264	285

Statistics for commercial-industrial-agricultural loans, carloadings, steel, oil, electric power and business failures are for the preceding week and latest available. *000 omitted.

MONTHLY COMPARISONS

	July	Prior Month	1962
Employed	70,851,000	70,319,000	69,564,000
Unemployed	4,322,000	4,846,000	4,019,000
Industrial production	126.5	125.6	119.4
*Personal Income	$464,300,000	$462,600,000	$443,500,000
	June	**Prior Month**	**1962**
*Money supply	$149,800,000	$149,400,000	$145,600,000
Consumers' Price Index	106.6	106.2	104.0
*Construction contracts	$ 4,402,161	$ 4,850,522	$ 3,899,598
*Manufrs. inventories	$ 58,760,000	$ 58,440,000	$ 56,910,000
*Exports	$ 1,813,600	$ 1,900,500	$ 1,838,300
*Imports	$ 1,410,200	$ 1,406,200	$ 1,342,400

† Figures shown are subject to revision by source. *000 omitted.

Commodity index, based on 1957-59=100, and the consumers' price index, based on 1957-59=100, are compiled by the Bureau of Labor Statistics. Industrial production is Federal Reserve Board's adjusted index of 1957-59=100. Imports and exports as well as employment are compiled by the Bureau of Census of the Department of Commerce. Money supply is total currency outside banks and demand deposits adjusted as reported by Federal Reserve Board. Business failures compiled by Dun & Bradstreet, Inc. Construction contracts are compiled by the F. W. Dodge Corporation.

Published weekly by the Council of Economic Advisors.

SOURCE *The New York Times*, Aug. 25, 1963.

There is, nevertheless, more solidarity than appears. Business interests, large and small, have, as is often said, a "businessman's point of view"; large over-all organizations like the National Association of Manufacturers and the United States Chamber of Commerce encourage and express this point of view, consolidating sentiment and speaking for the business community as a whole. Although often rivals, textile interests, iron and steel interests, transportation interests—each with its own trade association, or perhaps several such—have common ground and may work together for common purposes. At many points, big business pulls little business along with it; interlocking directorates and financial relationships blur the pattern of dispersion and harmonize conflicting interests and objectives. Big bankers influence lesser ones, and they, still lesser ones within their radius of contact. So, too, with corporations and industries of other sorts—influence radiating downwards, indeed, through all levels, and certainly not excluding the millions of people who, having investments in General Motors or the Pennsylvania Railroad or any one of hundreds of other enterprises, large or small, instinctively incline toward the viewpoints of those bearing responsibility for operating the business. Notwithstanding incessant internal clashes of interest and policy, therefore, the American business world on a great many issues presents a common front of immense prestige and potentiality.

Business in politics

Furthermore, this common front is utilized powerfully for political ends. Back of it stand millions of voters. While we hear less of the business vote than of the labor or farm vote, no one can fail to perceive that at every presidential and congressional election it is thrown heavily to some particular party —normally the Republican party—and presidential candidate. But it is not alone through nominations and elections that business seeks to mold and guide national policy. There are also broad avenues for influence upon the president by advice and persuasion, upon department heads in their work of planning and administration, upon the great regulatory commissions, and upon Congress in connection with legislation. Here we enter, of course, the labyrinth of interest-group activities, including lobbying; and the fact already has been stressed that among the scores of groups and interests assiduously endeavoring to influence senators and representatives to support or oppose given tax, tariff, currency, labor, farm, and other proposals, a prominent place must always be given business organizations and groups. Of course, business interests do not always see eye to eye; one may be found pressing for a piece of legislation strongly opposed by others. All in all, however, there is a good deal of concerted effort, with even diverse and independent efforts contributing to the development of an attitude or atmosphere favorable to the business point of view in general. Furthermore, one of the major lessons which business has learned in the past generations is the folly of ignoring or defying public sentiment—the wisdom, indeed, of cultivating such sentiment in every possible way.

NATIONAL ASSISTANCE TO BUSINESS

Almost everything the national government does affects business, most of the time benevolently. The maintenance of friendly intercourse abroad fosters trade across national frontiers, the defense of the nation not only preserves the plants and facilities of the business world against destruction or capture but also provides an immense market for the sale of privately manufactured armaments of all types. The preservation of law and order guarantees ownership against theft and depredation and facilitates the free movement of goods and services over a vast continental area. Assistance to the aged, the infirm, the sick, the veteran, and many others insures a market for many types of consumer goods; and granting of economic and military aid to friendly foreign powers in recent years has assured a market abroad for many types of American commodities. There are, however, many forms of assistance aimed particularly or exclusively at the business community or at segments of it. These programs are summarized and illustrated in the following paragraphs.

1. Subsidies

Throughout the country's history, business has profited immensely from subsidies from the national treasury; and some branches of it still do so. Most conspicuous among beneficiaries has been the railway industry, on which more than $1.25 billion, chiefly in public lands, has been bestowed. But transportation by air, sea, and highway have also been subsidized: contracts with air carriers for transporting mail are frankly drawn to subsidize a young industry, and airport facilities are extensively supported by national, state, and local expenditures; the trucking industry has been subsidized by immense national, as well as state and local, expenditures on highways which are its roadbed; the newspaper, magazine, book publishing and direct-mail advertising industries are sustained by mail service charges which are admittedly below cost and the differential must be made up by appropriations from tax funds. One of the special recipients of treasury largesse has been the American shipping industry. The efforts of the government to stimulate trading in American vessels have included tonnage tax advantages and subsidies to private operators by lucrative mail contracts, by government construction of vessels which are then leased to private operators, by payment of the difference in cost of operation between American-owned and foreign-owned vessels. The list of subsidies might be extended for several paragraphs. All told the business community has been the direct beneficiary of billions of dollars of national expenditure and a substantial share of the national budget currently is allocated for this purpose. Contrary to some of the pronouncements of its associations, the business community has never opposed public subsidies as such. What it opposes are subsidies to other sectors of the national economy.

2. Tariff protection

The most important concealed subsidy received by business throughout our history has been that arising from protective tariffs. A protective tariff is a duty on imports fixed high enough to offset any price advantage which foreign goods might enjoy in competition with home-produced articles. Every tariff act

from 1789 to 1930 had as one of its purposes, and often the main one, to give American products (chiefly manufactures, until eventually agricultural products were added) a competitive advantage over foreign products in our markets. The peak of such favoritism was reached under the Tariff (Hawley-Smoot) Act of 1930. The pros and cons of this policy have been argued warmly for 160 years. Producers of raw materials such as cotton have usually opposed tariffs on manufactured goods. Manufacturers have usually argued the benefits to be derived from fostering the development of home industry and the advantages accruing to American labor by being protected against lower European or Asiatic wage scales. The point is that business has at all stages been the beneficiary of what amounts to a tax, in the form of higher prices, on the country's consumers. Since 1934 the nation has gradually retreated from the extreme protectionist position of 1930. More and more business interests feel able to survive foreign competition and are especially anxious to enlarge their export markets, expecting that tariff reduction at home will stimulate reciprocity abroad. There has been a change also since 1934 in the procedure by which tariffs are fixed. Dissatisfaction with congressional tariff-making increased steadily in this century. General tariff bills had by 1910 become such labyrinths of facts and figures that even the most conscientious legislator could inform himself on only a small portion of the duties. The influences of special interests in promoting high rates on particular goods were enormous. Fluctuations in economic conditions at home and abroad made any set of rates soon out of date.

Flexible tariff introduced

The first reform efforts accompanied a desire to reduce tariffs generally and led to the creation in 1916 of the United States Tariff Commission. This agency, directed by six members appointed on a bipartisan basis, was charged with continuous review of the tariffs in relation to costs of manufacture at home and abroad and with keeping both the president and Congress fully informed. Originally the Commission had no authority even to make recommendations except in very general terms but in 1922 it was charged with the duty of investigating differences in the cost of production between any protected domestic commodity and its foreign counterpart and required to recommend to the president specific increases or decreases in tariff rates based upon its studies. The president, in turn, was authorized to change rates by as much as 50 per cent up or down.

The amount of tariff revision accomplished by this procedure was more than offset by the new high rates of the Tariff Act of 1930. A new Democratic administration, determined to stimulate international trade and to improve the tariff procedure, persuaded Congress in 1934 to inaugurate a broad new tariff program. The Reciprocal Trade Agreement Act of 1934 empowered the president to bargain with foreign countries for mutually advantageous tariff concessions and to lower the tariffs by as much as 50 per cent without further congressional approval in so doing. The president's power was to expire after three years. Succeeding Congresses have renewed the grant of power to the president up to 1967. In recent years, however, the renewals have come

grudgingly and in some cases for shorter periods, especially from Republican Congresses. In the last few extensions, the role of the Tariff Commission has been enhanced so that the president must await their studies before concluding agreements and they are directed to lay before him and before Congress any evidence of injury to domestic interests from the extant duties. The Trade Agreements Extensions Act of 1958 provided further that Congress may by a two-thirds vote veto any presidential tariff orders in those instances where the president has rejected the advice of the Tariff Commission. The latest extension, enacted in 1962, broadened somewhat the president's powers, especially to increase the free list in collaboration with the European Economic Community. It also, however, removed Poland and Yugoslavia from the benefits of the most-favored-nation principle and lowered the vote needed for Congressional veto of certain orders to a simple majority.

U.S. TARIFF HISTORY—1821-1962



SOURCE: *Statistical Abstract of the United States, 1962.*

GATT

Since 1948, most of the tariff agreements have been negotiated multilaterally through the 37 countries that are signatories of the General Agreement on Tariffs and Trade (GATT) entered into at that time. GATT is regarded by the national administration as an executive agreement negotiated under the general authority of the Reciprocal Trade Agreements Acts. It has never been submitted to Congress and never expressly approved by it.

The result of the reciprocal agreements program to date has been a very

substantial reduction in tariff levels. Average duties are now about 11 per cent as compared to 53 per cent in the early 30's. Agreements are now in effect with 43 countries. Tariff making has to a considerable degree been removed from the legislative arena to the administrative one, although Congress can and has revised some of the base rates of the Tariff Act of 1930. Each recent extension of the president's power to make agreements has been contested and "protectionist" influence is still significant but not paramount in the Congress. In the last year or so, the trade program has been complicated by heavy outflow of gold due to foreign aid and investment abroad. Fear of exclusion from the European Common Market has also stimulated wider business support for liberal trade policies. Nevertheless, the program commands wide "administration" and commercial and industrial support. It is an important item of our contemporary foreign policy and will not be easily cast aside.

3. Lending operations

Until World War I, business commonly depended for credit upon banks and other private financial institutions. A War Finance Corporation was then set up, however, to make government loans mainly to industries requiring them for increased war production. While that agency eventually disappeared, its place was taken during the depression by the Reconstruction Finance Corporation (R.F.C.), charged with rescuing embarrassed railroads, banks, trust companies, insurance companies, and other businesses, both large and small. During World War II the government again expanded its loan functions to stimulate the manufacture of war goods. By 1950 the national government had developed into the country's largest banker, with its lending operations extending to agriculture, housing, foreign trade as well as to business of almost every variety. In 1951 and 1952 the R.F.C. was sharply criticized in Congress. Investigation by a Senate committee revealed both partisan and personal favoritism in its operations. When the Eisenhower Administration took office pledged to reduce governmental business operations, the R.F.C. was one of its prime targets and the agency was liquidated by act of Congress. The same Congress, however, created a new Small Business Administration (SBA) and authorized it not only to assist small businesses to obtain government contracts but also to loan money to such businesses for plant expansion, modernization of equipment, and similar purposes. More recently, loans for plant expansion in "depressed" areas have been made available under the Area Redevelopment Administration. In 1963 more than $10.5 billion of loans were outstanding on the government's books for housing, rural electrification, farm purchase and improvement, commodity support, and business development.

4. Provision of a monetary mechanism

One of the great defects of the Articles of Confederation from the point of view of the business community was the freedom it allowed to debtor-controlled state legislatures to multiply the amount of money in circulation by various kinds of "cheap money" expedients. The authors of the Constitution were virtually unanimous on the need for a sound and uniform system of "hard" currency. Congress was endowed with specific authority to "coin money [and] regulate the value thereof" and the states were forbidden to "coin money,

emit bills of credit, or make anything but gold and silver coin legal tender in the payment of debts." From that day to this, one of the important functions of the national government in serving business has been to provide a monetary system which will facilitate domestic and foreign commerce and will remain fairly stable as a storehouse of economic values. Although occasionally the Congress has fallen under the influence of debtor—usually agricultural—interests and has sought to "ease" the plight of the "downtrodden" by multiplying the amount of currency in circulation, in general, national management of the currency has been dominated by "sound" money policies.

5. Provision of uniform standards of weights and measures

One of the most useful services performed by the national government in support of nation-wide markets for manufactured goods, foodstuffs, and fibers is the establishment of uniform standards of weights and measures. The authority given Congress to "fix the standard of weights and measures" is so broad that it can be, and has been, exercised in connection with all manner of measurements—length, weight, volume, temperature, strength, quality, and others. One of the great landmarks in this field and one of the numerous benefactions to this nation by the Adams family is the report in 1821 by John Quincy Adams on a system of uniform measures. To aid in determining such standards, the Bureau of Standards is maintained in the Department of Commerce. Along with the familiar units taken over from old English usage—the pound, yard, gallon, bushel, and so on (with their derivatives)—the metric system employed in Continental countries, and having conspicuous advantages, has been given official status, even though as yet but little actual use is made of it outside of scientific circles. As developed to the present time, the function of the national government is merely to "fix" standards, keep models in the Bureau of Standards, and furnish models or copies to the states, leaving it to state and local governments, in the interest of honesty and regularity, to require compliance with the appropriate standards in business and other transactions. Congress might not only *fix* standards, but set up machinery for enforcing them nationally. This, however, it has never done.

6. Scientific research and the provision of useful data

The business community is under a heavy and growing obligation to the national government for the collection and dissemination of useful data on trade, markets, foreign exchange, labor supply, cost of living, consumer income, investment opportunities and thousands of other subjects reflecting in great detail the condition of the economy of the nation and of the world. Monthly periodicals like the *Survey of Current Business* and *Economic Indicators* keep business supplied with timely information on the state of the economy. An elaborate network of observation posts and reporting installations supplies daily and weekly data on the weather. Less extensive but no less elaborate data is also developed on minerals, water, and other resources. The government is, however, not solely a statistical collecting agency; it is also pushing the frontiers of scientific knowledge. Through such agencies as the Bureau of Standards, the Atomic Energy Commission, the National Science Foundation, and the Department of Defense, new data, much of it of great practical utility to industry, is being discovered and made available. If

one includes the research program in agriculture and that in public health, it is not too much to say that the national government has become the greatest research institution in modern America.

7. Protection of copyrights and patents

From its inception the national government has sought to promote the progress of science and the useful arts "by securing to authors and inventors" the exclusive right to their respective writings and discoveries. The exclusive right conferred is by way of exception to the common-law rule against monopolies, the purpose being, of course, to reward talent and encourage creative effort. Slightly over 100 years ago, a commissioner of patents soberly recommended to Congress that his office be abolished because "everything had been invented." How far wrong he was is indicated by the fact that from 25,000 to 50,000 patents are granted every year. In fact the 3 millionth patent was awarded, amidst much publicity, in September of 1961.

8. Provision of uniform bankruptcy procedures

The credit structure upon which so much of modern business enterprise depends is protected and strengthened by the provision of uniform procedures for discharging unpaid obligations through bankruptcy. Under the Constitution, bankruptcy is one of the matters over which the national and state governments have concurrent legislative power. For more than 100 years (except for three brief intervals) it was left entirely to state control. In 1898, however, Congress passed a general bankruptcy act; and thereupon former state laws on the subject either were repealed or fell into a condition of suspended animation. It still is permissible for a state to legislate on bankruptcy. The national law, however, takes precedence and this law is so comprehensive that little need for state action survives.

NATIONAL REGULATION OF BUSINESS—PRINCIPLES

> The Congress shall have power to . . . regulate Commerce with foreign nations, and among the several States, and with the Indian tribes.—Art. I, Sec. 8, cl. 3

The power to regulate

The power of Congress to promote business interests by subsidies, loans, and services is sufficiently broad to encompass almost any conceivable program of this type. Few limitations of consequence have ever been discovered or enunciated by the courts to the spending power of the national government. So long as Congress declares with some reason that the object of the expenditure lies within the broad conception of public welfare, the courts appear willing to accept its power to make outlays. The power of Congress, however, to regulate business activities, that is, to penalize certain types of conduct and forbid others and to place limits upon the freedom of decision of the owners, stands on a very different constitutional footing. It is subject to a number of constitutional restraints. The most important of these are: (1) that the regulatory authority of the Congress is largely confined to interstate and foreign commerce; and, (2) that the power must be exercised so as not to deprive any entrepreneur, partner, or corporation of "due process of law."

All of the economic activities which are embraced in the concept of "business" are not historically included in the word *commerce* and all of those which are included are not interstate or international in character. The limitations on the power of Congress to regulate business, which are based upon the protection to property in the "due process" clause of the Fifth Amendment, have already been discussed in an earlier chapter.

Expansion of the meaning of "commerce"

The history of the constitutional meaning of interstate commerce is one of progressive expansion by statute and judicial interpretation so as to embrace not only the great technological changes in the fields of transportation and communication but also to embrace more and more forms of business activity. The regulation of all forms of interstate transportation and communication has been validly entrusted to the Congress for many decades. Only after a long controversy and in the midst of economic depression and political attack did the Court come around to the opinion that, nearly all manufacturing and other production being, under present-day conditions, carried on with a view to the interstate or national, or even the international, market, the commerce clause may properly be construed to permit Congress to regulate as commerce any business transactions or operations resulting in or otherwise associated with interstate or foreign commerce, however indirectly. From this seminal concept, it was but a step to holding, more specifically, that all manufacturing, mining, lumbering, and other productive enterprises in which raw materials or finished products, or both, are carried in interstate commerce are inseparable from such commerce, and are, therefore, within the scope of congressional regulative power. It was on this basis that many of the regulating statutes of the New Deal were ultimately sustained.

Present scope of congressional power

Under the prevailing theories of the power of Congress over interstate and foreign commerce, therefore, only the most parochial of business activities are exempted from national authority. Such business transactions must begin and end within the confines of a single state and must have no demonstrable effect upon or relevance to transactions which go beyond the state borders. This does not mean, however, that the states are wholly denied the power to regulate business activities which come within the scope of national power. They may be authorized by Congress or by the courts to exercise regulatory authority if not inconsistent with national policies or with judicially determined national needs. The states, therefore, continue to regulate many types of business transactions and institutions, even some which have interstate aspects. For the most part, however, their regulations must be consistent with national statutes or regulations or with judicial decisions on the scope of national power.

Regulation includes prohibition

The power to regulate, it must be added, includes also the power to prohibit. Embargoes on foreign commerce, for example, have been imposed several times in our history (e.g., in 1794, in 1812, and in 1917-18) suspending trade completely with some countries or in some commodities. Congress has prohibited the transportation across state lines of lottery tickets, stolen goods, prostitutes, "filled" milk, liquor if being taken into "dry" states, and prison-made goods if in violation of state laws.

Authority over foreign commerce broader than over interstate commerce

Regulatory authority over foreign commerce is broader than over interstate. The exclusive and virtually unrestricted jurisdiction of the national government over our relations abroad applies to commerce no less than to everything else and, this adds materially to the regulative power conferred in the commerce clause—in addition to opening up methods of dealing with commerce otherwise than by congressional act, for example, by treaty. Authority to regulate foreign commerce, furthermore, extends to every act of transportation or communication cutting across our national boundaries, no matter how deep into the country may be the point of beginning or ending.

Exercise of power to regulate

Despite the broad sweep of authority now believed to reside in the Congress to regulate business, it has not seen fit to bring the entire business community under detailed scrutiny of the national administration. The amount and character of national regulation vary widely from one type of business activity to another and from one epoch of time to another. In World War II, for example, the national government regulated businesses of all types in more minute detail than it had before or than it has since. In general, the regulatory power has been exercised more completely in those fields of business where monopolistic conditions actual or potential have threatened a weakening of the supposed regulatory effect of competition in free market. The Congress has also sought to safeguard the position of employees against exploitation by powerful corporate combinations. This type of restraint upon business we shall consider in the chapter on labor.

REGULATION OF BUSINESS—TRANSPORTATION

A discussion of the practices of business regulation must necessarily begin with the railroads, for these were the first major objects of concern. In the long struggle to bring the owners and managers of these great instrumentalities of commerce under the control of the government there was established a pattern of regulatory theory and procedure which has been closely followed when other forms of business activities have been brought under public control.

Transportation development

It is hardly too much to say that the United States, as a nation of continental dimensions, has been made by transportation. Certainly growth in territory, population, wealth, and power not only has paralleled the sequence of horse and rider, stage coach, steamboat, railroad, automobile, and airplane but would not have been possible without it. By and large, transportation development has been one of the great achievements of our boasted free private enterprise. At the same time, it never could have taken place without a great deal of government aid.

1. Railroads: Federal regulation becomes necessary

Until long after the Civil War—and after most of the great expansion in the West and Southwest had taken place—regulation of railroad financing, operations, and procedures was left almost entirely to the states. As roads extended their networks through many states, and vast country-wide systems were built up, the situation got out of hand. By the later seventies and the eighties, railroad management and operation had become "big business," with formidable financial and other economic powers involved, with intense rivalries

engendering ruthless policies, and with fabulous profits at stake. The railroad magnates took full advantage of the lack of effective competition. More than this, they used their great power by rebates and preferential rates to force monopoly into other segments of the business community. Abuses calling for remedy were many and glaring. The states attempted at first to correct matters insofar as they could. But their spheres were restricted; railroad magnates and lobbyists often dominated their legislatures; regulations by only one or a few states were ineffective; the Courts denied state authority over fares in interstate commerce. This placed the matter squarely in the hands of the Congress.

The Interstate Commerce Act (1887) and its expansion

The upshot of all this experience and of continued popular dissatisfaction and protest among western farmers and eastern small businessmen, was the passage by Congress in 1887 of an Act to Regulate Commerce, forbidding excessive charges, discriminations, and other unfair practices, and creating a special agency—the Interstate Commerce Commission—to administer and enforce the principles and rules laid down. Under it and the laws and decisions supplementing it is now regulated all interstate transportation of persons and commodities carried on by railroads, by common carriers by water (both inland and coastal), by express companies, by sleeping-car and other private-car companies, by freight forwarders, by motor-bus companies, and by pipelines except those for the transportation of gas and water. Bridges, ferries, car-floats, and lighters, and indeed terminal and other facilities of whatsoever character when used in the interstate transportation of persons or goods are also regulated. Until 1934, the act applied also to instrumentalities and facilities used for the transmission of intelligence by means of electricity, such as telegraph, telephone, cable, and wireless systems.

RISE AND DECLINE OF THE AMERICAN RAILROAD SYSTEM

Date	No. of Locomotives	No. of Freight Cars	No. of Miles of Track
1880	17,949	539,255	115,647
1890	31,812	1,061,952	208,152
1900	37,663	1,365,531	258,784
1910	60,019	2,148,478	351,767
1920	68,942	2,388,424	406,580
1930	60,189	2,322,267	429,883
1940	44,333	1,684,171	405,975
1950	42,951	1,745,778	396,380
1960	31,178	1,690,396	381,745

SOURCE: *Statistical Abstract of the United States, 1962.*

Restrictions imposed

Upon railroads—and, so far as applicable, upon all other instrumentalities of public service subject to the basic law—are imposed numerous restrictions each prompted by some earlier abuse. Thus, (1) rates for the

transportation of persons and freight must be just and reasonable, and calculated to yield merely a "fair return" on the value of the property employed; (2) charging a higher rate for a short haul than for a long one over the same line in the same direction is forbidden, except when authorized in special instances by the Interstate Commerce Commission; (3) rebating, directly or indirectly, and undue discrimination or preference among persons, corporations, or localities are prohibited; (4) free transportation may be granted only to narrowly restricted classes of persons; (5) railroads are forbidden, except in a few special cases, to operate, own, or control, or to have any interest in, any competing carrier by water; (6) except under strict supervision of the Commission, competing lines may not combine, merge their receipts, and apportion resulting profits; (7) carriers may not transport commodities (except timber and its products) in which they have a direct property interest; and (8) they may issue long-term securities, purchase or build additional lines, or abandon old lines, only with the Commission's consent.

Duties prescribed

In addition, numerous positive duties are prescribed. For example, (1) printed schedules of rates must be kept open for public inspection, and changes in them may be made only with consent of the Interstate Commerce Commission; (2) full and complete annual reports must be made to the Commission, covering such matters, and arranged in such form, as the Commission may require; (3) all accounts must be kept according to a uniform system authorized by the Commission; (4) in case of injury to any of its employees while on duty, a carrier must grant pecuniary compensation, unless the accident was caused by willful act or negligence of the injured party; (5) the standard or basic work day for railway employees engaged in the operation of trains is eight hours, and carriers must conform their wage schedules to it and grant overtime pay; (6) all trains engaged in interstate commerce must be equipped with automatic safety appliances; and (7) all railway companies so engaged must maintain compulsory retirement and pension systems for their superannuated employees.

The Interstate Commerce Commission

The Interstate Commerce Commission (I.C.C.)—charged with enforcing the regulations outlined above and many lesser ones as well—consists of 11 persons appointed by the president and confirmed by the Senate for seven-year terms, and has a staff of some 2500 clerks, attorneys, examiners, statisticians, investigators, and technical experts, organized in 3 divisions embracing 9 distinct bureaus. The commissioners themselves work almost entirely in panels or divisions of three members each; and a decision of a panel has the same force and effect as a decision of the Commission itself—subject to the entire Commission granting a rehearing. Any person, corporation, municipality, or other private or public group may lodge with the Commission a complaint concerning any alleged infraction of the interstate commerce laws. The Commission, acting ordinarily through one of its panels, must institute an inquiry. If preliminary investigation discloses that the complaint may be well founded, a hearing follows, of a sort not unlike those to be observed in a court of justice: plaintiff and defendant are represented by attorneys; books,

papers, and other materials (which the Commission has full power to order produced) are placed in evidence; witnesses are examined; and at the end the Commission, that is, in most instances the appropriate panel, embodies its conclusion or finding in an order enforceable in the courts, although also with right of appeal to those courts by the party affected adversely. Orders may relate to rates, quality or conditions of service, or any one of literally scores of other things falling within the scope of the laws; and disobedience renders the offender liable to prosecution.

Control over rates

Under the original law, the Commission did not have power to make or revise rates, either on its own initiative or on complaint of shippers that existing rates were unreasonable. Ultimately, however—although only after a vigorous campaign of popular education, and in the face of persistent opposition from the carriers—the necessity of conferring extensive rate-making power was brought home to the public. Under the transportation acts of 1906 and 1920, the Commission (as agent of Congress for the purpose) is authorized, on complaint and after hearing, not only to fix "just and reasonable" rates, regulations, and practices, but also to prescribe definite maximum or minimum charges. The Commission finds itself in consequence of this heavy responsibility, perpetually under crossfire from shippers and other interests clamoring for lower charges, and, on the other hand, carriers insisting that rising operating costs or other factors call for rate increases. On the ground that to compel even property "affected with a public interest" to be used without suitable compensation would amount to confiscation, the Court has declared that rates should be such as to insure a "fair return" on the "value" of the property involved. But upon what constitutes "fair return," especially as to how "value" is to be determined, there can be, and is, a great variety of opinion. The matter is too involved to be discussed here, but it may be observed that, whereas until later years the Supreme Court was inclined to support valuation based (for example, in the case of a railroad) on what it would cost currently to reproduce the road and its facilities, less an allowance for depreciation, the present tendency is rather to favor valuation in terms of the more stable and manageable criterion of the amount of money actually put into constructing and developing the road from its beginning, again of course with a deduction for depreciation.

The pattern of regulation

The pattern of government regulation which emerges from the efforts to control the railroads is: (1) that the regulating agency be an independent commission removed by legislative intent from the direct oversight of the president and exercising its powers in a more or less judicial atmosphere; (2) that the regulatory authority be granted by Congress in the broadest terms—"just and reasonable rates"—with the agency authorized to specify in particular how the authority will be discharged; (3) that the actions of the agency will be carefully scrutinized by the courts on appeal and that such court scrutiny will emphasize the protection of property rights against administrative impairment; (4) that competition will be encouraged as a "natural" regulator until it is demonstrably obvious—as it has been since 1920 in the case of the railroads—

that the effort to inject competition is either impractical or unwise; (5) that, although the original grant of regulatory power may extend only to certain aspects of the business under consideration, the power is likely to be broadened subsequently to bring under scrutiny more and more facets of the enterprise.

Results of regulation

After almost 80 years of railroad regulation by the procedures and under the policies outlined, a few observations are in order. In consequence of vast and rapid technological change, more and more goods are now being moved by highway and air and more and more people are traveling by private motor car. The once proud and truculent railroad industry is sick unto death. Whatever monopoly it once could claim has nearly vanished. Its great stations are falling into disrepair and its small stations disappearing. Each of its chief competitors receives subsidy and benevolent supervision. The continuance of commuter service in our large cities probably depends on subsidies and tax advantages and in Washington pleas for financial help are advanced in every Congress. The detailed, case-by-case method of insuring fair rates and reasonable service under a bi-partisan and judicial commission seems peculiarly ill-adapted to the problems of the day. How by these procedures can the relative claims of highway, air, and rail be fairly weighed? Faced by organized labor's demand for higher wages how can higher rates be promised? How relevant is the case law on "fair return" to either of these questions? How can terminals, yards, switching and sorting facilities be consolidated and moved to cheaper land to save taxes, labor costs, and transit time? There are no easy answers to these questions. The commission system, however, has not conclusively demonstrated that it can accommodate itself readily to a fast changing world.

2. Water transportation

Historically, the regulation of interstate transportation has, until this century, been largely a matter of regulating railroads. A good deal of such commerce, however, has always been water-borne—in vessels plying the coastal waters of the country or its rivers and lakes. For most of our history, national attention to this type of commerce took the form almost entirely of expenditure for the improvement of rivers and harbors. Over the years billions of dollars have been spent for this purpose, sometimes legitimately and wisely, but often only on the basis of congressional log-rolling. River and harbor bills have traditionally been a favorite source of congressional "pork." Only when the railroads began to complain that they suffered unfairly from the competition of unregulated water traffic did the Congress attempt to bring such traffic under control. In the Transportation Act of 1940, Congress prescribed a system of regulation of rates, services, and management of water shipping under the purview of the I.C.C. The Act of 1940, however, made numerous exemptions and perhaps 90 per cent of the tonnage of domestic carriers is unregulated.

Shipping engaged in foreign commerce and commerce between the continental United States and the island territories is regulated by a Federal Maritime Board, now located in the Department of Commerce. The Board also works in close association with the Maritime Administration in that de-

partment which administers the various programs of governmental subsidy and assistance to the shipping industry engaged in foreign trade.

3. Motor transportation

Meanwhile, however, the jurisdiction of the I.C.C. had been enormously extended in another direction. The automobile had been introduced, and trucks and buses had come into use. For a good while, distances covered were usually limited and no regulation was deemed necessary beyond state or local provisions concerning licensing and safety. As truck and bus business developed, however, on something approaching its present huge scale, serious difficulties and abuses arose—cut-throat competition between companies and especially between them and the regulated railroads, underpayment of employees, laxity about accident insurance, dubious financing. Although remedial measures were instituted by some states, it became apparent that the business had so largely assumed an interstate character that, as the Interstate Commerce Commission long urged, the problem was fundamentally one for the national government. In 1935, therefore, Congress passed a Motor Carrier Act, bringing all interstate truck and bus lines within the pale of national law and making the I.C.C. the regulating authority. If it intends to operate across state boundaries, a truck or bus company must initially secure a certificate of convenience and necessity from the Commission. Thereupon, its financing, rates, accounts, records, hours of labor, safety appliances, and general level of service become subject to that body's supervision substantially as in the case of railroads.

It might be supposed that regulations thus applied to trucks and buses would make possible a coordinated policy for land transport within the I.C.C. However, wholly outside the purview of the Commission is the huge highway program of the national government, laying at public expense the roadbed for the automotive industry and providing a key determinant of costs. Furthermore, a large portion of highway hauling is unregulated, except for safety and labor protection rules, since trucks wholly owned by shippers are exempted. The I.C.C. estimates that its controls reach fewer than 20 per cent of the motor carriers.

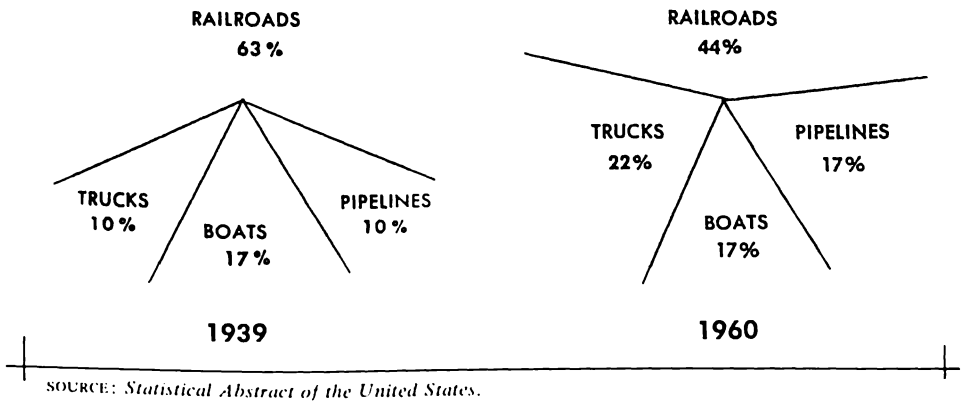
4. Aviation

Shortly after World War I (which imparted a considerable impetus to aviation), a standing interstate conference having as its object the promotion of uniformity in state legislation brought forward a uniform state law for aeronautics; and numerous states adopted it. As time went on, however, much, if not most, flying became interstate; and in 1926 Congress passed the first act regulating air traffic. A Federal Aviation Act of 1958 established the present system. At present two main agencies function in this field: a Federal Aviation Agency and a Civil Aeronautics Board. The former concerns itself principally with mapping, lighting, and marking interstate airways, providing regular and emergency landing fields, licensing planes and pilots, devising and administering safety programs, and fostering aviation research. The latter is concerned principally with the regulatory functions of controlling rates and services for the interstate transportation of passengers, mail, and goods, reviewing accident findings and promulgating rules on safety, issuing certificates to airlines, suspending or revoking licenses, and generally controlling

the economics of air transport. In a domain in which strict uniformity of rules and practices is peculiarly desirable, the states have in most instances risen to the need by incorporating all national regulations into their own aviation codes. As in the cases of rail, water, and road transportation, the government has participated heavily by expenditures for facilities and by mail subsidies.

THE CHANGING PATTERN OF U.S. FREIGHT TRAFFIC

(Per cent of total ton miles)



SOURCE: *Statistical Abstract of the United States.*

5. Pipelines

For a good while, crude oil and various petroleum products have been transported from the great southwestern oil fields to the North and East not only by rail and water but also by pipeline. World War II saw a considerable expansion of this form of interstate commerce. By its nature, natural gas definitely requires this method of transportation; and one of the most extraordinary developments in the transportation field since the recent war has been the multiplication and extension of transmission lines linking gas-producing areas from Kansas to Louisiana with principal cities and many smaller ones throughout more than half of the country. Under appropriate conditions, rates and services are now regulated, with the Interstate Commerce Commission functioning in the case of petroleum and the Federal Power Commission in that of gas.

REGULATION OF BUSINESS—COMMUNICATION

As illustrated by motor and air transport and indeed, by the steamship and the railroad, science and technology are responsible for many new modes of transportation, progressively expanding the instrumentalities of "commerce" and augmenting the task of regulation. In the field of communications,

even more revolutionary developments have occurred in the techniques of producing and distributing newspapers, the methods of handling the mails, and especially the harnessing of electrical energy. In most European countries, facilities for electrical communication—telegraph, telephone, radio and television—are government-owned and operated, directly or through auxiliary corporations. Apart from some limited ownership and operation of facilities for its own use by the national government, all of these instrumentalities in the United States, on the other hand, have been developed and, speaking broadly, are owned and operated privately. Since all more important ones necessarily are interstate, and in some instances international, substantially all fall within the range of congressional control over commerce.

1. Telegraph, telephone, and cable

When first developed, intrastate wire communications were regulated, rather ineffectively, by the states, and interstate communications not at all. And this continued to be the situation even after Congress, in 1910, gave the Interstate Commerce Commission jurisdiction over telegraph, telephone, and cable companies operating in interstate and foreign commerce. Preoccupied with railway problems, the Commission paid but little attention to its new task. Partly on this account, and partly because of unsatisfactory experience with the first machinery set up for regulating radio, Congress in 1934 concentrated all responsibility for both wire and wireless communications in a new independent regulatory body, the present Federal Communications Commission (F.C.C.), consisting of seven members appointed by the president and confirmed by the Senate for seven-year terms. Here again the impetus to effective national regulation was the existence in practice of monopolistic conditions. It is neither wise nor practical to have competing telephone or cable systems. The American Telephone and Telegraph Company (actually confined to telephone service save for providing the wire circuits for Western Union), now covers the entire country with its facilities. Since the merger of the Postal Telegraph Company with the Western Union Company in 1943, there are no telegraph competitors of any importance. Therefore, virtually all telegraph and all long-distance telephone services are now under national regulation, as of course, for obvious reasons, are all cable lines. Submarine cables may be licensed only by the president, who also is responsible for seeing that reasonable rates and services are maintained. The F.C.C. controls the actual transmission of messages. The telegraph and telephone lines are "common carriers"; their services must be adequate; their rates must be just and reasonable, authorized by the Commission, publicly advertised, and changed only with notice given the Commission and public; no discriminations may be practiced; new lines may be constructed and existing ones extended only with the Commission's consent; and full reports must be rendered, with access by the Commission to all records and accounts.

The basic problem of the telegraph industry is the same as that of the railroads. It is in decline and its functions largely shifted to long distance telephone, teletype machinery, and air mail. In the telephone industry, a different set of problems plague the regulators. The powers of the F.C.C. do not extend to certain major subsidiaries of the Bell and A. T. and T. systems such as

Western Electric from which virtually all equipment was purchased. Most of the rates and services of the system are controlled by state regulatory commissions under various procedures and formulas.

2. Radio and television

Radio broadcasting had its actual beginning in 1920, and seven years later Congress belatedly recognized a need for regulation. Nature imposed the monopoly here by making it impossible for listeners to hear two broadcasts on the same wavelength. The first act assigned the function to a Federal Radio Commission of five members, and charged it with licensing stations, assigning wavelengths, and exercising other supervision. The arrangement did not work well, and in 1934 the Commission was abolished and its functions vested in the new Federal Communications Commission (F.C.C.). Radio and now television broadcasting—on the theory that air waves may cross state boundaries—has been from the beginning under *exclusive* national control; and, subject to the ultimate authority of Congress, all power over it is in the F.C.C. The number of channels being limited by nature, the first and largest problem is that of choosing among large numbers of applicants for the privilege of operating a station those persons (citizens only) who shall be given licenses, and deciding what frequencies they shall be assigned. The criterion required by law is "public interest, convenience, and necessity," which, as in the other regulatory laws, leaves almost complete discretion to the Commission.

Unlike regulation of transportation systems, the regulation of broadcasting has never involved control of rates or profits. Broadcasting companies are not "common carriers" in the eyes of the law and are, therefore, not required to offer services to customers on a carefully regulated basis. Although the major control exercised over them by the F.C.C. stems from the assignment of wavelengths and frequencies, it is by no means confined to this and includes the practices of the broadcasters in what is put out over the air.

From the beginning the task of the F.C.C. has been extremely difficult. What standards should be considered in designating those few among many applicants who are to receive the privilege of operating a lucrative enterprise? Among the distinct interests—those of the manufacturers of receiving sets, those of the operators of broadcasting stations, those of the great networks (three in television and seven in radio), those of the advertisers and their clients, those of the receiving public—which are to be favored and to what extent? Are there other uses of broadcasting facilities than commercial ones —education, for example—that ought to be encouraged and facilitated? Is competition desirable between broadcasters or between broadcasting and other media of communication or is it better to regulate a few large concerns than many small ones? In the interests of decency, political competition, civic education and community morality what control, if any, should be exercised over program content?

In determining policies for the assignment of broadcast channels, the Commission seems to have been guided by: (1) priority—*i.e.*, those already in the business because of their huge investment in facilities are likely to be preferred to newcomers; (2) technical adequacy—*i.e.*, is the quality of the equipment and the engineering personnel such as to justify licensing; (3)

financial responsibility—*i.e.*, is there adequate proof of strong backing by the users of time and by the owners of the company; (4) public service—*i.e.*, is the program content merely propaganda or are the listeners assured of reasonably well rounded programs aimed at popular taste. All of these, however, especially the last one, are difficult to measure and judgments about them differ widely. From the beginning the Commission has been expressly forbidden to exercise censorship but it certainly must interest itself in the character and quality of the programs being offered. Required from the start also, to provide equal time to all candidates for office, it has found it difficult to encourage the use of broadcasting for civic educational purposes. The waiver of this requirement in the presidential campaign of 1960 remains as yet an exception to the requirement rather than a permanent modification of it.

In view of all the uncertainties of the situation, the deep and abiding differences of view about proper public policy, and the great value of the privilege which the Commission can confer, it is not surprising that the F.C.C. has been caught up in controversy almost from its inception and has suffered through several periods of obloquy. In the most recent of these—1958-60—the Commission was investigated by a committee of the House, many questionable practices were revealed and one commissioner was forced out of office. A scandal in network broadcasting also came to light during this period. Quiz shows of various kinds were shown to be rigged and record companies were shown to have encouraged the promotion of their records by various broadcasters through gifts of cash and other items of value.

REGULATION OF BUSINESS COMBINATIONS

Corporations, trusts, and holding companies

Business in this country attained its present immense proportions mainly through the growth of corporations and the pyramiding of such corporations, in turn, into combinations of still greater size and power. Public, or "government," corporations obtain their charters from Congress. Private corporations may do so likewise, but usually get them rather from a state (Delaware being a favorite because of the easy terms permitted), with legal rights ostensibly restricted to the state of incorporation, but in practice extended to other states as well by simple formalities of registration. Their owners are the people who hold shares of stock; capital is obtained also from those who lend them money, receiving certificates of indebtedness in the form of bonds. The officers and directors who operate them are largely immune from personal responsibility, with the organizations, as such, also sustaining only limited liability at law. Sixty or seventy years ago, corporations began forming associations or alliances aimed at combinations based upon agreements fixing prices, dividing sales territory, limiting production, and sharing profits. Presently there appeared also "trusts," in which stocks of a group of corporate units were gathered largely or wholly into the hands of a single company acting as trustee, with of course control over all of the affiliates. In time, too, arose "holding companies," with assets consisting solely of stocks of operating com-

panies whose affairs they controlled, and developed particularly in the field of gas, electric, and other public utilities. And on such a scale did these various developments take place that by 1933 our 100 largest industrial units (corporations, trusts, holding companies, and other combinations), with assets aggregating almost $100 billion controlled not only nearly half of the country's industrial wealth, but one-fifth of the entire national wealth.

The problem of monopoly

From such concentration of economic power, evils long ago began to flow—overcapitalization, "watered" stock, and the like, but chiefly monopoly, with its attendant strangulation of smaller competitive enterprises, its complete domination of an economic function or group of functions, its independent and irresponsible control over services and prices. Manifestly, in certain fields monopoly is hardly to be avoided. Speaking generally, it is not practicable for two or three gas or electric companies to operate in the same city; and in such cases public regulation has been widely introduced. From England, however, America inherited a deep seated antipathy to monopoly in general, and the common law as brought across the Atlantic (and still basic to our legal system) made unlawful any monopolistic powers and practices unreasonably obstructing trade—in other words, interfering with the freedom of competing businesses, large and small, to organize and operate on equal terms. And this free scope for individual initiative and enterprise, leaving the way open for failure and disaster, but also for opportunity and achievement, and insuring the consuming public the benefits of quality and price flowing from a competitive quest for markets and profits, has always been highly prized by the American people. By the same token, the protection of this conception—in other words, the curbing of monopolistic abuses—has been, and remains a major public concern.

State regulation proves inadequate

For upwards of 100 years, in part because of the limited definition given to commerce by courts and Congress, the states were left to deal with monopolistic and other practices interfering with the free flow of trade. The correctives they brought to bear rested either upon the old common-law principle that all combinations operating to restrain trade *unreasonably* were illegal, or upon statutes defining or modifying that principle's applications. In the era of big business, state regulation proved almost wholly ineffectual.

National control introduced—the Sherman Act (1890)

In 1890, therefore, Congress, taking a novel view of its commerce power risked judicial disapproval by passing a vigorous measure—the Sherman Anti-trust Act—aimed at protecting trade and commerce "against unlawful restraints, and monopolies," and to that end declaring in sweeping terms, every contract, combination, or conspiracy in restraint of trade or commerce among the several states or with foreign nations to be illegal, and providing heavy penalties for violations. Congress, however, left enforcement to the Department of Justice, with no special machinery and hardly any funds provided; busy with other things that Department showed little zeal for action. When it did finally bring action against the Sugar Trust in 1895, a Supreme Court decision severely narrowed the scope of the law by ruling that although the defendant produced all but 2 per cent of the sugar used in the United States,

its business was primarily *manufacturing* rather than *commerce*, and therefore subject to regulation only by the states. For another decade virtually nothing happened—with most of the really huge industrial "trusts" of later days meanwhile getting their start.

The "rule of reason"

"Trust-busting" was one of President Theodore Roosevelt's prime interests, and successful prosecution in 1904 of a prominent holding company charged with monopoly in the railway field (the Northern Securities Co.) gave him fresh impetus. Notwithstanding government victories in other cases, however, the Supreme Court in 1911 again weakened the law by setting up a distinction between combinations which, in the Court's opinion, involved only a "reasonable," and those which amounted to an "unreasonable," restraint of interstate or foreign trade.

Further legislation required

Experience of this sort suggested that if the law applied only to "unreasonable" combinations, some means should be provided by which well-intentioned combinations might know whether they would be regarded by the government as "reasonable," and therefore lawful, without first being subjected to a criminal prosecution to determine the matter. Demand arose, too, for clarification as to the kinds of arrangements that the government would look upon as unreasonable restraints of trade, and as to the corporate practices that it would regard as constituting unfair competitive methods. The outcome was (1) the passage, in 1914, of the Clayton Antitrust Act to reinforce and supplement the Sherman Act of 1890, and (2) the simultaneous creation of the Federal Trade Commission as an agency to cooperate with the Department of Justice in the enforcement of "antitrust" laws, new and old, and especially to curb unfair competitive practices in the conduct of business.

The Clayton Antitrust Act (1914)

Earnestly sponsored by President Wilson as a "new law" to meet "conditions that menace our civilization," though opposed with equal vigor by business interests, the Clayton Act (1) forbade price-cutting to drive out competitors, granting rebates, making false assertions about competitors, limiting the freedom of purchasers to deal in the products of competing manufacturers, and a long list of other abuses, discriminations, and restraints of trade; (2) forbade corporations to acquire stock in competing concerns, if the effect would be to lessen competition, and outlawed interlocking directorates in the case of larger banks, industrial corporations, and common carriers; (3) made officers of corporations personally liable for violations of the act; and (4) made it easier for injured parties in cases arising under either this act or the original antitrust law to prosecute their suits.

A quarter-century of irregular enforcement

The object of the new legislation of 1914 was to close the gaps in the Sherman Act, and President Wilson hailed it as supplying "clear and sufficient law to check and destroy the noxious growth (of monopoly) in its infancy." Notoriously, however, it proved less effective than had been hoped. Congress failed to provide adequate funds for properly staffing the antitrust division of the Department of Justice, leaving it possible to prosecute only the most flagrant cases in a few large industries. In interpreting "unfair methods of competition," the courts grew increasingly tolerant. To a deadweight of

opposition from large business interests was added honest doubt of disinterested persons, including some officials, as to whether the entire program was practicable, or even desirable, and especially as to whether corrective regulation of trusts and other combinations was not preferable to attempts to break them up completely. Efforts, too, to make directors personally liable for the acts of corporations almost completely broke down. During World War I, the entire program was, to all intents and purposes, suspended; through ensuing Republican administrations, the legislation was seldom invoked. When the National Recovery Act of 1933 was placed on the statute book in an effort to rescue the country from a great depression those laws were expressly waived for as long as the emergency legislation should remain in force. This period of suspension proved, however, of only two years' duration, and thereupon the laws came back into at least nominal operation. Presently, too, as the New Deal administration shifted its economic ground some new vigor was placed behind their enforcement. Thurman W. Arnold, was placed in charge of the antitrust division of the Department of Justice and forthwith became the most assiduous "trust-buster" that the country had known, instituting in five years 44 per cent of all proceedings started under the antitrust laws between 1890 and his retirement in 1943. There was, however, some shift from the old idea of "trust-busting" as an object in itself to that of defending a free market in the necessities of modern life. With this broader social end in view, prosecutions were directed primarily against private groups that had established themselves in strategic positions of control—against "bottle-necks of business" that blocked the distribution of products anywhere along the line from the raw-material stage to purchase by the ultimate consumer.

The situation during World War II

With the outbreak of World War II the antimonopoly campaign was slowed down. The government sought more benevolent relations with the larger corporations in order to encourage armament production. President Roosevelt announced in 1942 that, while every effort would be made to protect the public interest, with no violation of law escaping ultimate punishment, prosecutions would be postponed whenever it could be shown that they would tend to interfere with production of materials for war use. In the same year, indeed, Congress expressly exempted from prosecution at any time any acts or omissions "deemed in the public interest" and approved by the chairman of the War Production Board after consultation with the attorney general.

More recent developments

After the war President Truman showed concern, and indeed during the campaign of 1948 made a great deal of political capital out of attacks on "big business," special interests, trusts, and Wall Street. After the election, moreover, Administration forces launched a twofold program, on the one hand a vigorous drive for antitrust law enforcement, and on the other a more cooperative approach aimed at clarifying for business the many ambiguities of existing law and drawing sharper lines between what the government considered legal and what illegal combinations and practices. The period from 1948-52 was another period of vigorous enforcement. In 1950 the Clayton

Act was amended (Anti-Merger Act of 1950) to prohibit not only the acquisition of stock of a competing corporation but also of its assets where competition was lessened by such action. Suits were started or activated against some of the largest enterprises in the nation: the "Big Four" meat packers (Swift, Armour, Wilson, and Cudahy), DuPont, American Telephone and Telegraph, the A & P grocery chain, Aluminum Company of America, the leading motion picture distributors, the three large farm machinery manufacturers (International Harvester, Deere, and Case), and many others. The Supreme Court, meanwhile, enunciated interpretations more friendly to the antimonopolists. It reversed an earlier position and held that size alone could be objectionable. It also held that the power to raise prices or to exclude competition is an abuse whether these things have been done or not.

The Eisenhower administration from 1952-1960 abated, somewhat, the aggressiveness of the campaign against monopoly. Attorney General Brownell announced his policy as primarily one of promoting competition rather than attacking bigness and stated that criminal prosecution would rarely be used. A large number of new suits were, nevertheless, started and numerous pending cases were terminated by agreement. The major emphasis seemed to be to halt mergers rather than attack existing combinations. The Kennedy Administration has emphasized price-fixing conspiracies as the object of its major antitrust prosecutions and has successfully attacked that in the electrical equipment industry. Suits against the major steel companies and several major drug firms have been started in 1963.

The results of the activities of the past two decades are mixed. The Aluminum Company was ordered to divest itself of its Canadian properties. The A & P Company was fined $175,000 and ordered to divest itself of a subsidiary wholesale operation, the Atlantic Commission Company. It successfully resisted efforts to break it up into seven retail divisions. The DuPont case, dismissed by the district court after months of argument, was carried to the Supreme Court by the government and the company was ordered to divest itself of its stock in the General Motors Corp. This position it reaffirmed vigorously after the government again appealed a district court order calling only for limited divestiture. The case against A. T. and T. was settled by consent decree before adjudication was complete and while the company was ordered to license a large number of its patents free to all applicants and others for a reasonable charge, it was not required to divest itself of Western Electric, its chief supplier of telephone equipment. I.B.M. agreed by a similar procedure to offer for sale as well as rental its tabulating and computing machines and to license a number of its patents free or on a "reasonable" royalty basis. A proposed merger of Youngstown Sheet and Tube Company with the Bethlehem Steel Company was halted by injunction requested by the government in 1958. Perhaps the most damaging attacks were those against the largest manufacturers in the electrical industry including Westinghouse Electric Corp. and General Electric Company. Charged in late 1960 with a price-fixing conspiracy on heavy electrical equipment, the major defendants pleaded guilty and several officials were actually sent to jail.

A continuing dilemma

Over a 70-year stretch, frontal attack on monopoly through the Department of Justice has yielded mixed and not highly impressive results. A limited number of large concerns, for example, the Standard Oil Company and the American Tobacco Company, have been broken up; others have been brought to book and penalized; many minor punishments have been inflicted along the way. Large obstacles, however, remain, and by their nature can never be wholly overcome. Among them is the dependence of the laws for vigorous enforcement upon the economic predispositions, and personal inclinations of successive presidents, attorneys general, and other high officials concerned. A second impediment is recurring uncertainties, despite all the legislation and court decisions, as to what, in many situations, actually constitutes "unfair competition," "unreasonable" restraint of trade, and the like. A third is the sometimes wavering support given by the courts. And the most obstructive of all is divided opinion, with resultant hesitation, springing from the circumstance that large-scale production and merchandising, requiring large-scale organization, make for economies, and therefore often for more and cheaper goods and services for the consuming public. Big business it is argued is performing economic miracles for our society and now is acting more and more from a sense of social responsibility. It is also argued that bigness in industry is offset and held in check by bigness in labor organizations and bigness in government. There is, furthermore, some evidence that the era of concentration of corporate power may be passing. There has been a rapid increase in the number of firms during the postwar years and the huge corporations are not expanding as rapidly as the smaller ones. On the other hand, there have been many mergers in the postwar period. A number of our larger industries are dominated by three or four huge firms rather than one and operate under what has been called administered rather than competitive prices. They compete on many levels, but not in pricing.

THE FEDERAL TRADE COMMISSION AND POLICING BUSINESS PRACTICES

1. Functions

The Sherman Act, as we have observed, depends for enforcement almost entirely upon the antitrust division of the Department of Justice. The Clayton and Federal Trade Commission Acts of 1914 directed at dishonest and unfair, as well as monopolistic, business practices provided a new independent establishment in the form of the Federal Trade Commission, consisting of five members appointed by the president and confirmed by the Senate for seven-year terms with not more than three drawn from any one party. No clear jurisdictional line between the two enforcing agencies was established at first; both were intended to curb the formation of trusts and the growth of monopolies. The entire development of the Federal Trade Commission, however, has been rather in the direction of defining fair and prosecuting unfair trade practices of whatever business organizations and establishments happened to exist at any given time. In other words the Commission has sought to maintain "fair" competition rather than to attack monopolies. In pursuance of this purpose it

enforces not only the Acts of 1914 as amended but also: (1) the Anti-Discrimination (Robinson-Patman) Act of 1938, designed to clarify price-discrimination provisions of the Clayton Act, and aimed at preventing sellers from arbitrarily giving advantages to some buyers as against others through disguises such as advertising allowances and brokerage fees; (2) a Truth-in-Advertising (Wheeler-Lea) Act of 1938, applying especially to the food, drug, and cosmetics businesses; (3) a Wool Products Labeling Act of 1940, which seeks to protect producers, manufacturers, and consumers against the presence of unrevealed substitutes and mixtures in wool products; (4) the Export Trade (Webb-Pomerene) Act of 1918, amending the Clayton Act by permitting exporters to form and operate associations more or less in the nature of cartels (which otherwise would be illegal), so long as approved by the Commission as not "substantially" lessening competition in the domestic market; (5) the Fur Products Labeling Act of 1951 which seeks to protect consumers and manufacturers against misleading labeling of furs and fur products; and, (6) the Textile Fiber Products Identification Act of 1958 which seeks to protect consumers against mislabeling of various yarns and cloths.

2. Activities

In pursuance of its many duties, the Commission: (1) enforces the laws against unfair competitive practices on the part of corporate and other businesses participating in interstate commerce (except banks, common carriers, broadcasting companies, and other enterprises regulated through different channels); (2) works out lists of unfair practices and holds conferences in which representatives of industry are encouraged to agree to avoid such practices (although the line between lawful and unlawful agreements is not always easy to fix); (3) issues "cease-and-desist" orders when violations of law are discovered and the violators are not disposed to desist of their own accord; (4) requires corporations to submit reports covering aspects of their business on which the Commission desires information; (5) advises with corporations on organizational and other matters with a view to helping them avoid running afoul of the law; (6) guards against unlawful acquisitions of stock by corporations and against prohibited interlocking directorates; (7) investigates trade conditions and practices in and with foreign countries where combinations or practices may affect the foreign commerce of the United States; and (8) recommends to Congress new legislation calculated to uphold the principle of fair competition in the interest of both business itself and the public.

3. Procedures

In enforcing the laws against unfair and fraudulent practices, the Commission may act in response to a complaint received, or by direction of the president or of Congress, or at the suggestion or request of the attorney general. As a rule, however, action starts with a complaint lodged by some individual, group, firm, or corporation having a grievance against a specified business concern because of some practice which it is alleged to be pursuing. Hundreds of such complaints are filed every year. If, upon preliminary investigation, the Commission finds a complaint groundless or trivial, or relating to something over which the Commission has no jurisdiction, or not affecting the public interest (mere private controversies have no status under the law),

nothing happens. If, however, the protest is believed to have merit, the offender is called upon to explain—often with the result that all parties consent amicably to a "stipulation," or agreement, that the practice complained of shall be abandoned. If, finally, the concern under attack is not prepared to yield so readily, and if after hearings the Commission finds it clearly in the wrong, a "cease-and-desist" order will command the offender to discontinue the objectionable practice or practices within 60 days. If there is failure to comply, the Commission may ask the appropriate court of appeals to affirm its order, which, if done, subjects the offender, in case of continued disobedience, to action for contempt of court.

4. Difficulties encountered

The Commission has a mixed record of achievement. Some of its difficulties grow out of the obscurities of the law. It has not always had adequate financial support from Congress; its members have been shifted rapidly, and often have been selected primarily on political grounds. Although supposed, too, to be final judge of the facts in a case, it frequently has found the courts insisting upon making their own inquiries, and many times has seen its cease-and-desist orders overthrown. Further, the "cease and desist" system, dependent as it is upon protracted litigation for its enforcement, is greatly weakened by long delays between issuance and final determination. The process was speeded somewhat by an Act of 1958 aimed at expediting court consideration. President Kennedy in 1961 urged additional legislation aimed at the same problem. While it has played an insignificant part in curbing monopoly, by preventing misleading advertising, deception, fraud, and misrepresentation, and by otherwise policing the business world, the Commission has done much to raise the standards of American business.

REGULATION OF FINANCIAL INSTITUTIONS

1. Banking

Because of its responsibility for the monetary system and because the credit structure of the economy is so intimately tied to the system of banking, the national government has long evinced great interest and exercised special authority in this field. Under the leadership of the Federalists and over the strenuous objections of the Jeffersonians, the government first chartered a Bank of the United States to serve as the principal fiscal agent of the government and as the main regulator of private financial institutions. The Supreme Court in the celebrated case of McCulloch *v.* Maryland (1819) triumphantly affirmed the Federalist position and a government bank served the nation until 1836. When Andrew Jackson finally strangled this "monster," as he called it, the control of banking devolved entirely on the states. The chaotic situation which resulted with "wild cat" banks, unsupported currency, special charters, and many other abuses was not brought under control until 1863. The necessities of Civil War finance stimulated the Congress to find a better method of controlling currency and also of marketing its bonds. The result was a system of national banks and a confiscatory tax on state bank notes.

Under the national banking system, privately owned banking firms could

National banks

be chartered as national banks with the right to issue paper money and with the obligation to accept national regulation of their fiscal practices including audit of their accounts. State banks continued to exist, as they do today, but most of the large firms became and have remained national banks and are closely supervised by the comptroller of the currency in the Treasury Department.

The federal reserve system:

Originally, national banks were entirely separate establishments, with no more means of coming to one another's relief in time of stress than railroads or merchandising enterprises. From the ups and downs of business during recurring cycles of prosperity and depression flowed embarrassments and failures which often might have been mitigated. To remedy this situation by linking up all national banks in an integrated series and imparting greater elasticity to their operations, Congress in 1913 created an independent establishment known as the federal reserve system which ever since has been a principal feature of our national banking arrangements.

a. Organization

First of all, the country is divided into 12 federal reserve districts, in each of which is located a federal reserve bank, usually in the district's principal city. In each case, all or nearly all stock is subscribed by the member banks within the district, and control is vested in a board of nine directors, three named by the general management of the reserve system in Washington, six by the member banks. The general management referred to consists of a board of governors (the Federal Reserve Board) of seven members appointed for 14-year terms by the president and confirmed by the Senate, with due regard for both geographical distribution and representation of financial, agricultural, industrial, and commercial interests. This board, endowed with broad supervisory and regulatory powers, bears full responsibility for formulating monetary policies and exercising general direction of the system. All national banks must belong to and hold stock in the federal reserve bank of their district; state banks may do so if they meet the requirements and find membership to their advantage—as most of them do.

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b. Workings

The federal reserve banks—often referred to as "bankers' banks"—do not carry on a general banking business with individuals and corporations, but instead perform services, directly at least, only for the national government and for the member banks of their respective districts. Services to the government are many and various. Proceeds of revenue collections are deposited with them, and in general they have custody of government funds which in earlier days were left idle in subtreasuries; they make transfers of such funds according to instructions; and they serve as fiscal agents in selling securities and paying government checks and coupons. For member banks, they act as clearing houses for the handling of checks and other financial instruments, serve as depositories for surplus funds, and, more important, provide rediscounting facilities enabling the needs of customers to be met and a greater volume of business to be done.

What happens in this latter connection can be explained briefly. A national or state bank loans money to individuals and corporations, taking the

borrowers' notes—"discounting" them, as the phrase goes. If demand is heavy, the bank may reach a point where it has no more money at its disposal; and in the old days that would end matters—the bank would simply have to refuse further applicants. Nowadays, however, what a bank in this situation almost invariably does is to transmit at least a substantial part of its accumulated "commercial paper" (which may include mortgages and various forms of collateral) to the federal reserve bank to which it belongs and get it "rediscounted," that is, borrow money on it just as the original borrower did; and with this money it can make new loans and of course earn new profits. But this is not all. On the basis of the commercial paper thus pouring in with also backing of gold certificates based on the government's stock of gold, the reserve bank can issue paper money with which to perform its rediscounting operations (the national banks themselves no longer can do this). In this way arise the federal reserve notes which constitute by far the largest part of the paper currency circulating in the country today.

c. Stabilization of the credit structure

One of the ways in which the Federal Reserve Board seeks to stabilize the credit structure of the country and control cyclical tendencies to alternating prosperity and depression is by expanding or contracting the credit facilities of commercial banks by lowering or raising the rediscount rate. A lower rate will give the commercial banks easier access to funds and encourage them to help business by lending at moderate interest rates, a higher rate of course having the opposite effect. Stabilization is sought also through the open-market buying and selling of commercial paper and of government bonds and other securities by the reserve banks—large purchases of commercial paper naturally having the effect of supplying member banks with more free funds and, in the case of government bonds, strengthening the market and keeping up prices—both of which may prove desirable in depression-time. The Board also determines the reserves required by banks against their deposits and by raising or lowering these amounts can influence the interest rate and the amount of credit available.

The banking crisis of 1933 and some remedial measures

As set up under the legislation of 1913, the federal reserve system served useful purposes and indeed seemed to have solved our major banking problems. Certainly it helped greatly to carry the country through the expansion and later contraction of its economy incident to World War I. In the "roaring twenties," with their gross overextension of credit, however, it failed to furnish a sufficient brake. After the stock-market crash of 1929, our banks proved unable to weather the storm in any such fashion as did those of Great Britain, Canada, and some other countries. The experience was harrowing, and it is small wonder that a good deal of remedial banking legislation of permanent character (too complicated and technical to be reviewed here) was enacted in the next two years. Speculative temptations to which large numbers of banks had succumbed in the past were at least partially removed by requiring that thenceforth banking establishments should not engage in both commercial, that is, general, banking and "investment" banking. If they insisted upon continuing the latter, they had to give up the former. In the hope that if

depositors could be assured that their money would be safe in banks, they would be willing to leave it there, thus averting bank "runs" and resulting bank closings, a plan of governmental guaranty of bank deposits was introduced. Deposits in all banks included within the federal reserve system, nationally authorized trust companies, and all nonmember state banks applying and meeting certain specifications—in all, some 13,400 institutions—are now insured through a Federal Deposit Insurance Corporation with a maximum protection of $10,000 on each separate deposit. The insurance, of course, is purchased by the participants by premiums paid on their deposits.

In the recent recessions of 1957-58 and 1960-61 the Federal Reserve system has played an important and much debated role. Under the Eisenhower administration, the Board on several occasions acted to tighten credit in order to halt inflation and was vigorously urged to ease it to combat the fall-off in business activities and the spread of unemployment in 1958 and in 1960. The Board, on occasion under Truman and later, came into conflict with the Treasury Department over the question of the influence of its decisions on the interest rate and marketability of government bonds. Widespread disagreement still exists over the proper role of the Board and the proper policies for combatting inflation or recession.

2. Securities

The stock-market crash of 1929 which signaled the beginning of the depression led not only to an overhauling of the government's system of controlling banking. It stimulated national concern with abuses in the management of stock exchanges and in the sale of stocks and bonds. State action having been tried for a generation in the form of "blue sky laws" regulating securities vendors was found inadequate to the task of protecting the interest of the millions of shareholders. Congress under the spur of President Roosevelt assumed regulatory authority in this field with the passage of a Securities Act in 1933 and a Securities Exchange Act in 1934.

The Securities Act of 1933

The primary purpose of these two interlocked pieces of legislation is to protect investors against every sort of fraudulent practice in the issuing and handling of securities offered for sale in interstate commerce. To this end, the act requires all issues of stocks, bonds, or other securities (with certain exceptions indicated below), if to be offered in interstate commerce or by mail, to be registered with (originally the Federal Trade Commission) the Securities and Exchange Commission (S.E.C.) set up in 1934. Every such registration must be accompanied by a "registration statement" containing full financial and other information, and also by the "prospectus" intended to be used in soliciting purchases by the public, and containing all information which an investor ought to have when making a decision. Selling or offering to sell to the public in interstate commerce or through the mails any security not properly registered with the Commission is made a penal offense. Not only so, but heavy civil liability is laid upon any corporation, including its directors and principal financial officers, for any untrue or only partly true declaration of a material fact in a registration statement or prospectus. It is not the business of the Commission, any more than that of a state securities commissioner, to pass

upon the inherent value of securities issued or upon the outlook for prosperity of the corporation issuing them. No action by the Commission is to be construed as a recommendation of any security to potential purchasers. The agency's only function, up to this point, is to see that complete information concerning a security is made available to the public, that this information is accurate, and that no fraud is practiced in connection with sales.

3. The Securities Exchange Act of 1934

To aid in promoting this general end, the Securities and Exchange Act of 1934 went an important step further. A large proportion—doubtless the major part—of the securities registered with the Commission are bought and sold on stock exchanges found in 20 or more of our principal cities, the largest and best known being that in New York. Formerly, however, transactions in securities in these markets were subject to little regulation beyond the few restrictions which the exchanges themselves saw fit to impose upon their members. These provided little protection for the investing public. All manner of unsavory and dishonest practices grew up—"wash sales," matched orders, "rigging the market," "jiggles," pools, and other manipulations—by which prices were pushed up or forced down for the benefit of insiders, while innocent investors were fleeced. Speculation "on margin," too,—that is, paying only a certain percentage in cash for what is bought—reached scandalous proportions, notably in the frenzied market operations shortly preceding the crash of 1929, and threatened to precipitate the entire national credit structure into chaos.

To remedy this situation, the transactions of all exchanges engaged in interstate commerce (as every one is) are declared to be "affected with a national public interest" which makes it necessary to provide for their regulation and control "in order to protect interstate commerce, the national credit, the national taxing power, to make more effective the national banking system and the federal reserve system, and to insure the maintenance of fair and honest markets in such transactions." Annual and other reports are required to be filed with the exchanges and the Commission by all corporations or companies having securities listed, and any deviations from material fact constitute grounds for suspending or withdrawing a given security from trading. Various provisions outlaw objectionable practices of the past, and, all in all, the measure seeks to make the exchanges fair and open market-places for investors rather than mere rendezvous for conspiring speculators. One will not be so naive as to suppose that all stock-market operations have since been, or will in future be, beyond reproach.

A major review of the effectiveness of these regulations of the security market was finally completed by a special study group for the S.E.C. in 1963, and numerous changes in the basic laws are now before the Congress. Most of the proposals deal with tightening extant procedures, expanding the scope of S.E.C. authority to various persons, securities and fiscal institutions not now covered by the laws, and improving the "self-regulating" practices of the exchange managements.

In the depression years particular attention was invited to the questionable character of certain corporations whose major function was to own the

4. Public utility holding companies

stock of operating utilities. The towering structure of the Insull empire, which pyramided these "holding companies" on top of each other until it had gained control over a major sector of the gas, light, and water supply businesses of the Midwest, came crashing down in the depression spreading injury to many innocent persons. The securities regulations did not quite get to the heart of this related problem. Congress, therefore, attempted to regulate these "holding corporations." It passed in 1935 a Public Utility Holding Company Act giving the Securities and Exchange Commission jurisdiction over all holding companies concerned with the production of gas or electricity and either participating in interstate commerce or making use of the United States mails. Regulation of rates, services, and general business practices of such companies was vested in the same act in a Federal Power Commission already in existence since 1920. The same agency has control over security issues, mergers, and sales of property by *operating* gas and electric companies engaged in interstate commerce. But, aside from rates and services, practically all aspects of gas and electric *holding* companies fall under Securities and Exchange Commission regulation. Every such company (unless holding less than 10 per cent of the stock of any subsidiary) must register with the Commission, file full information concerning itself and its subsidiaries, and receive Commission approval, without which it has not even any right to exist. The issuance and sale of such companies' securities, and all proposals for mergers and sales, must likewise have Commission endorsement. Loans of operating companies to holding companies are forbidden as also are the payment of "excessive" dividends. All accounts must be supervised by the S.E.C. and full financial reports made to it. Corporate members of holding companies may make no political contributions and if engaging in lobbying must report on all such activities.

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16

Government and Labor

Labor in the national scene

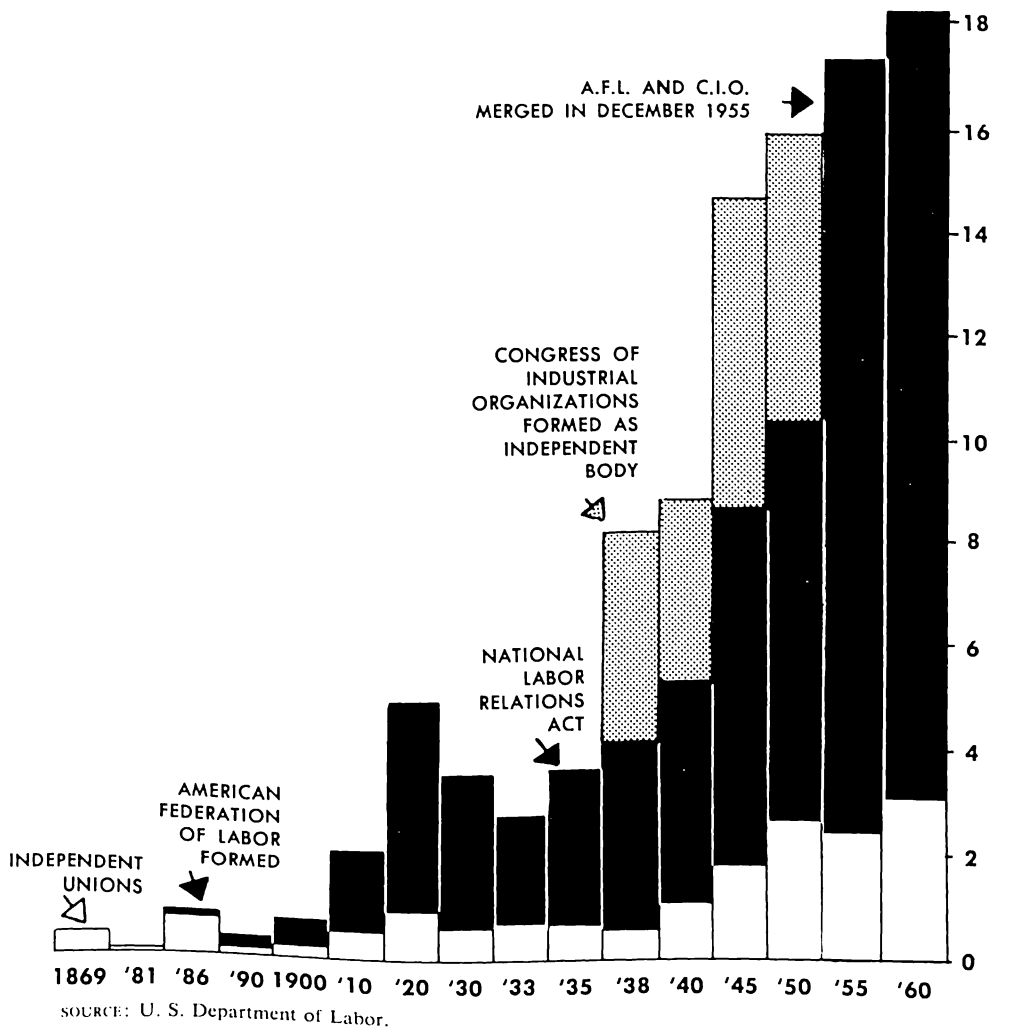
THE DEVELOPMENT OF a labor interest in our society is a product of the Industrial Revolution in which small handicraft industries were replaced by large mass-production factories and in which management was separated from daily contacts with employees. In the early years of our history, the laboring men did not participate in political processes. Voting and officeholding were reserved for property owners. The democratization of the suffrage paved the way for labor interests to be represented. Before the rapid industrialization of the nation after the Civil War, however, the laboring multitudes seemed to accept the idea that cheap land and low taxes were the most useful public policies to serve their needs. Only after the victorious northern Republicans swung the full weight of the national government behind the rapid development of industry did the industrial worker emerge as a strong claimant for governmental protection. The emergence of labor as a powerful interest in modern politics, furthermore, has followed closely upon the organization of this interest in the economic sphere through unionization. At first, labor sought to achieve better conditions, higher pay, and shorter hours by purely economic procedures. Only as governmental power and prestige were repeatedly thrown into the struggle on the side of employers did labor come to appreciate that political power was also essential to its ambitions.

The development of unions

Even before 1800 mechanics and artisans in a few of the larger cities began drawing together in unions. As industry expanded and workers multiplied, consciousness of a weak bargaining position without organization, combined with growing desire for improvement of labor conditions in other respects, led to unionization on a steadily increasing scale. Employers did not

like what was going on; public opinion was skeptical; and in pursuance of old common-law doctrine, the courts long looked askance at unions as constituting, or threatening, criminal conspiracy. In spite of numerous obstacles, the movement began to take root and after about 1870 went steadily forward. In time local unions began drawing together in regional, or even nation-wide, federations. In 1881, a Federation of Organized Trades and Labor Unions became the common voice of organized labor. In 1886, the present name of American Federation of Labor (A.F.L.) was adopted and for another half-century this organization held the field almost alone. In 1935, however, a militant rival, the Congress (until 1938 Committee) of Industrial Organiza-

UNION MEMBERSHIP, 1869-1960



SOURCE: U. S. Department of Labor.

tions (C.I.O.) was created by the secession of several unions from the parent body. Outside of these over the years grew the powerful Railroad Brotherhoods and numerous minor independent organizations. In 1955, the C.I.O. and A.F.L. unions were reunited into one grand federation.

Hostility of business and the courts

Throughout the period 1880-1932, the growth of labor unions was stubbornly and bitterly, sometimes violently, contested by the business interests. "Freedom of contract" and "criminal conspiracy" doctrines were asserted by business and enunciated by courts to justify fine and imprisonment for the leaders of strikes and boycotts, labor's principal weapons in the economic sphere. The Sherman Antitrust Law of 1890, designed as we have observed to halt the consolidation of corporate power, was applied with devastating effect to certain labor union activities. Congressional sympathy for the aims of organized labor, expressed in the Clayton Act's apparent exemption of labor from the antitrust laws, was overcome by judicial hostility and virtually all of the alleged protection was repealed by judicial interpretation. The courts, furthermore, fell increasingly into the habit of granting injunctive relief to business concerns harassed by labor disputes, actual or threatened, and in so doing prohibited the use of many of labor's most effective economic weapons. In spite of this hostility the A.F.L. slowly grew in numbers and influence, but by 1932 it still counted only 3,000,000 members and had little real strength in most of the large industries (steel, textiles, automobiles, rubber). It is only since 1932 that organized labor has deployed upon the national scene as one of the great economic interests of modern America. With a drastic change in governmental attitude from a suspicious pseudo-neutrality to benevolent protection, labor unions have flourished as never before. Their membership has steadily advanced until they now speak for about 25 per cent of all persons gainfully employed in the United States and for 32 per cent of industrial, transportation and service employees.

Labor in politics

Throughout most of its history, organized labor in America has eschewed any attempt to build its own political party. Several nineteenth-century efforts to do so, beginning with the Working Men's party of 1828, were not conspicuously successful. Marxism, around which so many European labor parties were built, has never strongly appealed to the American laborer. Labor's political doctrine was largely supplied by Samuel Gompers, leader of the A.F.L. He preached abstention from independent party organization and participation in the American two-party system by supporting friendly candidates in either party and by appealing to both parties for favorable platform declarations and for benevolent legislation. Labor's main weapons, he felt, were economic, not political. Theoretically, the Gompers policy is still supported, but both of the large federations of unions have swung more and more heavily toward active intervention in political campaigns. Through generously financed subsidiaries like the C.I.O. Political Action Committee and Labor's League for Political Education of the A.F.L., and now the Committee on Political Education of the A.F.L.-C.I.O., labor has sought to sway the electorate in behalf, usually, of Democratic candidates. In New York City a

powerful independent labor party has been organized by local trade unions and their party (the Liberal Party) has held the balance of power in many municipal and state elections. Labor is in politics to stay and its influence, especially in the Democratic party, has been growing steadily in the large industrial cities of the North and Midwest.

NATIONAL PROTECTION OF LABORERS

State regulation

As industrialization rapidly spread throughout the nation in the latter half of the nineteenth century, laboring men increasingly demanded protection from unhealthy and dangerous working conditions, from competition on the job market from children and immigrants, from long hours and low pay, and from many other abuses of mechanized manufacturing and corporate management. Much of their effort was directed to state legislatures in the belief that the national government had no power to regulate the conditions of mining and manufacturing. State action, and there was a great deal of sympathetic legislation in the period of 1880-1932, was always embarrassed by the fear that any particular state would place its own industry at a competitive disadvantage with that of other states if it imposed costly standards of safety, health, and welfare. Despite this difficulty, labor won important gains from state after state in the fields of industrial safety, child labor, improved factory conditions. In fact, much of the legislation protecting labor interests at present on the law books is still state law, and the states continue to play an important role in regulating industry benevolently toward working men and women.

Early efforts at national protection

Although national regulation of industry in behalf of workers is largely a product of the New Deal period, the national government had never been completely indifferent to labor interests. As far back as 1840, the government adopted the policy of setting a standard for private employers in its treatment of its own employees. The movement to restrict immigration, especially of contract laborers, which began in 1882, was largely motivated by a desire to protect the job security of American workers. Unlike workers in industry, those engaged in transportation early looked to the national government for protection and after prolonged agitation an Hours of Service Act in 1907 limited to 16 the hours of consecutive employment of train crews. In 1916, and at the behest of the by now strongly organized railway brotherhoods, the Congress passed an 8-hour-day law for all trainmen. Coincident with state action to protect workers against industrial accidents, the Congress in 1908 passed an Employers' Liability Act for the protection of workers in interstate commerce. This act drastically amended the old common-law rules of "contributory negligence" and "assumption of the risks of employment" which up to this time had substantially allowed employers to escape liability for the injury or death of workmen while performing their duties. The Seaman's (LaFollette) Act of 1915 surrounded employment in the merchant marine with guarantees of proper conditions, hours, food, and wages. In 1920, the benefits of the Employer's Liability Act were extended to sailors. Several

major efforts of this era, however, proved abortive as the Supreme Court struck down laws aimed at child labor and at fixing conditions for female employment. So rapidly did national interest in the plight of the workingman unfold in this century that by 1913 the Congress was persuaded to establish a separate Department of Labor of cabinet rank by breaking up the Department of Commerce and Labor created in 1903. This new agency was designed "to foster, promote, and develop" the welfare of wage earners in the United States, to improve their working conditions, and to advance their opportunities for profitable employment. It should be added, however, that the methods selected by Congress for the achievement of these goals were largely educational and noncoercive.

As the nation entered the depression, the national government had already thrown its protective mantle around certain laboring groups (railroad workers and sailors) but was still largely restrained from interceding for the great mass of laborers by narrow judicial construction of its commerce and taxing powers. Impressed with the plea that the descending spiral of economic activity could only be reversed by placing more purchasing power in the hands of consumers (labor), the New Deal early addressed itself to improving the wages and working conditions of the great mass of industrial wage earners. The first major effort in this direction was embodied in the National Recovery Act of 1933 which, among many other specifications, provided that codes of fair competition be drawn for similar industries by joint labor-industry-government teams and that these codes should set minimum wage levels, fix maximum hours, eliminate child labor, and spread available employment. These codes would then be enforced upon the industries concerned by the national government. In 1935, however, the entire procedure was called into question by litigation and the Supreme Court invalidated the core of the Recovery Act, mainly on the grounds that the code procedure constituted an invalid delegation of legislative power to an administrative agency.

The National Recovery Administration

Operating within the prevailing conception of constitutional power, Congress next sought to establish standards of employment for all those firms supplying the government by contract. The Public Contracts Labor (Walsh-Healey) Act of 1936 prescribed the payment of prevailing minimum wages, limited hours of employment to 40 per week, outlawed child and convict labor, and prescribed minimum standards of health and safety for the employees of all businesses holding government supply contracts in excess of $10,000. These prescriptions were made a part of every appropriate government supply contract.

Establishment of labor standards for public contractors

Incidental to the attempt of President Roosevelt to reconstitute the Supreme Court, a series of decisions issued in 1936 and 1937 indicated the Court had revised its views on the extent of national power to protect industrial wage earners and that it no longer found any constitutional barriers to national legislation regulating manufacturing and mining benevolently toward labor. With its sweeping triumph at the polls in 1936, the Roosevelt administration promptly moved to occupy the new ground opened to it; in 1938 in

a Fair Labor Standards Act a large proportion of workingmen were placed under the protection of the United States government.

The establishment of labor standards for industry generally

As amended in 1961, the Fair Labor Standards Act now extends to about 27 million wage earners of both sexes "engaged in interstate commerce, or in the production of goods for interstate commerce," including workers in occupations "directly essential" to this production, the benefits of minimum standards of employment. A minimum wage of $1.25 an hour (originally 25 cents) for all covered employees is established, and a maximum work week of 40 hours (originally 44 hours). For all hours worked in excess of the maximum, overtime at the rate of one and one half times the base pay is required, except that by collective bargaining agreements in certain industries the work week may be extended. The employment of children under 16 is forbidden in manufacturing, mining, transportation, and commerce and under 18 in occupations declared by the Bureau of Labor Standards in the Department of Labor to be "particularly hazardous . . . or detrimental to their health and well being." In other occupations and businesses covered by the law, children of 14 or 15 may be employed in periods not interfering with their schooling and under beneficent working conditions. In 1963, the Act was further amended to require equal pay for equal work regardless of the sex of the worker. Challenged before the courts soon after its passage, this bold effort to provide a nation-wide floor below which the conditions of employment in industry might not sink was sustained unanimously by the Supreme Court.

NATIONAL PROTECTION OF LABOR UNIONS

Throughout the period of developing governmental concern with the plight of labor, there has always been an impressive argument made by some that elaborate legislative and administrative efforts to protect labor from exploitation are both unnecessary and unwise. Let the government, it is argued, encourage the unionization of employees or at least do nothing judicially or otherwise to discourage such unionization and the unions will take care of wages, hours, and working conditions. It was not, however, until the depression of the thirties that this point of view won wide, although never universal, acceptance. As the national economy rapidly plummeted, the arguments of the labor leaders and their friends gained increasing support. Here again was an opportunity to sustain consumer purchasing power and to spread employment by the actions of unions.

Anti-Injunction Act of 1932

The first target of the labor unionists was their ancient enemy, the injunction. The broadening concept of corporate property rights which characterized the decisions of the national bench from 1875 to 1936 and which embraced as property such nebulous values as "good will" and "going-concern value" suggested to able members of the bar a device for thwarting the spread of unions. Strikes, picketing, and boycotts, the central weapons of the labor movement, could normally be shown to a sympathetic court as threatening irreparable damages to corporate property thus broadly defined. The writ of injunc-

tion, an old common-law process issued by courts of equity on proper plea and in circumstances in which only one side is normally heard, was designed, they said, exactly to ward off such damages. From about 1890 onward courts fell into the habit of granting injunctions against union leaders and members, ordering them to continue work or to refrain from actions which might threaten property loss. Violation of such an order placed a unionist in contempt of court and subjected him to summary (without jury trial) punishment. In the decade of the twenties these injunctions became more and more sweeping in their prohibition of all the traditional methods of union agitation. The Anti-Injunction (Norris-LaGuardia) Act of 1932 represents the first successful national effort to foster trade unionism in the United States and marks the turning point in the attitude of the government. This act surrounded the injunction procedure in the national courts with so many safeguards to protect labor union interests that the injunction became largely useless as a device by which employers could break existing unions or thwart their organizational efforts. This act also declared the "yellow-dog" [1] contract as contrary to public policy and unenforceable in national courts.

The N.R.A. and labor unions

The New Deal's National Recovery Act of 1933 carried governmental benevolence to unions one step further. Bent upon leaving no stone unturned and no theory of depression-beating untried, the act not only provided for the labor standards already mentioned but required in famous Section 7(a) each industrial code to include a provision recognizing the right of employees "to organize and bargain collectively through representatives of their own choosing." It also provided for the codes to carry a prohibition against forcing membership in a company union or forcing anyone to agree not to join a union as a condition of his employment. Thus the company-dominated unions of the twenties were outlawed. A National Labor Relations Board was set up within the N.R.A. to administer these provisions of the law and to conduct employee elections where the question of representation in collective bargaining arguments was at issue.

The National Labor Relations Act of 1935

Congress and the president moved swiftly to salvage the policy of labor union protection from the wreckage of the Supreme Court's decision condemning the N.R.A. The National Labor Relations (Wagner) Act of 1935 represents the fruit of this effort. This act proclaims as the policy of the national government the fostering of collective bargaining between employees and employers through unions and surrounds the process with safeguards for unionization which substantially deprive the employer of several of his traditional weapons. Using the Federal Trade Commission Act as its guide, the act specifies a number of "unfair labor practices" and prohibits them to employers. Company-dominated unions are outlawed; employers are forbidden to coerce or restrain employees in the exercise of their rights to become members of a union and to bargain through such organization; employers may not hire or fire employees in such a way as to discriminate against union members or officers; employers are required to bargain with the proper representatives of

[1] A "yellow-dog" contract is one in which a prospective employee binds himself as a condition of his employment never to join a labor organization.

their employees. A National Labor Relations Board (originally of three but now of five members) was established independently of any existing agency and authorized to enforce the new law upon employers engaged in industries "affecting" commerce. Through a network of regional offices the Board was empowered to discharge its responsibilities by: (1) ascertaining by election procedures or otherwise who are the bona fide representatives of the employees in covered industries or plants; and (2) determining on complaint of an employee or his representative, if an employer is engaging in an "unfair practice." Should the Board, after proper hearing, find an employer to be violating the law, it may issue a "cease-and-desist" order against him which may be enforced by a proper national court.

The act's constitutionality upheld

This legislation, with its strong deterrents to employer interference in the unionization of his employees, has ever since been regarded as the Magna Carta of the labor union movement. It represents the greatest gain in governmental benevolence ever achieved by organized labor. And, by staying the hands of management, it contributed in no small way to the tremendous increase in union membership which followed upon its enactment. When attacked in the courts, they sustained the administration's argument that the national power to regulate interstate "commerce" embraced the power to regulate the labor relations of concerns whose raw materials or finished products were shipped across state lines even though the firms were not themselves directly engaged in commerce. More than any other decision of this period, this pronouncement celebrated the change in the Court's attitude toward national power to regulate business.

Attacks upon the act

From its inception, the National Labor Relations Act has been the target of a large segment of the business community. The theory of this act, the business interests argue, is that employers and employers alone are to blame for the plight of the working mass and for spreading industrial unrest. Only employers can commit unfair labor practices. Unions can coerce employees into becoming members without penalty under the law. Special safeguards are provided for "closed-shop" agreements (agreements which require an employee to belong to the union in order to be employed) and all forms of company unions are proscribed. Labor has responded that employers still have ample legal sanctions for dealing with unlawful behavior by union leaders and agents. Nothing in this law authorizes unions to commit violence or modifies existing limitations on picketing or boycotting. During World War II the controversy over national policy toward unions abated. It broke out with renewed vigor in the postwar era, however, and led finally to a new policy of governmental regulation of unions as well as of management.

THE PROMOTION OF INDUSTRIAL PEACE; REGULATION OF UNIONS

Much as some groups have argued in behalf of a governmental policy of hands-off economic questions like the relations of labor and management, and much as the government has in the past few decades sought to relieve itself of

The public interest and industrial peace

some of the burden of regulating industry by strengthening the hands of the unions, the government has never been able wholly to turn its back upon the combats between labor and management. As unions have grown in size and power, their controversies with the great corporate combinations have threatened not only local and sporadic violence as of old but also national economic paralysis. The strike or collective work stoppage is the oldest and strongest bargaining device the unions have, and when they are able to shut down the entire steel industry or coal industry or railroad system the national economy must grind slowly to a complete halt. There has developed, in other words, a public interest different from that of either labor or management in a particular industry which demands that this paralysis never be allowed to creep through the whole of society. The government's interest in promoting industrial peace has grown steadily as unions and corporations have grown and is, perhaps, at the present time its paramount interest in the field of labor relations. In times of war or of war-emergency there has been no question of the transcendent necessity for maintaining full production, but even in "peace" the government must prevent economic collapse.

National power to deal with disputes

Prior to the Anti-Injunction Act of 1932, the national policy toward labor disputes was that labor was largely to blame for them and that its leaders must be closely restrained whenever serious property damage or obstruction to the free flow of commerce was threatened. In prosecuting the leaders of the Pullman strike of 1894, the Cleveland administration invoked the national power to prevent interference with the mail to justify its actions in moving into Illinois against the wishes of Governor Altgeld of Illinois. Subsequently, as was mentioned earlier, the Sherman Antitrust Act was invoked time and again to punish the participants in strikes and boycotts and to re-establish peaceful relations in various industries. The injunctions granted by national courts were also widely used to stop strikes and thus to terminate industrial unrest. From all of this it is plain that there has never been a serious question of the power of the national government to intervene in many types of labor disputes and that its intervention until well into this century was largely repressive and punitive, especially in regard to labor. A very large share of the responsibility for fostering industrial peace was, nevertheless, left to the states so long as the disputes were largely local in their scope and effect.

Mediation procedures established for railroads

The shortcomings of these wholly negative procedures for dealing with labor disputes were first clearly realized by the national government in the field of transportation. In this field also the power of the government to experiment with other procedures was unquestioned. Starting with legislation dating from as early as 1888 and culminating in the Railway Labor Act of 1926 (strengthened in 1934), a scheme for handling disputes in that field has been developed based upon a gradation of three mediatory or fact-finding agencies. This system has worked tolerably well but has not been uniformly successful in heading off strikes in the railroad industry. The nation is, at this writing, confronted by an imminent shutdown of the railroads over the issue of work rules. Congress has already intervened and the President has requested that the I.C.C. be given authority to utter interim work rules.

National mediation in disputes of all types

When the Department of Labor was separately organized in 1913, Congress authorized it to act as a mediator in labor disputes. Through a Conciliation Service thereafter established, agents of the government offered their good offices in thousands of controversies and, without any coercive authority of any kind, nevertheless contributed to the peaceful adjustment of a large number of them. The Service proved unable, however, to cope effectively with the great strikes of the post-World War II era. Its location in the Department of Labor lent some slight color to the charge of its critics that it was biased in favor of labor. In 1947, amidst the general reorienting of governmental policy toward unions and industrial peace, the mediation functions were withdrawn from the Department of Labor and independently organized as the Federal Mediation and Conciliation Service. This service, through its regional offices, continues to promote peaceful settlement of labor disputes by lending to the parties its trained conciliators. In a typical year it will be involved in 18-20 thousand disputes and is likely to contribute to the settlement of a very high percentage of them.

World War II and industrial peace

As governmental policy toward labor and labor unions was sharply changed in the thirties, great reliance came to be placed on first the N.R.A. and then the National Labor Relations Board for heading off industrial conflict. Under the theory that most violence and intransigence in labor disputes was employer directed rather than union stimulated, it was supposed that the protection of the bargaining rights of workers would contribute to industrial peace. The entrance of the United States in World War II brought a new dimension to the government's interest in industrial peace and a new urgency for finding more compelling procedures for dealing with strikes and strike threats in coal and steel and other "essential" industries. A determined Congress in 1943 passed over a presidential veto a War Labor Disputes (Smith-Connally) Act which imposed strong deterrents to work stoppages. The president was empowered to take possession of and operate any plant, mine, or facility in which a labor disturbance threatened the production of materials needed for the war effort. As long as governmental operation continued, any interference in production by strike, lockout, slowdown, or any other tactic was illegal. Coincident with the expiration of this act (at the end of World War II) a new rash of strikes swept the country and stimulated bitter debate over the proper method of dealing with them. In the absence of effective legal sanction, the president personally intervened on many occasions to bring the stoppage to a halt by the power of public opinion and his own prestige. In those parts of the economy still under wartime price controls, wage settlement boards and committees threw their energies into peaceful amelioration of the swelling tide of unrest as unions sought desperately to keep wages up to the rising spiral of inflationary prices.

Changing attitudes toward unions

The election in 1946 brought to Washington a group of legislators determined to remake the whole governmental policy and machinery for dealing with labor disputes and with labor-management relations. By this time a large segment of articulate opinion was convinced that the major fault for the dreaded paralysis of industry-wide strikes lay with the unions. Swollen by

increased employment and governmental benevolence, it was argued, they had become too powerful and their leader too arrogant. The public interest in resisting inflation and in stopping the hardships of prolonged strikes in key industries demanded that these new giants of economic power be brought under governmental control. Such was the setting for the passage of the Labor-Management Relations (Taft-Hartley) Act of 1947.

The Labor-Management Act of 1947:

In form, the Labor-Management Act of 1947 is an amendment to the National Labor Relations Act of 1935 and thus preserves for labor all of the basic guarantees of the earlier law. The general principle of unionized labor is accepted as axiomatic. At the same time, the right of every worker to "refrain from . . . concerted activities," that is, to identify himself with no union, if he so prefers, is expressly recognized and protected. Every union desiring to be in a position to avail itself of the services of the Labor Relations Board in defense of its bargaining and other interests is required to keep on file with that agency full information on its membership, officers, finances, rules and regulations.

1. Rights and duties of unions

2. "Closed" and "union" shops

When the act was passed, 30 per cent of all organized employees (notably in the printing industry and the building trades) worked in closed shops, that is, in establishments in which one must be a union member even to be hired; and more than that proportion were under "union shop" rules requiring every worker in an establishment to become a union member, if not already such, within 30 days after taking employment. Under the Act of 1947, the closed shop is completely banned, and "union shop" may be maintained only if a majority of all workers in a plant eligible to vote on the question so demand, and only under other restrictions aimed at protecting employer interests.

3. Collective bargaining

The basic rights and procedures of collective bargaining guaranteed in the legislation of 1935 are reaffirmed, with full freedom for both employers and employees to choose the agents who will represent them at the bargaining table. But whereas previously only employers were compelled to bargain, employees now are equally forbidden to refuse to do so; and whereas formerly employers might not, in the course of bargaining or otherwise, make even noncoercive statements to their employees or others without risk of having what they said adduced as evidence of unfair practice, now they may do this with impunity.

4. Unfair practices

The new law adds to the unfair practices of employers several unfair practices sometimes engaged in by unions. Employees, for example, may not be coerced to join unions; members in a union shop may not be required to pay excessive initiation fees or dues; employers may not, under the practice popularly known as "featherbedding," be required to pay for services not rendered, for example, to pay a textile worker for operating a single machine when he could just as well operate four or five, or, in the case of a radio station using records, to hire "live" musicians. Secondary boycotts (in which one party refuses to deal with another unless the other will, in turn, refuse to deal with a third) and jurisdictional strikes (arising, for instance, out of conflicts between A.F.L. and C.I.O. unions, or between any such and independent unions) are forbidden. For all of the practices named, unions are made liable to suit.

5. Labor disputes

The act attempts to strengthen the traditional governmental procedures for dealing with strikes. In general, the right to strike when other measures fail is fully recognized. However, certain kinds of strikes, for example, jurisdictional strikes and strikes against the national government (for which the penalty is instant dismissal) are absolutely prohibited; and for situations threatening strikes in themselves legitimate, procedures are ordained in connection with the new Federal Mediation and Conciliation Service designed to give the parties a chance to "cool off" and mediation an opportunity to achieve its purpose before overt action occurs. A special procedure is established for dealing with industry-wide strikes or those threatening a serious economic breakdown. The president, when he finds such a strike or lockout threatens national health or safety, may appoint a board of inquiry to examine into the causes. On receipt of a report from this board, the executive may request an injunction to stop this strike or lockout. If the proper court finds such a dispute is industry-wide and if continued will threaten national health or safety, it may issue the injunction regardless of the provisions of the earlier act limiting such orders. The parties are then required to continue to seek agreement with the aid of the conciliation service and the Inquiry Board for at least 60 days. Then the inquiry board's final report is made public and a secret ballot of the employees must be taken by the Labor Relations Board in 15 days to see if they will accept the board's terms. At the end of this process the injunction is lifted, and if no settlement has yet been reached the strike may proceed.

6. Political provisions

There also are provisions of political import. Benefit of National Labor Board procedures, for example, hearing and deciding complaints against employers, cannot be claimed by any union having any officer who refuses to declare under oath that he is not a member of the Communist party and that he does not favor the forceful or unconstitutional overthrow of the government. The Federal Corrupt Practices Act of 1925 is amended to bracket labor unions with corporations by forbidding them to make any contributions or incur any expenditures from union funds in connection with any election to any national political office.

7. Administrative arrangements

Finally, the National Labor Relations Board is increased from three to five members, and its activities confined largely to adjudication. This was done to meet the criticism that formerly the Board was at the same time "investigator, prosecutor, judge, and jury." All work of investigation and prosecution is devolved upon a new official, the "general counsel," appointed by the president and confirmed by the Senate for four years, and with full supervision over 20 regional offices and their field staffs.

This act thus clearly marks a new phase in governmental policy toward labor and toward disputes. Labor unions are regulated nationally for the first time and peace is to be achieved by adjudicatory determination of the rights and grievances of both parties. Crippling strikes may be halted for a time by injunction and executive intervention in disputes is supported by law.

More than a decade and a half has now elapsed since the government sharply changed its policy toward labor unions and sought to promote indus-

WORK STOPPAGES, 1946-61

Year	Number	Workers Involved	Man-Days Idle
1946	4,985	4,600,000	116,000,000
1947	3,693	2,170,000	34,600,000
1948	3,419	1,960,000	34,100,000
1949	3,606	3,030,000	50,500,000
1950	4,843	2,410,000	38,800,000
1951	4,737	2,220,000	22,900,000
1952	5,117	3,540,000	59,100,000
1953	5,091	2,400,000	28,300,000
1954	3,468	1,530,000	22,600,000
1955	4,320	2,650,000	28,200,000
1956	3,825	1,900,000	33,100,000
1957	3,673	1,390,000	16,500,000
1958	3,694	2,060,000	23,900,000
1959	3,708	1,880,000	69,000,000
1960	3,333	1,320,000	19,100,000
1961	3,367	1,450,000	16,300,000

Experience under the new policy

trial peace by a different approach. Has the new policy been successful? There is little agreement on this question. Labor has yielded little in its demand for outright repeal of the new policy, and business has steadfastly supported the act. In the campaigns of 1948, 1952, and 1956 the Democratic presidential candidates pledged their party to repeal while the Republican candidates, especially General Eisenhower, pledged only to seek modifications. Congress has sternly refused to modify the law in any important respects. Experience thus far under the new law indicates that its effects were not wholly anticipated by either side. The unions have not grown appreciably in membership since 1947 despite an increase in the labor force. Many factors may account for this, for the experience has not been different in earlier boom periods. Industrial peace has certainly not been completely achieved. Relatively few of the disputes since 1946 have been crippling. The inquiry board and injunction procedure have been used about 20 times. The most successful uses were those halting longshoremen's strikes in 1953, 1956, and 1961. Several strikes in coal and other industries were not halted. The steel strikes of 1952 and 1959 presented the most severe challenges to the Act. President Truman refused to use the procedure in 1952 and referred the issue to the Federal Wage Stabilization Board set up during the Korean emergency. When this failed to bring settlement he attempted unsuccessfully to take over the steel plants. In the prolonged strike of 1959, the injunctive procedure was challenged by the union on the grounds that there was no real emergency and that the courts were being made part of the executive branch contrary to constitutional theory. Although the Supreme Court upheld the use of the injunction as proper, the strike was not settled by the inquiry board or by injunction but rather by the mediation of the Secretary of Labor (Mitchell) strongly supported behind the scenes by Vice President Nixon. The effort to outlaw

the closed shop and to place the union shop under more rigid control has had mixed results. More plants now have some form of union security agreements than before but the unions have been less able to discipline their own members, since expulsion from the union no longer carries with it loss of the job. However, state "right-to-work" laws which place even more severe restrictions on union shops have been spreading (19 states now have them in some form) and the Act of 1947 provides that state regulations of this matter may take precedence over the national rules.

Controversy over the wisdom and effectiveness of the Act of 1947 is presently overshadowed by new issues of public policy raised by the revelations of corruption, racketeering, association of union officials with "crime rings," and other union abuses by the investigations in 1957-58 of a Senate Select Committee headed by Senator McClellan (Arkansas). These investigations, directed by Robert Kennedy (now Attorney General) and dealing largely with the Teamsters' Union, brought the union movement and its leaders once again under a cloud of public suspicion and paved the way for greater and more detailed national regulation of unions. The upshot of this new controversy was the passage of the Labor-Management Reporting and Disclosure Act of 1959.

The Labor-Management Reporting Act of 1959

This act seeks in the first place to protect the rights of individual members of labor organizations by guaranteeing them: (1) equal rights and privileges to participate in elections and meetings; (2) freedom of speech and assembly to discuss the conduct of union officers; (3) secret balloting in the determination of dues, fees, or other assessments; (4) the right to take legal action against officers; and (5) protection against arbitrary or improper suspension, expulsion, or other disciplinary action. Labor unions are, further, required to adopt constitutions and by-laws and file with the Secretary of Labor copies of these together with other detailed information on such matters as the rules governing admission, dues, audits of funds, selection of officers, and strike votes. They are also required to file annually complete financial reports. Officers are required to disclose to the Secretary financial transactions of their own with employers. Employers are required to report certain payments to union officials or to union members or to personnel consultants. Private personnel consultants are required to report any agreements involving union matters which they may undertake in behalf of employers. Trusteeship agreements by which one labor union controls or influences another are also regulated. The selection of union officers is carefully regulated and maximum terms are prescribed as well as secret ballots and some effort is made to keep the nominating procedure open and competitive. The fiduciary responsibility of union officers managing labor funds is spelled out in more detail with various safeguards provided and convicted criminals are disqualified from holding union positions. The act also tightens the prohibitions against secondary boycotts of the Act of 1947 and adds to its unfair labor practices, picketing aimed at forcing recognition of a union not supported by the employees. Finally, the confused controversy over the relative extent of the jurisdiction

of the N.L.R.B. and of state labor boards is partly resolved by authorizing the N.L.R.B. to refuse to accept jurisdiction in many types of "small" cases.

PROMOTION OF EMPLOYMENT—MAINTENANCE OF PROSPERITY

Unemployment—a perennial problem

In enumerating the famous "four freedoms" to which he believed people everywhere entitled, President Roosevelt placed high in the list "freedom from want"—the best guarantee of which is, of course, remunerative employment. Under our American system of free competitive enterprise it has been axiomatic that any person needing to support himself or a family ought to have a chance to do so by honest toil. The ideal is, however, not always easy to realize in practice. Regardless of how prosperous the times, the lag or collapse of particular industries, the shifting of others from one part of the country to another, changes in popular tastes and demands, the introduction of new labor-saving machinery and production techniques, and other developments constantly going on in the national economy, throw people out of work; and at best there is always a substantial margin of unemployment. In periods of economic recession and stagnation the proportion may mount to appalling levels. At the nadir of the depression of the thirties, the number of unemployed in the country rose to 13 million or more; and during the recession of 1960 it reached 5.5 million. It has remained above 4 million ever since. The problem of holding unemployment to a level not seriously damaging to the society is clearly still with us.

Some devices for restricting it:

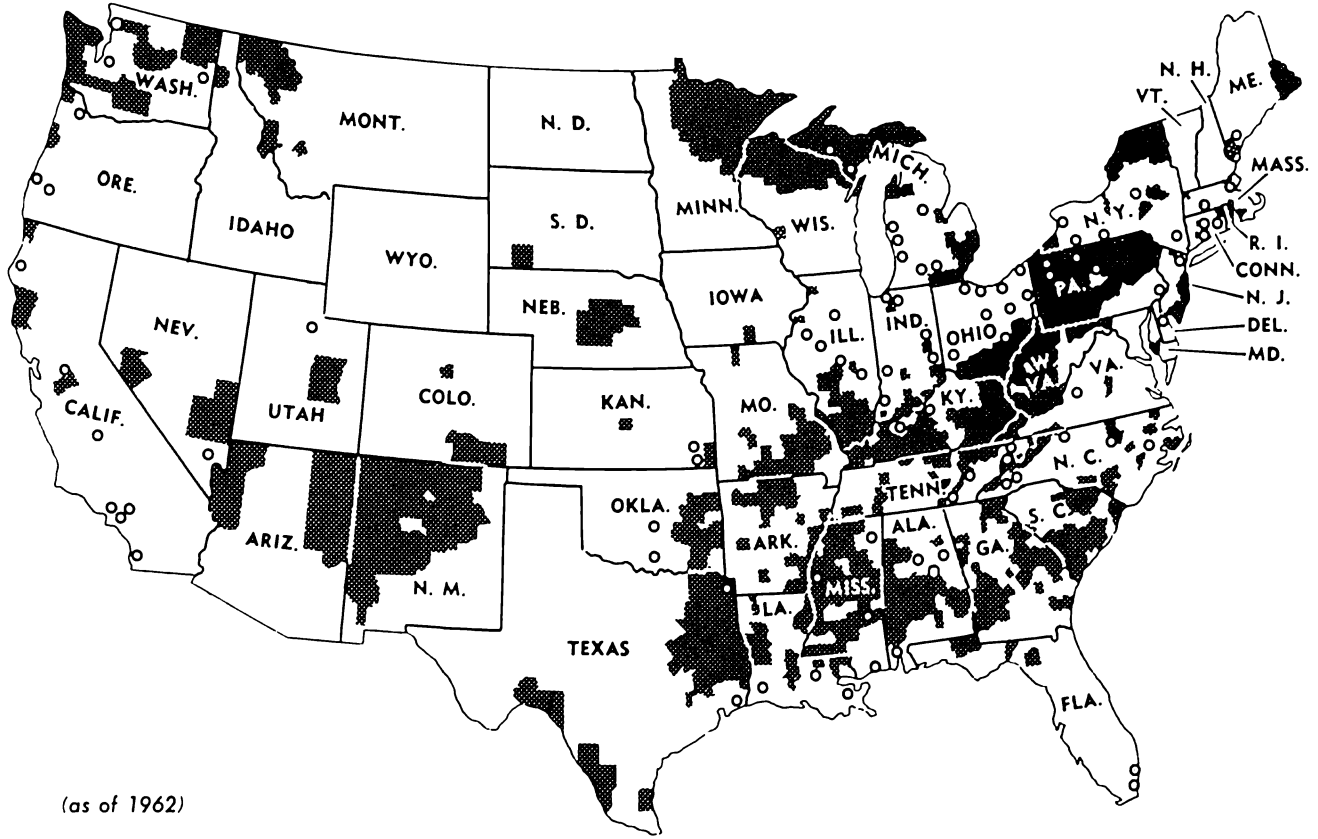
State and national governments have long concerned themselves with the matter, approaching it on the following lines: (1) employment agencies and other services for bringing workers and jobs together; (2) in times of special stress, programs of public works; (3) special aid for areas of chronic unemployment; and (4) long-range economic investigation and planning.

1. Public employment agencies

Even when jobs are plentiful, there is the problem of bringing job and worker together; and over so vast a country, with industries so diversified, and with costs and difficulties of seeking work except in one's immediate locality so prohibitive, the problem is indeed serious. For meeting it, a bewildering variety of employment agencies have made their appearance—agencies not creating work, of course, but only directing people to it. Some are conducted by individual employers or employer associations; some are maintained by labor organizations; many are private philanthropic or profit-seeking enterprises. Even under regulation, however, private agencies long ago showed serious defects. During World War I an acute labor shortage led to the creation of a United States Employment Service in the Department of Labor, and for a time local offices set up by this agency dotted the country. From 1919 to 1933 the service was poorly supported; and one of the earliest measures of the New Deal was to strengthen public employment offices. In the Public Employment (Wagner-Peyser) Act of 1933, the Congress decided upon a state rather than a national system, to be supported, however, by matched grants-in-aid for all state services conforming to national standards. During World War II

UNEMPLOYMENT PICTURE — THE HARD-PRESSED AREAS IN THE U. S.

The shaded areas are those with chronic unemployment designated as redevelopment areas under national legislation.
The circles indicate communities with unemployment rates above 6 percent for over a year.



(as of 1962)

SOURCE: *The New York Times*, April 1, 1962. © 1962 by The New York Times Company. Reprinted by permission.

and to facilitate increased war production, all state offices were taken over by the national government. They were returned to the states in 1946 by Congress despite a veto by President Truman, who wanted national control continued for at least a while longer. The whole program, now operated by the United States Employment Service, is closely geared to the unemployment insurance system discussed later.

2. Programs of public works

In periods of heavy unemployment, state and national governments alike may come to the assistance of the working population by instituting programs of public works calculated to provide jobs—as well as, of course, by direct grants for relief. The most striking illustrations of this "pump-priming" method of dealing with a slump in industry are afforded by the well-known programs embarked upon by states, and especially by the national government, in battling the depression of the thirties. Even during mild recessions experienced in 1949, 1957 and 1960, however, effort was made to speed up national building and improvements, with concentration upon sections of the country where the largest numbers were out of work. The Public Works Acceleration Act of 1962 is an illustration of this policy. Contracts for supplying defense materials to the government are also distributed nowadays with some regard for the employment situation in various localities.

3. Help for distressed areas

A somewhat different approach to the problems of maintaining prosperity was urged upon the government in the late 1950's. Numerous measures were considered in Congress aimed at providing governmental aid to industrial regions suffering from prolonged and chronic unemployment. The aid was to be used to promote new industrial outlets for local workers and to rehabilitate existing industries where possible. Clearly in the minds of many proponents were areas dependent upon textile manufacturing, coal mining and processing, and railroad repair and switching facilities. President Eisenhower vetoed such measures during his tenure preferring other methods, mainly involving credit and money controls, for dealing with recession. President Kennedy, however, advocated this procedure and an Area Redevelopment Act in 1961 became one of the first accomplishments of his administration. Under this Act, $100 million in loans was made available to be matched by state, local, and private contributions for site acquisition, factory building, or equipment in "depressed" areas. Another $100 million was provided for loans under similar conditions for redevelopment in rural areas. Provision was made also for retraining local workers and for technical assistance to state or local projects.

4. Long-range study and planning

Finally, a new role assigned economic investigation and planning may be mentioned. Fearful of unemployment on a disastrous scale after World War II, and hopeful that such a calamity could be staved off, both then and later, President Truman, members of Congress, various economists, labor leaders, industrialists, and others feeling deep concern threw their support in 1945 to a "full employment" bill, predicated on the national government's responsibility for preventing depression and unemployment and on the conviction that by promoting an "expanding economy" the government might be able to assure jobs permanently for substantially all people willing and able to work. Con-

gress eventually adopted in the Employment Act of 1946, a compromise program which provided for: (1) an "economic report" by the president each year to Congress, covering levels of employment, production, and purchasing power, current and foreseeable trends, the government's "economic program," and recommendations for legislation; (2) a council of three full-time economic advisers to the president to maintain constant watch over the economic situation, keep in continuous touch with the president concerning it, and advise and assist in preparing the annual report; and (3) a joint congressional committee on the economic report, composed of seven members from each house, charged with planning ways and means of carrying out the recommendations made and reporting them for action. Set up as a unit in the Executive Office of the President, the Council of Economic Advisers has become a key agency in the Executive Office on matters affecting the health of the national economy. Its history reveals that the president, at least, is highly sensitive to any signs of a decline in economic activity and anxious to make timely efforts to reestablish a high level of prosperity. The Council has played a varied but impressive role in influencing the kinds of recommendations presidents will make to deal with such pressing recent problems as inflation, rise in unemployment, and the loss of gold. It seems certain that the national government will never again hesitate to take drastic action if a depression threatens.

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17

Government and Agriculture

Agriculture the favored interest

THE SEAL OF the United States Department of Agriculture declares, "Agriculture is the foundation of manufacturing and commerce." This motto expresses a view, widely held in the life of the American nation, that agriculture is the backbone of our society. Cities, industry, and commerce may all be swallowed up in the maw of war or pestilence and life would still be possible; if the soil or those skilled in making it yield its bounty were to be destroyed, all life would disappear. Furthermore, in this view, rural life is demonstrably superior to urban life on every significant count: it is healthier, better for raising the young, and spiritually stronger. It produces a self-reliant, independent, vigorous, and healthy people. Trade and manfacturing produce the urban swarm, dependent, frail, neurotic, materialistic, and fearful. These convictions are properly described as agricultural fundamentalism and have played an important part in shaping the policy of the government toward agriculture. That these views have not been decisive on all occasions of national controversy is due, in part, to the fact that they have been sharply contested by another view which holds that agriculture, like every other economic interest, should find its proper place in the national economy through competition. If the calculus of the market place decrees that manufacturing should rise and farming decline, so be it. Agricultural fundamentalism, however, has been sufficiently impressive in the national scene that the government has usually been disposed to grant to the agricultural interest whatever that interest was agreed upon. The rural interest has been bolstered also by the fact that our political institutions are not geared perfectly to represent majority opinion. Having once been a majority, the rural interest has steadfastly clung to institutional arrangements which give it political strength disproportionate to its numerical strength in the population.

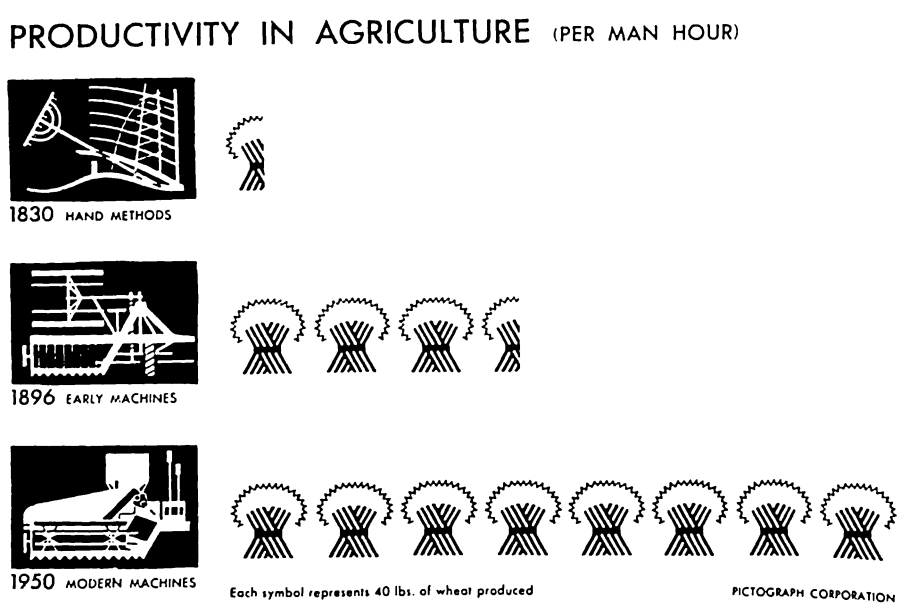
The United States Senate, to a lesser extent the House of Representatives, and dozens of state legislative chambers award to rural America many more representatives than a strict population accounting would require. Because of these arrangements and because of the appeal of the fundamentalists' creed, it would not be unfair to say that agriculture has been treated benevolently by the government more consistently than any of the other great economic interests. Despite the faith of the fundamentalists and the bounty of a sympathetic government, the place of agriculture in America life has slowly but certainly declined. This decline and the conflict of ideologies about it provide the setting for most of the modern controversies surrounding the determination of national agricultural policy.

The revolution in agriculture

The position of agriculture in modern America has been determined largely by the tremendous revolution in agricultural technology which has been occurring since about 1850. This revolution, although obscured from the view of the city-dweller by the blinding light of the Industrial Revolution, has been just as sweeping in its impact. The continuing application of scientific methods and power-driven machinery have been pushing the output per farmer and per acre to unimagined heights. In 1830, for example, it took about three farm families to produce enough food and fiber beyond their own needs to feed and clothe one city family. In 1960, one farm family could feed and clothe more than six urban families and two more persons abroad. Production per worker has increased more than 250 per cent in 100 years. Stated another way, the revolution in agriculture has meant that a constantly increasing share of agricultural produce is for sale rather than subsistence—90 per cent in 1960. Agriculture has become a great "business" venture and is no longer simply a way of life. The most prosperous 1200 farms produced $1.4 billion of crops and livestock in 1960. Even so, 78 per cent of the farms in 1960 produced little more than subsistence for their owners or operators. The income of these farmers was greater from working in nearby cities than from their farms. The tremendous outpouring of agricultural products thus comes from not more than one-fourth of the farm population. In fact, the most productive 10 per cent of the farms produce more than half of the agricultural output measured in terms of dollars.

The decline of the farm population

Fewer and fewer farmers are producing more and more crops, and whereas in 1860 the United States was 80 per cent rural, today fewer than 10 per cent of our people are actually on farms. The farm population has been declining relative to the city population since 1790 but it has been declining absolutely since 1916. The farm population of 15.6 million in 1960 is about the same as it was in 1864. The number of farms reached an all-time high of 6.8 million in 1935; by 1961 there were only 3.7 million. The farmer's share of the national income has also been falling: it was less than 7 per cent in 1960. It is well known, further, that even the present reduced farm population can, with the aid of modern technology, produce much more of many crops than the nation has been able to consume or to export and that this excess seems to be increasing. The American farmer has turned



Rural blight

Malthus right around: in the United States, the food supply is pressing on the (farm) population.

The faith of the fundamentalists, sorely tested by these developments, is being challenged further by the persistence and spread of rural blight. The argument for the superiority of rural ways could, in the past, be bolstered by reference to the statistics of infant mortality, disease, death, crime and other symptoms of social ills. In all of these respects and with minimal governmental efforts, the rural areas were superior to the urban ones. In each year that passes, however, the difference is narrowing. In infant deaths and in many diseases, the urban areas are now ahead of the rural ones. Even the urban birth rate—one of the best indications of strong family life—is starting to catch up to the rural rate. There are some cities, in fact, that are superior in every one of these respects to the rural areas. Underlying these developments is not only aggressive urban governmental attack on the problem but also subsidence in the rural economy. More than one-fifth of all acreage now tilled is so eroded and its fertility so depleted that it ought not to be cultivated any longer. One-crop agriculture produces surpluses and eats up the soil. Among that half of the farm population which produces little above subsistence, living standards, real income, and per capita wealth are all quite low. In fact, much of the most desperate poverty in the United States is on the farm and rural slums rival the worst that our large cities can produce. There are, perhaps, 350,000 farm families with average incomes under $1,000. If the national government were to withdraw its benevolent hand and capacious pocketbook from agriculture, it seems clear that the misery, disease, crime, and suffering in rural America would compare with the worst that our great cities have ever produced.

The farm interest, like that of business and of labor, relies heavily today

The farmers in politics

on its great associations to press its claims before Congress, the executive branch, party committees, and state governments. The strongest of these, described in an earlier chapter, are well financed, competently led, and frequently effective. Unlike the business interest, the farmers are not so solidly dedicated to one party. They are influential in both parties and are more inclined to shift loyalty from one party to the other if harassed by economic distress or assuaged by promises of benevolence. The farm vote appeared to be influential, for example, in the victory of Truman in 1948 after having aided the Republicans to gain control of Congress in 1946. The farmers, furthermore, unlike business and labor, have historically provided the basis for several strong third parties: Republican, Greenback, Populist, and Non-Partisan League, for example. Farmer-supported minor parties have captured control at various times of several state governments. No labor party has ever achieved as much success. Economic distress in agriculture has produced as much home-grown radicalism in both economics and politics as has distress in any other segment of the economy. This has been articulated through party platforms and campaigns as frequently as for any other interest.

Unity of farm interests?

Any discussion of the farm interest in American politics is predicated to some degree on a myth. Like the business interest, the farm interest is nothing like as homogeneous as it is frequently made to appear. Cash crop farming is frequently at odds with subsistence farming. Truck crop farming is not as dependent on world economic conditions as export crop farming. Southern cotton agriculture is usually at loggerheads with midwestern dairy farming. Tenant farmers oppose absentee landlord farmers. Small operators battle large operators. On few questions of public policy is the farming population agreed. Most farmers accept the tenets of agricultural fundamentalism, but beyond this there is little agreement. Even the fundamentalists are likely to export their children to the urban-industrial areas of America.

THE IMPROVEMENT OF AGRICULTURAL PRODUCTION

Although by nature and tradition the most highly individualistic form of enterprise, agriculture long ago turned to government for encouragement and assistance. And from the earliest days, local governments have provided roads for the movement of farm products to market, have supported land title registration and surveys to insure the rights of ownership, have financed fairs and exhibitions to encourage better breeding of plants and animals, and in numerous other ways have aided the farmer in his struggle against nature. The states too have responded to the farmers' claims by providing programs of research and education designed to supplement local efforts. The farmers turned to the national government with some reluctance and only after they became convinced that state and local efforts were not adequate to their needs. Out of its power to spend money, to regulate commerce, to provide post roads, the Congress has found constitutional authority to support an everwidening array of programs for the benefit of American agriculture.

The distribution of the public domain

Among the oldest and perhaps the most persistently pursued program through the years has been the improvement of production. Until about 1890, one of the major methods used by the national government to achieve greater output of food and fiber was its program for the distribution of the huge public domain. More and more land was thus brought under cultivation and the priceless heritage of the American people was distributed among those who undertook to cultivate it. Until the Civil War the policy for the distribution of land was determined by statesmen with one eye on the treasury, but the Republican party pledged itself to give away the national domain as quickly and as cheaply as possible. By 1890, the last usable land had been placed under cultivation and the frontier was gone.

Provision of scientific research

A more enduring method of national assistance to agricultural production has been the provision of scientific research. The first appropriation for agriculture was made by the Congress in 1839 in the amount of $1000 for seed collection and distribution and for agricultural investigations. The first full-time employee devoting himself to agricultural problems was a chemist. When the Department of Agriculture was created in 1862 as a separate agency under a commissioner, one of the major functions assigned to it was the collection of information about agriculture by the conduct of "practical and scientific experiments." From these modest beginnings the research program of the Department of Agriculture has grown by mighty leaps until it is the most comprehensive of its kind in the world and the Department one of the greatest research establishments. From it each year flow hundreds of bulletins describing the results of the experiments and investigations. Chemists, engineers, economists, bacteriologists, geneticists, management experts, nutritionists, horticulturists, and scores of other experts labor daily at the task of showing the American farmer how to wrest larger yields, larger profits, greater leisure, and higher standards of living from nature. This research is carried on not only in the departmental laboratories and at the great 12,000 acre Agricultural Research Center at Beltsville, Maryland, but also in hundreds of state and territorial experiment stations and state college laboratories. Beginning in 1887, the agricultural experiment station program has been supported by national grants to state agricultural colleges. The states and territories, on their parts, appropriate matching and supplementary funds to the colleges and stations, altogether more than doubling the total annual investment in agricultural research. This comprehensive attack on farm problems has throughout the years contributed importantly to the revolution in agricultural technology which has done so much to shape the modern American economy.

Improvement of agricultural education

Underlying the great program of discovering new knowledge beneficial to agriculture has been a powerful national effort to improve agricultural education. Scientific farming requires scientific farmers and these require institutions dedicated to instruction in agricultural arts and science. It is not coincidence that the same Congress which created the first Department of Agriculture also created the first national-state program of agricultural colleges. The Land Grand College (Morrill) Act of 1862 granted millions of acres of the public

domain to the states for the support of state colleges of agriculture, engineering, and home economics. Out of this program grew the great state universities and agricultural colleges of modern America. Since 1890, national money grants have replaced the land grants, and state appropriations have grown to exceed many times over the national gifts. Through the national grants, of course, the national government exercises a continuing influence over the programs of the agricultural colleges.

The development of Agricultural Extension Service

The colleges, however, can work directly with only a small portion of the agricultural population. A new program designed to carry the knowledge and skills of the colleges and the experiment stations to the farmers' backyards was inaugurated in 1914. The Cooperative Agricultural Extension (Smith-Kerr) Act of that year provided the basis for the modern extension service. Through county agricultural agents supported by national, state, and county governments, the accumulating knowledge about agriculture is today carried into the farmyard and there adapted to the needs of the individual farmer. The Extension Service unites the levels of government in a unique way to produce an itinerant encyclopedia of farm science at the beck of virtually every farmer in the land. With this triumvirate of college, experiment station, and extension agent under the mild, generous, and beneficent hand of the national department, the American farmer is the recipient of more solicitous concern, expert advice, and improving instruction than any other sizable group in the population.

IMPROVING THE ECONOMIC POSITION OF THE FARMER

The problem of surpluses

Unlike factories, farms cannot close down when the supply of agricultural products produces a glut on the market. The only recourse to a farmer in a period of falling farm prices is to try to increase his output. This is especially true of highly specialized, one-crop, staple agriculture. The great technological advance in agriculture, stimulated partly by the determined efforts of government scientists to improve productivity, has helped to produce in this century a new and unusual farm problem—surpluses. Two world wars added new urgency to the expansion of agricultural production as European cultivation was halted by the guns of opposing armies. The restoration of European production, the exhaustion of foreign purchasing power, and the growing restrictions on international trade combined in the postwar eras to reduce the export market for American staples and to leave the greatly expanded output of American farms without markets to absorb the yield.

Early aids to marketing

The farmer's interest in improving the marketing and distribution of his crops is, of course, not new. The long battle of the midwestern, southern, and plains farmers in the 1870's and 1880's against the railroads and the grain elevators represented a determined effort to improve distribution and to gain for the farmers a larger share of the ultimate price to the consumer of their products. Until the New Deal era, however, the demands of agriculture for governmental aid in distribution were largely met by: (1) inaugurating an

elaborate system of collecting and disseminating timely data on crop prospects and market prices; (2) establishing and maintaining by state cooperation uniform grades and standards for commodities shipped to out-of-state markets; (3) regulating bonded warehouses, stockyards, commission merchants, brokers, and commodity exchanges in the interests of fair play for the producers. All of these programs, directed for the most part by the Agricultural Marketing Service, have been strengthened with the years and are still key activities of the national department. However, they all fell short of striking decisively at the heart of the farmers' problem after World War I.

The first Agricultural Adjustment Act

The Roosevelt administration faced in 1933 a deep and disastrous drop in industrial activity. It faced a situation in agriculture which had been aggravating since 1922 and which was bankrupting the great agricultural regions of the nation. Borrowing the ideas of the Farm bloc of the 20's the New Deal struck boldly at the heart of the problem. In the Agricultural Adjustment Act of 1933 it sought to increase farm income by raising farm prices and to raise farm prices by curtailing production and subsidizing the farmer for the curtailment. The price level on farm products sought was one which would restore the purchasing power of farm products obtaining in the relatively favorable period of 1909-14. To achieve this "parity" the act aimed to reduce production to the extent necessary to bring agricultural prices up to the relative level of industrial prices. For this curtailment, the farmer was to be paid out of the proceeds of a tax levied on "processors" of the commodities for which curtailment was directed. This tax would, of course, be passed on to the consumer in the form of higher prices. Originally the act extended to only seven commodities: wheat, cotton, corn, rice, tobacco, hogs, and milk. Later, beef, dairy cattle, peanuts, barley, flax, sorghums, sugar beets, sugar cane, and potatoes were added. The Secretary of Agriculture was charged with administering the program through voluntary agreements with farmers to reduce acreage, plow under a portion of crops already planted, kill surplus animals, and by other means to produce less in consideration of a cash subsidy. Within one year, 40 million acres were withdrawn from cultivation and farm income, including the subsidy, had increased 39 per cent. The Secretary was also given broad power to eliminate "unfair" trade practices in the marketing and distribution of all kinds of agricultural commodities. In 1936, this much-debated effort to improve the relative position of American agriculture was swept away by the Supreme Court. The Court held the processing taxes which financed the subsidy program to be unconstitutional. These are not taxes in a real sense, said the Court, but levies upon one group of people for the benefit of another. The field of agricultural production, further said the Court, is reserved to the states and may not be the object of national regulation thinly disguised as taxation. Actually the plan had cost almost twice as much as the tax had yielded.

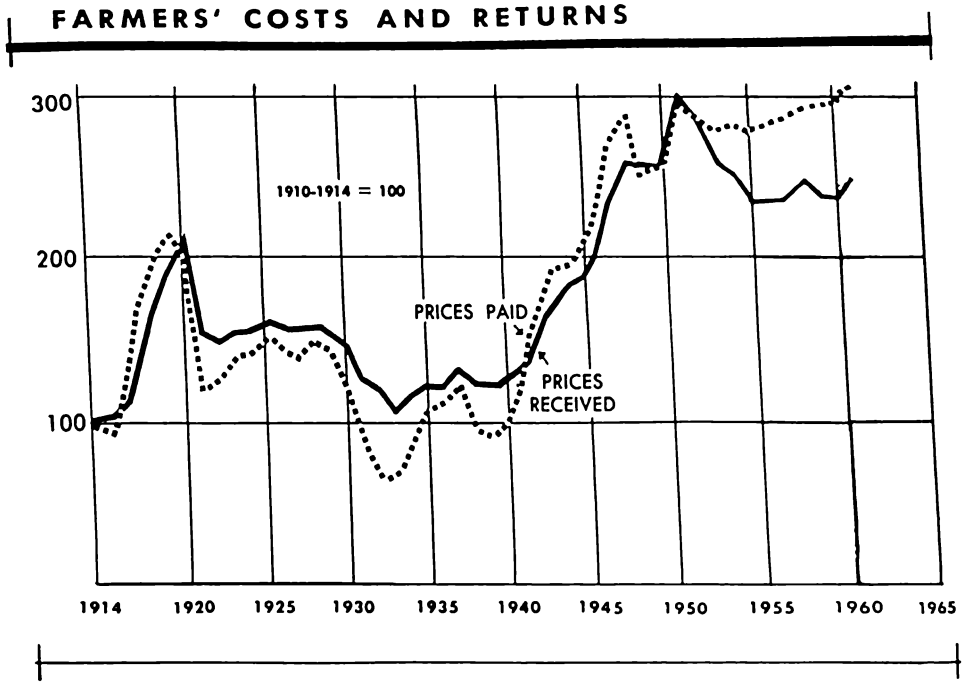
The objectives of the farm policy of the New Deal were partly aided by the devastation of drouth, dust storms, and floods in 1934. While helping to keep production down, these disasters also spread new distress among the

farmers of the plains, driving them in large numbers from their homes and onto the highways as itinerant farm laborers. The catastrophes also convinced the nation's leaders that they had some obligation to preserve the nation's resources. The combination of ideas and events suggested to the Congress a way out of the predicament created by the Court decision. In the Soil Conservation and Domestic Allotment Act of 1936, production control was made incidental to soil conservation. Restoration of 1910-14 farmer purchasing power was now sought by benefit payments to farmers for soil conservation practices which also reduced production of basic commodities. By shifting land from soil-depleting crops (corn, tobacco, wheat, cotton, etc.) to soil-building crops (clover, alfalfa, pasture grasses, etc.), the farmers were stimulated to reduce surpluses of staple crops and save the soil at the same time. No special tax was levied this time: the whole program was financed out of general receipts.

Production-control tied to soil conservation

The curtailment in production under the new program was still not adequate and, when 1937 and 1938 proved exceptionally good crop years, the old vicious spiral of commodity surpluses and sharply declining prices set in again. Accordingly, in the latter year, Congress passed a new Agricultural Adjustment Act, scrupulously avoiding processing taxes and any other devices likely to encounter judicial disapproval, but nevertheless contemplating, like the ill-fated measure of 1933, control of agricultural production. Without abandoning the conservation tie-up of 1936, the new law sought to achieve the desired control by supplementary arrangements briefly as follows: (1) if in any year the production of wheat, corn, cotton, rice, or tobacco threatened to create a surplus that would break the price, the Department of Agriculture should take a referendum among the producers of a given crop on the desirability of imposing limitations for the next crop year; (2) if two-thirds voted favorably, the Department, operating through state committees, should allot to each producing county for that year, on the basis of the average acreage seeded during the preceding 10 years, the number of acres that might be planted to the given crop; (3) within each county, and with the cooperation of democratically elected local farmer committees, an allotment should be made, in turn, to each producing farmer (again on a basis of past average production) of a maximum acreage from which he might market his product without restriction; (4) a farmer suffering a reduction in income under his allotment should be compensated by a government subsidy; (5) on the other hand, he might raise more acres of the crop if he wished, but if marketing products from excess acreage during a period of surplus, he should be subject to fine; (6) on surplus crops so produced, he might, nevertheless, receive loans from the Commodity Credit Corporation in the Department of Agriculture in amounts calculated according to "parity" prices; (7) such surplus crops should be stored under government seal in elevators or warehouses until a time of scarcity, when the farmer might sell them at the parity price and repay his loans—such sales operating to prevent the market price from ever rising far above parity; and (8) when the price of a given stored commodity should fall below parity, the producer should be entitled to receive

The second Agricultural Adjustment Act (1938)



SOURCE: U. S. Department of Agriculture.

from the government payments sufficient to make up the deficiency. In short, surplus crops were to be stored in years of superabundance, without the farmer being left short of cash, and then would be available to be thrown on the market in years of shortage from drouth or other cause.

The new program found constitutional

To this system of an "ever-normal granary"—keeping part of the supply out of the market so that what remains will bring a "just" price—were added arrangements for crop insurance, starting tentatively with wheat in 1938 and later extended to cotton and flax. The idea of the insurance program was to protect producers against losses from depleted yields caused by drouth, flood, hail, insect infestation, and plant diseases. Insurance costs (i.e., premiums) were made payable by the insured to the government either in cash or in surplus wheat (or other products), the latter becoming an additional reserve of the ever-normal granary. The revamped farm program was sustained as constitutional by a now reconstructed Supreme Court and it has formed the basis of all subsequent legislation in this field.

Agriculture in World War II

As the nations of the world in 1939 gave up diplomacy for the battlefield, the main agricultural problem of the United States shifted once again to need for expanded production. In 1942, the Department of Agriculture announced its goal as "the largest production in the history of American agriculture." The farmers, with bitter memories of the twenties still alive, were, however, reluctant to expand their production facilities without governmental assurance of protection against the inevitable drop in exports at the close of

the war. A sympathetic Congress promised (the Stabilization Act of 1942) that the government would support prices of the staple agricultural products (cotton, corn, wheat, rice, tobacco, and peanuts) at not less than 90 per cent of "parity" for the two years after the emergency ended. A benevolent government also made every effort to raise farm income during the difficult periods of wage and price controls and rationing. The result was that American agriculture entered the postwar period in what was probably the strongest financial position it had ever known.

Postwar price-support program

President Truman declared the war emergency at an end in December, 1946. The postwar recession in the national economy and especially the precipitous decline in markets for agricultural products predicted by most of those charged with plotting national policy did not occur immediately. Pent-up consumer demand in the United States and the Marshall Plan of aid to shattered economies abroad sustained a lively demand. And when price and wage controls were abandoned by a government bent on returning to "normalcy," agricultural prices led a headstrong upsurge in prices which in a few short years drove the American cost of living to dizzy heights. As the time approached in 1948 for the expiration of the price-support guarantees, a Republican Congress began to hammer out a new farm program in the light of the intoxicating farm prosperity of the forties. Farm groups, however, fearful that the bubble would collapse, leaving them with high production costs and expanded facilities, continued to demand governmental price supports. A bitter wrangle, lasting until the hour of adjournment, developed between the supporters of rigid price supports for the staples at 90 per cent of parity and the supporters of a more flexible support program (60-90 per cent) by which production might gradually be readjusted to consumption. In the end, the Agriculture (Hope-Aiken) Act of 1948 provided for a temporary continuance of rigid, 90 per cent, supports until 1950 and then a "long-term" program of flexible supports. The old 1910-14 base period for determining parity with industrial prices was abandoned—as it had been in fact during the emergency—and was replaced with a new formula using prices of the war and postwar periods. Since this meant a decline in a few staple prices (wheat, notably), the act provided a transitional period in which the new lower level of prices would gradually be achieved. The support program, although intended for the staples, was authorized for many other crops at the discretion of the secretary of agriculture if trouble developed in marketing those commodities at "fair" prices.

The Agricultural Act of 1949

The repudiation of the Republican record in the election of 1948 was taken by many Democrats as an authorization to abandon the "flexible" features of the Act of 1948. The Agricultural Act of 1949 was largely a victory for the high, rigid, price-support program as against the flexible program. Although provision was made for adjusting support for most types of agricultural products to the market situation, the basic staples which had been the center of the difficulty through the years were virtually assured of a high level of support. The parity formula was once again revised to take account of the

high postwar wages of farm labor and the wartime subsidy payments to farmers designed to hold consumer prices down.

The Eisenhower administration confronted a changed situation in agriculture. The world markets had fallen away as after World War I, and even the Korean episode and the high level of industrial activity which it stimulated could not bridge the growing gap between production and consumption. The government warehouses, elevators, bins, cribs, and refrigerators were bursting with the protected commodities bought up by the Commodity Credit Corporation in keeping with the high level price-support mandate of the Act of 1949.

The Agricultural Act of 1954

The new administration finally unveiled its new farm program in 1954 after a panel of farm representatives had reviewed the matter for several months. The result was a new Agricultural Act which conformed in broad outlines to the recommendations of President Eisenhower and his secretary of agriculture, Benson. This act: (1) directed the Commodity Credit Corporation to "set aside" from its inventories large quantities of wheat, cotton, cottonseed oil, butter, milk solids, and cheese which, subject to presidential direction, might be donated for disaster relief, school lunches, or research purposes, bartered with foreign nations, transferred to the national stockpile of strategic materials, or sold on the market at not less than 105 per cent of the parity prices of the commodities; (2) provided for the "basic" or staple commodities a system of flexible price supports at $82\frac{1}{2}$ to 90 per cent of parity prices and for dairy products at 75 to 90 per cent of parity prices; (3) directed the Veterans Administration and the Defense Department to accept supplies of milk, butter and cheese from the Commodity Corporation from its stocks; (4) expanded the national program for eliminating brucellosis from dairy cattle; (5) tightened the provisions aimed at preventing expansion of staple production into new areas; (6) established agricultural attaches to be located in diplomatic missions abroad for the purpose of promoting the marketing of American agricultural products.

The Soil Bank

To this program was added in 1956 on the recommendation of the President a "soil bank" arrangement aimed at reducing by voluntary and compensated effort the acreage planted to the protected crops—mainly, corn, wheat, cotton, and rice. Farmers could retire acres from cultivation putting them into pasture, trees, or grasses and receive payments for the loss of production involved. Under this program 28 million acres were retired from cultivation from 1956 to 1960.

The Kennedy Program

Meanwhile the Democrats recaptured control of the Congress in 1954 and held it through Eisenhower's second term. Efforts to restore rigid price support programs were turned back in 1956 and in 1958 by presidential veto. The first proposals of the new administration in 1961 looked to much greater flexibility in the whole program to adjust acreage and marketing controls to the current situation in any of the protected staples. It also preferred strict acreage controls combined with moderately high price supports to the low price support program of the previous administration. Congress responded by expanding the Secretary of Agriculture's marketing-order authority but re-

fused to delegate major power for acreage and price control. The Agricultural Act of 1961 continued, in general, the previous effort to retire lands from cultivation. The second effort in 1962 concentrated on control of volume of output rather than on acreage. New methods yielding greater returns per acre had resulted in mounting surpluses from the same acreage. Congress, however, refused again to grant the Administration real power to control output except on a limited basis for feed grains. In 1963, the wheat farmers rejected in a referendum the marketing quotas and price support program. This was the first time in many years that a major crop control program had been turned down and exhibited the continuing controversy even among farmers on the proper approach.

The Commodity Credit Corporation

The heart of the modern effort to sustain a relatively high level of farm prosperity is the purchase by the government of the excess yields of farm products. The chief instrument for its accomplishment is the Commodity Credit Corporation in the Department of Agriculture. This Corporation is governed, under the general supervision of the secretary, by a board of directors of six members appointed by the president with the consent of the Senate. It is authorized to borrow $14.5 billion to carry out its missions. The Corporation's typical method of operation is to loan to eligible farmers the full value of their harvest at the supported price with the harvest as security. If the farmer cannot dispose of his crop on more favorable terms, he simply allows the Corporation to possess the crop. Commodities are also purchased in the open market at the support price. During World War II, the Corporation gradually disposed of its holdings, usually at a profit, but the modern era of falling exports and rising production has forced the Corporation to take on more and more commodities. Its inventories had grown to $3.5 billion by June, 1953, and were $4.5 billion by June of 1963. Until 1951, the farm price subsidy cost about $350 million a year but in the decade 1952-61 it has cost about $2.2 billion a year and looks as if it will go higher.

Every effort by the experts of the Department of Agriculture to promote the diversification of agriculture in the great staple producing areas, to improve marketing practices, to find new uses for the staple crops, to reduce acreage devoted to price supported commodities, to dispose of surpluses to needy children and to barter surpluses abroad has thus far fallen short of bringing production into line with demand. The supporters of a "flexible" price program believe it offers the only feasible hope for gradually adjusting production to effective consumption. Those favoring "rigid" supports cite the distress of the twenties, the pledges of the government during World War II, and the importance of the great staple producing areas in the nation as justification for heavy and continuing annual subsidies to the producers. The subsidy, however, appears to be more than adequate for the highly mechanized, heavily capitalized large farm units but not sufficient for the poorest third of the farmers. These continue to abandon agriculture and seek urban job opportunities. In the cities, they are helping to swell the ranks of the unemployed. There is not on the horizon a politically acceptable program looking toward

the return of a free market for agricultural production. In an imperfect world, it is, of course, better to be troubled by glut than by famine.

IMPROVEMENT OF RURAL LIFE

Throughout the years and especially since 1933, the national government has supplemented its concern for production and distribution with programs aimed at improving the human, or social, aspects of farming. Impelled to do this by rural backwardness and distress brought sharply to view by the depression of the thirties, and by the continued exodus from farm to city, the Department of Agriculture, with a good deal of backing from Congress, now regards as part of its task the systematic promotion of better living conditions on the farm and in rural communities. Only a few outstanding services of this nature can, however, be mentioned here.

1. Relief for farm tenants

Agricultural credit institutions have been developed to aid in farm purchase, farm-home construction, and purchase of farm equipment. These are designed primarily to benefit farmers who own, or have an ownership interest in, the land they cultivate. There is another large agricultural element that cannot avail itself of these agencies, for the reason that those belonging to it own no land and little, if any, other property that might serve as security for loans. These less fortunate people—commonly excluded also from wage and hour provisions, unemployment insurance, and workmen's compensation —are the tenant farmers, sharecroppers, and farm laborers, who from 1880 until fairly recently steadily increased in proportion to the number of farm owners, and now comprise at least one-third of the total number tilling the soil. They (or many of them) are the people who give rise to rural "blight;" and the areas where large numbers of them live, notably the southern and southwestern states, form our "rural slums." Following a penetrating, and fairly startling, report in 1937 on the conditions and outlook of these submerged groups, submitted by a committee on farm tenancy appointed by President Franklin D. Roosevelt, Congress in the same year passed the Farm Tenant (Bankhead-Jones) Act, under which the government, operating through state and local machinery terminating in county committees of farmers, offers 40-year loans (at 5 per cent and up to $12,000) to farm tenants, farm laborers, and sharecroppers (with preference for veterans) to enable them to acquire homes and lands of their own; and likewise "rehabilitation loans" (at 5 per cent and to a maximum of $5,000) for the purchase of livestock, seed, fertilizers, and farm equipment, for refinancing indebtedness, and for family subsistence, including medical care. Mortgages on loans for similar purposes made by private lenders also are insured. Loans (made through offices commonly located in county-seat towns) are not confined to the categories of persons mentioned, but are extended also to better situated "family type" farmers who for some reason cannot get the credit they need elsewhere, at all events on favorable terms.

Until two decades ago, the United States lagged behind several other

countries in bringing electrical energy within the reach of rural populations, and even today, with 400 farm uses for electricity known, some 3 per cent of the nation's more than 6 million farms still are without electric light and power. In 1936, however (when only 10 per cent of farms were electrified), Congress passed a Rural Electrification (Norris-Rayburn) Act launching a long-term program under which large progress has been made toward providing farms with cheap light and power, relieving the drudgery of the farmer and his wife, and adding to the farm's income-producing equipment. Management of the undertaking is vested in a Rural Electrification Administration (R.E.A.), since 1939 a unit within the Department of Agriculture. Such management consists principally in making long-term, self-liquidating, 2 per cent loans up to 100 per cent of cost (1) to associations (usually farmer cooperatives organized for the purpose), corporations, or local-government bodies, to enable them to build transmission lines and buy generators for furnishing electrical energy to people in rural areas for whom central-station services are not available, and (2) to individuals or firms engaged in wiring farm buildings and installing electrical and plumbing appliances and equipment —no loans being extended directly to consumers. Private utility companies also have, of course, been expanding their services in rural areas—sometimes, it is charged, deliberately to discourage government-financed undertakings from being started. Fifty-seven per cent of all farms electrified since 1936, however, get their power through systems developed by R.E.A.

2. Rural electrification

The government's task of rural electrification is expected to start tapering off and to be completed in a few years. In 1949, however, Congress decided to move also into the field of rural communications and passed an act authorizing the R.E.A. to begin making 2 per cent loans to independent telephone companies (of which there are 5762 in the country), farm cooperatives, and nonprofit mutual associations to establish and extend telephone services for the 60 per cent of the nation's farms still without such conveniences. Critics of the plan objected that it would inflict unfair competition upon private companies, that the telephone might become obsolete, leaving the government with a useless investment, and that the undertaking might prove an entering wedge for government control of all communications and for curtailment of freedom of speech. But such arguments did not prevail and by mid-1963 the R.E.A. had loaned $1 billion for telephone service extensions.

3. Rural telephone service

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18

Conserving the Nation's Resources

Earlier wastefulness

PERHAPS IT IS inevitable that an energetic and growing people taking over a virgin continental expanse richly endowed by nature should be guilty of extravagance and waste. So, at all events, it has been in the United States, where for 100 years good land was so abundant, and forest, mineral, and other resources so apparently inexhaustible, that no generation felt much concern about economical use in its own time or possible shortages later on. On the theory that the quickest and surest way to develop the country was to get its resources into the hands of people who would settle new areas, promote new industries, and expand national production, the national government (state governments also within their more restricted spheres) prodigally sold or gave away agricultural land, mineral lands, forest lands, and whatever else was available, to substantially any private individuals, corporations, or other interests desiring them. When good grass land was put to the plough and exposed to ruinous soil erosion, or noble forests were devastated by rapacious lumber companies, or petroleum, gas, coal, and other mineral deposits were wastefully used, there were few to protest.

The conservation movement

Toward the close of the nineteenth century, however, warnings began to be sounded, not only that the supply of available public land was fast diminishing, but that continued heedless exploitation of forests, minerals, and other natural wealth would one day leave the country impoverished. Sharing this apprehension were President Theodore Roosevelt and a group of close associates; and measures for protecting and developing the country's resources became one of that chief executive's principal concerns. A new gospel of

conservation was preached with crusading zeal; a national commission was set to work surveying conditions and needs; the governors of the states were called into conference at the White House; and for the first time the nation became to some degree "conservation conscious." The entire idea, however, ran sharply counter to a century-old tradition, and not only did powerful interests with something to lose resist it, but people generally had difficulty divesting themselves of the notion that there was plenty of everything and that future generations would take care of themselves. During the next half-century, the fact was gradually brought home that—with greater needs in prospect as population grew and standards of living improved—we already had used up more than half of our known petroleum supply, the larger part (it was reported) of our natural gas, more than a third of our high-grade coal, most of our best iron, an alarming share of our copper, lead, and zinc, and an amazingly large proportion of our forest reserves (to say nothing of having exhausted millions of acres of our soil). During this half-century, laws were passed, agencies of enforcement and supervision set up, and land, forests, minerals, water supply, and water-power sites here and there given moderately effective protection. The earliest efforts were directed almost exclusively at the resources of the publicly owned parts of the country. But gradually it became clear that if the nation was to benefit from the conservation on the scale required for its future well-being, controls would have to be extended, so far as constitutionally possible, to privately owned areas as well. Spurred by the depression of the thirties, by the recurring drouths, dust storms, floods, and other disasters of the same period, and eventually by the necessity for maximum utilization of our resources (the "sinews and muscles of our defense machinery") for national defense and war—such broadening of scope became one of the major themes of the New Deal era.

What conservation means

In the course of this development, the concept of conservation underwent significant expansion. At the outset, it was limited to maintaining in adequate supply resources like forests which, as used, could be renewed, and to eliminating avoidable waste of others, such as oil and gas, not capable of replenishment. It still includes these things, but in addition extends to many kinds of resources not originally embraced. To this somewhat negative emphasis on simple replacement or avoidable depletion has been added the idea of conservation as a positive policy of maximum utilization of resources for the satisfaction of maximum social needs. As the Department of the Interior put it in a report of two decades ago, conservation now means "the management and wise use of the natural assets to prevent their depletion and at the same time *to produce wealth.*" It has come to mean not only preventing existing farms from being ruined by soil erosion, but making new farms available through provision of water for irrigation; not only protecting existing forests from devastation, but developing means for their prudent use, with additions meanwhile from lands too worn out or otherwise marginal to be worth much for other purposes; not only keeping oil and gas from burning in

the fields, but restricting general output in the interest of coming generations.

National-state relations

From every point of view, conservation is an appropriate field for governmental action, and indeed quite dependent upon it. The rugged individualists who developed the country in pioneering days proceeded on the principle of taking and using what they found; and, left to themselves, their more sophisticated but hardly less acquisitive descendants probably would have not much more regard for the interests of posterity. Moreover, the tasks involved (including planning) are of such magnitude, geographically and otherwise, that only governments can undertake them. Like so many others of our public enterprises, however, the work of conservation is considerably complicated by our federal system. Up to a point, it is true, the national government has free scope. As we shall see, more than one-fifth of the country (mainly but by no means exclusively west of the Mississippi) is owned outright by the nation as a whole; and on this "public domain" the national government, as proprietor, can lease grazing lands, restrict access to minerals, regulate the use of forests and plant new ones, control the exploitation of water power, protect wildlife, and, speaking broadly, do anything else that it likes, with no constitutional questions raised. Here is where conservation activities have been pursued most vigorously and effectively. The greater part of the country's resources, however, are in areas over which the national government has no control as owner; and in these it falls to the states and their subdivisions to do much of whatever is done. The results are very uneven. Some states have well-developed programs covering forest protection and extension, control over water resources, regulation of oil and gas production, promotion of drainage and irrigation projects, and protection of fish and other wildlife, according as such activities are appropriate to particular states. Other states are lax; some do not even have a department of conservation, planning board, or other such agency. In any event, plenty of room is left for national authorities to help out—which indeed they must do if there is to be any approach to effective conservation the country over.

In spite of constitutional limitations, means for such participation have been discovered. Through discussion and published information, the national government can educate the people on the subject; through grants-in-aid, it can join with the states in financing and controlling conservation activities; its commerce power can be invoked in regulating the development and use of navigable streams, the sale of commodities and services, for example, hydroelectric energy, and the interstate transmission of oil and gas, and its treaty-making power in protecting migratory wildlife; through voluntary arrangements carried out in conjunction with states, it can enlist farmers in programs of soil conservation, and from these in turn derive means of controlling crop production. All of these things not only can be, but are being, done; and it is reasonable to expect that as time goes on, conservation, like many other activities cutting across national-state lines, will more and more be nationalized.

LAND AND LAND USE

Public land

National conservation activities have to do, first of all, with the most basic of natural resources, that is, land, and in two principal ways—safeguarding the public domain and protecting the soil of arable land wherever threatened by depletion through erosion. Of the total 2.2 billion acres contained in the United States today, upwards of 1.8 billion acres, or 80 per cent, have at one time or another been "public land," land nationally owned. Of this, more than a billion acres have been sold or given away, leaving a present national domain of somewhat over 400 million acres or more than one-fifth of the total national area. Four states, Nevada, Idaho, Alaska, and Utah, contain more public land than private land. Of lands disposed of, vast quantities were in earlier times granted to the states for sale in aid of education and internal improvements; later on, much was bestowed upon transcontinental railroads; a great deal was allotted to soldiers and sailors; large tracts were sold to speculating land companies; and under terms of the Homestead Act of 1862—offering 160 acres to anyone who would pay a registration fee of $10 and perform a limited amount of work on his holding during a period of five years—millions upon millions of acres were parcelled out among pioneering homeseekers. Prodigality and fraud often went hand in hand; yet vast areas passed into the possession of thrifty populations and helped make the country what it is today.

With the national domain shrinking, however, to something approaching its present proportions, and with the newer idea of conservation developing, the government 40 or 50 years ago grew less lavish. Restrictions were imposed on free entry; large areas were set off as permanent national holdings; and finally, after a decade of virtual suspension, allotments were entirely stopped in 1935. In 1946, President Truman, by executive order, reopened certain remaining lands to entry (except any containing deposits of thorium, uranium, or other "fissionable materials for the release of atomic energy") under carefully guarded conditions. With the government also acquiring land by purchase, condemnation, cession, or gift, from private (or sometimes even public) holders, and adding it to public forests or utilizing it for park development, water-power development, or other purposes, the expectation is that henceforth there will be little net loss of acreage in the public domain.

Project 2012

Late in 1960, the Bureau of Land Management proposed to the Congress a long-range program for managing the public domain—called Project 2012. This plan was aimed at transferring into private ownership lands that might be valuable for urban or suburban development and at classifying all public lands with a view to improving their usability. The proposals came late in the session and many congressmen were critical of land sales that would allow substantial private development profits. The Kennedy administration has indicated it will not support sales of public lands where parties

other than the government receive windfall profits but it has approved classification and improved utilization.

Reclamation

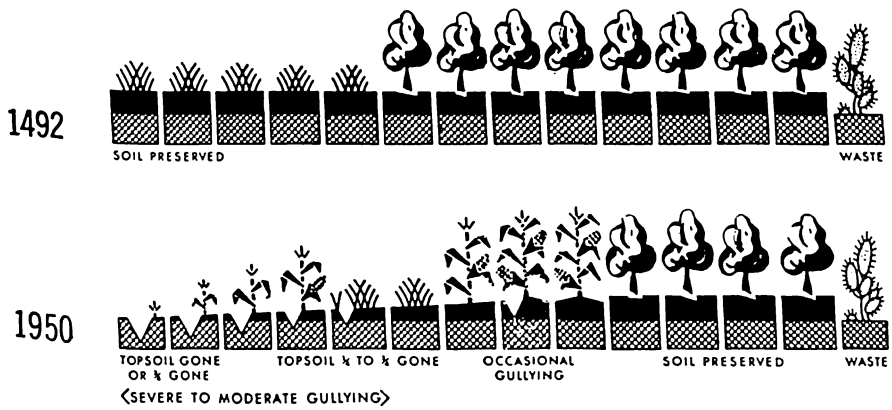
Large stretches of the earlier public domain, located chiefly in the western states, were arid or semiarid—much of the land fertile enough, but unproductive unless supplied with water. Since 1902, a Bureau of Reclamation in the Interior Department has been charged with conservation and distribution of limited water resources in 17 Rocky Mountain, southwestern, and Pacific Coast states—largely by construction of dams, reservoirs, aqueducts, pumping stations, and the like. The primary objective is, of course, the transformation of dry lands into permanently productive farms and the maintenance of production on lands threatened with drying up because of shortages of water supplies from other systems. Bracketed with these purposes are drainage, flood control, municipal water supply, sometimes navigation, and more and more frequently, the generation of hydroelectric power. The most spectacular of its reclamation projects is the Colorado River development which features Hoover Dam. By irrigating lands and opening up farms, the government tends to aggravate its already serious problem of agricultural overproduction. But it also meets a strong demand for cultivable land. Three-fourths or more of the national funds expended are recovered from water uses and power sales; and in any case pressure of western sentiment for such improvements is too strong to be resisted. Throughout its history, in fact, reclamation has been a fruitful source of sectionalism in politics.

Soil conservation

For a good while before an unprecedented plague of devastating floods and dust storms prompted Congress, in 1935, to pass the Soil Conservation Act mentioned earlier, it had been realized by agricultural experts that the country's most precious resource of all (apart from water) soil, was being depleted in almost every area where land was ploughed, and in great regions of the West and Southwest with startling rapidity. Yellowed rivulets and turbid major streams alike, after every rain, testified mutely—as did also clouds of powdery dust borne eastward across the country by air currents in periods of drouth—to the irrecoverable wealth that was being lost; fields once productive grew barren and useless; farm after farm went to ruin. Starting its work under the new legislation mentioned, a Soil Conservation Service in the Department of Agriculture reported in 1936 that, throughout the country as a whole, a total of 735 million acres of land (enough to make 20 states the size of Illinois), once well adapted to cultivation, grazing, or forest culture, had been seriously impaired or totally destroyed by either water or wind erosion, or both. Ten years later, the same authority still was obliged to say that 500,000 acres were being ruined by erosion every year, at a direct and indirect cost to the country of $3 billion. Even yet there is alarming wastage, 3 billion tons of top matter, we are told, being washed or blown annually from our fields, many of which ought never to have been ploughed. The worst dust storms in history occurred in 1954 and damaged 13.2 million acres of crop land. But the Soil Conservation Service now cooperates vigorously with states, localities, and individual farmers in bringing about physical adjustments in land and intro-

ducing soil-conservation methods (contouring, strip-cropping, terracing, crop rotation, farm drainage, and the like). The vehicle selected by the Congress to achieve soil conservation on farms was the specially created Soil Conservation district rather than the traditional Agricultural Extension system. Every state and major territory has now enacted laws under which soil-conservation districts (often coinciding with counties) may be set up for carrying out the program under direction of a state soil-conservation committee and of locally elected farmer committees. By 1963 a total of 2952 such districts, embracing more than two-thirds of all the farms in the country, had been organized. Individual landowners within any district have a right to help and guidance from field offices of the Conservation Service, or from county agents, in planning "layouts" adapted to the particular needs and productive capacities of their farms or ranches. The Service undertakes to send technicians to advise and work directly with any one in need of them. A farmer may participate in the plan or not as he chooses; there is no compulsion, either national or state. But a powerful incentive is supplied by the fact that under the legislation of 1936 subsidies are available only to those employing soil-conservation practices. The "soil bank" program begun in 1956 has added a new stimulus to the retirement of overworked, staple-producing cropland and, as we have observed in the preceding chapter, 28 million acres had been taken out of cultivation by 1960.

EXTENT OF EROSION IN THE UNITED STATES



EACH BLOCK REPRESENTS 135 MILLION ACRES PICTOGRAPH CORPORATION

In 1944 a new responsibility for watershed protection and flood control was given to the Service. Under legislation in 1954 that greatly expanded this area of activity, the Service now aids in planning and developing projects to prevent floods, halt erosion, and conserve water resources mainly but not exclusively on small watersheds. Grants and loans are used, usually on a matching basis, to finance state or local projects.

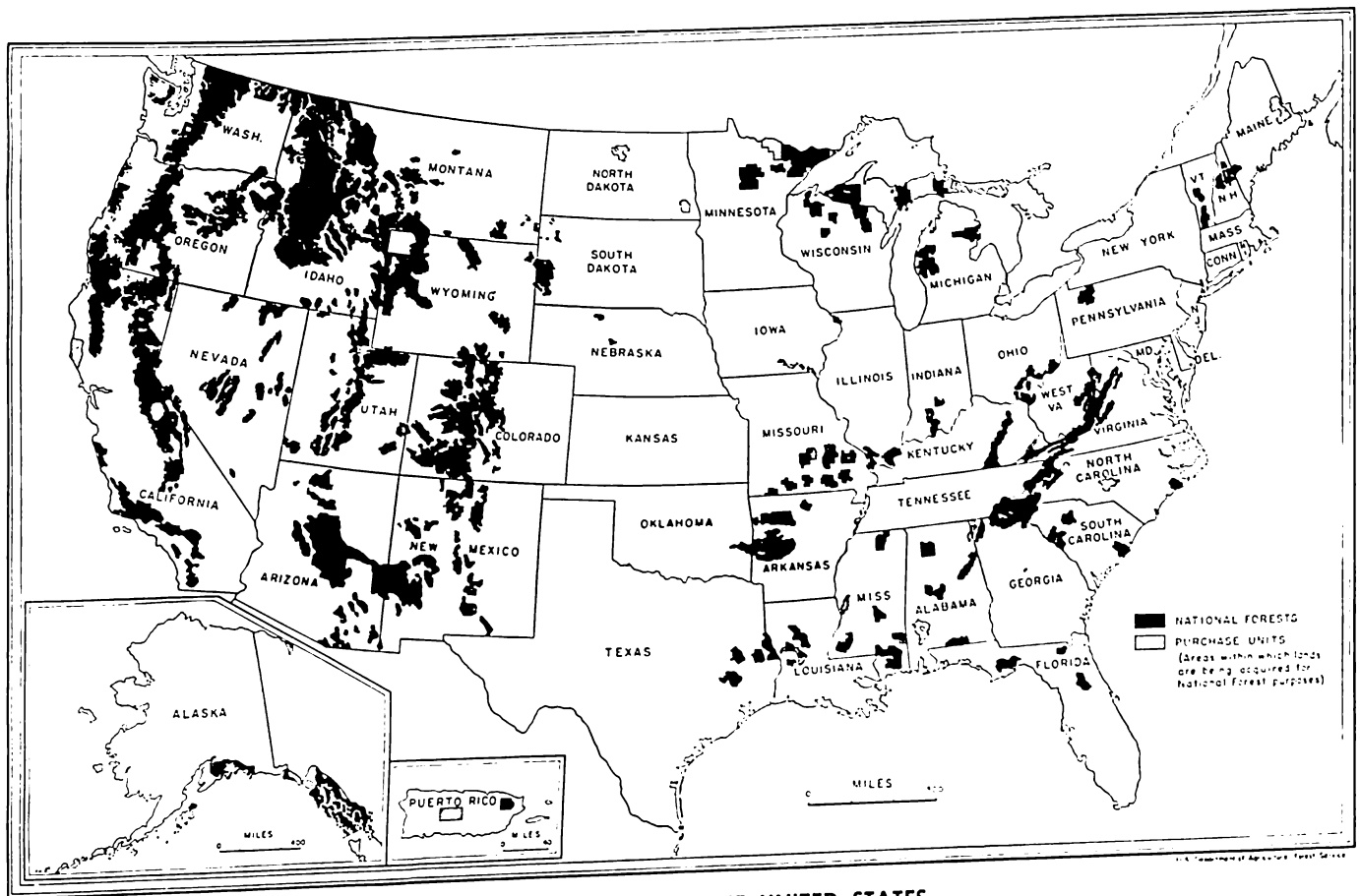
FORESTS AND WILDLIFE

Forests

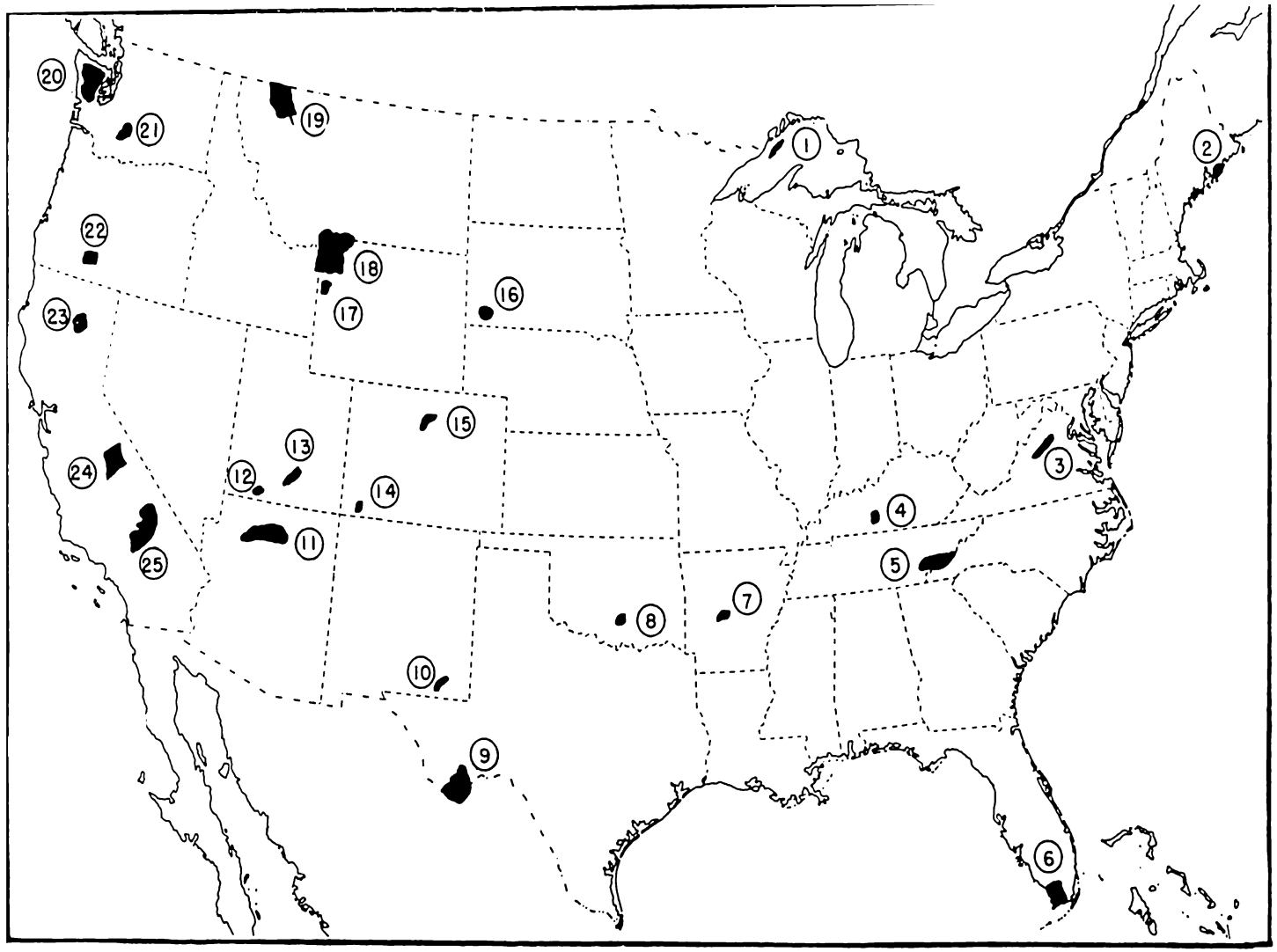
As a positive program deliberately adopted, conservation in this country really had its beginning 50 or 60 years ago in an effort to preserve and extend the nation's forests. Theodore Roosevelt not only perceived the immense value to the people of forests yielding lumber, stabilizing the distribution of moisture, preventing soil waste, fostering wildlife, and furnishing recreational facilities, but deplored the rapidity with which forest wealth was disappearing at the hands of lumber companies and other private exploiters. Under legislation dating from 1891, he and later presidents set aside generous portions of the public domain as national forests. Envisaging a forest program for the entire country, Congress in 1911 provided for extensive purchases for forest purposes on the watersheds of navigable streams, wherever situated. Purchases of other submarginal areas were later authorized. As a result, the United States has today, under custody of a Forest Service in the Department of Agriculture, a total of 152 national forests, situated in 42 states and Puerto Rico, and with an aggregate area (185 million acres) considerably exceeding that of the state of Texas. Many states, too, have set apart forests or created parks of their own, and in reality not far from one-third of the country's total wooded territory (630 million acres) benefits from direct national or state protection. To be sure, the public forest areas are not simply walled off as reserves for the future. A forest benefits from judicious use, for example, removing fully matured trees in order to clear the way for younger growth. Accordingly, in the national forests (and usually in state forests as well), timber is cut and marketed by private companies, under government supervision. Selected tracts are also leased for grazing purposes; and nearly the entire expanse is open to campers and other recreation-seekers, under regulations permitting no damage to the wooded growth. The first consideration, however, is the preservation of the forests as *forests;* and to that end they are given all possible protection against fire, insects, disease, soil erosion, flood, and damage from indiscriminate grazing, as well as from destructive cutting. In areas that require it, systematic planting of young trees is carried on, whether as reforestation of lands that have been denuded or as afforestation of lands not previously wooded but likely to be useful only if made so. Over two-thirds of the forest resources of the country remain in private hands, and states and nation are constantly encouraging sustained yield management of these precious resources. The governments also collaborate to protect these forests from fire and disease.

The national parks

Not all of this nation's precious resources are so closely identified with material well-being as are soil, timber, water power, and minerals. Conservation to many of our people embraces also the preservation of scenic beauty, of spectacular natural phenomena, of historic spots, of areas which may remind us of the land before the white man came. The enjoyment of these things should also be passed on to our children's children. Although this phase



NATIONAL FORESTS OF THE UNITED STATES



MAJOR NATIONAL PARKS OF THE UNITED STATES

(1) Isle Royale, (2) Acadia, (3) Shenandoah, (4) Mammoth Cave, (5) Great Smoky Mountains, (6) Everglades, (7) Hot Springs, (8) Platt, (9) Big Bend, (10) Carlsbad Caverns, (11) Grand Canyon, (12) Zion, (13) Bryce, (14) Mesa Verde, (15) Rocky Mountain, (16) Wind Cave, (17) Grand Teton, (18) Yellowstone, (19) Glacier, (20) Olympic, (21) Mount Rainier, (22) Crater Lake, (23) Lassen, (24) Yosemite, (25) Sequoia.

of the conservation has been the least adequately supported by "practical" statesmen, through the years the nation has set aside from its own lands or acquired from private owners 24 million acres in 42 states and three territories which have scenic or historic significance. Most of this acreage is embraced in 28 national parks and 152 historic and other areas. Yellowstone was the first of these areas, set aside by the Congress in 1871. A National Park Service, created in the Department of the Interior in 1916, now administers Yosemite, Grand Canyon, Smoky Mountains, Grand Teton, Yellowstone, Mount Rainier, Glacier, and the other parks and historic areas. More than 85 million visitors enjoy these places each year. Much of the cost is borne out of income from concession privileges and admission or other charges. Appropriations for maintenance, however, fell far behind the demands created by the millions of touring Americans who are now using the parks. To meet this problem, the Park Service in 1956 launched a 10 year program to bring its facilities to the level necessary to care for the 100 million persons who will almost certainly be park users by 1966. In general, the Congress has responded favorably to the needs for added expenditures.

Fish and wildlife

Well before the close of the nineteenth century, Congress recognized the value of the country's fish and game, not only to the sportsman, but to the people generally as a source of food and an otherwise productive element in the national economy. An office of commissioner of fish and fisheries was created in 1871 and a biological survey established in 1885. In 1940, these and other agencies entering the field as the conservation movement gained momentum were gathered into the present Fish and Wildlife Service in the Department of the Interior. Here again, as in the case of forests, there must be a division of labor with the states. Throughout the public domain, the national service is free to regulate fishing and hunting as it likes, to maintain fish hatcheries and stock streams and lakes, to correlate wildlife protection with forest control. It administers and enforces, too, the laws relating to marine fishing, and even operates the fur seal industry of the Pribilof Islands of Alaska, selling the product to private traders. Outside of the public domain, it cooperates with states and their subdivisions, and indeed with private agencies and organizations, in much that relates to the development, protection, rearing, and stocking of all desirable species of wildlife. It carries on research, helps plan useful regulations, provides wildlife refuges (more than 280 have been established), administers grants-in-aid, helps enforce local game laws, and generally provides a spearhead for conservational work in this field. Congressional power over interstate and foreign commerce is available for direct control of the program. As long ago as 1900, it became a national offense to ship out of a state game of any sort taken in violation of state law. To meet a situation created by the passage back and forth every year of wild fowl between nesting places north of the border and winter refuges in the southern states, Mexico, and Caribbean countries, agreements for protection have been entered into under a Migratory Bird Treaty Act of 1918 with both Canada and Mexico. Our own states are forbidden to make or sanction

any less rigorous rules concerning killing such birds than those laid down nationally.

MINERALS—PETROLEUM

Minerals

Top soil, when lost, can be replaced only very slowly and precariously; when minerals disappear, they are irreplaceable—except in geological time. Originally, the United States was richly endowed with mineral wealth; and compared with many other countries, it still is so. Nevertheless, for 100 years there have been heavy use and wastage, and in the last 30 or 40 a machine civilization and mechanized warfare have taken terrific toll of supplies once lightly viewed as virtually inexhaustible. In 1950, the American economy consumed about 2.5 tons of ore per person. The list of minerals still abundant has grown surprisingly short. On the present scale of consumption, we are told we still have enough bituminous coal for 1000 years and enough anthracite for 175 years. With oil and gas already cutting sharply into demand, and civilian uses of atomic energy in the offing, not all of the underground stocks may ever be needed. We still have long-range supplies of iron (at any rate lower-grade ores), oil, gas, phosphate, and molybdenum. But unmined supplies of gold, copper, zinc, and bauxite (from which aluminum is extracted) are said to be good for only about 20 more years, and of lead, manganese, and vanadium for only 10; while stocks of platinum, antimony, mercury, tungsten, chromium, nickel, tin, mica, graphite, asbestos, diamonds, and quartz crystals are—in proportion to the uses we make of such materials—negligible. As we quickly discovered during the two world wars, we are, with respect to many strategic minerals indispensable to our economy, a "have-not" nation. Each year we are importing a larger proportion of our raw materials. Recognizing that new discoveries and inventions may improve the situation at various points, one nevertheless understands why, in the present-day conservation program, minerals hold a high place.

The task of identifying, locating, investigating, and mapping mineral resources falls principally to the Geological Survey in the Interior Department; and prolonged researches of this agency have resulted in detailed classifications and descriptions of all mineral-producing lands. The bulk of the country's minerals of primary concern to industry and defense—coal, iron, oil—are located in areas outside of the public domain; and governmental policies looking to preventing their wastage have to be more or less indirect, for example, in the case of oil and gas, through regulation of interstate and foreign commerce. Mineral deposits on the public domain also, however, are important; and here systematic protection is afforded under a policy of the past 40 years by which (*a*) when such land is alienated to private persons or corporations, the government reserves all mineral wealth contained, to be kept intact or exploited only under such terms as the government may impose, and (*b*) when land remaining publicly owned is leased for any purpose, no mineral rights pass with it except such as the government specifies, and with

royalties on any minerals extracted paid into the Treasury and in part passed on to the appropriate states.

Petroleum

Only 2 per cent of the oil produced in the United States today comes from the public domain. Although the amount produced on state-owned lands is larger, the great bulk of the annual output is yielded by lands that have passed into private ownership—which means that whatever is undertaken by government in the interest of conservation must, by and large, proceed by public regulation rather than by management of a resource still in public possession. Until within the last 30 years, not much was accomplished, and wastefulness ran riot. Under the "law of capture," any landowner in an oil-producing area was at liberty to drill as many wells on his property as he liked, tapping pools under it and drawing off oil from underneath neighboring properties as well. Many another dubious device calculated to speed up the flow of riches from "black gold" was freely invoked. Beginning with Oklahoma in 1915, some states sought to curb extravagance by regulating the distance between wells, forbidding oil and gas to be left flowing and burning in fields, and even assigning production quotas through some administrative agency. Results were not happy. Yet only after discovery of the rich eastern Texas fields in 1930-31, augmenting output and shattering prices, were two lines of action started which in time led to the restrictive system that we now have—(1) interstate agreement and (2) national control through the commerce power.

Present controls

The first of these did not begin auspiciously. In 1931-32, Texas, Oklahoma, and Kansas tried, by agreement, to discourage overproduction and price demoralization by forbidding shipments exceeding fixed quotas from the respective states. In spite of all that they could do, however, "hot oil" streamed into other parts of the country, production continued at extravagant levels, and chaos prevailed, especially after the Supreme Court held that governors of states might not resort to martial law in order to police production controls. But the excess oil was shipped in interstate commerce; and this gave the national government an opening. In the National Industrial Recovery Act of 1933, the president was authorized, with a view to helping the states out of their dilemma, to prohibit the transportation in interstate or foreign commerce of any petroleum or its products produced or withdrawn from storage in excess of amounts permitted by state law or regulation. A code for the oil industry, with the secretary of the interior as administrator, was duly put into operation. Here again, however, there was discouraging experience. Tested in the courts, the arrangement collapsed. The damage, nevertheless, was not irreparable. To begin with, the states returned with fresh vigor to the policy of co-operative regulation; and, with authorization from Congress granted in advance, a group of them entered into a new compact prorating volume of production and of allowable interstate or foreign shipments. By 1963, 30 states (producing 90 per cent of the country's oil) were adhering to the plan. Congress followed the Court rebuff by passing the "Hot Oil" (Connally) Act of 1935 which directly forbids interstate and foreign commerce in petroleum in violation of state regulation.

WATER AND WATER POWER

Bases of national authority

In most parts of the country, water is something that is there when and where it is needed, and people simply take it for granted. But for city-dwellers at least, it is there only because government has provided for its capture, storage, purification, and distribution. For the nation as a whole, water raises problems as serious as does any other resource. From early times, towns and cities have been concerned with providing water for their inhabitants; and states, counties, and specially organized districts have had to do with protection against floods and with drainage projects, pollution abatement, power development, and irrigation. Almost from the beginning, the national government likewise has been involved. Important rivers commonly border or flow through a number of states; drainage basins cut widely across state lines; areas requiring water storage and irrigation know no state limits. And constitutional authority to operate in this field is ample. First of all, there is full power over the water resources of the public domain, in whatever states located. In the second place, there is authority to improve and regulate the use of navigable streams as avenues of interstate commerce. Flood protection, watershed development, recovery of the cost of improvement through utilization of power, are also considered by the courts as parts of commerce control.

Flood control

Aside from the navigability of streams, entailing chiefly the removal of natural obstructions, the regulation of artificial ones such as bridges and dams, and the control of water-power development, the national government's role in connection with water resources presents itself in three main phases: (1) the adjustment of situations in which there is danger of too much water; (2) the conservation and use of meager supplies in areas naturally semiarid or especially subject to drouth; and (3) the development of hydroelectric power from installations designed to promote irrigation, navigation, or flood control. While looking to states and localities to bear primary responsibility for providing levees and other forms of local flood protection, the national government has for three-quarters of a century stood ready to lend financial assistance, especially at times of unusual disaster. More significantly, however, as the concept of conservation has broadened, and as destructive floods have multiplied in the basins of the Mississippi, Ohio, Missouri, Colorado, Columbia, and other rivers, it has extended its activities to include permanent programs of flood prevention, in collaboration with state and local authorities. The states, of course, are not absolved from continued responsibility for their own protection. Congress, in 1936, authorized any two or more of them to enter into flood-control compacts, and four New England states promptly signed an agreement for flood control in the valleys of the Connecticut and Merrimac; Minnesota and the Dakotas followed with a compact for similar control in the valley of the Red River of the North; and other compacts covering the Yellowstone River, Arkansas River, Pecos River and many others have fol-

lowed in recent years. The same comprehensive Flood Control Act, however, which authorized such interstate arrangements virtually accepted flood control as in general a national function, with states and localities obligated only to provide necessary land and rights of way and even this obligation has since been considerably relaxed.

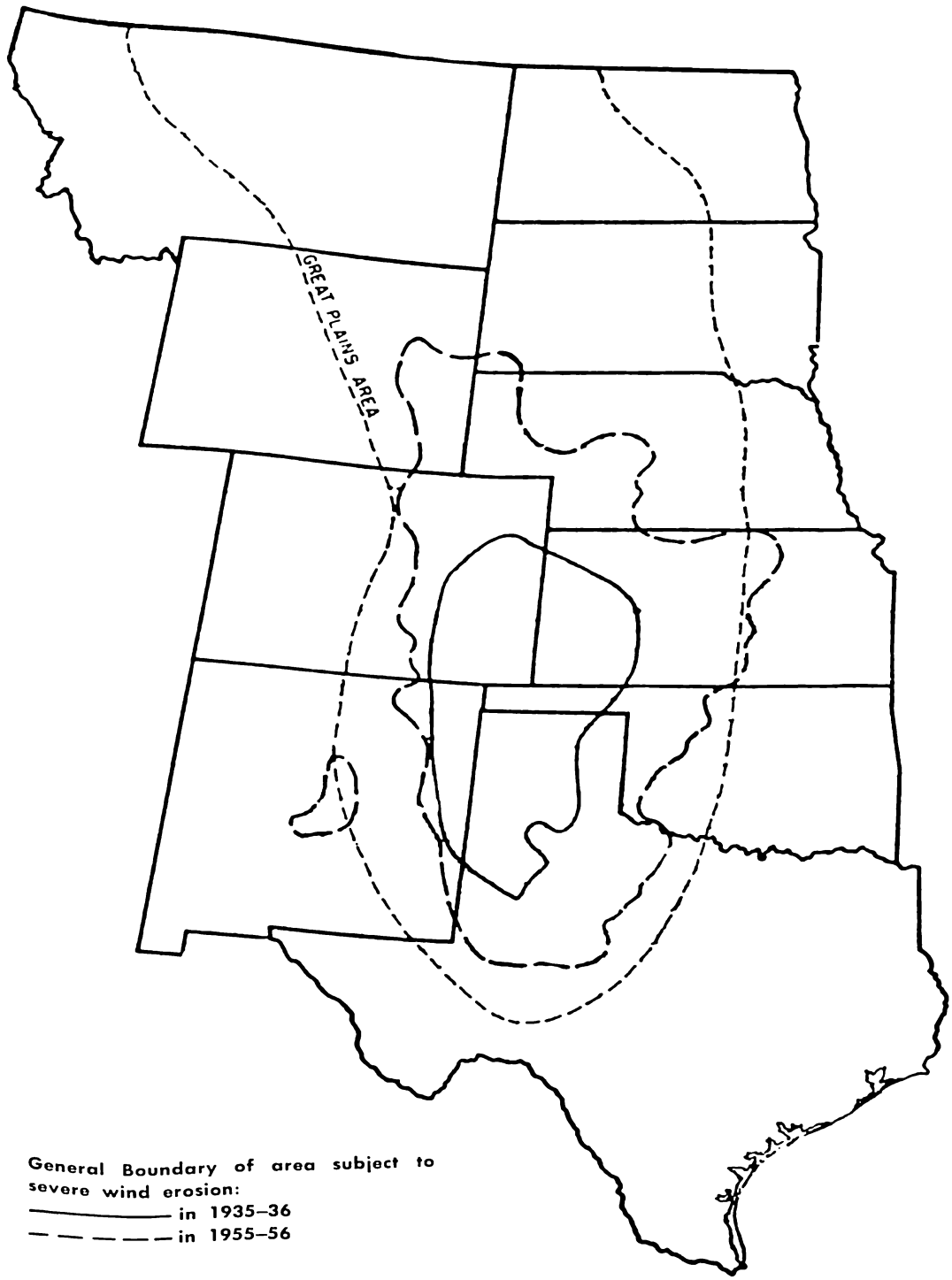
New Flood Control Acts in 1944 and 1946 and a Watershed Protection and Flood Prevention Act in 1954 have considerably expanded the national program. The Soil Conservation Service, working through local soil-conservation or flood-control districts, has entered the field in an important way promoting watershed protection, small dams, and on-the-farm water control measures with loans, technical advice, surveys, and grants. The Corps of Engineers of the Department of the Army, long charged with planning and constructing public works on navigable rivers, has also enlarged its flood-prevention activities.

Water scarcity

Apart from the irrigation needs of portions of 17 western states met by the Bureau of Reclamation, scarcity of water, until a decade or two ago, presented no problems sufficiently serious to evoke wide public concern. Destructive drouths and devastating sandstorms occurring in the summers of 1934, 1936, and again in 1953 and 1954, however, dramatically stressed the need for conserving and enlarging the water resources of the so-called "Dust Bowl." Surveys of that stricken territory revealed that a chronically serious condition had been growing worse. Large stretches of once fertile land were being turned into desert by unscientific farming (overgrazing and ploughing of grass land); and ironically, good rainfall, far from being a blessing, might only add to the area's impoverishment by carrying away still more of the topsoil. Realization of the situation prompted co-operative efforts by state and national governments to minimize the effects of drouths, if not actually to prevent them. An act of Congress in 1937 authorized the Department of Agriculture to promote in arid areas the construction and maintenance of reservoirs, ponds, wells, dams, and pumping facilities, while another in 1939 provided especially for water conservation in districts where farmers were too distressed to assume repayment obligations under the general reclamation laws. In 1954, the responsibilities of the Department of Agriculture for water conservation were extended by the Congress to all areas "arid" or not. Another large area presenting an especially acute problem of water conservation and redistribution is the interior of California, where the Sacramento and San Joaquin Valleys join to form the Great Central Valley, now benefiting from a tremendous "Central Valley Project" conserving and distributing run-off water from mountains to the north and east.

Water pollution

The water problem of the United States, however, is by no means confined to the arid and now irrigated areas of the West and Southwest. Currently, our people use about 250 billion gallons of water a day but by 1980 the daily consumption is estimated at 600 billion gallons. We have this much water but not necessarily in the right places. Whereas, for many decades the farm was the major user of water, industry is now surpassing it and this use combined



THE DUST BOWL

with the consumption of our urban citizens is likely to present in the future the most serious of water problems. Much of the water available for municipal and industrial use is water of poor quality (polluted by industrial and human wastes) and can only be made usable by extensive and expensive treatment. While many industries that use water for cooling purposes can use polluted water, others cannot. A great outpouring of wealth and energy is necessary if treatment is to be provided on a scale correlative to the problem. Congress in 1956 began a program of grants to communities on a matching basis for construction of facilities and for the development of pollution control programs. Efforts to increase national participation were resisted by the Eisenhower administration. The Kennedy administration increased appropriations for these purposes.

Other attacks being made on this problem include renewed experimentation in converting salt water to human use; efforts to procure more stringent enforcement of antipollution laws as well as the adoption of more effective laws; and research programs aimed at better utilization of water and easier removal of contaminating elements.

Hydro-electric power

The great river systems of the United States afford almost limitless opportunities for harnessing and utilizing water power. From the conservation standpoint, the use of this power of falling water to drive the wheels of industry and to ease the burdens of homemaking is vastly superior to the use of irreplaceable natural resources like coal and oil for these purposes. Industrial development is dependent in great measure on the availability of cheap sources of power. The South and West have lagged behind the East in industry partly because of the difficulty in extracting power profitably from their main resource, water. The extensive development by the national government of dams for flood control, irrigation, or navigation improvement has made it feasible to extract power from these same projects at favorable cost rates so long as the major installation costs are charged to the other uses of the project. Amidst fierce and continuing controversy over publicly-supplied versus privately-supplied power and over the proper allocation of costs in multi-purpose projects, the national government has moved, at first cautiously then strongly, into the field of power generation and distribution.

National regulation of water power

Earlier in this century the main national interest in water power was the regulation of private exploitation of water resources in the public domain and on navigable rivers. Citing its constitutional authority over navigable rivers, over the public domain, and over the interstate transmission of electric energy, the Congress in 1920 created a Federal Power Commission of three cabinet members to license the construction of power plants in sites under national jurisdiction, to control interstate wholesale electricity rates and to regulate the security issues of private utilities engaged in interstate commerce. Ten years later, a full-time Commission of five members replaced the cabinet committee. The Flood Control Act of 1936 extended the Commission's jurisdiction to include multi-purpose river-basin planning, and the development of electric power at government-constructed dams. The Natural Gas Act of 1938 added

further to the Commission's authority the power to regulate the interstate transportation and sale of natural gas.

The national development of power projects

In recent years, the major governmental concern in water power has been the development of power resources rather than the regulation of private developments. Beginning with the Tennessee Valley Authority (T.V.A.) and Hoover Dam on the Colorado River and largely under New Deal leadership, the Corps of Engineers, the Department of the Interior, and independent government corporations have steadily increased the amount of public power generated on government projects. In virtually all cases, power production has been bracketed with conservation, flood control, irrigation, navigation, or national defense in great multi-purpose dams. Opposition to these developments has also steadily mounted in intensity. Eastern industry, coal producers and unions, and private power interests have bitterly opposed using their tax payments to create competition in the South and West. The Republican administration elected in 1952 slowed down, but did not halt, the spread of public power and attempted to stimulate more private development of water power. The Kennedy administration has announced that the "no new projects" policy of the previous administration will be abandoned and that new public power projects will be undertaken in the light of available financing.

In addition to the great dams of the Tennessee Valley Authority which now have a capacity of more than 6 million kilowatts, the government projects include: the Columbia River program begun in 1937, administered by the Bonneville Power Administration with a capacity of 7.0 million kilowatts installed by mid-1963; the Southeastern Power Administration created in 1950 operating throughout 10 southeastern states with a capacity of 1.6 million kilowatts at 14 installations with 2 more projects underway; the Southwestern Power Administration, created in 1943, operating in Arkansas, Louisiana, and parts of Kansas, Missouri, Oklahoma, and Texas, with a capacity of 880 thousand kilowatts already installed and 5 projects still to be completed; the Bureau of Reclamation with many installations including those in the Central Valley of California, on the Colorado River, and in the Missouri basin with a total installed capacity of 5 million kilowatts; the Corps of Engineers with dozens of installations and with a total capacity in 1963 of 7.3 million kilowatts.

REGIONAL CONSERVATION—THE TENNESSEE VALLEY AUTHORITY

The regional approach

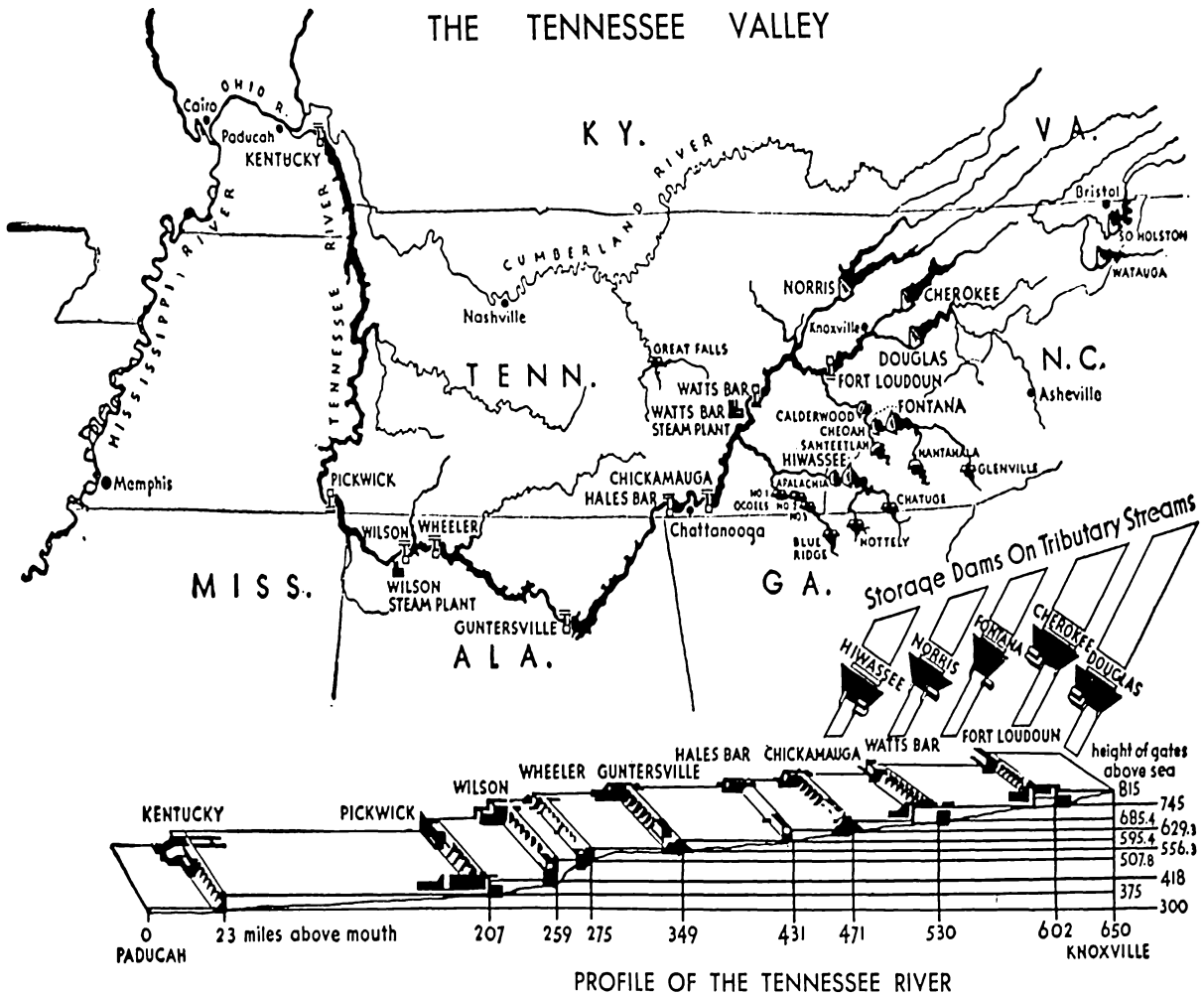
Conservation as practiced in this country draws heavily upon science and technology; it operates through legislation and administration; it sometimes gets into politics; and its pattern is fixed largely by geography, both physical and political. Physically, the pattern follows the distribution of resources to be protected—land and water everywhere, forests in eastern and western wooded areas, power where the main rivers are, oil and gas in the richly endowed fields of the South and Southwest. Politically, its planning and management are conditioned by the distinction between publicly and privately owned land, by the principle of federalism, by the allocation of constitutional powers, and by the

framework of governmental and administrative units—states, counties, districts. Historically different forms of conservation, whether nation-wide like soil conservation or more localized like the maintenance of forests and parks, have been developed separately. We still have largely independent land, forest, wildlife, mineral, oil, gas, water-power, and other laws, authorities, and services, with dispersion aggravated by allotment of administrative responsibilities to many different departments and regulatory agencies. Another approach, would be to bring together most or all of the various activities under a unified management functioning for a group of states or parts of states having common problems. We now have one outstanding example of this procedure in the Tennessee Valley Authority. As a regional area for such treatment, the valley of a large river is logical and convenient. Serving often as political boundaries, rivers commonly are thought of primarily as dividing lines. In reality, however, they usually unite rather than divide; their watersheds, to right and left, generally are alike physically, homogeneous socially and economically, and in need of the same protection for soil and forests and the same power and other services.

The Tennessee Valley Authority:

1. Origin and purpose

Construction of works at Muscle Shoals on the middle Tennessee River during World War I for extraction of nitrogen from the air, to be used in manufacturing explosives, left the national government the possessor of 2300 acres of land, two nitrate plants, a power house, and Wilson Dam. Postwar years saw much controversy over the use, if any, to be made of this property. Senator George W. Norris of Nebraska, an ardent advocate of public power development, launched a tireless campaign for enlarging the property and basing upon it a broad program of public ownership and development throughout the river valley. Two measures looking in that direction were killed by vetoes of Presidents Coolidge and Hoover. But President Franklin D. Roosevelt became enamored of the idea. Spurred by him, Congress in 1933 passed a Tennessee Valley Authority Act aimed at improving the navigability and promoting flood control of the Tennessee, providing for reforestation and proper use of marginal lands in the Tennessee Valley, encouraging the Valley's agricultural and industrial development, assisting national defense by operating government-owned nitrate plants, and indeed pointed toward other objectives not fully specified. Over a potentially rich and productive area of almost 41,000 square miles (four-fifths the size of England), embracing portions of seven states, and having a present population of more than 4 million, agriculture and industry were to be reconstructed, forests restored, soil erosion checked, mineral resources developed, cheap power and chemical fertilizers produced, and the inhabitants assured the benefits of a "more abundant life." To carry out the plan, the Tennessee Valley Authority was created as a government corporation under a board of three directors appointed by the president with the consent of the Senate and operating with funds supplied by Congress, supplemented by the proceeds of bonds which the Authority might issue in limited amounts and eventually by sales of surplus power. As envisaged by President Roosevelt and by the T.V.A. itself, the project was a significant undertaking



PROFILE OF THE TENNESSEE RIVER

in democratic management and in the relatively new art of regional planning, blazing the way, it was hoped, for enterprises of similar nature and scope in other suitable sections of the country. As viewed by people of contrary opinion, it constituted a venture in subsidized governmental competition with private utility and other business which would be unfair, uneconomical, and a flagrant abuse of national powers; and the two points of view still are encountered wherever T.V.A. affairs come up for discussion, in Congress or outside.

2. Activities and achievements

From its inception, T.V.A. was characteristically a multiple-purpose enterprise. Throughout its history it has been concerned with flood control, improvement of navigation, soil conservation, production of chemical fertilizers, reforestation, and development of power. It carries out directly enterprises like building dams, but, in the case of activities like soil conservation, it rather provides funds and centralizes planning, with administration decentralized, so that the area's people themselves and their governments may bear an active share in what is done. Although by no means overlooking other objectives, the Authority has (especially during its first 10 years) focused its efforts mainly upon taming the unruly Tennessee River, thereby promoting navigability, reducing flood hazards, and, in particular, providing great quantities of electric power. Twenty-seven major dams on the main stream or its larger tributaries have been built or acquired; others are contemplated; and arrangements have been made for selling surplus power to counties, cities, cooperative associations, and larger private industries (though not to individual consumers), with a view not only to recovering some portion of the huge expenses incurred, but also to providing a long-desired "yardstick" for measuring the fairness of rates charged consumers by private producers. Agreements entered into with leading private power companies, too, have enabled the Authority to extend its market considerably beyond its own immediate area. Several private utility properties have been purchased outright; and T.V.A. is now the largest producer of electric energy in the country. In meeting the urgent need for increased resources to vitalize our defense and war industries after 1940, the Authority proved an important asset, particularly helpful being the production of chemicals and fertilizers at Muscle Shoals and the stepping up of power production at the various dams. While an object of much continuing criticism and attack, partisan and otherwise, the experiment is to be regarded as having justified itself, for purposes of peace as well as of war.

Other proposed "valley authorities"

In President Roosevelt and others of like mind, T.V.A. inspired a vision of a country refurbished throughout its length and breadth by similar enterprises undertaken in suitable areas. Congress has for more than a decade been deluged with proposals relating to particular valley regions. In 1937, President Roosevelt himself advocated T.V.A. types of undertakings in the Arkansas and Columbia basins; in 1944, he called for a Missouri Valley Authority, to develop the water and other resources of parts or all of 10 or 11 western states comprising nearly one-fourth of the better crop land of the country; in 1949, President Truman urged both a Missouri Valley Authority and a Columbia Valley Authority. The valley authority system for resource development and

conservation has gained increasing support also from the unseemly quarrels and frustrations growing out of the dispersion of authority among the Soil Conservation Service, Forest Service, Bureau of Reclamation, Bureau of Land Management, Power Administrations and Corps of Engineers. Each of these, however, has managed to protect its present jurisdiction. Thus far, all efforts to achieve a more logical allocation of functions among the departments or to achieve it regionally by valley authorities have been unsuccessful. The first Hoover Commission recommended that virtually all land management programs be consolidated in the Department of Agriculture and water resource programs in the Department of the Interior. It did not support the valley authority idea. The Bureau of Land Management resisted transfer from Interior and the Corps of Engineers from the Army and the recommendations got nowhere. Much of the present controversy centers around development of the Missouri Basin, with the Corps of Engineers and the Departments of Interior and Agriculture each presenting a separate plan. Early in 1961, a Senate Select Committee on National Water Resources urged the development in cooperation with the states of comprehensive river basin plans for the major rivers of America by 1970. The Kennedy Administration has urged the establishment of planning agencies for all river basins where no coordinated program exists.

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19

Promoting Public Health and Welfare

GOVERNMENT AND WELFARE

The welfare function

AN IDEAL SOCIETY would be one in which every individual had enough to eat and wear, adequate shelter, protection for health and safety, a chance for a good education, and an opportunity to earn a living by moderate toil, with safeguards against worry and want in old age. Such a society never existed, and some people would say that in the troubled world in which we live there is no use dreaming of one. Doubtless the United States has come nearest to realizing something of the kind, but not even our rich resources and technical competence have availed to prevent much poverty, misfortune, and insecurity. It has been necessary from earliest days for the more fortunate to help the disadvantaged through private agencies and through government on all levels. The promotion of public well-being has been a primary responsibility of government for generations. In a sense, everything that government does is intended to advance the people's well-being. Public activities contributing to health, safety, morals, rehabilitation, recreation, poor relief, and social insurance are aimed at that objective most directly. These are the important elements in modern public welfare programs.

Local and state welfare activities

The earliest welfare activity on record (using the term in the specialized sense in which it will be employed here) was care of the poor. In England, this responsibility, insofar as not discharged by relatives or other private benefactors, early fell to the church parish. Even before the American colonies were founded, however, parliamentary legislation authorized taxation for this purpose, and the colonies inherited the concept of poor relief as a public, tax-sup-

ported function. In New England and some of the middle colonies, the town became the relief agency; farther south, the parish—soon replaced, however, by the county. To this day, towns and counties throughout the country raise and spend much revenue for this purpose. More than 100 years ago, the states also entered the field—establishing hospitals and asylums for special classes of unfortunates such as the feeble-minded, the insane, hardened criminals, and the blind; setting up boards and other authorities to administer such institutions; organizing departments of welfare; and in some cases supervising local services. In times of stress, programs of public succor sometimes proved pitifully inadequate. On the other hand, deficiencies were met to some extent by the private charities for which our people have traditionally had a commendable record. Early in the present century, states began helping their local governments extend financial aid to persons outside of institutions, chiefly the aged, the blind, and needy mothers. Meanwhile, too, states and localities were contributing to welfare in the broader sense by developing health services, introducing safety requirements in transportation and industry, building up educational systems, providing highways, fostering agriculture, protecting natural resources, regulating working conditions for women and children, fixing hours and minimum wages in industry, enacting workmen's compensation laws, encouraging good housing, and in many other ways.

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The national government and welfare

From early days, the national government likewise had a good deal to do with welfare in the broader meaning of the term. In the case of the states, broad constitutional authority flowed from reserved powers; in that of the national government, such authority was ample also, not only because specific powers like that of regulating interstate and foreign commerce could be drawn upon, but especially because of the blanket grant of power to raise money "to provide for the . . . general welfare of the United States." And through the years—particularly after 1900—national welfare activities took such forms as: (1) humanizing the conditions attending immigration, (2) curbing the transmission of diseases and the distribution of impure food and drugs, (3) maintaining hospitals for certain classes of the ill and injured; (4) conducting research on problems of health and creating a public health service to cooperate with and assist state health services; (5) imposing safety regulations on railroads, air and water carriers, and mines; (6) taxing out of existence injurious forms of manufacturing, for example, making matches from white phosphorus; (7) curbing and controlling traffic in narcotics; (8) prohibiting the circulation of immoral matter through the mails and the interstate transportation of persons for immoral purposes; (9) matching state contributions for support of vocational rehabilitation; (10) promoting the well-being of Indians on reservations; (11) caring for veterans; and other services too numerous to mention. Until the "Great Depression," however, the national government largely left to the states the task of caring for the poor, the sick, and the unfortunate. In 1912, a Children's Bureau was established in the then existing Department of Commerce and Labor, to encourage the states to enact remedial legislation on child labor. In 1918, small grants to the states were initiated for combating venereal

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diseases, and in 1920 for encouraging vocational rehabilitation. In 1921 a Maternity (Sheppard-Towner) Act gave the states limited funds for five years for promoting the well-being of mothers and infants. Although judicially sustained when challenged, this measure was allowed to lapse at the end of its period. Not until after 1930 was anything further added to the record.

FROM RELIEF TO SOCIAL SECURITY, 1929-35

The shock of depression

During the lush decade of the twenties, local and state welfare services expanded only slightly and along traditional lines. National programs remained as before. The nation, thus, entered the depression firmly attached to a system of public care for the unfortunate which emphasized local responsibility and which was supported mainly by local taxes. In its main contours the American system of poor relief had been designed in Elizabethan England. The swelling tide of unemployment spreading want, fear, and despair over the face of the land soon engulfed the private charities and the town, parish, and county poorhouses and dole systems. The states attempted to bolster the local units with grants and loans and work programs but they too were soon swamped by falling income and inadequate machinery. Still unemployment mounted, to 10 then to 12 millions, and private charity, local units, and state governments looked to the national government for help.

The first national efforts took the form of loans by the Reconstruction Finance Corporation to state and local governments for public works construction to give employment and for direct cash relief. These units soon exhausted their credit as the "natural" recovery hoped for by the Hoover administration failed to materialize. And to the ensuing Roosevelt administration it fell to attack the problem with fresh determination and a new philosophy. The policy of the new regime was to put vast new resources at the disposal of the states and local units and also to act directly, on many different fronts, to create employment and provide relief. Most of the major steps taken have been touched upon at various points in preceding chapters of this book, and need not be reviewed here. Suffice it to say that billions of dollars were appropriated, piling up a national debt considered extraordinary until dwarfed by that incurred during the later years of defense effort and war. Through a Federal Emergency Relief Administration, a Public Works Administration, a Civil Works Administration, a Works Progress Administration, and other huge agencies that came and went, vast programs of employment and relief were carried forward by direct action of national agencies and through grants to states, counties, and cities.

The Social Security Act (1935)

Down to 1934-35, thought and effort were centered largely upon breaking the back of the depression. Huge outlays for relief, for employment on public works and vast loans and gifts to states and localities, however, could not go on forever, even though the conditions currently requiring them easily might recur. Moreover, there ought to be ways not only of cushioning the impact of "hard times" when encountered, but of giving large masses of people

a new sense of security against hazards of both bad times and good. The interest of those having to do with making national policy now turned, therefore, to devising ways by which the states, with the help of insurance systems and relatively modest grants-in-aid, could be brought back into the center of the welfare picture. National spending on employment-making public works and on other forms of relief went on to some extent until after the economic situation was sharply reversed by the defense and war effort starting in 1940. In 1935, however, and after careful studies of the social insurance systems in Europe, and of the question of a permanent program for this country, Congress, by heavy majorities, passed an omnibus Social Security Act representing the first concerted nation-wide attack involving all levels of government on the problem of economic security for wage earners and their families. Conceding that the measure as enacted did not provide complete protection against "the hazards and vicissitudes of life," President Roosevelt, at all stages a vigorous sponsor, nevertheless characterized it as "the most useful and fundamental single piece of legislation ever enacted in the interest of the American wage earner." As now operating after several expansions of coverage, the program furnishes impressive testimony to the accepted responsibility of government on all levels for assuring all people in all parts of the country a reasonable degree of economic and social well-being.

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SOCIAL INSURANCE

1. Unemployment compensation:

Towering above all else in the general scheme provided by the Act of 1935 are two plans of social *insurance:* (1) unemployment; and (2) old age and survivors. These two insurance programs represent efforts to provide long-term solutions to the central problems of social security.

a. The national-state basis

Loss of their jobs by millions of workers during the great depression sharply emphasized the hazards of layoff and dismissal confronting industrial workers. A major objective of the legislation of 1935 was to encourage the states to soften the impact of such disasters by providing benefit payments from which employees, usually with meager reserves, could, when laid off or dismissed, keep themselves and their families going for at least a limited period without turning to public relief. Virtually every state already had workmen's compensation laws under which employers were required to carry insurance to enable them to pay benefits to employees kept from work by industrial accidents or occupational disease. This had become an accepted part of the cost of production and was passed on to the consumer in the price of goods produced. To this was now added benefits for employees kept from work, not by accident or illness, but by lack of employment. The cost was to be part of the legitimate expense of doing business and passed on to consumers. Like the President's Committee on Economic Security, whose recommendations were largely followed, Congress weighed the desirability of a straight national system of unemployment insurance, uniformly compulsory and nationally administered. Fearing, however, that such a scheme would be held unconstitutional,

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and considering it desirable not to dictate any one of the many different forms that such insurance might take, the two houses agreed upon a plan offering the states substantial inducements (including subsidies to cover costs of administration) to devise and set up unemployment compensation systems of their own. If any state failed to do so, the minimum system prescribed in the law would be applied to the industries of that state by the national government. With this type of sanction, every state promptly established its own program. Speaking strictly, therefore, under existing law there is no national system of unemployment compensation, but only a variety of state systems operating under national standards and with national supervision.

b. Financial arrangements

The heart of the plan is the arrangement for financing the insurance from payroll taxes paid by employers. In the first place, the national government levies a 3.1 per cent tax upon the payrolls of all employers of as many as four persons during at least 20 weeks of a calendar year. The taxable payrolls are so computed, however, as not to include anything paid to any employee in excess of $3000 a year. In the second place, each state levies its own payroll tax, for support of its own unemployment compensation system, set up and operated under its own law. The state tax may apply only to those liable to the national tax or it may be, and in many states is, applied to more employers. In the third place, when an employer pays his national tax, he is allowed an offset for the amount he is paying his state; in other words, he actually pays the national government a payroll tax of 0.4 per cent. A state therefore can tax an employer at the rate of 2.7 per cent without imposing any additional burden, because anything up to that amount will be deducted when the national tax is paid. In all states except one, 2.7 per cent is the maximum rate of state tax. However, most states have established systems of "merit" or "experience" rating by which employers with good records for steady employment may reduce their state tax liability without increasing their national taxes. The average rate of tax is, therefore, appreciably less than 2.7 per cent of covered payrolls. Should any state elect to remain out of the system, its employers still would be liable for the national tax, the proceeds of which in such a case would be retained in full by the national government and used nationally. All funds collected by the states go into an unemployment trust fund in the national treasury (held, however, in separate state accounts), and are invested in national bonds, subject, of course, to requisition by the states as needed for benefit payments. During the recessions of 1958 and 1960-61 unemployment rose rapidly and thousands of covered employees exhausted their benefits while still out of work. Congress on both occasions provided for a temporary extension of payments to these persons for an additional 13 weeks. In the first instance (1958), 17 states that had exhausted their own reserves were authorized to borrow from the national reserve to make the payments. By 1961, none of these had paid back anything and the second effort was also financed by advances out of the reserve. The national payroll tax was raised from .3 to .4 per cent in 1960 and then to .8 per cent for one year (1962) and to .65 per cent for one year (1963) to replenish the national reserve.

c. State patterns

To participate, a state must meet certain requirements. It must, of course, set up an unemployment compensation system, levy the necessary tax, and provide for administration through a regular industrial commission, a special unemployment commission, or some other suitable agency. It must arrange to have all benefits paid through public employment offices or other approved agencies. It must agree that funds withdrawn from its treasury account in Washington shall be used solely for payment of benefits. There are also restrictions upon its liberty to withhold benefits under special circumstances arising from industrial disputes. Apart from these restrictions, a state is free to adopt any particular type or scheme of compensation preferred, to determine the categories of unemployment to be covered, and to fix the scale of benefits to be paid. Under these conditions—with every state, and the District of Columbia participating since 1939—there are many differences from state to state. The tendency over the years has been for the various state systems to become more and more similar. Nine states started by taxing employees as well as employers, but now only New Jersey, Alabama and Alaska do this. Nearly all states follow the national act in excluding from coverage self-employed persons, agricultural workers, domestic employees, and employees of nonprofit agencies and institutions. Almost half of the states, however, cover smaller firms than the national act.

Altogether about 45 million workers are covered by the system out of a labor force of 70 million. The only major changes in coverage since 1935 have been: (1) the extension of coverage to employees of the national government in 1954; (2) extension to smaller firms beginning in 1956; (3) removal of railway employees in 1938 and provision for them by a separate system; (4) addition of maritime workers in 1946; and (5) inauguration of a special coverage for ex-servicemen in 1958. President Kennedy sought unsuccessfully in 1961 and again in 1963 to extend the coverage to small firms and nonprofit organizations.

Inflation in the postwar era has markedly reduced the real value of the benefit payments despite the fact that most states have been increasing their maximum weekly rates. The most recent tabulations (1961) show the average weekly payment for the entire United States is $34. Benefits are paid during any one year for not more than 26 weeks in most states. Eligibility for benefits is computed according to somewhat varying wage-credit formulae in which length of employment and taxable wages received are principal factors. Many students of the subject consider that the maximum weekly payment ought in no case to be less than $45 nor the maximum period less than 26 weeks. President Kennedy proposed in 1963 to raise the benefits and also to raise the amount of taxed wages. Except, however, for the large number of workers not covered and the diminished value of benefits resulting from inflated living costs, existing arrangements have yielded generally good results. The system, however, is designed only for short-run or seasonal unemployment. It is not geared to take care of prolonged economic depression. Finally, it should be clearly understood that this system is designed to take care of those who are

eady, willing, and able to work. It is not for the disabled, the sick, the infirm, r the aged. To receive benefits, a worker is obliged to register at the nearest ublic employment office, operated by the state in conjunction with the unmployment insurance program and he must accept "suitable" employment if ffered to him.

2. Old age and survivors insurance:

The other insurance plan provided by the Social Security Act of 1935 vas designed especially for the aged. The problems of the nation's senior citizens were brought into sharp focus by the depression. Layoffs had been especially heavy among workers over 50. The mechanization of industrial production and the introduction of assembly-line techniques had made it difficult for the older workers to keep up with their younger rivals. The great improvements in this century in private and public health had produced a rapid increase in the percentage of our population over 60. The urban family unit, unlike the rural family, was not equipped by living space or income to take care of its over-aged dependents. The result: a disproportionate share of those in distress were in the older age group. Public works programs, the preferred method of the Roosevelt administration, did not greatly aid those who were past their prime and thus unable to do heavy labor. Everywhere in the nation the older citizens were demanding special attention—many of them through the Townsend movement for old-age pensions.

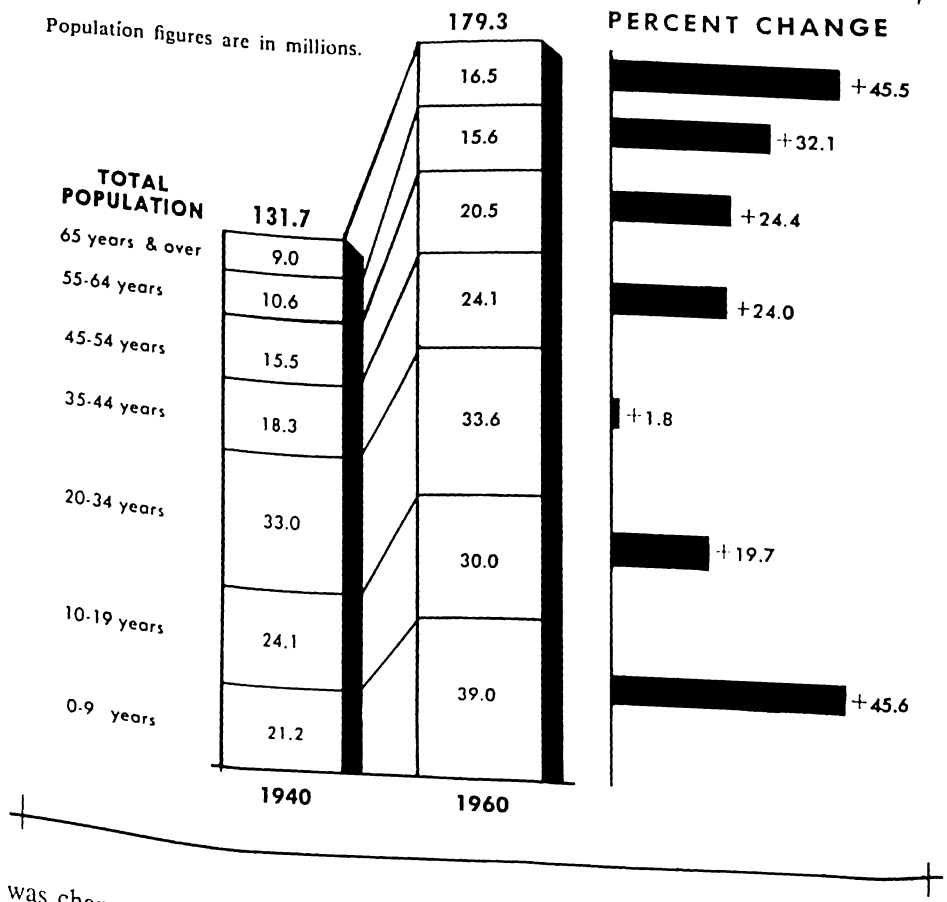
a. Outline of system

In essence, the system established in 1935 is a nation-wide contributory retirement system under which annuities or pensions, graduated in amount on the basis of earnings and duration of employment, are payable at age 65 from a fund built up from money paid in equally by employers and employees. The national government was intended to make no financial contribution beyond meeting the costs of administration. It does bear undivided responsibility for operating the system and plays the combined roles of collector, bookkeeper, and manager. The states and their subdivisions have no part in the undertaking. On the employee's side, the plan is one for compulsory savings—in other words, for spreading wages over his adult lifetime rather than over merely his wage-earning years, so that after retirement he may have a resource on which to draw for a living. And on the theory that the employer (not to mention the taxpaying public) has a stake in fostering employee frugality and in keeping his employees from eventually going on relief, he is required to give his workers, in effect, a premium for their industry, and in so doing to help make the plan workable, as a scheme of "cooperative thrift," by sharing in creating and maintaining the fund. Under the system, almost 15 million retired workers already are drawing benefits, while other millions still on the job are building up potential rights to future old-age income.

b. Coverage

At the outset, old-age insurance applied to substantially the same workers as unemployment compensation, with approximately the same groups, for example, agricultural workers and domestic employees, excluded. Whereas, however, the coverage of unemployment insurance never has been expanded on any large scale, that of old-age insurance has been greatly broadened. In 1939, 1.5 million workers not previously reached were brought in, the name

POPULATION CHANGES BY AGE GROUP, 1940-1960



was changed to "old age and survivors" insurance, and coverage was further widened to include protection not only for the worker but for his family, through provision for monthly benefits for aged wives and young children of retired workers, and for widows, orphans, and aged parents of workers dying before retirement. After prolonged agitation, an amending act of 1950 brought under the system, in addition, 4.7 million self-employed nonfarm workers, 1.45 million employees of state and local governments, a million household servants, 750 thousand regularly employed farm workers, and certain smaller groups—an aggregate of some 10 million. In 1954, another 10 million workers were potentially added to the system, including public employees in all jurisdictions desiring it, farm laborers, and members of many professions. More than 90 per cent of the country's entire labor force is now covered by the system.

c. Financing

Contributions made by employees and employers alike started at 1 per cent each of the wages received or paid in 1937, and under the original law

would, by stages, have reached a maximum of 3 per cent each in 1949. Because, however, huge reserves were necessarily built up in anticipation of future claims, Congress, from year to year, and usually over presidential objection, "froze" the tax at 1 per cent. Beginning in 1950, however, the levy was allowed to rise to meet the costs of increased benefits, lower retirement ages, and greater allowances for widows and dependents. The original schedule was modified and the tax in 1963 is now 3.6 per cent and is scheduled to rise ultimately to 4.5 per cent. In the beginning the tax was paid on the first $3000 of annual wages; it is now paid on the first $4800.

d. Benefits

Accompanying the tax increases in the postwar years has been a general increase in benefits paid out by the system. Under the original act, average monthly payments of $20-$25 were typical, with lower payments to surviving widows and higher payments to families with children. Increases granted at various times have raised the average monthly benefits to $70-75 for retired workers. Each rise in the benefit schedule has also been accompanied by rises in the allowable earnings of retired beneficiaries. The reserve created against future claims had by 1963 reached the staggering total of almost $20 billion.

There has been a good deal of controversy, first and last, about whether this system is actuarially sound and solvent. The long delay by Congress in raising the tax rates as originally planned gave a great deal of support to those who argued that ultimately deficit financing by Congressional appropriation would be required. A special review of the program in the light of the changes of the 1950's, conducted in 1958 by an Advisory Council for the board of trustees of the OASI trust fund, pronounced the present system reasonably sound.

e. Results

The result of the old-age-insurance system as now operated is a minimum guaranteed retirement income for virtually every employed person when he reaches age 65 (in some cases 62) or for his widow and family if he dies before that time. The adoption and expansion of this system brings this country into line with most advanced European nations. We have taken a long step toward eliminating the concern of many of our people about the declining years of their lives.

The most vigorous controversy today about the insurance system concerns the proposals put forth by several congressmen and most recently by President Kennedy for adding a medical care insurance system to it for the aged recipients of old-age insurance. The President's proposal would have increased the payroll tax to finance the medical payments. Congress has, thus far, not approved.

PUBLIC ASSISTANCE

Categorical assistance:

The two insurance systems established in 1935 were designed to make long-range provision for the aged and the temporarily unemployed. Neither scheme was intended to relieve immediate distress. The Social Security Act of 1935, therefore, provided a program of immediate and continuing assistance

to certain needy individuals. In examining the types and conditions of persons who needed help at that time and would be likely to need it in the foreseeable future, the Congress selected certain categories of such persons for whose welfare the national government ought to assume continuing responsibility. The sponsors of the *categorical assistance* program expected that responsibility for virtually all other classes of unfortunates would, henceforth, fall wholly on the states and local communities.

1. Old age assistance

The first group for whom the act established a continuing program of succor were the needy aged. Obviously no insurance program would help those at or near retirement age at the time, and, as we have noted, thousands and thousands of such persons were destitute in the mid-thirties. The pattern selected for aiding those needy aged was one which had been tested in some of the states. A few states had experimented with old-age pensions as early as 1923 and 25 states had some kind of system in operation in 1935. In most cases, however, the state systems were inadequate as to both coverage and benefits. Using the familiar grant-in-aid technique, the Act of 1935 created a joint national-state program of old-age assistance. National money was appropriated to any state which qualified by meeting the minimum national standards. These standards were: (1) that aid be paid on the basis of need; (2) that aid be extended beginning at age 65; (3) that the program cover the entire state; (4) that a single state agency administer the state's part of the program; (5) that the state pay a portion of the costs of the assistance; and, (6) that all personnel—state or local—engaged in administering the program be selected on a merit basis. To states with approved programs, the national government agreed to pay 50 per cent of all administrative costs and, originally, about 50 per cent of the assistance grants up to $50 per month for any single beneficiary. Most states quickly enacted laws qualifying them for participation and today every state, Puerto Rico, Guam, the Virgin Islands, and the District of Columbia participate in the old-age-assistance program. There are, of course, many variations in practice from state to state. Since the amount of actual benefit depends upon need and need is determined in each case by state or local public welfare workers, standards of assistance show wide regional variations. Eligibility for aid is also based upon varying requirements as to residence, responsibility of relatives, and citizenship. Under new amendments passed in 1962, able-bodied recipients may be required to work on community projects for part of their grants. The states' programs vary also in the amounts they are willing to put into the program. Many states, for example, have higher maximum monthly grants than the national formula entails. The average monthly payments, in fact, vary from $10 to $90. Modifications in the formula for national grants have been made in the ensuing years in the direction of increasing the national contribution. At present, the national government pays 60 per cent of the total cost of old-age assistance. During 1963, approximately 2.3 million persons (almost 20 per cent of all men and women over 65 in the United States) received an average of $75 a month under this program.

In 1960, a supplementary medical assistance program was introduced under which the national government assumed a major share of the rising medical care costs for the needy aged.

It might well be asked at this point why the old-age-insurance system has not after twenty-five years eliminated the need for old-age assistance. In the first place, the insurance program did not until 1950 include several million workers. As the coverage has been extended (in 1950, 1954, and 1958), the need for old-age assistance has been declining, but it will be another decade before those newly brought into the system can be supported more or less adequately out of it. There are also some persons still not included in the insurance program. Secondly, the benefits paid under the insurance program are in some instances not adequate to maintain a decent level of subsistence and must be supplemented by grants of assistance. Thirdly, the continued rise in longevity accompanied by major increases in medical care costs have made it necessary to use assistance grants for medical purposes. It is anticipated that if insurance benefits are enlarged and coverage extended, the need for old-age assistance will gradually diminish.

2. Aid to the blind

The second category of needy persons selected by the Congress in 1935 for a continuing national-state program of assistance was the blind. In general, the standards required for state participation were the same as for the aged, except that payments were to be made beginning at age 16 or 18 to persons whose deficiencies of eyesight incapacitated them for normal work. All of the states and territories participating in old-age assistance now also participate in assistance to the blind. In 1963, 98 thousand persons (more than one-third of the blind population) received an average grant of $80 per month of which the national government paid 45 per cent.

3. Aid to dependent children

Many dependent children are cared for (in a fashion) in privately or publicly supported asylums, orphans' homes, and foster homes. With a view, however, to salvaging the advantages of home care wherever possible, numerous states, even before 1935, enacted laws providing pensions or other forms of aid for needy mothers having children in their charge. The Social Security Act undertook to generalize this type of beneficence by instituting grants-in-aid for its support. State-operated systems vary, but in virtually all instances assistance is available only in behalf of children under 16 years of age (18 if in school) only if financial need is shown, and only if living with a parent or relative, although some provision is now made for children in foster homes. All states now receive subsidies for the purpose. In 1963, aid went to upwards of 940,000 families in behalf of 2.8 million children at a total cost of some $1.4 billion, of which the national government paid 60 per cent. A special addition—for one year only—to the program for dependent children was enacted in 1961 authorizing payments for children of the needy unemployed.

4. Aid to the totally and permanently disabled

A fourth category of needy beneficiary of national grant was added to the original three by the amendments of 1950: the totally and permanently disabled. National grants were, thereafter, made available to acceptable state programs which made provision for grants to persons 18 or over who were

totally and permanently incapacitated and who were not mentally ill or tubercular. In 1963, 440 thousand persons received grants averaging $76 per month of which the national government paid half.

Under the categorical aids program the national government has undertaken a continuing indefinite commitment to pay a share of the costs of providing assistance to all persons found to be eligible by state and local agencies. In this respect, the assistance aids differ from all other types of grant-in-aid programs operated by the national government. With need and eligibility determined locally or by the state and with national, state, and, in some cases, local contributions to the total costs, a pattern of assistance has been worked out which unites all of the levels of government. Each level meets that portion of the responsibility for which it is best suited. Controversy continues mainly over the share of the cost which should be borne by each level and the amount and character of supervision which the national government should exercise over the states. In a general overhauling of the categorical assistance program in 1962, emphasis is now being given to rehabilitative and training programs aimed at moving people off the relief rolls.

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CHILD HEALTH AND WELFARE SERVICES

For a few years in the early 20's, the nation had aided state programs for improving maternity care and child welfare. The Social Security Act reestablished a child health and welfare service program. Under it grants-in-aid are now made to the states and some territories for general support of appropriate state activities. As operated in 1963, $50 million is distributed annually among the states and territories for these programs. The grants are made in proportion to demonstrated need and on condition that standards are met and matching funds appropriated by the state.

1. Maternal and child health services

To share in maternal and child health grants, a state must not only have a health department but within such department a maternal and child health division with a physician in charge. The function of the division must be principally to help county health departments develop and operate health services for children from birth through school age and for mothers before and after childbirth. With emphasis on prevention rather than treatment, prenatal clinics are held, child health conferences organized, school children given medical and dental examinations, immunization precautions taken against communicable child diseases, and nutritional information imparted. In both quantity and quality, national-state-county services of these kinds vary greatly from state to state, and even from community to community. That they have more than proved their worth is indicated by a decline of mothers' deaths in connection with childbirth from 58 to 3.2 per 10,000 during the first 25 years of the system's operation, and of infant deaths, on the same numerical basis, from 560 to 252.

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Grants are also made, as provided by the law, to "extend and improve [especially in rural areas and in areas suffering from severe economic distress]

. . . services for locating crippled children, and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and after care, for children who are crippled or who are suffering from conditions which lead to crippling." In 1963, more than 750 thousand crippled children were registered in the various states, many of them receiving help. Every state except Arizona participates in the program, but in few areas are the funds sufficient to finance an adequate state-wide service for all those suffering physical handicaps.

2. Services for crippled children

Dependent children may stand in need of help beyond that of a financial nature; and many not classified as "dependent" require assistance also. They may suffer from neglect, abuse, physical or mental deficiency, the stigma of illegitimacy, or tendencies to delinquency. The national government's yearly grant in their behalf is designed to assist state child welfare departments in supervising and aiding local services in arranging for foster-home or institutional care, protecting against mistreatment, conducting clinics, encouraging neighborhood activities tending to curb juvenile delinquency, assisting schools and courts in handling children's cases, and other such activities. In no state is this work all that it should be, but in 1963 more than 400,000 children were receiving aid.

3. Child welfare services

GENERAL PUBLIC HEALTH SERVICES

Early national health efforts

The Social Security Act of 1935, a landmark in the development of a coordinated national program for the care of the needy and the handicapped, also marked the beginning of a growing national-state public health program. Public health grants to the states, abandoned in the twenties, after a brief history, were reestablished on a broader scale than ever before. The earlier grants for venereal disease control (1918-25) and child and maternal hygiene (1922-29) had been swept away by economy-minded statesmen. When the nation turned its attention to the enduring causes of widespread suffering, it found that illness was a major contributor to loss of job, family breakdown, and individual destitution. Concern for the health of our citizens was not wholly a new responsibility of the national government. A United States Public Health Service of trained scientists and physicians had been in operation in the Treasury Department almost since the founding of the nation. Founded for the care of ailing sailors by the Congress in 1798, a Marine Hospital Service had slowly acquired new functions—controlling epidemics, aiding states in the development and enforcement of quarantine regulations at ports of entry, investigating the causes, methods of transmission and cures of communicable diseases, regulating the interstate sale of biologics, loaning trained medical scientists to the armed services and to other agencies—and by 1912 it had become the modern Public Health Service. To this Service the Act of 1935 assigned responsibility for directing a new grant-in-aid program to assist states in improving their general public health services, including vital statistics gathering, communicable disease control, public nurse services, and

many others. The original appropriation for these purposes of $2.5 million has now grown to $25 million.

Venereal disease program

The thirties brought a new frankness to discussions of sex problems in American society and thus opened the way to a concerted drive on one of the nation's greatest health problems: venereal diseases. Led by Surgeon General Parran, a campaign against these dread scourges was launched. In 1938, Congress enacted the Venereal Disease Control Act which revived the grant-in-aid procedure of 1918 and made national funds available for approved state programs of education, treatment, and case-finding. Aided by the discovery of penicillin and other antibiotics during and after World War II, the national-state programs have helped markedly to reduce the incidence of venereal diseases. From a peak annual appropriation to the states of $3 million, the national program had dropped to $700 thousand but with recent rises in the disease rate, has now climbed again to $4.3 million.

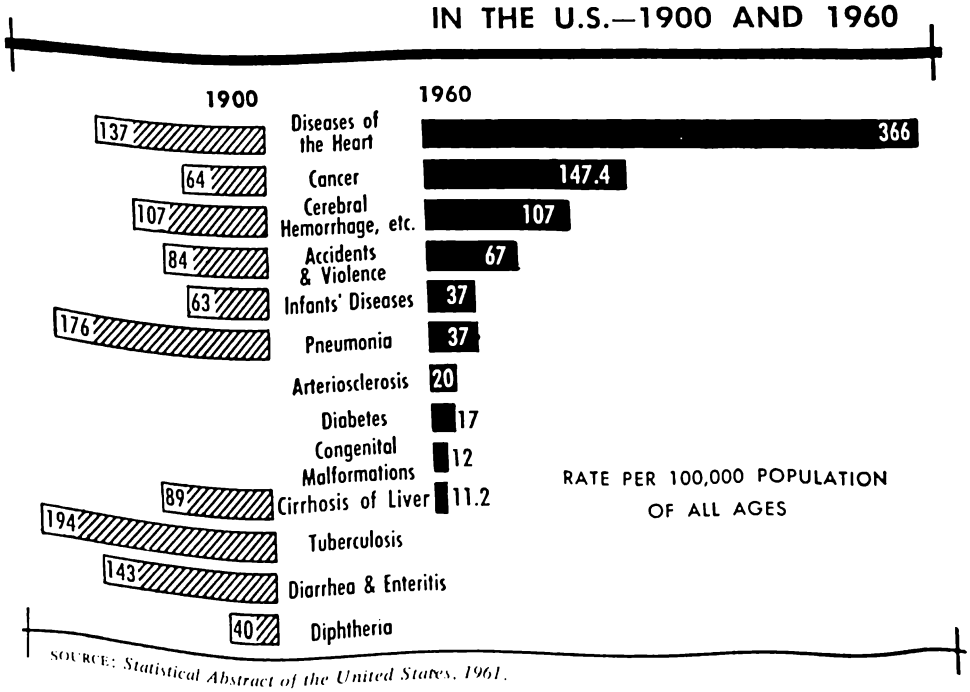
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Considerable success in the battle against venereal disease marked one of the last major episodes in the attack upon communicable disease that had begun with Pasteur's great discoveries in the late nineteenth century. To be sure, much suffering and death were and are caused by tuberculosis, and a new aid program to assist states in case-finding and treatment was inaugurated in the Public Health Service Act of 1944. Also poliomyelitis, rheumatic fever, scarlet fever, and others continue to cause incapacitation. The mortality tables of the forties and fifties reveal, however, that cancer and heart and circulatory

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THE TEN LEADING CAUSES OF DEATH IN THE U.S.—1900 AND 1960



SOURCE: *Statistical Abstract of the United States, 1961.*

diseases are now the chief causes of death. The modern killers and disablers do not respond to the techniques developed to combat the contagious diseases. The emphasis in public health work has, therefore, been gradually shifting to: (1) research to discover causes and cures; (2) education on proper living; and (3) early diagnosis.

1. Grants to the states

Among the great disabling diseases of modern America, none produces as much distress as mental illness. About half of all the hospital beds in the United States today are occupied by mentally ill patients. During World War II, 12 per cent of all men 18-37 examined for induction into the armed services were rejected because of mental and personality disorders. The Metropolitan Life Insurance Company has estimated that one out of every twenty persons born alive in this country will at some time have to be hospitalized for mental disorders. Responsibility for the care of the mentally ill has traditionally belonged to the states. The National Mental Health Act of 1946 marks the beginning of a national program in this field. Under this act grants are now made to state mental health agencies for community programs. Grants to the states for cancer control were instituted in 1947 and for heart disease programs in 1948.

2. Research

The major effort of the United States Public Health Service in the fields of chronic illness and death-causing disorders is research. The older National Institute (now Institutes) of Health has been greatly expanded and now includes a Cancer Institute dating from 1937, a Mental Health Institute created by the Act of 1946, a Heart Institute, a Dental Institute, and a Microbiology Institute created in 1948, an Institute for Arthritis and Metabolic Diseases and one for Neurological Diseases and Blindness created in 1950, one for Allergy and Infectious Diseases in 1955, one for General Medical Science and another for Child Health and Human Development in 1962. These institutes carry on their programs in a Clinical Center created in 1953 and in other facilities of the Service at Bethesda, Maryland. Grants are made to medical schools, universities, laboratories, and public and private hospitals for research projects. Fellowships for work in the national facilities are awarded and conferences of scientists and doctors are sponsored.

Grants for hospital construction

One of the key problems in the postwar era in improving the health of the American people has been the shortage of hospital and clinical facilities. With a larger and larger portion of available beds occupied by sufferers from protracted and chronic illness, and with construction and operating costs climbing beyond the capacities of local private organizations, the national government moved in to give the states a lift. The Hospital Survey and Construction Act of 1946 inaugurated a new grant-in-aid program by which national funds—originally $75 million a year, increased to $150 million in 1949—are now made available to states to pay a portion of the construction costs for public and private hospitals, public health centers, and other health facilities. An additional $60 million annually to subsidize construction of nursing homes, diagnostic and treatment centers, and rehabilitation centers was made available beginning in 1955.

Medical care insurance

At the time the vast social insurance system was established, there were many who felt that a program of public insurance for medical care would sooner or later be required to deal with one of the major drains on individual resources. President Truman proposed such a system in his State of the Union Message in 1949 and repeated his proposal on several occasions. The American Medical Association has vigorously opposed all such plans. President Truman's never got out of committee. The problem, however, remained for medical costs continued to rise and President Eisenhower in 1955 proposed a system of reinsurance of part of the costs of medical care leaving the main insurance programs remaining in private hands. Even this modest proposal got nowhere in Congress. Then in 1960, as discussed earlier, a special program for increased national participation in the medical care of the needy aged was inaugurated. In 1961 and again in 1962 and 1963, President Kennedy proposed a plan for medical care insurance tied to the old-age-insurance system and designed for the aged. This met the same fate as other earlier insurance proposals.

PUBLIC HOUSING

Beginnings of a major problem

The acute housing shortage experienced by the country during and after World War II focused attention upon a problem really as old as our present industrial society. Rural housing often is far from what it should be. But when our population dwelt almost entirely on farms or in villages and small towns, most people had reasonably good homes, even though frequently with primitive equipment; and there was not much for public authorities to do about the matter. With the rise of great industrial centers, however, the situation changed, and decidedly for the worse. Rising land values produced building congestion; detached houses gave way to drab tenements; high rents forced families into pitifully inadequate quarters; immigrant workers congregated in teeming ghettos, "Little Italy's" and the like. The "slum"—dreary, crowded, and dangerous alike to health and morals—became a blot upon an otherwise fair social economy. Aside from some control over fire hazards and structural safety, the first serious attention given to housing by public authorities was directed to ameliorating the condition of low-income groups in slum areas.

Slow development of local and state action

Even in the third quarter of the nineteenth century, a few cities bestirred themselves to some extent about the matter, enacting local codes prescribing building regulations and sanitary standards. The effects, nevertheless, were slight, and in time people concerned turned with more hope to the legislatures of the states. From this source in certain of the more highly industrialized sections did indeed come measures fixing standards with beneficial results. At best, however, the laws merely imposed regulations on private owners of existing housing or upon private construction, without directly bringing new and better housing into existence. New York, it is true, went farther by enacting measures calculated to encourage private enterprise to undertake a good grade

of building for people of low incomes, and by setting up a state housing board charged with planning and promoting slum clearance in the crowded districts of the metropolis and with supervising the construction of "model tenements." But for a long time no other state emulated the example thus set. Principal ways in which states and localities eventually contributed to housing betterment included municipal building codes and zoning regulations, rent regulation, loans for home construction and repair, tax exemptions for newly-constructed dwellings, and redevelopment corporations for undertaking slum clearance and new building. But in nearly all states these ameliorations came late and slowly.

The national government enters the field

Aside from some provision for the housing of war workers during World War I, the national government kept almost completely out of the field until the depression of the thirties. From that time, however, it has been continuously involved, in many different ways and through the medium of legislation and administrative machinery so complicated, and so frequently changed, as to bewilder almost any one except a professional student of the subject. The first form of national effort, undertaken at a time when a large numbers of people were losing their homes through mortgage foreclosures, was aimed not particularly at increasing or improving housing but at enabling hard-pressed homeowners to avoid being dispossessed. The method consisted in setting up (in 1932) a series of home loan banks (under a Federal Home Loan Bank Administration) to provide credit for local institutions engaged in home-financing and in addition a Home Owners' Loan Corporation (in 1933) to make direct long-term mortgage loans out of national funds and at low interest rates to distressed homeowners who for one reason or another could not borrow through other channels. Almost simultaneously, however, encouragement of new low-cost building and of renovation of run-down residential properties was undertaken through a Federal Housing Administration, authorized not only to insure lending institutions against possible losses on loans made for the purposes indicated, but itself to make loans to these institutions to be employed in promoting low-rent dwellings. To this point, the objectives had been primarily to enable people to save their homes and to stimulate employment in home building and modernization. Growing concern with the social values of good housing, however, to say nothing of the financial saving in terms of fire hazards, disease, delinquency, and crime, was reflected in a United States Housing ("Wagner-Steagall") Act of 1937, setting up in the Federal Works Agency a United States Housing Authority charged with making long-term loans (up to 80 per cent of the costs involved) to state or local housing authorities for the construction of low-rent housing and for slum-clearance. The national agency was not to engage directly in the work of construction or demolition, but merely to make construction loans and annual operating grants; municipal or other local authorities directly concerned were to plan projects, furnish such additional funds as might be needed, and execute the different enterprises. Within four years after the legislation was enacted, all but nine of the states qualified for aid by setting up the requisite authorities

—sometimes with jurisdiction confined to one or two cities, but often extending to all cities and towns and even to rural areas.

Housing and World War II

The plan outlined had only limited opportunity for operation before the national defense effort launched in 1940, together with the ensuing war, gave the housing problem a new slant and emphasis. With the rapid expansion of shipyards and of plants for manufacturing airplanes, explosives, and other war materials, the building of new plants for such purposes, and the construction of military camps and training quarters, hundreds of thousands of workers and their families flocked to localities not equipped to house them; and, partly in order to meet this situation, partly because of scarcity of labor and materials, and partly because Congress virtually cut off supporting appropriations, the general program of civilian construction and slum clearance came almost to a stop. Indeed, under legislation of 1940 national housing activities were substantially restricted to such as had to do with taking care of the armed forces and of war-plant workers; and between 1940 and 1945, nearly 1.5 million war-housing units were constructed or reconstructed, about half of the number publicly and about half privately.

The postwar problem

Almost complete cessation of civilian building for five or six years (on top of heavily reduced building during the preceding depression decade), an unexpected increase of population in the meantime, return from overseas of millions of servicemen looking for homes, and continued deterioration of a great deal of housing long obsolescent—these and other factors produced a severe shortage for several years after World War II. In the steady advance of our people toward material well-being, housing had lagged: working hours had been reduced by a third to a half; food consumption had increased; education and recreation had progressed; social security had been initiated; even the average span of life had been lengthened. But millions in the low-income groups still lived in slums (both urban and rural), and other millions in homes more or less substandard. Only about one-half of the nation's families owned the places in which they dwelt.

After the war, the record of achievement had its bright spots, yet hardly was one to stir enthusiasm. The program under the United States Housing Act of 1937 came back into practical operation and by 1950 some 192,000 new dwelling units in 268 localities had been provided under it. In a limited way, the program was extended to rural areas.

The National Housing Act of 1949

What the situation seemed to require was a coherent long-term program under which the government would not merely *loan* but also *spend*, and with some liberality; and as early as 1945, a measure of this purport known as the National Housing (Taft-Ellender-Wagner) Bill made its appearance in Congress and passed the Senate. For almost four years, however, the project, bitterly fought by real estate and building lobbies, languished in the House of Representatives, and only in the early summer of 1949 was it found possible, after bitter contention in the two houses, to get an act of the kind, amending and extending the legislation of 1937, on the statute book. Under the new law —aimed particularly at urban and rural slum clearance and redevelopment—a

total of 810,000 new housing units (separate houses or small apartments, but only for low-income families) was aimed at over a period of six years. All projects were to be developed, owned, and operated by local "housing authorities" (usually municipal) established under state statutes. While the national government was to expedite construction by loans in individual instances where needed (a total of $1 billion was made available for the purpose), local authorities were expected usually to provide for costs by sales of nationally-supported, tax-free bonds to private investors. To supplement contributions by local governments, the national government was to subsidize the system to a maximum of $100 million a year for five years to help make up the difference between the "economic rent" (based on annual operating costs and debt service) and the rent families of the low-income group could afford to pay, estimated at not over $30 a month.

Developments in public housing since 1950

The fighting in Korea (1950-1953) and the renewed emphasis it induced on national defense resulted in redirecting national housing interest into housing for defense plants and military installations. The Defense Housing and Community Facilities and Services Act of 1951 reflects this shift in emphasis in the public housing program. The Eisenhower administration, although pledged to reduce national programs competing with private enterprise, revealed deep sympathy for the public housing program. In a message to the Congress early in 1954, the President called for a broadening of the objectives of the national public housing program to include urban redevelopment as well as slum clearance. In this way cities might salvage declining neighborhoods and stop others from deterioration and not have to await the appearance of the slum for national help. He also asked the Congress to extend the low-rent public housing program of the Act of 1949, although at a reduced rate of 35,000 new units per year for the next four years. The Housing Act of 1954 substantially met the President's request except that it limited the commitment on public housing units to one year. The President again in 1955 asked for a broader program of public housing and finally wrested authority for 45,000 more units from a reluctant Congress.

Returning to the attack in 1956, the President got Congressional approval for 35,000 more units for 1956 and an equal number for 1957. No units were authorized in 1958. In 1959, the Congress twice passed housing bills providing for a renewed and expanded low-cost housing construction program but the President vetoed each. Authorization for 37,000 new units was finally approved. The Housing Act of 1959 also launched a new loan program aimed at promoting private construction of facilities specially designed for elderly persons and expanded somewhat the loans and grants for urban renewal programs. Metropolitan regional planning through state or regional agencies was also promoted by grants-in-aid. President Kennedy, shortly after his inauguration, called for a much expanded housing and community rebuilding program and Congress responded with a Housing Act of 1961 that: (1) removed the statutory prohibitions on the yet unbuilt 100,000 low-cost housing units contemplated by the original act of 1949; (2) expanded the loans avail-

able for college housing, housing for the elderly, and farm housing; (3) increased the monies available for grants for urban planning and for urban renewal projects; (4) authorized new loans to improve urban transportation facilities and utilities; and (5) authorized new grants for community purchase and development of "open" adjacent areas for recreational or conservation purposes.

THE NATIONAL GOVERNMENT AND EDUCATION

Aid to vocational education

The mounting controversy in the last two decades over national aid to public education has in some minds obscured the fact that the national government is already deeply involved by subsidy and direct expenditures in the field of public education. In earlier chapters we have described the programs of national assistance for agricultural education at the college level and through the Extension Service. A new program (National Defense Education Act) of aid to university students and staff was begun in 1958 and renewed in 1961. In 1917, a broad program of national grants to the states for vocational education, largely at the high school level, was inaugurated. Expanded greatly in the past four decades, this program now provides national funds for and national supervision over training for young men and women in skilled trades, distributive occupations, industrial techniques, home economics, nursing (practical), and agriculture. Funds are also granted for preparing teachers in these subjects to staff the vocational schools. Many states have been stimulated by the national grants (some had them before the national grants began) to establish a system of vocational schools under the supervision of a state agency and to appropriate funds for the purpose of providing such education. To this program of education aids was added, beginning in 1920 and greatly expanded in 1954, aids for vocational rehabilitation for training the physically handicapped for useful employment.

Temporary grants during depression and war

During the depression numerous grants, loans, and direct national expenditures were made for school construction, remodeling and equipment. Thousands of local school districts benefited from these temporary measures. Beginning in World War II and continuing to the present, substantial grants have been made for school construction in areas heavily burdened by military or defense facilities and for the establishment of child-care centers, nursery schools, and other educational facilities. Grants were also made to aid school districts obliged suddenly to make provision for large numbers of children whose parents were stationed at military installations. A huge subsidy to education has been made by the national government in the past two decades by means of the veterans' aid program inaugurated in the G.I. Bill of 1944.

Aid for general public education

Through continuing grants for school lunches for needy children and for aid to school districts affected by national installations, the national government is making important contributions to public primary and secondary education in the United States. All of this has not, however, set at rest the urgent demand for national grants for general public education aimed at help-

ing localities deal with the great flood of school-going children and at placing a floor below which, regardless of local revenues, educational programs may not fall. President Eisenhower early in 1955 asked Congress to inaugurate a new program of national assistance to local school districts for building construction to help them meet these needs. He suggested: (1) that the national government buy local bonds for construction at a low interest rate; (2) that the states be aided in creating state school building authorities with power to borrow national funds and build schools that could be leased to local districts that have already exhausted their borrowing power; (3) that grants be made for construction to school units that are unable to finance needed construction. These recommendations he renewed on several subsequent occasions. President Kennedy entered this field to battle on behalf of school aids early in 1961 and has continued his efforts. He has proposed aids to help pay teachers' salaries as well as for construction of facilities. He has also proposed both grants and loans for college and university facilities. As with all previous efforts, the Kennedy program has thus far foundered on the two great shoals of educational legislation: (1) the religious issue—Catholics generally oppose general aid programs if parochial schools are not somehow taken care of and many doubt if constitutionally, the government can aid religious education; (2) the racial issue—many Northern congressmen feel that aid must not be given to segregated schools and most Southern members will not support aid on this basis.

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Conducting Foreign Affairs

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The transcendent importance of foreign affairs in the modern world

IF THE FATHERS and grandfathers of the statesmen of modern America were to revisit the scenes of their earthly endeavors, nothing, perhaps, would surprise them quite so much as the prominence now given to foreign affairs. For generations our people worked out their various destinies largely indifferent to the aspirations of the peoples of the rest of the world. In fact, they were determined not to allow the quarrels or feuds, the wretchedness or splendor, of other peoples or nations to entice their notice away from the main show of building a free and prosperous nation out of a wilderness. Separated by broad oceans from nations powerful enough to menace their national independence, selected by immigration from among those most dissatisfied with the societies from which they came, confident of the virtues of a political system built upon freedom, the American people felt they had little to fear and nothing to learn from Europe and Asia. Occasionally their idealism and their wealth might be enlisted in behalf of the starving Chinese or the struggling Armenians and then they would applaud the statesmen who lectured the "power hungry" and "cynical" politicians of Europe on their bad behavior. Mainly, however, America had few important ties abroad and wanted none. "Why," in the language of Washington's Farewell Address, "by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?"

Today it is quite different. The United States is tied to half of the world by military alliance, its troops are deployed thousands of miles from this continent in fulfillment of commitments solemnly undertaken, its treasure has

been exported in multiplied billions of dollars to bolster the defenses and the economies of friendly powers, its sons by the thousands have died in battles far away from home. Its newspapers and broadcasts are filled daily with the comings and goings and sayings of diplomats and statesmen from the entire world, its legislative halls resound with the clash of tongues on the conduct of affairs in Seoul, in Viet Nam, in Geneva, Bandung, Laos, and Bonn —places the average American had never even heard of until the day before yesterday—and the utterances of its statesmen are awaited with fear or awe by the leaders of every nation on earth. The earth has shrunk; technology has annihilated space. Our distant neighbors of yesterday are just across the street today. What is more, science has at last handed to men the power to destroy themselves completely. Failure in the conduct of foreign policy can well mean destruction for us all. The conduct of American foreign policy has thus become the dominant concern of our government.

THE CONSTITUTIONAL BASIS

Exclusive national control and its basis

We have the word of the Supreme Court for it that, even if no authority could be found granted in the Constitution, nor indeed any clauses from which it could be deduced, the conduct of foreign relations would still be a proper and necessary function of our national government as "a necessary concomitant of nationality." There is, however, no lack of expressly conferred power. Nowhere, it is true, is there a single blanket grant, or even any mention of "foreign relations" as such. But the president is authorized to "appoint ambassadors, other public ministers and consuls," to make treaties and to "receive ambassadors and other public ministers." The Senate is allotted a share in treaty-making, as well as in appointments, and Congress is given power to regulate foreign commerce and to declare war. Furthermore, national control in this field is made exclusive by clauses forbidding the states to "enter into any treaty, alliance, or confederation"—or into *any* agreement or compact with . . . a foreign power" except with the consent of Congress, or to engage in war unless actually invaded. By discriminating against alien residents in their land-ownership or other laws, or by failing to do justice when aliens suffer from mob violence, the states may raise difficult international problems for the national government. But that government has the sole right and power to handle such matters internationally.

National responsibility nevertheless diffused

The conduct of foreign relations is an executive function in many countries. In the United States, too, it is such a function primarily, yet one also shared heavily with the Congress. As chief executive, the president unquestionably is the supreme director of our official international intercourse. Nowhere in the Constitution, however, is he expressly assigned such primacy. On the contrary, he is merely given certain powers, the Senate is given others and Congress as a whole still others. And while we must allow him the center of the stage, it should be clearly understood that what we have in this area of

our government is a responsibility shared by the executive and legislative (and, in matters of interpretation and enforcement, even the judicial) branches—a responsibility considerably more diffused than that prevailing in the corresponding field in any other important country. And yet as the conduct of foreign affairs has become uppermost in importance among the functions of the national government, the Congress has insisted that it be taken into fuller partnership in determining what our policy should be. If we must vote huge funds and call up our manpower for military service, says the legislature, we should participate in the decisions that make these steps necessary.

The president's powers:

An appreciation of the complexities and difficulties in the way of conducting foreign affairs within the governmental structure prescribed by the Constitution may, perhaps, best be obtained by a consideration of how particular powers and responsibilities are discharged by the president and Congress.

1. Carrying on foreign intercourse

Basic to everything else is the maintenance of day-to-day intercourse with foreign governments. For this the president (utilizing the facilities of the State Department) is the official channel. On the one hand, subject to the Senate's right of confirmation, he appoints all ambassadors and ministers to foreign countries, and all foreign service officers (including consuls) stationed therein, with of course the full power of direction and removal which the appointing power entails. Indeed, in the belief that more can be accomplished by informal contacts than can be achieved through the formal channels of diplomacy, he may employ "special," "secret," or "personal" agents abroad, who, not being technically public officers, require no senatorial confirmation, and who commonly receive their pay, if any, out of a presidential "contingent fund." Conversely, he receives, on his own responsibility, all foreign ambassadors and other public ministers, with power also, if occasion requires, to break off dealings with them and in effect send them home. Through the State Department, he carries on correspondence abroad, obtaining information, declaring policy, pressing claims, offering settlements, and replying to all manner of inquiries and proposals. Congress, on its part, may not address any foreign power or receive any communication from one. Any private citizen or corporation undertaking, "directly or indirectly, . . . to carry on verbal or written correspondence or intercourse with any foreign government or its officers or agents (without express authority from the president) designed to influence the measures or conduct of any foreign government . . . in relation to any disputes or controversies with the United States or to defeat the measures of the government of the United States," becomes liable to penalty. While normally using the State Department as his channel, to such a degree that even foreign governments must ordinarily address the White House through the Department, the president may nevertheless go as far as he likes in handling matters directly and personally—even to the extent of managing the country's foreign relations from his own desk, as did President Wilson during World War I and President Franklin D. Roosevelt at intervals during World War II. He may go abroad to lead in the negotiation of a great international settle-

ment, as did Wilson when peace was to be made in 1919, or to meet with representatives of foreign governments at any places (in either hemisphere) selected for the purpose, as Roosevelt repeatedly met and conferred with Prime Minister Churchill and Marshal Stalin (and on one occasion with President Chiang Kai-shek) during World War II and as Truman, Eisenhower and Kennedy have on occasions too numerous to record.

2. Recognition

From authority to speak for the nation in its dealings abroad springs a second significant presidential function, that of determining the attitude to be taken by our government toward newly risen states or newly risen political regimes in existing states. As to who is to decide whether we shall officially "recognize" and have dealings with such states and regimes, the Constitution is silent. At various times it has been argued that Congress is entitled to participate along with the president. International usage recognizes the function as executive and the power to appoint and receive envoys would certainly make it such in the United States. Precedent, backed by judicial opinion, places it wholly in the president's hands, subject only to the discretion of the Senate in confirming diplomatic appointments and assenting to treaties, and to that of both houses in voting foreign service appropriations. Recognition may take the form of welcoming into the family of nations (so far as we can do it by our own action) a state that has lately asserted its independence—as President Monroe, after 1817, recognized a number of newly risen Latin American republics, or as President Theodore Roosevelt in 1903 recognized the republic of Panama, thereby paving the way for the construction of the Panama Canal. The usual method in such instances is to send and receive diplomatic representatives. Or recognition may take the form of instituting official relations with a new political regime that has taken over in a given country, as when, in 1928, President Coolidge recognized the Nationalist government set up by the Kuomintang in China by concluding a treaty with it; or when, after the U.S.S.R. had waited 16 years for American recognition, President Roosevelt, in 1933, invited President Kalinin, of the All-Union Central Executive Committee at Moscow, to send a representative to Washington for conference, and followed by concluding an agreement with the emissary, Foreign Commissar Litvinov. A most recent, and perhaps melancholy example, is the recognition rather quickly and easily accorded the Castro regime in Cuba only six days after the flight of the former dictator, Batista. The power to recognize carries with it also the power to refuse to recognize. Students of our diplomatic history will recall how President Wilson, in 1915, became primarily responsible for the downfall of the revolutionary president Huerta in Mexico by declining to have dealings with the regime which he headed. Presidents Hoover and Roosevelt steadfastly refused to recognize the new "state" of Manchukuo established under Japanese auspices on Chinese soil in 1932; and President Truman, in 1945-46, refused to recognize communist-dominated governments in Bulgaria, Romania, and Yugoslavia, established in defiance of decisions reached at the Yalta conference, even though later developments forced him to open diplomatic relations with them. The United States, too, has never recognized

Russia's acquisition of the Baltic countries in 1940 and has not, in spite of the British example, recognized communist China.

3. Protection of citizens abroad and of alien residents

"Under our system of government," the courts have declared, "the citizen abroad is as much entitled to protection as the citizen at home." The president, as chief executive and director of our foreign relations, is expected to see that such protection is duly extended, whether on the basis of treaty provisions usually covering such matters or otherwise. If an American sojourning in a foreign land or traveling on the high seas is mistreated and cannot obtain justice, the president, acting through the State Department, may make demands in his behalf, and may go to any length short of a declaration of war to obtain redress for him. Similarly, it is the president's duty—up to the limits of national authority—to see that protection is extended to aliens legally domiciled in the United States. He must execute all provisions of the Constitution, the national laws, and treaties bearing on their rights; and while he has no way of compelling state authorities to guarantee equal treatment in matters, like land ownership, outside the scope of national jurisdiction, he may admonish them to be mindful of alien rights and may instruct district attorneys to lend aliens needed legal aid. In time of war abroad, he may be of assistance to both aliens and citizens by issuing a proclamation of neutrality calling attention to rules of international law and to statutes forbidding various unneutral acts. When the United States itself is at war, however, the rights of aliens of enemy nationality resident in the country become merely such as international law recognizes in situations of the kind. The president is not obligated beyond that point.

INTERNATIONAL AGREEMENTS

> He [the President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur. . . .—Art. II, Sec. 2, cl. 2

The most sensitive aspect of foreign dealings with regard to the respective powers and duties of the president and Congress is the matter of international commitments. Who can and should commit this nation to a course of action by agreement with one or more foreign states?

4. Making international commitments:

a. Treaties

One of the main instrumentalities for regulating and stabilizing international relations is treaties. Under the Articles of Confederation, Congress made treaties; and the framers of the Constitution at first thought of giving the power to the Senate. As, however, the concept of the presidency grew in their minds, the view developed that it would be better to assign treaty-making, along with the general management of the country's foreign relations, to the chief executive, associating with him the Senate as an advising and restraining council. The House of Representatives was deliberately omitted from the plan in the interest of "secrecy and dispatch." Assent to treaties by two-thirds, rather than simple majority, of the Senate was specified, not primarily in deference to any general policy or theory, but mainly to protect important

interests of certain sections of the country from being "sold out" by bare Senate majorities.

Scope of the treaty power

So far as they went, these arrangements for treaty-making were simple and obvious enough. But they left open one fundamental question on which sharp differences of opinion soon arose: how far, under a system of limited powers, was the treaty power to be regarded as extending? Could treaties deal with matters outside of those constitutionally committed to the national government? And, with legislation often required for making treaty provisions effective, could a treaty open a way for Congress to exercise legislative powers not otherwise possessed? Approaching the matter from his strict-construction, states'-rights viewpoint, Thomas Jefferson sought to establish the view (1) that the Constitution's provisions on treaty-making merely set forth a procedure for exercising granted powers and are not themselves a substantive grant; (2) that the president and Senate have no right to employ treaties as means of evading constitutional restrictions generally applicable to the government; and (3) that treaties entailing extraconstitutional legislation should not be negotiated. Throughout most of our history, however, and especially in the last half-century, a different view has prevailed. The Supreme Court has recognized the treaty power as extending to "all proper subjects of negotiation between this government and those of other nations," regardless of the Constitution. President Theodore Roosevelt, in 1906-07, in effect, invoked it to compel San Francisco to admit Oriental children to its public schools—certainly a matter ordinarily for state or local control. When, in 1918, Congress, in pursuance of a treaty with Great Britain authorizing agreements between the United States and Canada for the protection of migratory birds, enacted a stringent measure on the subject, the Supreme Court fully sustained the law, on the ground (1) that while control of bird-life is, of course, not a power which is expressly conferred upon Congress, it is a proper subject for treaty agreement, and (2) that treaty-making is one of the many powers which the "necessary and proper" clause authorizes Congress to implement by legislation. Significantly, in order to be supreme law of the land, acts of Congress must be "made in pursuance" of the Constitution, but treaties simply, and more broadly, "under the authority of the United States." This does not exempt them from judicial invalidation because of unconstitutional provisions, though none has ever been overthrown in this way. And this suggests virtually the only definite limitation upon the treaty-making power that can be discovered today.

The Bricker amendment debate

Jefferson's doubts about the validity and wisdom of a treaty power so broadly defined have found staunch modern advocates. In the period since World War II this issue has reappeared in national politics with an unexpected vigor. Participation by the United States in numerous international organizations has involved us in negotiations looking toward the conclusion of treaties or conventions on a wide variety of subjects. Among the subjects, human rights appears to have awakened the gravest concern that the treaty process might be used to confer power on the national government which has heretofore been regarded as reserved to the states. Led by Senator Bricker, Republican of Ohio,

a nation-wide campaign was carried on for many months in favor of an amendment to the Constitution which would restrict the treaty power to those subjects on which the national government has express authority. This campaign, largely supported by Republicans, appears to have reached its peak in 1954 with a determined effort by the Bricker group to drive an amendment through the United States Senate. Numerous versions of an amendment which might achieve the stated purpose were fashioned in an effort to compromise disagreements. The Eisenhower administration gave little aid or comfort to the Bricker plan and Democratic Senators, in general, lined up against it. The Senate debated the matter for weeks early in 1954 but when the matter finally came to a vote the language had been so modified that little of the original proposal was left. The final vote was one short of the necessary two-thirds. The Democrats in control of the Senate since 1955 have shown no interest in reviving the matter. The Bricker proposal, it should be added, was aimed also at alleged abuse of the executive agreement, about which more will be said later. One result of the Bricker amendment debate was the declaration by Secretary of State Dulles that the administration had no intention of agreeing to the proposed international covenant on human rights and would, therefore, not submit it to the Senate. The Bricker amendment debate illustrates the strong determination by some groups in the Congress to strengthen the hands of the legislature in the field of foreign affairs. President Eisenhower, on his part, declared that as originally proposed the amendment would shackle the hands of the executive in the conduct of foreign policy.

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Presidential initiative in treaty-making

The language of the Constitution seems to associate the Senate with the president throughout the entire process of concluding and ratifying a treaty. Passages in *The Federalist* indicate that this is what the framers had in mind, and President Washington actually began his treaty-making (with certain tribes of Southern Indians in 1789) on that assumption, several times visiting the Senate chamber for the purpose. A year or two of experience demonstrated, however, that it was more practical and expeditious for the president to negotiate the treaty and to seek the Senate's "advice and consent" only afterwards —such consent being simply to a final act of ratification to be performed by the president and making the instrument effective so far as our own government is concerned. To be sure, either branch of Congress, or the two concurrently, may by resolution advise or request that a given treaty, or series of treaties, be negotiated; and the president (or secretary of state acting for him) may, and usually will, in advance or during the course of a negotiation, consult with individual senators. Unless the chief executive chooses to set the necessary machinery in motion, no negotiation can be started; he can begin a negotiation regardless of the desire (and even without the knowledge) of either branch of Congress; and rarely indeed is the Senate as a body given any chance to express itself on a proposed treaty until the completed instrument is transmitted to it. Short of flatly withholding assent to ratification, the most that the senators can then do by way of registering disapproval is to attach amendments making it necessary for the president to renew negotiations with a view to securing the

foreign government's acceptance of the proposed changes; or, in the case of a great multilateral agreement on which negotiations could not well be reopened, to assent to ratification but attach reservations designating various features of the agreement as not to be held binding on the United States. In exercising his powers of initiative and direction, the president may work through the regular diplomatic representative accredited to the foreign government concerned; or he may appoint a special plenipotentiary or commission to go abroad for the purpose; again, he may cause the negotiations to be carried on in Washington through the secretary of state; or, finally, he may undertake, or at least participate in, the negotiations himself, as did President Wilson in connection with the Treaty of Versailles in 1919. When the treaty is completed, he has full freedom to submit it to the Senate, return it to the negotiators for revision, or drop it altogether. He may hold it back because he considers it unsatisfactory, or because he recognizes that submission of it to the Senate would be useless. Indeed, even after the Senate has given its consent, a treaty still may be held up. It remains for the president to ratify it, and, upon being apprised of ratification by the other government (or governments), to promulgate it; and he has the option of refusing to take these last necessary steps, although clearly he will do so only under very unusual circumstances.

The role of the Senate

"A treaty entering the Senate," wrote John Hay after six years of experience as secretary of state, "is like a bull going into the arena; no one can say just how or when the final blow will fall—but one thing is certain—it will never leave the arena alive." This statement is much too strong: (1) no treaty was rejected outright by the Senate until 1824; (2) the total number so rejected throughout the history of the country to 1935 is only 14; and (3) while in about 150 other cases to the date mentioned the Senate either failed to act or insisted on amendments or reservations of such character that either our own government or the other party (or parties) chose not to go ahead with the project, it unconditionally approved some 900 treaties, or more than four-fifths of the entire number presented to it. Quite a number of treaties slip through with no opposition at all. None of consequence has been rejected since 1935. Those that stir controversy, however, encounter a genuine hurdle in the two-thirds rule. It must be admitted that of the treaties that have come to grief in this way a large proportion have been of first-rate importance, for example, the treaty for the annexation of Texas in 1844, the Olney-Pauncefote, Hay, and Taft-Knox arbitration treaties of 1897, 1904, and 1911-12, respectively, the Treaty of Versailles in 1920, the St. Lawrence Waterway Treaty of 1934, and the protocol for adherence to the Permanent Court of International Justice (World Court) in 1926 and 1935. Many which finally emerge unscathed do so only after a great parliamentary battle, calling into play every sort of pressure from the White House. During and after World War II, however, with the United States undertaking the most extensive treaty commitments in its history, the Senate has consistently approved without serious difficulty.

Once duly ratified by the governments concerned and proclaimed by the

Execution and termination of treaties

president, a treaty becomes, from the international point of view, a contract between the United States and the nation (or nations) constituting the other party, and from the domestic point of view, an extension of the law of the land, supreme and enforceable like any other portion of the law. Both national and state courts must give it full effect. Of course not all treaties are, or are intended to be, permanent. Some expressly provide for their own expiration; some are terminated by war; some are replaced by new agreements; some are abrogated by being "denounced" by one or more of the parties. When it is desired in this country to dispense with a treaty, or some portion thereof, our government is likely to seek an agreement to that end with any nation or nations concerned. In default of such agreement, however, the president may, on his own authority, simply proclaim the treaty at an end; or he may take such action with the support of a joint resolution of Congress; or Congress itself may make any of the treaty's provisions of no legal effect by enacting legislation inconsistent with them. Although treaties are "law of the land," the Supreme Court has said that they are no more truly such than are acts passed by Congress. Invariably the Court has been reluctant to construe a statute as in violation of a treaty; but when there is manifest conflict, the later in date prevails. Neither a court decision nor a statute can, however, abrogate a treaty as an international contract. Although thus rendered unenforceable at home, it preserves its international status until revoked by executive action. In the meantime the foreign power concerned may construe a crippling judicial decision or statute as a breach of contract entitling it to reparation through an international proceeding.

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b. Executive agreements

Treaties can be ratified and become operative only with the advice and consent of the Senate. But not every agreement entered into with a foreign government takes the form of a treaty. Increasing numbers, instead, are "executive agreements," for which—notwithstanding that there is no mention of them in the Constitution, and that as a rule they are to all intents and purposes treaties—consent of a two-thirds senatorial majority is neither sought nor obtained. In some instances, for example, postal conventions and trade agreements (the lend-lease agreements of the World War II period also), such agreements rest upon authority conferred in advance by blanket act of Congress. Others, however, are concluded by the president (directly or through agents) without such authorization—sometimes in pursuance of a treaty, sometimes as commander-in-chief of the armed forces, and occasionally simply as chief executive and supreme representative of the country in its dealings with foreign states. If they are submitted on Capitol Hill at all (as some are), it is not to the Senate alone, as in the case of a treaty, but to the two houses for approval by majority vote in each. Furthermore, such agreements may be upheld by the courts as "supreme law of the land," and the limits to which the president may carry them are nowhere defined. Many agreements deal with minor matters which, by their nature, do not call for a treaty—for example, pecuniary claims of American citizens against foreign governments. Others relate to affairs of considerable importance. Indeed, an executive agreement

may become frankly a means of evading—temporarily at any rate—the necessity of going to the Senate with a treaty. In 1905, President Theodore Roosevelt worked out a treaty with Santo Domingo specifying that the United States should guarantee the security of that republic and take over the collection of its customs duties with a view to settling foreign claims and warding off European intervention. The Senate refused to consent to the treaty; whereupon the President entered into a *modus vivendi* with the Dominican government on the desired lines; and for two years the protectorate was maintained on this basis. In 1907, a treaty making the arrangement regular was at last assented to and ratified. In 1911, President Taft entered into a similar agreement with Nicaragua, not replaced by a treaty until 1916.

Congress and executive agreements

So far, indeed, was the power of executive agreement formerly carried that in 1941 a responsible State Department official could seriously argue that anything that can be done by treaty can also be done (and the implication was *should* be) by executive agreement. The war years then dawning, however, saw an uprising on the matter in a quarter where it was most to be expected —the Senate. When in pursuance of power conferred in the Lend-Lease Act of 1941, the State Department, under presidential direction, began concluding agreements with Great Britain, the U.S.S.R., China, and other nations involving a network of long-term commitments running into billions of dollars, dissatisfaction manifested itself. And when, in 1943, it was learned that a United Nations Relief and Rehabilitation Convention was to be treated as an executive agreement and not referred to the Senate, notwithstanding that it entailed obligations for the United States practically in perpetuity, the State Department was vigorously challenged. Controversy ensued in which the secretary of state was threatened with an official investigation, and in the end a compromise was forced under which, while UNRRA itself was entered into as a matter of executive-legislative action only, and without a treaty, the executive branch promised in future to be more circumspect about observing "constitutional processes." In anticipation, too, of efforts already started to build up a world organization for the preservation of peace, both branches of Congress, in the year mentioned, passed resolutions asserting that American participation must be by such "constitutional processes," which, in Senate phraseology, were expressly defined as meaning Senate approval by regular two-thirds majority. In 1945, the Charter of the United Nations was duly submitted to and approved by that body—as were also the Marshall Plan for aid to Europe in 1947, the North Atlantic Pact in 1949, the agreements with West Germany reestablishing its independence in 1955, and the "Pacific Area" alliances. The understandings entered into by President Roosevelt with Stalin and Churchill at Teheran and Yalta have frequently been attacked on the grounds that the Senate was never asked to consent to them.

The rapid extension of the executive agreement procedure during the last few decades has been appreciably slowed down by opposition in the Senate. Pointed up again in the debate over the Bricker amendment, Congressional hostility to the procedure has made the Truman, Eisenhower, and Kennedy

administrations much more cautious. No important financial commitment or agreement affecting foreign policy directly in the past several years has been entered into by the executive alone without congressional or, at least, senatorial approval. In general, these agreements are now used: (1) to implement legislation such as the reciprocal trade and the foreign aid statutes; (2) to provide U. S. membership in certain technical types of international organizations —these are usually submitted to Congress for approval by both houses; and (3) to achieve military arrangements such as armistices, agreements on treatment of American troops, and, most recently, the installation of a "hot" teletype line between the White House and the Kremlin.

c. Joint resolutions

A third recognized method of achieving international settlements takes the form of a joint resolution passed by simple majorities in the two branches of Congress and approved by the president. When initiated by the chief executive to implement some international agreement which he favors, and duly enacted by Congress, the procedure of joint resolution is hardly distinguishable from that followed when an executive agreement is negotiated and submitted. In the case of a joint resolution, however, Congress itself may take the initiative—though in any event action at the White House, as in the case of a bill, is a necessary final step. More than once in our history, a joint resolution, requiring mere congressional majorities, has been resorted to when the treaty-making process, calling for two-thirds in the Senate, broke down. Under such circumstances, Texas was annexed in 1845 and Hawaii in 1898; probably the Philippines would have been annexed in 1898 in the same way if the Senate had not at the last, and by a narrow vote, decided not to reject the annexation clause of the Treaty of Paris. It was by joint resolution, too, that war with the Central Powers was terminated in 1921 after the Treaty of Versailles had failed of ratification, and that in 1934 President Roosevelt was authorized to accede to Part III of the Versailles Treaty establishing the International Labor Office.

The extensive costs of and the large commitments undertaken in connection with our modern foreign policy have raised the problem of the proper roles of Congress and the president in its most acute form. Senatorial balking at the executive agreement system, the Bricker amendment, the demands of the House for a more important voice in foreign affairs, all are symptoms of the modern struggle over who is going to shape foreign policy. The President, meanwhile, has continued to assert his preeminence in this field and has given little, in any formal sense, away to his congressional critics. The very fact, however, that successful defense of the national interest abroad seems to demand huge expenditures has given Congress a new strength in the procedure that it did not possess to the same degree in earlier epochs.

FORMULATING AND CONTROLLING FOREIGN POLICY

The foreign policy of the nation has been defined as "the courses of action undertaken by authority of the United States in pursuit of national objectives

beyond the span of jurisdiction of the United States." [1] Every action taken by our government in dealing with other governments presumably reflects a policy. The sum of these actions at any given time is our foreign policy. This definition distinguishes the policy from the *objectives* sought by the government and from the *principles* which may underlie the objectives and policies. Disturbed by the shifts and turns that have characterized the dealings of the United States with other nations over the years, some people have charged that the country really follows no consistent principles, but merely zigzags from position to position as the rough winds of international politics toss the ship of state about. Undoubtedly it is true that our physical isolation in times past, our traditional aloofness from European affairs, and our preference for avoiding long-term commitments seemed for generations to manifest a rather negative attitude on many matters of concern to other nations. It is also true that officers and agencies engaged in managing our dealings with foreign governments have been prone to feel their way through situations as they arose, to make choices and decisions as they went, and to leave behind them records of performance not always remarkable for continuity and consistency. Even aloofness, however, and preference for meeting situations as they arise, constitute policies; and actually we have had not only various broad over-all objectives of our foreign policies in different periods in our national history, but plenty of generally recognized and often cogently asserted aims toward particular countries and situations.

Has the United States a foreign policy?

The entire matter of foreign policy is, indeed, one of the most perplexing that students of our government—to say nothing of our public officials—encounter. First of all, there is the extensive array of other nations, large and small, near and far, with which, singly and collectively, relations must be sustained. Then there are the bewilderingly numerous and complex factors—geographical, economic, technological, military, psychological, and ideological—that have to be taken into account. Further, there is the circumstance that, while certain primary axioms or principles may and do govern, there is, and can be, no single, all-embracing, global policy, but instead must be actions and objectives of many sorts, on many different subjects—threads, perhaps, in a skein, but of different color and texture. Still further is the complicating fact that foreign and domestic affairs are not two separate and independent national concerns, but on the contrary are always intermingled. "External affairs" may sound like something remote. Usually a little examination will reveal them to be closely connected with interests and objectives that we have at home, and attitudes and policies concerning them to be dictated, or at least colored, by such interest and objectives. The world scene, too, is constantly changing, at times very rapidly; far from remaining static, foreign policies must change with it; and this adds to the complexities which the student of the subject must be prepared to meet. Finally, from the time when the Federalists favored the quasi-war with France in 1798-1801 and the Jeffersonian Republicans opposed it, political parties more often than not have disagreed on the aims of

Complicating factors

[1] C. B. Marshall, *Department of State Bulletin*, Vol. 26 (1952), 915.

foreign policy. The rather remarkable record for interparty cooperation in this field achieved at Washington since 1945 has been exceptional rather than typical.

Who makes foreign policy?

Under our American system, the determination of the objects of our foreign policy is not the function of any single branch or department of government, or even exclusively of government at all, since public opinion (with the press, the radio, churches and other organizations, playing significant parts) has much to do with it. Within the government itself, the Department of State naturally plays a major role. It provides much of the information and advice on which all policy-making in this field rests. The Department of Defense has contributed actively, occasionally even fashioning policy in particular situations independently. The Treasury, Commerce, Agriculture, and Interior Departments—not to mention independent establishments like the United States Tariff Commission, the Maritime Board, the Export-Import Bank, and the Atomic Energy Commission—also make contributions. Needless to say, Congress, on its part, takes a hand—enacting legislation, voting appropriations, declaring war—not to mention, of course, the role of the Senate in connection with foreign service appointments and treaty-making. Indeed, it would be difficult to mention many agencies in Washington that do not, at some time or other, in one way or another, directly or indirectly, have at least some modest share in providing the information, supplying the incentives, or formulating the plans lying back of one phase or another of the foreign policies developed.

The role of the president

The supreme architect of foreign policy is, however, the president. Even when he is not the actual author of a given policy, he commonly becomes such to all intents and purposes by declaring it to the world and taking the necessary steps to carry it into effect. When Washington proclaimed American neutrality in 1793, and in his Farewell Address warned his countrymen against political entanglements with Europe, he started the country on a course of "isolation" from which for several decades only the most extraordinary emergencies ever availed to swerve it. Monroe, in 1823, voiced in a message to Congress certain principles concerning foreign political activities in the Western Hemisphere which, under the name of the Monroe Doctrine, developed into one of the most enduring and important of all our foreign policies. When, in 1844, President Tyler's secretary of state, Daniel Webster, instructed Caleb Cushing as our first emissary to China to see to it that the United States received assurance of equal economic opportunity in that country, he inaugurated a line of policy which, under the more familiar name of "open door," became, and long remained, the cornerstone of all American dealings with the Far East. Theodore Roosevelt, Taft, and Wilson brought a number of Caribbean republics under United States supervision and, for better or worse, left us a policy of maintaining Latin American financial protectorates. This only two decades later gave way to the "good neighbor" policy instituted by President Hoover and amplified by his successors. Wilson in 1915 and Hoover in 1932, through their respective secretaries of state, Bryan and Stimson, made it American

policy to withhold recognition from international agreements and actions in the Far East interfering with the territorial or administrative integrity of China or with equal opportunity for trade and other enterprise in that country. During the earlier stages of World War II, President Franklin D. Roosevelt led in formulating and carrying out the national policy under which the United States first severely strained and later frankly abandoned its neutral position in order to give aid to Great Britain and other fighting nations which, in the Chief Executive's opinion, must at all costs be kept from going down. Similarly, he bore full responsibility for the government's unyielding opposition to Japan's proposed "new order" in Eastern Asia, bringing the two countries to the brink of war by 1941 and precipitating them into actual combat before the year ended. In the Atlantic Charter of 1941, he joined with Prime Minister Churchill in proclaiming broad postwar international policies to which the United States was solemnly committed on his sole responsibility. Usually without consultation with Congress, policies were further determined and declared throughout the war, frequently as a sequel of conferences with spokesmen of allied states, as at Teheran, Cairo, and Yalta; and step by step, with the President leading, the way was prepared for emergence of the present United Nations. Early in 1947, President Truman enunciated the "Truman Doctrine" calling for aid to nations threatened by Soviet aggression. In 1948, he committed the United States to military assistance for Western European states; and in his 1949 inaugural he announced the "Point Four" program for technical help for underdeveloped areas. President Truman also, on his own responsibility, ordered American troops to aid the United Nations in resisting aggression in Korea in 1950. The policy of sharing atomic materials with other nations for peaceful purposes was announced by President Eisenhower on behalf of this nation in 1954. President Kennedy assumed major responsibility for the naval blockade of Cuba in 1962 and the war preparations associated with it. He also sent troops to Thailand and "technical" assistants to Laos and supported the use of U.N. troops in the Congo.

When a foreign complication arises, or a new international problem presents itself, it is the president (speaking directly or through his secretary of state) who has the first opportunity to say what the attitude of the nation shall be. By the stand that he takes he can so put the counry on record that it will be next to impossible for Congress, or even a later president, to change the course that he has set. As we shall see, he may even lead the nation into war; for although he cannot declare war, he can adopt an attitude or create a situation, for example, by refusing to yield in a controversy with a foreign government, that may make war unavoidable.

Congressional limitations and controls

Nevertheless, the president does not play a lone hand, or always have his own way. Rarely can the policies which he formulates or sponsors achieve their purposes unless accepted and perhaps financially implemented by Congress; and they may be completely thwarted by lack of congressional support. A zealous Congress forced upon a reluctant chief executive the War of 1812, and likewise the intervention in Cuba in 1898 which led to the war with Spain,

the annexation of the Philippines, and a long train of other momentous consequences. An unconvinced Senate balked President John Quincy Adams in his Pan-American policy, Pierce in his Cuban policy, Grant in his Dominican policy, Cleveland in his Hawaiian policy, and Wilson in his endeavor to put the United States into the League of Nations. One of the vigorous and important standing committees in each of the two branches is the committee on foreign relations or affairs, in which, in connection with proposed legislation (and, in the Senate committee, with foreign service appointments and treaties) problems of foreign policy receive extended discussion, sometimes supplemented by lively public hearings. Other standing committees, too—appropriations, banking and currency, agriculture—touch foreign policy at various points; and special committees may be set up to investigate phases or consequences of presidential policy-making. From any of these directions may come criticisms or recommendations eventuating in decisions making it necessary for lines of policy to be abandoned or sharply altered. Finally, too, whatever funds may be required for carrying presidential policies into operation are obtainable only through appropriations voted by Congress. For example, in 1947 President Truman would have been unable even to start doing anything very tangible about fending off the spread of Russian domination in Europe and the Near East unless Congress had been willing to appropriate the $400 million requested for aid to Greece and Turkey as the first step in the program —followed by the vastly larger authorizations required under the Marshall plan.

As we have noted, the energetic assertion of presidential leadership in the field of foreign affairs during most of this century has stimulated a vigorous reassertion of congressional rights. For fifteen years, said Senator George (Democrat of Georgia) in the debate in 1951, there has been a "notable drift toward the delegation of authority by Congress to the executive." The State Department and the president have both had to tread with greater caution in the last few years than for several decades. The congressional committees on foreign affairs have been called into consultation in advance of important international conferences or of important decisions in the foreign field more and more frequently. Now, more than at any time in this century, foreign dealings involve a partnership of the two branches.

The role of public opinion

Back of both president and Congress stand the people. Although the backward state of popular information on and interest in the affairs of distant nations reflects an older, perhaps happier, era, in the last analysis no long term program of foreign policy can be carried out that lacks the support of the voters. Here, as in other areas of planning and action, the chief executive and leaders in Congress must ascertain, study, and assess public opinion; failing to do so, they may easily be betrayed into embarking upon a course of action leading straight to humiliating frustration at the hands of the people or their elected representatives. Not infrequently, cross-currents of opinion make it difficult to discern what the nation really thinks and wants with respect to a given situation or problem; considerations of self-interest and altruism often

are bewilderingly intermingled, and economic, ethnic, or other interest groups, such as business, labor, and religious bodies, may pull in diametrically opposite directions. Nevertheless there is growing awareness in our people of the demands of modern foreign policy and increasing willingness to make the sacrifices necessary to support large military and foreign aid expenditures. There is also some diminution in the influence of ethnic groups in policy-decisions and an abatement of some of the sharper regional differences of earlier years. There also appears to be an increase in the portion of the public prepared to take an active, continuing, and responsible interest in foreign policy.

FOREIGN POLICIES—PAST AND PRESENT

For most of the nineteenth century the main goal of American foreign policy was the protection of our developing nation and then of the western hemisphere from European aggression, typified by Washington's Neutrality Proclamation of 1793 and by the Monroe Doctrine of 1823. Gradually, however, our people spread throughout our continental home and sought greater markets for mounting production or, like our European neighbors, sought a "place in the sun" and expanded our influence into the Caribbean, South America, China, and the islands of the Pacific. Our increasing involvement with world powers led us ultimately into World War I and to Wilson's proposals for a League of Nations. Disenchantment with the consequences of these policies led to a retreat during the twenties and early thirties to isolationism—marked by rejection of the League and the Neutrality Act of 1935.

From hemispheric security to imperial expansion

During our period of aloofness, however, the democratic world moved steadily toward disaster. Dictatorships mounted to power in Europe and planned subjugation of their neighbors; democracies faltered and fell; Japanese war lords mapped out a "new order" calculated to make all Eastern Asia tributary to Tokyo. World War II began in 1939, with France quickly overwhelmed, Great Britain thrown into jeopardy, and totalitarianism threatening the earth; soon the greatest armed conflagration in history was raging in three continents. For the United States, this tragic course of events was a source of rapidly deepening apprehension. Our interests and policies in Europe and Asia were flouted; the spectacle of one free people after another going down was sickening; we too might be within the plans of the conquerors, and intervening oceans which had failed to save us from involvement in 1917-18 assuredly could not be depended upon now. Eventually, in 1941, we were borne directly into the maelstrom. The attack upon us by Japan was surely the consequence of one of our policies—our unswerving insistence that the Japanese stop their aggressions in China. If this had not served, the war probably would have come to us anyway as a result of another policy, namely, our frankly unneutral course in repealing our embargo on the export of munitions in order that we might sell to the nations at war with the Axis, followed early in 1941 by the Lend-Lease Act in which we virtually underwrote the war effort of all such

Search for collective security

nations. Despite assurances in the campaigns of 1940 that the country would be kept out of war, by these policies President Roosevelt involved the nation more and more deeply in the great struggle abroad.

Acceptance of international organization

The President then led the country in the direction of another foreign policy, namely, that of abandoning the isolationism which so palpably had broken down and substituting the principle of world-wide, internationally organized collective security for which Woodrow Wilson had vainly fought. In the Washington Agreement of January, 1942, instituting the United Nations in its original purely military form, an organization was more than hinted at; and in the Moscow Declaration and other American-British-Russian-Chinese pronouncements of 1943, it became a prime objective. Meanwhile the idea captured support in Congress and the country. In 1943, congressional sponsorship was added to presidential when (1) the House of Representatives overwhelmingly passed the Fulbright Resolution declaring for American participation in "appropriate international machinery with power adequate to establish and to maintain a just and lasting peace among the nations of the world"; and (2) the Senate, on its part, almost unanimously adopted the Connally Resolution, carefully worded to preserve the right of that body to pass upon any agreement committing us to such an arrangement, but also endorsing American membership in an association of free nations with power "to prevent aggression and preserve the peace of the world." Long before the war was over, the country was thus as solemnly committed to a share in such an organization as president and Congress could contrive; and the commitment was backed by a great body of anxious public opinion. There were people who objected in principle, and others who doubted whether anything useful would come of it all. But in any case the nation had moved out of one period of foreign policy into another. The rationale of the new policy might be described as follows: (1) technological changes have brought all parts of the world extremely close together, whether they like it or not; (2) aggressions and war occurring anywhere are of vital concern to peoples everywhere; (3) the United States no longer can enjoy security standing alone; and (4) therefore our only hope lies in associating ourselves with all nations of good intent in an organization prepared to uphold peace and order by collective action. Moreover, when we actively led in instituting the present United Nations (U.N.) in 1945, followed by two regional organizations within its framework —based in one case on the Inter-American Defense Pact of 1947 and in the other on the North Atlantic Pact of 1949—it was demonstrated that we had indeed shifted our grounds, in action as well as in words.

Resistance to communism

The United Nations system was made dependent for its effective functioning on reasonable harmony among the five great powers—Britain, France, China, Russia, and the United States. When the harmony evaporated before Russian intransigence soon after victory and the capture of the Chinese government by the Communists, disillusionment once again spread widely among the American people. In any event, the United States has found it necessary to supplement its attachment to the U.N. by regional military alliances with

friendly powers to halt communist expansion. This era of "cold war" between the United States and its allies and Russia and its satellites has produced another modification in our policy. Officially, however, our dedication to the U.N. is as firm as ever.

Contemporary American foreign policy is thus largely built around two objectives: (1) preservation of a system of international collective security through the U.N., and (2) resistance to the spread of communism. Both of these require more elaborate analysis.

PARTICIPATION IN INTERNATIONAL ORGANIZATION

Miscellaneous multilateral relationships

The foreign relations of the United States have never been entirely confined to direct and separate dealings with other nations individually. To begin with, they have been operated within a framework of international law, which, although often honored in the breach rather than the observance, is at all events a matter of more or less general international acceptance and agreement. It clearly is not a creation of the United States or of any two or three nations alone. In the second place, many international agreements in the past have been multilateral, that is, shared by a considerable number of states: for example, the Versailles Treaty at the close of World War I (which we failed to ratify), the Washington treaties of 1922 relating to China, and the London Treaty of 1930 on the limitation of naval armaments. Such treaties or conventions have on several occasions been concluded at diplomatic meetings or conferences in which the United States was represented along with other states. As world affairs have grown more complex in later decades, the number and importance of such meetings have increased. There are also numerous international bureaus, commissions, councils, unions, and other establishments to which the United States has become a party, often in pursuance of some multilateral convention or agreement. Even before a new galaxy of such agencies sprang from World War II and the United Nations, official government manuals listed 70 such international bodies in which the United States was participating or to which it was giving financial support. These ranged from an International Hydrographic Bureau, an International Bureau of Weights and Measures, and a Universal Postal Union to the International Labor Organization created as an autonomous part of the League of Nations at the close of World War I and the Organization of American States (more commonly known by the name of its secretariat as the Pan American Union), dating from 1890 and linking up 21 republics of the Western Hemisphere for purposes of friendly cooperation. Organizations of the kind come and go; but the United States still bears some responsibility for more than 80 international organizations of various types, many within the orbit of U.N. but others quite independent.

The League of Nations

Agencies of the sorts mentioned are specialized forms of international organization. Of a different order, however, is international organization as represented by the now defunct League of Nations and by the more recently

established United Nations. With the relations of the United States to the ill-fated League, most people are now familiar. Conceived in the fertile brain of President Wilson and organized on a pattern which he largely devised, the intended universal association of states for the preservation of peace was probably foredoomed by the refusal of our Senate to assent to the United States becoming a member. After a checkered career of 20 years it collapsed under the weight of a global war which it had been powerless to prevent. Even though outside, the United States could never hold completely aloof from the League's activities. We employed observers at Geneva, participated in many conferences held under League auspices, ratified various conventions of League origin, took part in the work of several technical and other commissions performing League functions, and eventually (1934) joined the League-sponsored International Labor Organization, although persistently refusing to adhere to the Permanent Court of International Justice ("World Court") which the League set up.

THE UNITED NATIONS

1. Origin and nature

The most significant participation of the United States in international organization has come as a result of the challenging experiences of the 1940's. After one of the most extraordinary reversals of national attitude and policy on record, the country now finds itself in many respects the key member of the most imposing international association or union known to history, namely, the United Nations. With the idea of such an organization growing in sharpness of conception and in public interest and support, preparations went on quietly in government circles at Washington for almost two years before representatives of the four leading Allied powers were gathered in conference at Dumbarton Oaks (an historic Washington estate) in August, 1944, to draw up a plan. Two months of work resulted in proposals stirring wide and generally favorable discussion, but leaving difficult problems still to be settled. After some of the most thorny of these—relating especially to voting procedures—had been freshly canvassed by the leaders of the "Big Three" at the Yalta conference of February, 1945, responsibility for carrying the plan to completion was devolved upon a more general international conference convened at San Francisco on April 25, 1945. In this historic gathering, the Charter of the United Nations was written and signed by delegates of 50 different nations. There had been, in a sense, a "United Nations" from as far back as January, 1942, when representatives of 26 nations, meeting in Washington, adopted a "declaration" binding their states to cooperative military action against the Axis powers. Basically the United Nations subscribed to in the Charter by these same states and others was designed to perpetuate that association into times of peace and convert its function from waging war to preventing it. In any event, the new plan was quickly accepted and implemented. Transmitted by President Truman almost as soon as signed, the Charter swept through the Senate (July 25, 1945) by the extraordinary vote of 89 to 2. Other govern-

ments acted with such alacrity that upon adherence of the U.S.S.R. in October, the American secretary of state was able to announce the Charter adopted; and the first U.N. instrumentality brought into operation, the General Assembly, began functioning at London early in 1946. Doubts about the constitutional competence of the treaty-making authority to put the country into an organization of the kind had troubled many senators and other people in 1919. But in 1945 constitutional problems did not seem very important.

There were people, when the Charter was framed, who would have been glad to see the traditional national-state system discarded and some form of "world government" instituted. A step as revolutionary as that was not seriously considered. The new organization, like the League before it, became legally only a voluntary contractual arrangement among states retaining full sovereign equality and exempt from any international intervention in matters within their several separate jurisdictions. Originally, there were 51 such states; later admissions have brought the roll to a total of 113. The major outsiders are Communist China and Germany—East and West.

2. Organization

It is possible here merely to list the principal organs through which the U.N. operates: (1) a deliberative and advisory General Assembly—a "town meeting of the world"—embracing all of the member states each with from one to five delegates but only one vote, and meeting in regular session every September, with special sessions as needed; (2) a Security Council, charged with primary responsibility for maintaining international peace and security, composed of five permanent members—noncommunist China, France, the U.S.S.R., Great Britain, and the United States—and six nonpermanent members elected by the General Assembly for two-year terms, and in session almost continuously, (3) an Economic and Social Council, reflecting the organization's concern with world-wide economic and social conditions and problems (especially as related, even potentially, to the causes of war), and composed of 18 member-states—now including the United States—chosen by the General Assembly for three-year terms; (4) a Trusteeship Council, charged with supervising the administration of trust territories (all formerly League mandates), and composed of seven trustee member-states (including the United States) and seven nontrustee states, either permanent or elective; (5) an International Court of Justice, similar to the now displaced League "World Court," composed of 15 judges elected by the General Assembly on recommendation of the Security Council, sitting in the Peace Palace at The Hague, and with all U.N. members (and other states so desiring) parties to the organizing "statute"; and (6) a Secretariat, servicing the principal organs (except the International Court) and the specialized agencies through some 4000 employees drawn from over the world, headed by a secretary general, and forming to all intents and purposes an international civil service.

3. U.S. agencies for U.N. participation:

What the United Nations does, essentially, is to provide a framework within which a nation carries on "foreign relations" with other nations through collective channels instead of in the traditionally nation-by-nation manner. Of course, direct and independent diplomatic relations between nation and

MEMBER STATES OF THE UNITED NATIONS

1964

Western Bloc

Australia
Austria
Belgium
Canada
China (Formosa)
Denmark
Finland
France
Greece
Iceland
Ireland
Italy
Jamaica
Luxemburg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Turkey
Union of South Africa
United Kingdom
United States

Latin-American Group

Argentina
Bolivia
Brazil
Chile
Colombia
Costa Rica
Cuba
Dominican Republic
Ecuador
El Salvador
Guatemala
Haiti
Honduras
Jamaica
Mexico
Nicaragua
Panama
Paraguay
Peru
Trinidad and Tobago
Uruguay
Venezuela

Asian and Middle Eastern Group

Afghanistan
Burma
Cambodia
Ceylon
Federation of Malaysia
India
Indonesia
Iran
Iraq
Japan
Jordan
Kuwait
Laos
Lebanon
Nepal
Pakistan
Philippines
Saudi Arabia
Syria
Thailand
Yemen

African Group

Algeria
Burundi
Cameroon
Central African Rep.
Chad
Congo (formerly Belg.)
Congo (formerly French)
Dahomey
Ethiopia
Gabon
Ghana
Guinea
Ivory Coast
Kenya
Liberia
Libya
Malagasy Rep.
Mali Fed.
Mauritania
Morocco
Niger
Nigeria
Rwanda
Senegal
Sierra Leone
Somalia
Sudan
Syria
Tanganyika
Togo
Tunisia
Uganda
United Arab Rep.
Upper Volta
Zanzibar

Soviet & Satellites

Albania
Bulgaria
Byelorussia
Czechoslovakia
Hungary
Mongolia
Poland
Rumania
Ukraine
U.S.S.R.

Others

Cyprus
Israel
Yugoslavia

The New York Times, Sept. 24, 1961.

a. A matter of foreign relations

nation on an individual basis continue—as do various unattached international commissions, bureaus, and the like. Although the theory is that virtually everything pertaining to the interests of world peace will be channeled through U.N., there still are quite independent international discussions and agreements of the highest importance, yet affecting peace—for example, those culminating in the North Atlantic Pact of 1949. Indeed there not only is overlapping between two spheres of action—nation-by-nation and international organization—but possibility of confusion and conflict. The present point, however, is that a member-state's dealings within U.N. *are* foreign relations, to be carried on subject in general to the same constitutional checks and political limitations applying in the case of international dealings outside of the U.N. orbit.

b. Responsibility of the State Department

This being the case, it is natural that the agency within our government primarily responsible for U.N. relations should be the Department of State. So broad, it is true, is the range of U.N. functions and activities that hardly a department or establishment in our government fails to have interests involved. Representatives of departments like Agriculture, Commerce, and Labor, and of establishments like the National Security Council and the United States Tariff Commission constantly advise State Department officers and representatives at U.N. meetings, with upwards of a dozen interdepartmental committees functioning similarly. It is on the State Department chiefly that responsibility falls; and there is where one must look for the machinery through which our U.N. relations are officially carried on.

c. Representation at U.N. headquarters

For purposes of representation at U.N. headquarters in New York City, there is—as in the case of most other member-nations—a "permanent mission," which with us consists chiefly of a "representative" or chief of mission (now a member of the President's cabinet) and a deputy to him, a deputy representative to the Security Council, and representatives to the Economic and Social Council, the Trusteeship Council, and other organs and agencies, the whole staffed with a secretary general, certain advisers, and a secretariat equipped for year-round service. Delegations to the General Assembly, however, do not belong to the "mission," but are separately appointed (five delegates and five alternates, with the secretary of state serving as "senior representative") for each meeting. Under the terms of the United Nations Participation Act of 1945, the president reports in full to Congress every year on U.N. activities and on United States participation therein.

In a world polarized into hostile blocs, each burdened with huge and increasing armaments and each competing for the favorable opinion of the unaligned states and the newly emerging societies and over all hanging the dread spectre of nuclear war, the United Nations still stands as a symbol of hope. The early, and perhaps too optimistic expectations of our people in its capabilities have given way to more sober realization of its limitations. Although the U.N. has been able to achieve little relaxation of the armaments race or the tensions between the Soviet and the Western blocs, it nevertheless has earnestly addressed itself to many serious international problems. It has successfully isolated and dealt with potentially dangerous outbreaks in Iran,

Kashmir, Palestine, Korea, West New Guinea and, most recently, the Congo. It has also made impressive efforts to improve the health and welfare of many of the less fortunate in the world and to aid newly emerging nations in economic development. Our government continues to express its faith in the U.N. and to give it loyal and largely bipartisan support. Addressing the General Assembly on Sept. 25, 1961, President Kennedy said, "Today of all days our dedication to the Charter (of the U.N.) must be maintained." On the other hand, we no longer place our sole, perhaps not even our major, reliance on the U.N. to preserve peace, security, or freedom. We plan and carry out, independent of it, measures to strengthen the "free world" and to aid developing nations.

RESISTANCE TO COMMUNIST AGGRESSION— "COLD WAR" WITH THE U.S.S.R.

Not "one world," but three

Amid the bitter experience of World War II, many thinking people, impressed with the technological annihilation of distance and the resulting close interrelation of activity, and even community of interest, of peoples everywhere, became enamored of the concept of a future in which there would be but "one world," and a world so knit together by moral, economic, and even political ties that thenceforth the follies and disasters of the past could be completely avoided. To a considerable extent, United Nations, as planned, reflected such aspiration. The unhappy outcome has instead been a profound cleavage among three worlds: the world of the Western bloc including the restive Americas; the world of the U.S.S.R., its satellites and the aggressive Chinese and their puppet regimes; and the world of the "neutrals"—mainly the newly organized states of Africa, Southern Asia and the Middle East. To the United States, this situation has presented the most acute challenges in our history and has resulted in major and continuing readjustments in our foreign policies.

U.S.S.R. aggression and intransigence

When the U.S.S.R. absorbed the Baltic states in 1940, there were misgivings in this country; and, as indicated above, our government never has recognized those annexations. But for more than three years the Soviet Union fought as one of the allies against the Axis powers. It participated actively in planning and establishing the U.N. and became a leading member. From Anglo-American-Russian agreements, notably at the Yalta conference of 1945, it achieved recognition of its important status in the world and acceptance of many of its traditional ambitions. Hardly was the war over, however, before the former ally shifted to a policy of intransigence and aggression. Remaining in the U.N., it repeatedly blocked needed action by use of the veto in the Security Council, and many times "walked out" when displeased, as for example early in 1950 in protest against continued representation of Nationalist China. It has communized Poland, Hungary, Romania, Bulgaria, Albania and Czechoslovakia, contrary in most instances to agreements made at Yalta, and has established satellite governments in all of these states. For a time it seriously

threatened Greece, Iran, and other Near Eastern states by supporting uprisings by communists against the established governments. It has brought border Asiatic areas under its control and supported the communizing of almost all of China. Unquestionably it encouraged and assisted the North Korean assault on the (South) Korean Republic in 1950. To many it has seemed that the Soviet Union is bent upon the ideological if not physical conquest of Southeast Asia, India, all Western Europe, and perhaps the world.

The fall of China

Perhaps the greatest setback to American hopes, however, was the successful communist revolution in China (1947-49) which toppled the Nationalist regime, drove it from the mainland, and established effective Red domination of this vast and storied land. Aided and encouraged by the Soviet Union, the Reds soon emerged as a powerful force in Asiatic affairs and began pressing all the Western positions there. They intervened in Korea, supported the uprising against the French in Indo-China, conquered Tibet, pushed back the northeastern frontiers of India, and are continuing to support pressure against the regimes in Laos and Viet Nam. The loss of China and the resultant decline of Western influence in Asia precipitated angry and bitter controversy in the United States with charges hurled across the political battle-lines of "softness," ineptitude, and downright disloyalty. Countering Chinese pressure, we have used many of the same procedures hereafter described used to contain communism in Europe. A major split in 1962-63 between the Asiatic and European communists largely over the "peaceful co-existence" aims of the Soviet leaders revealed that the Chinese Reds are, at present, much the most aggressively anti-Western of the communist states.

The rise of new nations

The emergence of the neutrals—unaligned states as they prefer to be called—has also shaken the foundations of the "one world" concept and introduced striking changes in the character and nature of the U.N. One by one the former colonies of the Western bloc—mainly those of England, France, and the Netherlands—have successfully shaken off their colonial fetters and have deployed on the world stage as new nations in Africa, the Middle East, and South Asia. All are seeking rapid industrialization, improved living standards, and national identification. For the most part this has been or is now being accomplished without major violence but in Algeria, Laos, Viet Nam, and the Congo the blood-letting preceding independence was prolonged, expensive, and constantly threatened major tragedy. In several cases, some of the burden and much of the obloquy for supporting colonial regimes fell upon the United States as it tried to aid its European allies. More often, the United States has sought to aid economic development and to counter revolutionary pressures from the communist world. In any event, these new states, with their strong anti-Western feelings, present challenges to our position which cannot be ignored.

Significance for American foreign policy

For the United States, as for many other nations, all this has forced a painful reorientation of policies. Our statesmen and people have come to the conclusion that American and world security can be won only by strong methods, namely, by augmenting our own military might, by preparing for atomic

warfare if it cannot be averted, by developing the U.N.'s hitherto latent military potentialities, by building supplementary regional defense systems and by extending aid on a generous scale to the emerging nations—in short, by mobilizing the moral, economic, and military resources of the free world with sufficient vigor and effectiveness to "contain" communist power, that is, to prevent it from overflowing its existing bounds and extinguishing Western institutions and culture and subjugating the millions of Asia and Africa. To these difficult and costly objectives the over-all foreign (and much domestic) policy of our government in the past sixteen years has been directed. A few of the measures invoked—in addition to the rearmament program outlined in the next chapter—must be mentioned.

Expedients for containing Russian power:

1. Aid to Greece and Turkey

The turning point in American-Soviet relations came in 1947. The Moscow Conference of foreign ministers of the "Big Four" early in that year achieved not a single important agreement and ended all hope of the "friendly" cooperation for which we had been striving since 1945. Even while the conference was in progress, President Truman took the first large step to curb Russian expansion. In a message to Congress on March 12, 1947, he called attention to northern Greece, where protracted guerrilla operations under encouragement from Moscow were threatening a coup overthrowing the Greek government and delivering the country to communism. Such a coup if successful would put Russia on the Mediterranean and place Turkey and the strategic Dardanelles in an impossible position. To avert such a disaster, he proposed that the United States at once bolster local resistance by giving both Greece and Turkey liberal aid in the form of money, goods, military supplies, and military counsel. During vigorous and prolonged discussion in Congress and outside, it was objected that by such independent action the United States would be by-passing the organization ostensibly existing for dealing with such threats to world peace and order, the U.N. The President replied that the need was too urgent to permit of waiting for the U.N. to organize measures, that the harassed countries had no place to turn except to the United States, and that it was no disservice to the U.N. for a powerful individual member to act unilaterally to maintain or create conditions favorable to the organization's ultimate mastery in the international field. Under an act approved May 22, 1947, the United States launched a program of assistance (an initial appropriation of $400 million was voted) to the two countries which has continued. Regimes friendly to the West were stabilized and the threatened subversion thwarted.

2. The Marshall Plan:

a. Origin and purpose

Hardly had the new idea of employing material aid to bolster war-torn nations against Soviet seduction been inaugurated before a vastly broader field opened for applying it. While Congress was still debating assistance to Greece and Turkey, the State Department published a significant study under the title of *The Development of the Foreign Reconstruction Policy of the United States.* A few weeks later (June 5, 1947) Secretary of State George C. Marshall dramatized the document in a commencement address at Harvard University, outlining an ambitious scheme for cooperative but mainly American assistance in a general rehabilitation of the sagging national economies of Western

Europe. At the outset, the plan was not avowedly anti-Russian; on the contrary, the U.S.S.R. and its satellites were invited to participate in it. When, however, the invitation met with flat refusal, the project—promptly named by journalists the "Marshall Plan"—was fast reoriented as a phase of the Truman program for employing American resources and power to contain, or block, the Soviet Union's aspirations. The rationale of this program was that if tired, impoverished, and despondent Western peoples could be helped to their feet and given a vision of better things under a revived economy, the strong communist parties then operating in many nations would lose their appeal. In response to a request from Washington, 16 European governments conferred on the extent of their needs and on what they and their peoples could themselves do toward meeting them, arriving in the end at a four-year rehabilitation program under which the United States (mainly) was to be asked to supply goods, money, and credit to a total for the period of $22.44 billion. Warmly supporting the project, President Truman passed it on—under the name of the European Recovery Program (E.R.P.)—to Congress, convoked in special session. After debates carrying over into the following year, he was able, on April 3, 1948, to affix his signature to a Foreign Assistance Act, embracing aid for countries outside of the 16 (e.g., China), but with the major Title I designated as the Economic Cooperation Act. The legislation was limited to a single year. To keep the project going, later continuing and amending measures have been necessary.

b. Adoption

Foreign aid continues

Strictly speaking the Marshall Plan program ended in about four years having, in general, succeeded in rehabilitating the economies of several Western European nations. The outpouring of American funds, however, to counter internal or external communist pressures has become a continuing and major part of American foreign policy. Military assistance to bolster the defenses of our allies was added as a prime object of foreign aid beginning in about 1951 and as part of our global system of alliances. For a time it overshadowed the economic aid with which it was associated for legislative purposes. European allies, for example, received aid in this form after the Marshall Plan had achieved its goals. Gradually aid to the underdeveloped areas, newly emerging nations, and our Latin American neighbors became and has remained the major focus of our foreign aid program. New forms of assistance such as development loans have also been inaugurated in an effort to shift from the outright grant system.

If we include the postwar relief and rehabilitation grants, more than $97 billion has been committed for foreign assistance grants and loans from July 1, 1945 to June 30, 1962. About two-thirds of the total was used for economic and relief aid and the balance for military aid.

To sustain this continuing flow of treasure, each president, Truman, Eisenhower, and Kennedy, has faced stern Congressional critics and has had to battle vigorously for the level of support he felt essential. Rarely has he received as much as he requested or as much flexibility in administration as he thought desirable. Several of the loan and grant programs have specified

U. S. FOREIGN ASSISTANCE PROGRAM

1945-1962

(In Millions)

Region	Total	Economic Aid	Military Aid
1. Europe	44.706	28.866	15.840
2. Far East	21.837	13.729	8.108
3. Latin America	6.824	6.184	641
4. Near East—South Asia	17.847	12.703	5.144
5. Africa	1.845	1.730	116
6. Nonregional	4.074	3.244	829
Total	*97.133*	*66.455*	*30.678*

SOURCE: Congressional Quarterly Weekly Report, May 24, 1963.

TEN LARGEST RECIPIENTS OF FOREIGN AID

1963

(In Millions)

India	$775.1	Brazil	244.6
Pakistan	403.9	Chile	244.6
Turkey	348.0	U.A.R. (Egypt)	224.1
Korea (South)	331.3	China (Nt'l)	160.4
Viet Nam	287.2	Mexico	142.4

that capital equipment purchased with American funds be of American manufacture. More and more insistently the Congress is urging that other prosperous nations, especially England, France, Germany, and Japan, make a larger contribution to development aids for the new states of Africa and South Asia, that wherever possible international financial institutions bear a greater share of development costs, and that aid be sharply curtailed for countries such as Yugoslavia, Ghana, and Indonesia, that show some affinity for communist doctrine. The administration of foreign aid has also been repeatedly investigated and harshly criticized and has undergone numerous shifts of leadership. The major responsibility is now vested in a semiautonomous branch of the State Department, the Agency for International Development.

3. "Point Four" and underdeveloped areas

In a notable "Point Four" of his inaugural address of January 20, 1949, President Truman called for "a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas." The areas in mind were those of more

backward condition, largely in Asia and Africa—areas in which Western private enterprise (business, commercial, missionary, and the like) often has made scattered contributions, but which never before have been viewed as a field for concerted public undertakings. The President hoped that a program of timely assistance to such areas might diminish the appeal of communism. With its strident propaganda against Western "imperialism," the communist movement had been making striking gains in these areas. During 1948-49, the U.N. General Assembly discussed a long-range program of the kind, finally, in November, 1949, adopting resolutions inviting member-states to contribute to a co-operative budget for it. A congressional Act for International Development in 1950, put the United States in the position of first to comply by authorizing a small appropriation ($30 million) for 1951. The program has now become a regular part of our foreign assistance effort and under it we have made available hundreds of trained technicians to assist the peoples of the world to raise their own standards of living. Some observers believe that this program, which is the least expensive of the aid programs, has produced proportionately greater results than any of the others.

The Peace Corps

A special and new form of technical aid was created in 1961 by Congress on the strong recommendation of President Kennedy: the Peace Corps. A semiautonomous agency was created in the Department of State to recruit, train, and make available to underdeveloped nations for agreed upon projects a cadre of young men and women trained in various specialties (teaching, agricultural sciences, medicine, etc.) and in the language and culture of the nation to which they are assigned. These young people are to offer on the spot technical help and thus compensate for grave shortages of trained people in the new nations. In so far as possible these are to be dedicated young people who will live among the people they are to help without uniforms, high pay, or special perquisites. To mid-1963, more than 5,000 volunteers had been trained or were being trained and programs were underway in more than 40 nations.

4. The Atlantic Alliance

The communist coup in Czechoslovakia in 1948, transforming that unhappy country into a satellite of the U.S.S.R., convinced the leading statesmen of Western Europe that Russia would not be content simply to consolidate its gain of World War II but was bent on continued expansion. Great Britain, France, the Netherlands, Belgium, and Luxembourg meeting at Brussels in March of 1948 joined together in a fifty-year mutual military alliance against aggression. American support was essential if the Western "bloc" was to constitute an effective barrier against Russian advance. President Truman spoke out bluntly to Congress calling for American support and enlarging on the Russian menace. Led by Senator Vandenberg (Republican of Michigan), the Senate adopted by a vote of 64 to 4 a resolution declaring that this country should by constitutional processes seek peace and security by the "progressive development of regional . . . arrangements for . . . collective self-defense." Early in 1949, the President submitted for Senate ratification a North Atlantic Pact uniting the five nations of the Brussels Pact with seven other nations of

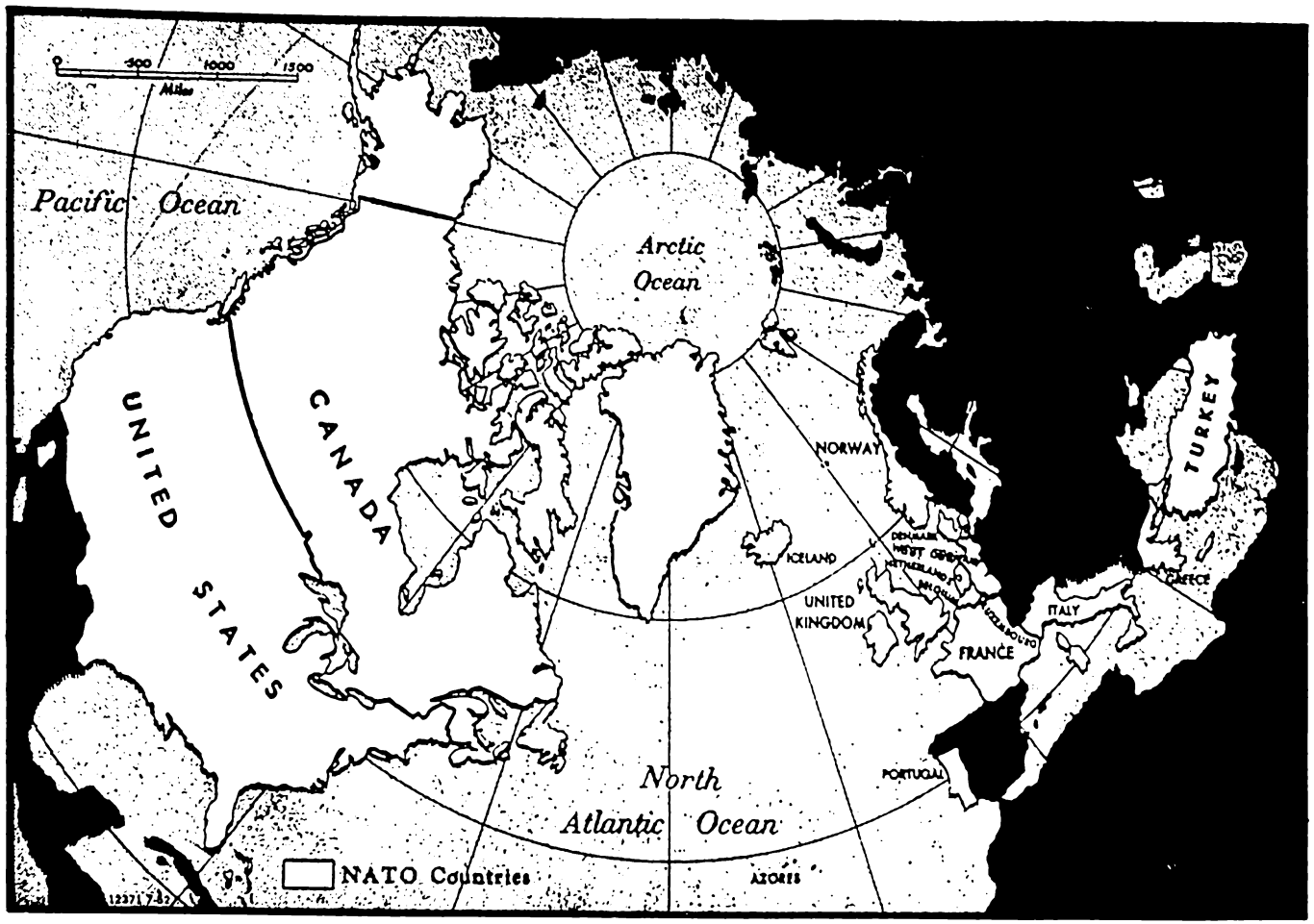
the "Atlantic community" in a defensive military alliance. Apart from the Inter-American Pact of 1947 uniting the nations of the Western Hemisphere in resisting aggression from outside, this was the first alliance of its kind seriously considered by the United States for more than a century. After extended hearings and debates the Senate approved American adherence by a vote of 82 to 13. The North Atlantic Treaty remains the cornerstone of contemporary American foreign policy in Europe. By this pact the twelve nations agreed that an armed attack on any one of them in Europe or North America is to be regarded as an armed attack against all; and if such an attack occurs, they will take action, including the use of armed force, necessary to maintain the security of the North Atlantic area. Greece and Turkey acceded to the treaty in 1952 and were added to the allied states.

Strengthening the defense of Western Europe

The North Atlantic Treaty provides for continuing consultation among the signatories to develop ways and means, mainly military, for making the alliance formidable. A Council of Foreign Ministers of the participating nations and a Defense Committee of the Defense Ministers were specifically established in the treaty. In the fall of 1949, these organs formally began their work under the general title of North Atlantic Treaty Organization (N.A.T.O.). In 1951, General Eisenhower took command of headquarters established near Paris from which it was hoped to build a coordinated armed force of the units dedicated to N.A.T.O. by the various allies. The military forces which the United States might contribute to the joint endeavor became the subject of a lengthy debate in the Congress, largely over the question of the proper way in which the Congress ought to be involved in such a determination. The Senate, by resolution, in 1951 finally approved an increase of American divisions stationed in Western Europe from two to six, but suggested that congressional consent should be obtained by the president to the sending of any more.

The problem of Germany

All efforts to reunite Germany having failed, the most difficult problem confronting the Western allies was the role to be accorded friendly West Germany. The United States strongly urged the rearmament of the Germans and the inclusion of German divisions in the armed forces of the allies. The European victims of German aggression in World War II were, on the other hand, as frightened by a rearmed Germany as by an aggressive Russia. To America, the attempt to defend industrial Western Europe against a Russian advance with a hostile or possibly indifferent Germany seemed unthinkable. The leaders of N.A.T.O. finally in 1952 after months of negotiations worked out a series of treaties and agreements creating a European Defense Community (E.D.C.) of France, Italy, Belgium, Netherlands, Luxembourg, and West Germany under which would be organized a single European military force including German units. To this force would be added, under N.A.T.O., American and British armed forces as well as those of the other members not partners in E.D.C. At the same time the United States, Britain, and France (the occupying powers) agreed that virtually complete independence would be accorded West Germany and that the guarantees of the Atlantic Pact would in general be extended to West Germany. French refusal to ratify the key



THE NORTH ATLANTIC ALLIANCE

agreements scuttled this program and a new series of accords was hammered out in 1954.

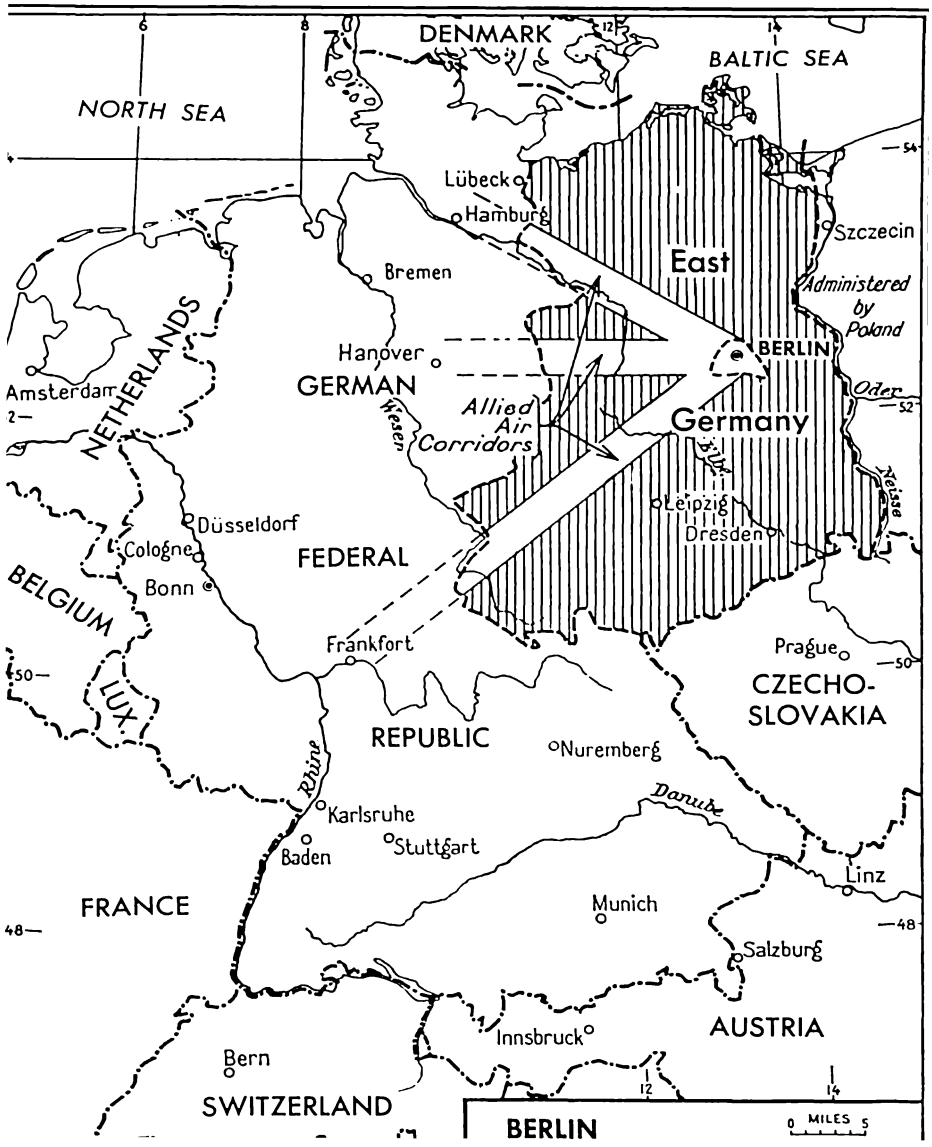
These agreements: (1) invited West Germany to become a member of N.A.T.O.; (2) provided that Italy and West Germany would be invited to accede to the Brussels Treaty of 1948; (3) created a new organization of the Brussels pact states called a Western European Union and endowed this new organization with power to control the armaments dedicated to support of the Union; (4) provided for the restoration of full sovereignty to and an end of the occupation of West Germany; (5) provided for a substantial military contribution to N.A.T.O. by West Germany but with the size and character of this contribution carefully limited in deference to French anxiety over a rearmed Germany; (6) provided that West Germany renounce the right to manufacture atomic and nuclear weapons. Those agreements to which the United States was a party were submitted to the Senate late in 1954 and ratified by it April 2, 1955, by a vote of 76 to 2. The other nations, in their turn, also ratified the pacts, France finally acceding after another set of agreements between it and West Germany over the Saar were fashioned. Although the completion of the network of agreements uniting the Atlantic states in a solid bloc did not of itself create the strong military forces ultimately contemplated by the Allies, it did present the Soviet with a strong front and the Rusian attitude in Europe began to change perceptibly. A peace treaty was finally concluded with Austria in March, 1955, ending the occupation and restoring its sovereignty after years of frustrating negotiations. So conciliatory grew the tone of Russian diplomacy that a top-level meeting of the "Big Four" reminiscent of the late years of World War II was held in Geneva in mid-summer of 1955. At the Geneva meeting the tone of all participants was most conciliatory. President Eisenhower went so far in an effort to find a solution for the armaments race as to propose swapping blueprints and aerial photographs of defense installations with the Russians. The important issues—the status of Germany and armaments reductions—were referred by the leaders to a conference of their foreign ministers to be held later at Geneva. This conference, held in late October and early November of 1955, ended without a single agreement of consequence between the East and West. And all subsequent negotiations—those of the Geneva Conference of Foreign Ministers of the "Big Four" in 1959 and the abortive "summit" conference of the heads of state of the same powers in 1960 in Paris—have also failed to produce any new accord on the status of Germany.

Berlin: the "Achilles Heel"

Relations among the N.A.T.O. allies have been beset almost from the start but especially in recent years by many difficulties. Europe has been organized economically into the "Six" (common market) and the "Seven"; France under De Gaulle has liquidated its Algerian commitments and has by excluding Britain from the common market, by insisting on developing its own nuclear weapons system and by cementing its relations with West Germany, manifested its determination to reduce Anglo-American influence in Europe. Britain has been anxious to reduce its European armed strength and to accept

American nuclear power as its own best defense. Probably the most vulnerable spot in the defensive posture of the N.A.T.O. alliance is, however, Berlin. The capital of the former German Reich was left, by the military and political settlements of 1944-1945, an island of joint Western-Soviet responsibility in the midst of the Soviet occupation zone—later the Soviet dominated German Democratic Republic. Large sections of the city were assigned to each of the four powers and in those under Western authority a large measure of self-government with free elections was soon established. All land access to this bastion of Western strength, however, must be across territory controlled by the Soviet Union. The Russians struck quickly after the collapse of the war-time alliance and sealed off the city in 1949. The Western position and that of the citizens of West Berlin were saved only by a mammoth air lift organized by the West. Late in 1958, after efforts to weaken N.A.T.O. and prevent the rearming of West Germany had failed, the Soviet Union again sought to exploit this chink in the western armor. In November it announced that unless negotiations looking toward a final settlement of the German question were begun in six months, it would make a separate peace with the German Democratic Republic and assign all its rights in Berlin to this satellite state. The Western powers would then be forced to negotiate with East Germany for their continued position in Berlin. The Russians indicated that in case of "trouble" they would support their puppet state. Khrushchev, the Soviet leader, clearly wanted a new summit conference on Germany. Instead, a conference of the foreign ministers of Britain, France, Russia, and the United States assembled in Geneva in mid-1959 and after prolonged discussions of the conflicting proposals for a German peace settlement adjourned without agreement. For a year, the Soviet Union pounded away at the West in soft and friendly and then in strident and belligerent tones. Khrushchev visited the United States in the fall of 1959, disavowed any ultimatum on Berlin, spoke of his hopes for amicable relationships, and promoted his country and his plan for a new "summit" conference. The conference finally occurred in May of 1960 in Paris and was dissolved almost before it began by a vigorous Russian attack on the United States and President Eisenhower for spying on the Soviet Union by means of high-flying planes, one of which was unhappily captured just prior to the conference meeting. The Russians then began to step up their pressure for a Berlin settlement on their own terms. A meeting in June, 1961 with President Kennedy in Vienna achieved no apparent results. The Russian leader is still calling for a settlement but has withdrawn any deadline. Meanwhile East Berlin has been completely sealed off from the Western Zone. The United States has increased its troop strength in Berlin and in Europe, and at one stage of the crisis in 1961 called up several reserve units to bolster its land and air forces. The Western Allies have indicated that they intend to maintain their position in Berlin come what may. The Congress by concurrent resolution in 1962 expressed its view that this country is "determined to prevent by whatever means may be necessary, including the use of arms," any Soviet violation of Allied rights in Berlin. In an

ERLIN AND THE TWO GERMANYS — 1963



effort to promote European unity, encourage West Germany, and reinforce our determination to protect Berlin, President Kennedy visited Germany in June, 1963.

5. Military aid to friendly nations

Apart from an allusion to "mutual aid," the North Atlantic Pact obligates the United States to no program of military assistance. Such assistance, however, had been given Greece and Turkey since 1947 and Nationalist China over a longer period. No one ever doubted that American aid would be required by the more needy Atlantic Pact states if they were to rebuild their armies. No sooner, indeed, was the pact assured than a comprehensive and co-ordinated program of American assistance long in preparation was placed before Congress. President Truman was able to sign a Mutual Defense Assistance Act in October, 1949, carrying an appropriation of $1.314 billion mainly for the Atlantic Pact states, but also in relatively small amounts for Greece, Turkey, Iran, Korea, the Philippines, and the "general area" of China. Thus was launched the third great program of bolstering friendly nations with American money aaginst communist subversion or attack. In the years since 1949, the program of military assistance has been expanded to include many other friendly nations and to bolster the defenses of those on the periphery of the "Iron" and "Bamboo" curtains.

6. Armed resistance in Korea:

In one area thus far, namely Korea, communist containment has involved the United States—as also the United Nations for the first time—in actual war. During World War II, the United States, Great Britain, China, and near the close the U.S.S.R. agreed that after the country's liberation from Japanese rule, Korea should again become a free and independent nation. When Japan accepted defeat, it became a matter of convenience for Russian authorities to receive the surrender of Japanese forces in the Korean north and American authorities that of forces in the south; and for the purpose, an arbitrary dividing line was fixed at the 38th parallel. Before long, it became apparent that, quite contrary to American intention, the U.S.S.R. proposed to regard the division as permanent. Although Russian troops were alleged to have been withdrawn from the northern zone in 1948, every effort of the United States, supported by associates in the recent war, to bring about the creation of a free government for a united Korea was frustrated. In the north, a well-armed puppet communist regime—the "Democratic People's Republic of Korea"—arose under encouragement from Moscow. In the south, a Republic of Korea was established as an independent nation in 1948 after a free election held under the auspices of the United Nations—a republic promptly recognized by the United States and 31 other U.N. members, although barred by Soviet veto from membership on its own part. With the northern communist regime from the first claiming jurisdiction over the entire country, there always was danger that it would attempt by force to make its asserted authority good. On June 25, 1950, a military assault across the 38th parallel was launched with that end in view. A seven-man United Nations commission concluding investigations in the country at the time testified—as was well known from other sources—that the attack was entirely unprovoked and unjustified. At the request of the

a. The U.N. moves to halt aggression

United States the U.N. Security Council instantly took notice of it, insisting upon an immediate cessation of hostilities, requesting all U.N. members to refrain from aiding the aggressors, and, as the situation grew worse, calling upon all to assist in repelling the invasion. Fifty-three of the 60 U.N. members joined in condemning the North Koreans' action, and in time more than 30 pledged material assistance in stopping it.

b. The role of the United States

The military operations that ensued proved decidedly more prolonged, difficult, and costly than originally expected. With encouragement and assistance from both the U.S.S.R. and communist China, the invaders overran almost the whole of the South Korean territory. South Korea itself was not well organized or equipped for defense; the United States had withdrawn virtually all of its military forces from the country in 1949; American funds voted for Korean aid had not been fully or effectively used; for a time, poorly armed Koreans and handfuls of American occupation troops brought over from Japan could fight only delaying actions, with danger of being pushed into the sea. Calls of United Nations upon its members brought wide moral support and appreciable naval and air, with some ground, assistance. The bulk of the armed forces were supplied by the United States and with U.N. authorization were quickly thrown into action. By late autumn a successful conclusion of the operation seemed in sight—when suddenly the entire picture was changed by the entrance of communist China into the conflict; for a time gravely threatening total defeat for U.N. forces. The U.N. forces finally succeeded in driving the Chinese back north of the 38th parallel and there the battle lines were stabilized.

c. The armistice

As the Korean struggle settled into a stalemate approximately along the 38th parallel a growing rift between the Truman administration and General MacArthur, the Commander of U.N. forces in Korea, burst into the open. The issue concerned the character and scope of American policy toward Red China. The General was anxious to push forward to complete victory in Korea by bringing military pressure on the Chinese in Manchuria and China if necessary even at the risk of an all-out war with China and perhaps with its ally, Russia. The administration, under grave pressure from its Atlantic Pact allies, was unwilling to push China too far. It feared that plunging our armies into a huge effort against the unlimited Chinese manpower would open western Europe to the Russians. On April 11, 1951, President Truman relieved MacArthur of his commands in the Far East. The General returned somewhat in the style of a conquering hero, plunging the nation and the Congress into a violent debate over the administration's Korean policy. Truman held firm in the face of the bitter controversy and the congressional efforts of his critics ended inconclusively. Persuaded by a Russian hint and by an earnest desire to have done with the Korean "police action," the United States agreed to open armistice negotiations under the U.N. banner with the North Korean leaders in July of 1951. One train of patient negotiators after another debated over the table first at Kaesong and later at Panmunjom for month after weary month. By early 1952 agreement had been reached on all points save one—the repatria-

tion of prisoners of war. There the truce talks bogged down for nearly a year. A new president, Eisenhower, in fulfillment of a campaign pledge visited Korea to try to end deadlock. In general, however, he gave support to the position of his predecessor. In April of 1953, the talks were resumed and, after a difficult period with the head of the South Korean Republic, Syngman Rhee, final agreements were concluded in July of 1953. A cease-fire accompanied by a withdrawal of the armies two kilometers from the battle-line and a voluntary repatriation of prisoners were the highlights of the settlement. A commission of "neutral" states was created to enforce the arrangements. A meeting of the South Koreans and their U.N. defenders with the North Koreans, Chinese, and Russians in Geneva in 1954 failed to find a more permanent solution and the armistice continues. Both Chinese and U.N. forces, however, have been withdrawn in large numbers from the war-torn peninsula.

7. Formation of Pacific alliances:

Korea turned American attention more forcefully than ever westward to the Pacific. The communist success in China had undone years of patient efforts by the United States in behalf of this strife-ridden and war-beset country. The remnants of the defeated Chinese nationalists took refuge on the island of Formosa which with American help was transformed into a bastion against the advancing Reds. The Republicans seized on the loss of China to berate the Truman administration and every single act of omission or commission was scrutinized and analyzed to show ignorance and incompetence if not willful treachery by a group which had always been "soft," as the extremists put it, toward communism. No issue in recent years has lit such an emotional bonfire or produced such hysterical oratory as this. The MacArthur dismissal was, perhaps, the high point of the controversy, but the campaign of 1952 was filled with angry words. The election of President Eisenhower did not quiet the debate; for he soon felt obliged to part company with some of the staunchest critics of the Truman policies, including Senator Knowland, floor leader of the Republican party in the Senate. Of the many issues in this controversy, one of the major ones has been whether the gravest threat to American interests is in Europe, as the Truman administration seemed to believe, or in Asia as the Republican critics declared. In any event, no one thought Asia could be ignored or that the communist influence could be allowed to spread throughout the peoples of this area unchallenged.

a. Japan

The first major move in the Pacific, after the fighting began in Korea, was to strengthen Japan as a friendly fortress against the Soviet-Chinese advance. A peace treaty bringing to an end the enemy status of Japan was negotiated throughout much of 1950 and 1951 by John Foster Dulles, later to become Republican secretary of state, in collaboration with most of our Allies of World War II. At a conference in San Francisco in September, 1951, the treaty was formally approved by more than 40 nations invited to participate. Russia attended the conference but refused to sign the treaty when its proposals for amendments were rejected. The treaty imposed no penalties or disabilities on the Japanese except for loss of outlying possessions which had been anticipated. Sovereignty was restored to the nation but a Security Treaty signed at the

same time with the United States permitted our armed forces to remain in Japan to help maintain the peace in the Far East and the security of Japan. This right was to continue as long as necessary. Both treaties were appropriately ratified and Japan attained formal sovereignty on April 28, 1952. The next major step in the build-up of the Japanese came in 1954 when the United States concluded a mutual defense agreement with Japan providing for the progressive rearmament of Japan with American aid. The Japanese promised in return to make the "full contribution" permitted by its resources to the defense of the free world. Economic and military aid began thereafter to flow from the United States to Japan.

In 1960, the United States negotiated a new mutual security treaty with Japan to replace that of 1952. Under its terms, United States armed forces could continue to use Japanese facilities, but in accompanying notes, it was made clear that the Japanese would be consulted before any major shift in their deployment, or change in their equipment (nuclear weapons) or before they would be used in combat operations. Although this treaty was more favorable to the Japanese than the one it replaced, its ratification was accomplished in the Japanese Diet only after a prolonged crisis including riots. So grave and menacing was the crisis that the Japanese government was forced to ask President Eisenhower to cancel his proposed visit.

b. Australia, New Zealand, Philippines, and Korea

Some of the victims of Japanese attacks in World War II were not anxious to build up this aggressive nation. To alleviate this anxiety the United States concluded with Australia and New Zealand a mutual defense pact. This pact, negotiated just prior to the Japanese Peace Treaty, provides (Article IV) that "an armed attack in the Pacific area on any of the parties" would be regarded by each party as "dangerous to its own peace and safety" and each party promises to "act to meet the common danger in accordance with its constitutional processes." A similar treaty was also concluded with the Philippines at the same time. South Korea demanded similar guarantees as a price for accepting the armistice and early in 1954 such a treaty was ratified by the Senate.

c. Southeast Asia

The Red drive, stopped at the 38th parallel in Korea, now shifted to French Indo-China and after months of hostilities between communist-led northerners and French-supported southerners, four new states—one of which was frankly Red dominated—were created by international agreement at Geneva in the summer of 1954. The American secretary of state, Mr. Dulles, now sought to create in the whole Southern Pacific area a concert of powers and resources similar to N.A.T.O. Led by India, however, a major portion of the peoples of this area were determined to remain neutral in the communist-West conflict. The best that could be achieved was a union of Pakistan and Thailand with the Philippines, Britain, France, Australia, New Zealand, and the United States. A Southeast Asia Defense Treaty was worked out by these states at Manila in September, 1954. This treaty dealt with aggression against the territory of the signatories in about the same way as had the other Pacific mutual defense treaties. It extended the area of concern, however, to

include the Indo-Chinese states of Laos, Cambodia, and South Viet Nam. It also attempted to deal with aggression by internal subversion. Threat of subversion from inside of any of the participating states is agreed to be a matter of concern for all and they promise in such a case to "consult together immediately" to agree on measures for common action. A Council and other appropriate implementing agencies were established to concert energies, resources, and policies. The United States Senate ratified the Southeast Asia Collective Defense Treaty in the spring of 1955.

Laos crisis 1960-61

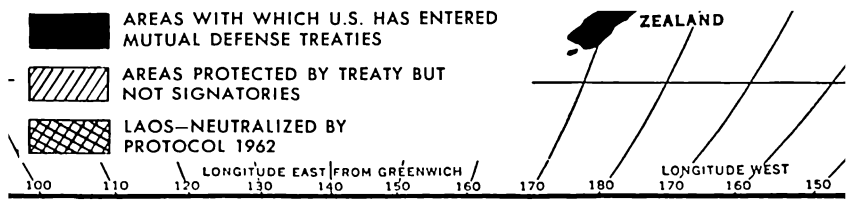
Communist pressure in Southeast Asia, halted for a time by the Geneva settlement of 1954, resumed in mid-1960. Infiltrating Laos from communist-held North Vietnam, the Reds by late 1961 controlled a substantial part of the northeastern area of the country. The S.E.A.T.O. states, assembled in Bangkok in March, 1961 pressed for a negotiated settlement. The United States believed that a cease-fire should precede negotiations and asserted that it would agree to a neutral and independent state. Negotiations begun at Geneva in late 1961 looking toward a neutralized Laos were aided in June 1962 by the formation of a coalition government of the major rivals in that strife-torn land and a declaration of neutrality for Laos was agreed to by the 14 nations participating. Meanwhile in May, American troops were rushed to Thailand under S.E.A.T.O. agreements to strengthen its borders should Laos fall to the communists and some military "technicians" were loaned to the Laos central government. The Soviet Union has formally supported the neutrality declaration as have the contending parties in Laos but the struggle has not as yet ended.

Chinese attack on India

The neutral position of India, the present major Asiatic recipient of American aid, was somewhat compromised late in 1962 when the Chinese Reds began to put military pressure on its northeastern frontier causing hundreds of Indian casualties and sending thousands of refugees streaming out of Assam and into north India. Both the United States and Britian immediately rushed armaments and supplies to the Nehru government. A peace committee organized among the neutrals sought to negotiate a peace between the contenders. Although no formal settlement has been reached, the Chinese have halted military operations and the Indians seem unwilling to attempt recapture of the border areas.

d. Nationalist China

All of these defensive arrangements still left unsettled and undefended, except by the United States, the forlorn remnant of Nationalist China on Formosa and other islands nearby. The communists of China were clearly determined to conquer this last outpost of opposition on what they, and most of the world, regarded as Chinese territory. Britain did not recognize the Nationalist regime and, therefore, could not or would not agree to aid in its defense. During the Korean "police action," President Truman had ordered the United States Seventh Fleet to patrol the waters between Formosa and the mainland to prevent military action by either group of Chinese against the other. The Republicans in the campaign of 1952 vigorously assailed the Truman administration for its China policies. Many of the party's leaders de-



ASIATIC DEFENSIVE TREATY ARRANGEMENTS OF THE U.S.

Iraq and Iran are indirectly affiliated with the United States' defensive treaty arrangements.

manded stronger measures in behalf of the Chinese Nationalists. President Eisenhower early directed the commander of the Seventh Fleet not to interfere with military action of the Nationalists aimed at the communists but to continue to protect the Nationalists. There was no indication, however, that nationalist leader Chiang Kai-shek was either willing or able to take the offensive on his own behalf and with his own forces. With the conclusion of the Southeast Asia Treaty some kind of decision had to be taken about the Chinese Nationalist territories. Late in 1954, therefore, the Administration negotiated a mutual defense treaty with the Republic of China embodying the same type of guarantee as in the other Pacific treaties. The territories which were specifically recognized as within the scope of the commitments were the islands of Formosa and the Pescadores. Several Nationalist-held islands just off the mainland of China, including Quemoy and Matsu, were not expressly included. The United States was given the right to station its armed forces in and around the protected islands. The Chinese treaty was ratified by the Senate early in 1955.

The Formosa Resolution

During Senate consideration of the Chinese Treaty, the Chinese communists began making menacing gestures toward the offshore, Nationalist-held islands of Quemoy and Matsu. They also reaffirmed in belligerent tones their intentions of conquering Formosa. This was a bold stroke aimed at the territories whose situation was not covered by American guarantees. Unwilling to announce the intention of the government in advance, certain that we could not count on our European allies, especially Britain, uncertain of the real direction of the communist policy, and yet anxious to avoid a Korea which might be charged to him alone (the Republicans had designated Korea Truman's War), President Eisenhower went to Congress. He proposed a resolution by which Congress would authorize him to use armed forces in accordance with the pending treaty and to include the "protection of such related positions and territories" now in friendly hands as he felt the defense of Formosa and the Pescadores justified. Only three dissenting votes were cast in each house against the resolution. A sort of armed truce has been in effect in the Formosa Straits since these actions. It was broken for a short time in 1958 by renewed firing on the islands but was ended with a new and unproductive effort at negotiations with the Red Chinese in Warsaw.

To underwrite the effort to unite friendly Asiatic nations in an interlocking series of defensive alliances, the various programs of military and economic assistance, already in existence, have been extended to America's allies in this area.

The Middle East

The critical theater of the struggle of East and West in the mid-1950's was undoubtedly the Middle East. A resurgent Arab nationalism led by Nasser, dictator of Egypt and supported, for a time at least, by the Russians aimed its gathering strength against the remnants of European colonialism. France had been pouring out treasure and troops it could ill afford, to remain dominant in Algeria. The drains and stresses of this struggle brought down the Fourth Republic, introduced Charles DeGaulle as president of a recon-

structed political system, and are continuing to promote division and strife despite a negotiated settlement achieved in 1962 including granting Algeria independence. The Suez Canal was seized by Egypt in advance of the date that the extant agreements called for its transfer. Syria and Iraq experienced upheavals which unseated governments friendly to the Western powers and Jordan and Lebanon were saved by American and British troops landed in 1958 to bolster tottering regimes.

American policy in this area was tentative and uncertain. We had encouraged but not joined mutual defense arrangements among Turkey, Iraq, Iran, Pakistan, and Great Britain concluded in 1955 at Baghdad. Despite our joining in the military planning of the Baghdad states in 1958, the bloc was rent by the pro-Nasser revolution in Iraq of that same year. We had turned against our European Allies, France and Britain, when in 1956 they had sought by force to recapture the Suez and then had to join them in 1958 by landing troops in Lebanon while the British landed troops in Jordan.

Middle East Resolution of 1957

As in the Formosa crisis of 1955, the Eisenhower administration sought advance approval from Congress for its movement of troops into this troubled area. Early in 1957, the President appeared before Congress and asked for a resolution authorizing him to furnish military or other aid to any nation in the general area of the Middle East threatened by communist aggression. After several weeks of debate, the Congress approved by large majorities a resolution announcing that the "United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East." The President was authorized, on his own determination of necessity, to use armed force to assist any nation requesting it against armed aggression from any communist-controlled country. However, the Congress insisted that it be allowed to terminate the commitment by concurrent (not subject to veto) resolution when it saw fit. This resolution was cited in 1958 to support moving troops temporarily into Lebanon.

Despite these actions, we have rather consistently sought to strengthen the role of the U.N. in mediating disputes in this area. At the time of the troop movements, the President appeared before the General Assembly and pled for a U.N. protective force and offered to withdraw our soldiers if such a force should be organized to stop raids from Nasser-held states into pro-Western territories.

Cuba and Latin America

The grim realities of the cold war came closer to the American continent than ever before on July 10, 1960 when Khrushchev warned the United States that if we should attempt intervention in Cuba, the Russians would use rockets if necessary to support the régime of Fidel Castro. Until that time, most of our people supposed that Red pressure was still comfortably remote in Korea, Laos, or Tibet. True, a communist-like régime had been established briefly in Guatemala in 1954 but had rather easily been ousted without threat of American military intervention. Further signs that all was not well with our "good neighbor policy" were available: the stoning of Vice President Nixon's car in 1958; the increasingly anti-American character of Castro's revolutionary gov-

ernment; the growing discontent with regimes like that of Trujillo in the Dominican Republic. These were noticed by the experts, however. Congress and the administration made no determined effort to reorient our policies and increase our assistance until Russia seemed ready to perch on our very doorstep. In keeping with our various Latin American professions, the immediate reaction to the Castro revolution in 1959 was friendly and only as its anti-American aims became increasingly manifest did we take alarm. The situation in 1960 deteriorated rapidly. Agreements were negotiated between Castro and the Soviets for economic aid and for trade; Czech armaments began to appear in Cuba; with Congressional authority we began to clamp down on sugar imports; we also stopped all economic aid; the Cubans nationalized large American private holdings and made menacing gestures toward our great naval base in Guantanamo Bay. Our efforts to get support from the other American republics at San Jose in order to resist the establishment of a communist-dominated state in this hemisphere revealed widespread discontent with our policies among our southern neighbors. The situation became worse in 1961 when we facilitated an invasion of Cuba by an army of Cuban refugees organized and equipped with our aid. The attack was a complete failure and the Castro regime became more admittedly pro-Russian than before. Not since the Civil War has the Monroe Doctrine been so firmly questioned and vigorously restated as in the Cuban crisis. In the late fall of 1962 we were in fact carried to the very brink of nuclear war. Aerial photography revealed the presence in Cuba of new missile bases equipped by Russia to fire nuclear rockets at the heart of our country. President Kennedy imposed a naval blockade of the island designed to halt all armament shipments into it and stated that this would be continued until all bases were dismantled. He further declared it to be our policy to regard any nuclear missile launched from Cuba as an attack on this hemisphere by the Soviet Union. Congress had earlier by resolution authorized the use of force, if necessary, to contain the Cuban regime or to prevent the use of Cuba as a base threatening the security of the United States. It had also, in response to a Presidential request, authorized the call-up of portions of the Ready Reserve. In case the blockade should not be immediately effective, the President ordered preparations for invasion. Under this threat, the Russians agreed to withdraw missiles and jet bombers and dismantle the bases. Russian military "aides" remain in Cuba, however, and a strong "bloc" of Senators continue sharply to criticize the Administration's acceptance of Soviet forces in the Western Hemisphere. Meanwhile, many efforts have been initiated to recoup our position in Latin America and under the name of Alliance for Progress, new aid programs have been developed to aid economic development in the Americas.

PROBLEMS OF ADMINISTRATION OF FOREIGN POLICY

Conduct of the modern foreign relations of the United States has long since spilled out far beyond the organizational arrangements, traditions, and

The problem outgrows the State Department

practices of the Department of State to which this function has traditionally been assigned. The review earlier in this chapter of the modern policies and aims of the United States in international relations indicates that we are conducting affairs abroad with our money, our goods, our soldiers, our engineers, our technicians, and our publicists as well as with our diplomats. The Defense Department is as concerned with our international commitments as the State Department. The Treasury is involved in a vast array of international fiscal agencies and agreements. Commerce and Agriculture seek markets abroad, give technical counsel to friendly foreign states, and in many other ways implement our determined effort to build a strong free world. The Justice Department controls immigration. Various independent establishments have from time to time administered part or all of our postwar programs of economic, technical, and military assistance to Europe and Asia. The Hoover Commission in 1949 found no less than 46 executive agencies to be more or less concerned with foreign affairs. All of this development has raised grave problems of co-ordination, of multiple and thus confusing representations to foreign powers, of adjusting our policies to our military capabilities or vice versa, and of making the authority and responsibility of the president effective. Several new co-ordinating devices have been attempted in recent years—interdepartmental committees of many varieties, advisory councils, added staff assistance for the president. The most important of the new devices is surely the National Security Council created by the National Security Act of 1949 in the Office of the President to integrate diplomatic and military strategy. This agency is essentially a cabinet committee to advise the president, aided by a small staff, and its operation will be described in the next chapter. None of the devices has been completely satisfactory and the search for improvement still continues. In general, the Kennedy policy seems to be to enlarge the State Department by bringing into it or associating with it other major agencies (*e.g.* Agency for International Development, U.S. Information Agency, the Peace Corps) concerned with foreign affairs.

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21

Defending the Nation Against Attack

EARLY RESOLUTION to keep out of Europe's wars did not save us as a nation from a threatened conflict with France in 1800 or an actual one with Great Britain in 1812. Nevertheless, by acquiring Louisiana and Florida we soon eliminated France and Spain as potential trouble-makers on our borders. After the final defeat of Napoleon, affairs abroad took a more peaceful turn; and for over 100 years we enjoyed a comfortable sense of national isolation and security. Wars with Mexico and Spain carried no serious threat; and although in 1917 we were drawn into the greatest armed conflict that the world to that time had known, we came off still effectively sheltered, as we thought, by our geographical location. In days which middle-aged persons can well remember, our Army numbered only 150,000, our Navy was better developed but not top-flight, and the national temper so averse to militarism that impressive defenses hardly could be maintained at all.

Once a casual interest

Then dawned a period of great change. International turmoil gripped the world; technological developments robbed us of the protection of broad oceans; mechanized global war advanced in our direction and finally in 1941 overtook us; by rapid stages, defense, long a matter of only sporadic interest, became our paramount national concern—and defense no longer confined to prudent preparedness, but actualized in deadly combat on land and sea and in the air in every quarter of the globe. And this time there was no lapsing back into an easy feeling of security after the fighting was over. As after World War I, new international machinery was set up to prevent such things happening again. But there had been failure before, and might be this time too.

Now a paramount concern

Besides, an ominous "cold" war with the world's other principal power, the U.S.S.R., might at any time grow "hot." The new "absolute weapon" of nuclear fission and the new and spectacular thrust of rockets and missiles might presently be turned against us. In wars of the future, distance would mean little or nothing. In short, with a great victory just won, the country had never been in so exposed a position, or so much in need of measures for protecting itself. In this situation, defense remained a paramount concern. When, in 1950, a communist assault upon the Korean Republic brought upon us undeclared but difficult and costly war, we soon found ourselves back in the atmosphere of 1940-41—tripling military appropriations, increasing taxes, conscripting troops, imposing economic controls, and otherwise girding for an all-out international conflict which only extreme good fortune could avert. Even after a truce was patched up in Korea, the government continued to devote $35-$50 billion yearly to national security, the draft of young men for military service continued, and 3 million men stood under arms. Then with the Russian launching of the first space satellite in October, 1957, we learned how far we had fallen behind in rocketry and the dangers became even more acute. All indications are that for a good while to come, defense, under a war or semiwar economy, linked to diplomacy, will be paramount among our national interests.

SOME CONSTITUTIONAL PRINCIPLES

During the Revolution and the ensuing Confederation period, lack of power of Congress to mobilize the fighting strength and material resources of the country with full effectiveness, and to deal promptly and decisively with domestic disorders, gravely imperiled the beginnings of the nation. The experience put the makers of the Constitution in a frame of mind to apply strong remedies. Into the new fundamental law they therefore wrote upwards of a dozen provisions which, taken together, provided every power at that time deemed necessary for defending the country, whether against Indian depredations, domestic uprising, or foreign attack. Three principles of the resulting defense system require mention at the outset.

1. Defense a national responsibility

To start with, full responsibility for defense was placed where it remains today, in the national government. The states may and do maintain militia for use in enforcing their own proper authority. But unless Congress gives permission, they may not "keep troops or ships of war in time of peace . . . or engage in war unless actually invaded or in such imminent danger as will not admit of delay." Even the state militia may be called into the service of the United States, thereupon passing under supreme command of the president; and the military establishments of the states have in later times, as the National Guard, become an integral part of the war machine of the nation. In time of defense emergency, and especially of war, states, counties, cities and other jurisdictions collaborate with the national government in a multitude of ways. Their efforts, however, are merely phases of an over-all national effort;

and full responsibility for that effort rests with the government at Washington.

2. Civil authority supreme over military

A second principle is equally fundamental. While solicitous about providing for defense, the framers of the Constitution had no desire to open a way for an overweening military establishment, or for the rise of military dictatorship. True, they did not expressly enjoin in the document—as is done in all of the state constitutions except that of New York—that the military establishment should in all matters be subject to civil control. But they achieved the same end by so defining the defense and war powers of Congress and the president (civil branches of the government) as to set up safeguards against military domination. Congress alone can raise and support armies, make rules for governing them, and declare war; the president is commander-in-chief of all armed forces, whether in peace or in war. The principle has been buttressed by custom and by statutory elaboration. The secretary of defense must by law be a civilian; and firmly established practice makes the same requirement of the heads of the now subordinate Army, Navy, and Air Force Departments.

3. Constitutional limitations fully applicable

Finally, defense, like every other national function, must be kept within bounds constitutionally determined. Powers granted the president and Congress are broad and under stress of war tend to be stretched to their limits, if not sometimes a bit beyond. Moreover, Presidents Lincoln and Franklin D. Roosevelt plainly viewed the war power as something over and above any particular power conferred, or in fact all such powers combined. Despite occasional appearances to the contrary, however, the Constitution is not suspended in wartime. The president, as commander-in-chief, is no more entitled to disregard its restrictions then than in days of peace.

DEFENSE POWERS AND FUNCTIONS OF CONGRESS

1. Providing for the armed services

To begin with, Congress has sole power to "raise and support armies" and to "provide and maintain a navy." These things it does by specifying the number and kinds of troops to be enlisted, prescribing the method of recruitment, fixing scales of pay, authorizing the building and manning of war craft, providing for auxiliary equipment such as forts, arsenals, and dockyards, and of course by raising and appropriating money for the maintenance of military, naval, and air establishments, subject to the constitutional restriction that no appropriation for raising and supporting armies may be made for a longer period than two years. There is no lack of power to take any steps considered necessary (including conscription) to safeguard the nation in time of peace and to insure vigorous and effective prosecution of hostilities in time of war.

2. Enacting military and naval regulations

In the second place, Congress has unrestricted authority to make "rules for the government and regulation of the land and naval forces," and also "rules concerning captures on land and water." Resulting "Articles of War" for the Army and "Articles for the Government of the Navy" long were separate and subject to criticism not only for their lack of uniformity but for harsh

features of the system of military justice for which they provided. Experience during World War II led to a general revision by a special committee of experts. In 1949, Congress enacted a new consolidated code, uniform for all of the armed services, and entitled "Military Laws of the United States."

3. Regulating the National Guard

Congress may provide for as large a standing army as it sees fit. Nothing is more certain than that the world situation will in future require a considerably larger one than in the past. Our earlier traditions, however, in common with those of English-speaking peoples everywhere, were opposed to any formidable army in time of peace, inclining rather, as a safeguard of freedom, to a volunteer citizen militia in each state with only such modest training and equipment as would enable it to cope with domestic disorder and to meet other relatively minor needs. All states have such militia, even though nowadays linked up, in a manner that would have shocked our ancestors, with the national defense establishment and bearing the significant name of National Guard. State contingents of the National Guard still are primarily state instrumentalities, with (so long as not drawn into national service) appointment of their officers and provision for their training expressly reserved to state authorities. Congress nevertheless is authorized to "provide for arming and disciplining the militia," to provide for calling into national service any and all portions of it required for executing the national laws, for suppressing insurrections, or for repelling invasions, and to make rules for governing such forces when "employed in the service of the United States." In pursuance of these broad powers, Congress in an Army Organization Act of 1920, gave the president permanent authority to make use of the National Guard for emergency purposes, and has enacted numerous regulations aimed at increasing the establishment's effectiveness and coordinating its organization, training, and equipment with that of the Regular Army—in addition, of course, to contributing heavily to its financial support. When, as a phase of the national defense program launched in 1940, the entire National Guard was drawn into national service and placed in cantonments for training, Congress specified that it might be used only in the Western Hemisphere and in United States territories and possessions, including the Philippines. After war came, however, the restriction was removed, and Guard units, or at any rate the men who had composed them, were sent to all overseas theaters of operation. National Guard units again were called into national overseas service in 1950 in connection with our military operations in Korea, in 1961 in connection with the Berlin crisis and such use was foreshadowed by Congressional resolution in the Cuba crisis of 1962.

4. Declaring war

Constitutionally, Congress alone can declare war. Hostilities may, of course, begin without a formal declaration, as in the instance of the Spanish-American War of 1898. Indeed, as illustrated by the war with Japan, Germany, and Italy starting in December, 1941, they may be forced upon us, and with an element of surprise, by aggressive action of a foreign power, leaving us no alternative. Even in such situations a declaration will promptly be adopted by the two houses, as a means (if for no other purpose) of fixing,

for the benefit of neutrals, an exact date from which the rights and liabilities incident to war are to be reckoned. The usual method is a joint resolution, requested and afterwards signed by the president. Many times it has been proposed by people anxious to keep the United States out of war that, except when the nation is directly attacked, the question of going to war shall in all cases be put to a country-wide popular vote. Unless the Constitution were amended, however, the decision must finally rest with Congress; and it is not clear that anything would be gained from the suggested procedure. With events moving as rapidly as they usually do, a plebiscite might not be practical; and momentary passions might make it even dangerous. The discretion of Congress in declaring war often is more theoretical than actual, not only because war may be forced upon us in spite of anything we can do, but also because the president, in conducting foreign relations, may bring the country to a point where no honorable alternative to war remains. Indeed, he may independently take steps leading to actual combat, as when President Roosevelt in 1940-41 (before Pearl Harbor) supplied naval escorts for merchant ships carrying "lend-lease" materials to Great Britain and other countries, resulting in armed clashes between American destroyers and German submarines. On the other hand, if Congress can declare war, it also can take measures designed to avert it, a good illustration being the Neutrality Act of 1935 (later abandoned) making it unlawful, with war in progress between two or more foreign states, to ship arms and munitions to the belligerents, as entailing risk of the United States being drawn into the hostilities.

New aspects from international commitments

From 1950 to 1953, the United States was engaged in an armed conflict in Korea of sufficient proportions to disturb the entire national economy, yet with no war "declared" by Congress. We came into the operation entirely through (1) the president bringing the communist invasion of South Korea officially to the attention of the U.N. Security Council, (2) the latter calling upon all U.N. members to assist in repelling the invaders, and (3) decision by our own executive branch to comply by military means on any necessary scale. Article 43 of the U.N. Charter, requiring U.N. members to place armed forces at the organization's disposal for maintaining peace, already had created the possibility that if such forces actually were raised and used, the United States might some day find itself in a war not declared by Congress. The Korean eruption produced precisely such a situation. To be sure, no U.N. forces had as yet been organized. But to stop a communist aggression, the U.N. Security Council asked member-states to join in military resistance. Recognizing both our interest and our moral, if not strictly legal, obligation, the president (as agent for implementing our U.N. relations) put us instantly into action. In doing so he consulted with congressional leaders but never formally asked the approval of Congress. This procedure allowed Republican statesmen, notably Senator Taft, to charge executive usurpation and to refer to Korea as "Truman's War." As long, moreover, as the U.N. serves the purpose for which it was created, the experience may be repeated. To this extent, the control of Congress over war by "declaring" it has been greatly reduced. In

general, however, congressmen are jealous of their constitutional prerogatives in the matter and, as we noted in the last chapter, all of the great regional defense pacts to which the United States is a party, while requiring signatories, in case of attack upon any of their number, to consult and to take individual or collective action, have been so drawn as to leave the United States (and every other signatory) free to follow the constitutional procedure.

5. Mobilizing the nation for war effort

There was a time when, except in case of invasion, war was of no great concern to the general mass of the people. Armies were volunteer, taxes indirect, supplies bought in the open market, sacrifice and morale demanded chiefly of the forces in the field. The vast scale on which the mechanized wars of today are waged, however, makes them of hardly less civilian than military concern. When war comes or is imminently threatened, it is, as President Wilson remarked in 1917, "not an army that we must shape and train; it is a nation." Experience gained during both world wars revealed in startling manner the lengths to which Congress may go in reorganizing and regimenting the national life for purposes of successful prosecution of, or even simply preparation for, war under twentieth-century conditions. As commander-in-chief of the armed forces, the president independently possesses war powers of impressive magnitude. To Congress, however, it falls, not only to provide the necessary men and money—by conscription acts, revenue acts, and appropriation acts—but to endow the chief executive with all the broad authority required for mobilizing industry, commerce, transportation, and even science and education. The method commonly is that of legislation delegating specified powers for the duration of the war (or other designated period), either with or without creation by Congress of new machinery for exercising them. In each field covered, the resulting system of controls is organized and administered by the executive branch. The underlying authority comes from Congress. While the courts often have looked with disfavor upon delegations of power by one branch of the government to another, developments during the two world wars indicate that under wartime stress and excitement Congress can go almost as far as it likes with such grants. Sometimes grants are made with little hesitation; at other times, only over strong opposition and at urgent presidential request. Occasionally, indeed—as, for example, when in 1944 President Roosevelt asked for power to conscript labor—they are refused.

6. Regulating wartime civil liberties

Except for the provision for suspension of the writ of habeas corpus, the Constitution recognizes no distinction between civil rights in peacetime and in wartime. War, however, brings not only an intensity of military activity but a tenseness of the public mind, stimulating restrictions that would not be undertaken or tolerated in time of peace. And such restrictions, as we observed in an earlier chapter, may be imposed by the president (commonly through the Department of Justice), either under his powers as commander-in-chief or in pursuance of authority delegated to him by Congress. Congress itself may impose them directly by legislative act—going, indeed, to undefined lengths in restraining speech, press, assembly, and other normal rights.

Inheriting the practice from English and colonial usage, Congress not

7. Caring for veterans

only has provided regular pay for soldiers and sailors, but has bestowed land, money pensions, civil service preferences, or other special benefits upon the demobilized forces after every war in which the United States has engaged from the Revolution onwards. The particularly hazardous nature of the service rendered the country by those who bear arms in its defense has always been given recognition. Persons actually incapacitated, together with their dependents, have usually been conceded to have an indisputable claim to the nation's care. However, powerful political pressure brought to bear upon congressmen by veterans' organizations often has led to grants where the obligation was considerably less clear. So generous, indeed, has been Congress where veterans are concerned that between 1792 and 1930 national outlays on money pensions alone, regardless of land allotments in earlier days and of later heavy costs of hospitalization and medical treatment, reached a total of $15 billion. Today (1963), as part of the aftercost of World War II and of Korea, the annual expenditure in behalf of veterans exceeds $5 billion. Benefits bestowed on veterans of the recent war in addition to the operation of regular pension, rehabilitation, and hospitalization systems, have included government aid in carrying protection originating in in-service war-risk insurance; opportunity to acquire on favorable terms surplus war property disposed of by the government; increased preferential eligibility for employment in the civil service; continued monthly payments for a period after honorable discharge; terminal leave pay for all wartime furlough periods not actually used; generous support for high school, collegiate, and professional education; and assistance in acquiring a home, business, or farm.

DEFENSE POWERS AND FUNCTIONS OF THE PRESIDENT

The president as the central figure

The authority of Congress manifestly underlies our entire system of national defense. Without it there would be no army or navy, no money, and only imperfect means of mobilizing the nation for a defense or war effort. The central figure in defense, and especially in the conduct of war, is nevertheless the president. During its three great wars of the last hundred years, the nation had in the White House chief executives—Lincoln, Wilson, and Franklin D. Roosevelt—who would have loomed large in history in any event. All gained stature, however, from guiding the country's destinies amid a supreme war effort. Each of these men also added something to the concept of the office of the presidency, partly in each case as an outgrowth of ideas of the defense powers.

Sources of his defense powers

Whether in peace or in war, every president, however, has significant defense powers and functions, accruing from (1) his constitutional status as chief executive, (2) his constitutional role as commander-in-chief, and (3) grants, or delegations, by Congress. In all that he does, even under stress of war, a president is presumed to keep within limits of authority coming to him from one or more of these sources. But he does not always have to be prepared to justify an action by citing any particular one of them. President Franklin D.

Roosevelt rarely considered it necessary to indicate in other than very broad terms the basis of specific war powers as he exercised them, leaving it rather to others to speculate, if they chose, upon whether, in the case of any given act or order, he was relying principally upon his permanent peacetime powers as chief executive, or upon his status as commander-in-chief, or upon statutory grants; and if perchance he made allusion to the latter, he was likely not to cite chapter and verse, but merely to invoke "the statutes."

The president and the beginning of war

In his conduct of foreign relations the president may create a situation making war virtually inevitable. In the course of stormy negotiations with Mexico in 1846, President Polk ordered American troops to advance into territory then in dispute with that country. The Mexican authorities had made it plain that such a step would be regarded as an act of war, and the soldiers were promptly fired upon. Polk then said that war existed by act of Mexico, and Congress proceeded to a formal declaration. President McKinley ordered the battleship *Maine* to Havana harbor in 1898, notwithstanding that the Spaniards were certain to regard the act as unfriendly. The vessel blew up and the Spanish-American War followed. By his handling of relations with Berlin after the sinking of the *Lusitania* in 1915, President Wilson brought the United States to a situation where the only alternative to a declaration of war upon Germany would have been national stultification. And later, the whole course of policy and action which, over a period of years, led the United States straight to involvement in World War II, while sustained by increasing evidences of broad national support, was projected and carried forward under the sole ultimate responsibility of President Franklin D. Roosevelt. President Kennedy in 1962 brought us close to war by ordering a naval blockade of Cuba. Congress could, if it liked, declare a war to which the President was opposed, and he could attempt to avert it by interposing a veto. With the possible exception of the War of 1812, however, all of our wars have been declared at presidential request.

The nature of Congressional participation

The extensive moral and legal obligations of the United States arising from its participation in the U.N. and from the numerous mutual defense treaties to which it is a party and the large armed forces constantly available for deployment around the world have added a new dimension to this problem of taking the nation into war. Congress, as we observed in the previous chapter, is demanding a larger share in presidential decision-making in the area of international military undertakings. The debate over the Korean police action and over the "Troops for Europe" Resolution in connection with N.A.T.O. revealed congressional discontent with what it called growing executive domination in these matters. A recent effort to shape an appropriate relationship between Congress and the president in committing the United States to a position which might easily result in war was the Formosa resolution of 1955, described in the previous chapter. In the course of the congressional debate over the resolution requested by President Eisenhower, a number of the Democratic leaders took the position that legally the resolution was unnecessary. The President, they said, already had the power to

command the armed forces to defend Formosa or the offshore islands of Quemoy and Matsu. The resolution they regarded simply as a means of showing the Chinese communists that the nation was united in its determination to prevent their further expansion. Many other congressmen, mainly Republicans, took the position, however, that by requesting this resolution the President was acknowledging his obligation to consult Congress on such a momentous decision and was, thus, reversing the pattern of several decades. The President's message and the reports of the committees, which considered the resolution, evaded this explosive question. The fact that the President did ask for the resolution will be cited in future situations to justify congressional participation and it was alluded to in the debate on the Cuba Resolution in 1962. The resolution itself, however, left the President a free hand to use force or not to defend the Nationalist-held islands. In the Middle-East crisis of 1957, the same procedure was followed. In this case, the congressional resolution left the President free to determine when or where troops might be used. The Congress, however, reserved the right to terminate the commitment by its own action. In the Berlin crisis of 1961, while announcing his policy and securing congressional approval for calling up Reserve units, the President did not seek a resolution authorizing him to use troops to protect West Berlin. Nor did Kennedy seek congressional action in the Laos crisis when, in 1962, troops were sent to Thailand. He did, however, seek authority to call up units of the Ready Reserve in the Cuban crisis of 1962.

The president in wartime

In time of peace, the president performs the normal functions of chief executive in connection with defense interests and activities substantially as in relation to other government services. It is when war comes that he rises to the full stature implicit in the sources and forms of authority above described. Subject to restrictions by Congress (which almost certainly would not be imposed in the midst of conflict), he can send all branches of the armed forces anywhere that he chooses, and use them as he desires. He can take as much part as he likes in mapping out strategy and directing campaigns; indeed there is nothing to prevent him from taking the field in person if he so desires. Like any other supreme commander, he can terminate hostilities by agreeing to an armistice. He can set up military governments in conquered territory, and, directly or through appointed agents, exercise all executive powers there, and all legislative powers as well until Congress makes different arrangements. Meanwhile, availing himself of broad grants of emergency authority already on the statute book, or voted by Congress in response to White House requests unfailingly made, he can carry out sweeping programs of armed recruitment, civilian mobilization, and economic controls, authorize or issue multitudes of administrative regulations, reorganize governmental agencies and create new ones, take over plants in which labor stoppages are interfering with war production or the railroads if transportation difficulties are impeding the war effort, and do such a multitude of other things that the sum total of authority amassed and exercised almost defies comprehension. Indeed, the object in modern war being to discover and make effective all national potentialities as

speedily as possible, and at the same time to break down the enemy's power of resistance, control over the use of the armed forces inevitably broadens into the general function of taking whatever measures may be found necessary to those ends. As a former secretary of war phrased it, the commander-in-chief's duty is nothing less than to prosecute a war "to the fullest extent." In discharging this responsibility, he, of course, must not violate the Constitution or the laws; and, to a degree, he must work in cooperation with Congress, from which much of his high authority has come and to which at least some of it will return. Outside of these limitations, however, he and his advisers, civil and military, have, and must have, virtually a free hand.

ORGANIZATION FOR NATIONAL SECURITY

Former separate defense administrations and services

Until World War II, defense organization in the United States was notoriously lacking in integration. At the top, the president as chief executive and commander-in-chief supplied a measure of unity. But the War (later Army) and Navy Departments were entirely separate; the armed services whose affairs they managed were not only separate but often uncooperative and even antagonistic. In making appropriations and enacting defense legislation, Congress rarely considered Army and Navy needs at the same time or in much relation to each other. In earlier and simpler days, the disadvantages of such disunity often were apparent but usually not serious, and little was done toward overcoming them. We emerged from our wars successfully, and the country was satisfied. Even World War I brought no significant change. World War II, however, was different. In the first place, its magnitude and complexity were unprecedented. Secondly, it demonstrated that for the attainment of objectives in such a conflict there must be a wholly new type of collaboration between land, sea, and air forces. Finally, at its end we were confronted with a world situation making it indispensable that we permanently maintain an armed establishment far larger than ever before in peacetime and organized and integrated for a maximum of efficiency at a minimum of what must in any case be stupendous cost.

National Security Acts of 1947 and 1949

From far back, there had been intermittent proposals to merge the War and Navy Departments into some form of defense department. Later the rapid development of air warfare led some people to suggest moving in the opposite direction and setting up a separate department of military (and perhaps civilian) aviation. World War II at last drove home the idea that basic reorganization must no longer be delayed and that it must be in the direction of all-around integration. After two or three years of lively bickering between the Army and the Navy, each of which had a plan of its own, and with the Truman administration sturdily urging action, Congress eventually, in 1947, passed a comprehensive National Security Act following the Navy plan in broad outline and providing for a defense reorganization outstripping any in all our previous history. The defense set-up about to be outlined rests prin-

cipally upon that piece of legislation, as amended in the direction of further coordination by two enactments: (1) the National Security Act Amendments of 1949 stemming largely from recommendations of the Hoover Commission; and (2) the Defense Reorganization Act of 1958. President Eisenhower made some further changes in the structure by a reorganization order in 1953.

1. The Department of Defense

In pursuance of the announced objective of "integrated policies and procedures for the departments, agencies, and functions of the government relating to the national security," the Act of 1947 undertook to gather substantially everything into an administrative and advisory structure known as the National Security Organization, with a National Military Establishment as its core and a National Security Council and a National Security Resources Board on the periphery. The National Military Establishment represented a major innovation, because its creation marked the first time that the previously separate War and Navy Departments were joined under any directive authority other than that of the president. Since, however, the Departments named (with the War Department rechristened Department of the Army, and with a new Department of the Air Force added) retained most of their previous autonomy, the change was more apparent than real. An entirely new official—a secretary of defense, appointed by the president and confirmed by the Senate, and with only civilians eligible—was introduced and charged with (1) establishing general policies and programs for the National Military Establishment and for all component departments and agencies, (2) exercising "general direction, authority, and control" over such departments and agencies, (3) discovering and eliminating unnecessary duplication or overlapping in their activities, and (4) advising with the departments and agencies in the preparation of their budgets and formulating a single unified military budget for consideration by the Budget Bureau, the president, and eventually Congress. The "Establishment" (largely a paper affair) did not have the true character of an executive department and the secretary of defense, although seated in the cabinet—as the heads of the three service departments were not—found himself possessed of prestige but very little else. Combined with the service departments' characteristic love of autonomy, the old traditional fear lest one man be given too much power in military matters had operated to cause the secretary to ge given too little. In practice, the "general" authority over the department given him very nearly evaporated. He could not appoint or dismiss (except within his own very limited staff); he could not enforce orders; he could not reorganize; even his control over budgets proved merely nominal.

Changes in 1949

The principal objective of the amending act of 1949 was to remedy this unhappy situation. The ethereal National Military Establishment was discarded, and in its place was put a single full-orbed executive department, the present Department of Defense, officially ranking second only to the Department of State. In line with this, the secretary was given powers commensurate with those of other department heads—his principal limitations being that he may not abolish any of the established functions of the Army, Navy, or Air Force or merge any portions of the armed services. Logically enough, the act

also transferred the National Security Council and the National Security Resources Board to the Executive Office of the President.

Defense Reorganization Act of 1958

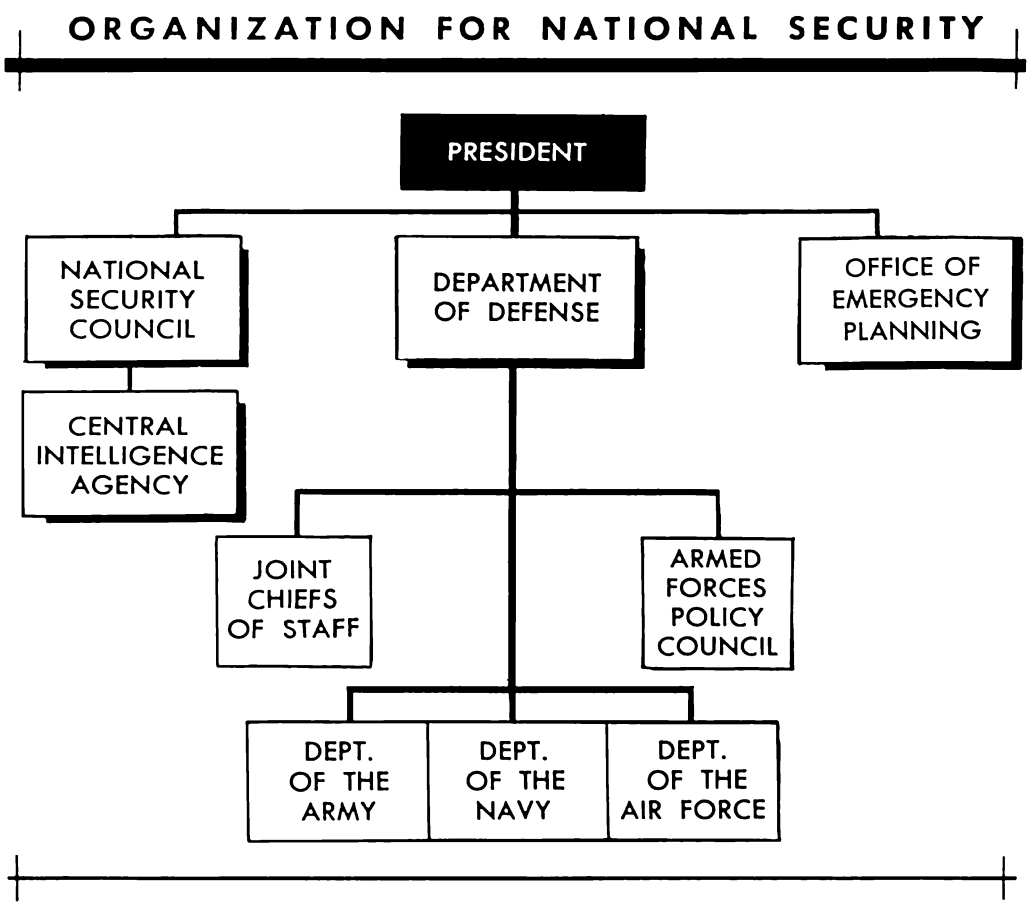
Demand for even greater subordination of the three services to the Secretary of Defense was a by-product of general dissatisfaction with American progress in missiles, rockets, and space exploration. Failure to keep pace with the Russians was blamed, in part, on continuing interservice rivalries and the lack of clear-cut assignments of responsibility to any service for development of the new weapons. President Eisenhower strongly urged Congress in 1958 to entrust greater authority to the Secretary of Defense, to strengthen the Joint Chiefs of Staff as professional advisors to the Secretary, and to facilitate unified command in the field. Congress responded half-heartedly. The Defense Reorganization Act of 1958 gave the Secretary power to transfer, abolish, or reassign defense functions but an order to do any of these things was made subject to Congressional veto. The Secretary was given clear and specific power to assign new weapons or weapons systems among the various services and a new Director of Defense Research and Engineering was established in the Department of Defense. Power to merge any of the military departments or services or to establish a single military Chief of Staff was expressly withheld. In later spelling out the assignments of each of the services, Secretary of Defense McElroy made no major changes and avoided any resolution of the continuing controversies over their respective roles in missile development and space exploration. Major criticism of these arrangements, especially of the lack of clear decision by the Joint Chiefs, continues to be voiced by the Army leaders and, to some degree, by those of the Air Force.

The "military departments"

The legislation of 1949 definitely reduced the Departments of the Army, Navy, and Air Force to their present status of so-called "military departments." The Department of the Army is charged with responsibility for organizing, training, maintaining, and equipping the United States Army, and with various subsidiary functions such as directing the Corps of Engineers in improving waterways, formulating and executing plans for flood control, constructing national monuments and memorials, and operating the Panama Canal. When it shall have divested itself (as now intended) of all insular administration, the Navy Department will have no functions not directly connected with the Navy itself. Taking over most aeronautical functions from the War Department, the relatively new Department of the Air Force already has developed extensive machinery concerned with substantially everything relating to not only the Regular Air Force, but to an Air Reserve, and Air National Guard, and an Air Reserve Officers Training Corps. All three departments undergo occasional organizational changes, but in general operate on lines not widely different from those familiar in the War and Navy establishments before 1947. All have the basic task of maintaining firm central and civilian control while promoting the military capacities and energies for which the respective—and still separate—armed forces under them exist.

Staff agencies

At the top level, the Defense Department is rounded out by two staff agencies designed for planning and policy determination: (1) the Armed



Forces Policy Council (replacing a former War Council), advising the secretary of defense on broad policy matters and rarely used; (2) the Joint Chiefs of Staff, originating during World War II and having as its province all matters pertaining to military strategy. The Joint Chiefs of Staff are also military advisers of the president as well as of the Secretary of Defense. The Joint Chiefs arrangement has survived the various reorganizations and has been shored up by the development of a substantial staff under it and separate, therefore, from the various services. It has, however, been the object of continuing criticism for its alleged failure to provide genuine, coordinated planning either in strategy or in budgeting and many internal disagreements have been carried to the Secretary, to the President, to Congress, and even to the public.

2. The National Security Council

With the secretary of defense supplying the principal point of contact, the Department of Defense is the arm of the president for purposes of national security in its military, naval, and aeronautical aspects. To provide broader basis for decisions involving defense the National Security Act of 1947 introduced two other major agencies already mentioned, the National Security Council and the National Security Resources Board, both placed in 1949 in the

Executive Office of the President. Only the first of these has survived. Its task is nothing less than to formulate for the president the collective advice of all appropriate officers and agencies of the executive branch on the integration of domestic, foreign, and military policies in any manner touching the national security. In addition to the president as chairman, the members include the vice-president, the secretaries of state and defense, and the director of the Office of Emergency Planning, who from their different official environments can bring together foreign policy, military, and economic viewpoints, with indeed the financial also contributed by the secretary of the treasury sitting, not as a member, but as a regular participant by presidential invitation. Meeting normally twice a month (with the president usually absenting himself in the interest of freer discussion), the Council is intended to thrash out large questions of national security and through its secretariat keep the chief executive currently informed on all its discussions and decisions. Under the direction of the Council is a Central Intelligence Agency (C.I.A.) to coordinate the intelligence activities of the various defense agencies and to supply the Council and the president with information necessary to their decisions. The Council does not itself determine policy. That is for the president to do, on the basis of Council advice, which, however, he is free to accept or reject, in whole or in part. If it is possible in our system—and some doubt it—to achieve high level correlation of the nation's foreign objectives, commitments, and risks with its military and economic capacities, this is the agency designed to do so. Like the Joint Chiefs, however, it has not escaped severe censure when crises arise—as in Korea with the entrance into the fray of the Chinese and in Cuba with the abortive effort to overthow Castro and in the lag in rocketry and missile development—for which it has not seemed to be prepared and for dealing with which, its advice has not seemed clear or persuasive. It must be emphasized, however, that the final responsibility for coordination and decision falls upon just one man, the president of the United States.

3. Office of Emergency Planning

Success in modern war was thought by the fathers of the present defense establishment to depend heavily upon a nation's economic preparedness, or at any rate upon the speed and effectiveness with which the economy can be converted to war production. The authors of the Security Act of 1947 provided a National Security Resources Board to investigate and plan correlating foreign and military policy with natural resources and economic capacity. The Board was replaced in 1953 with an Office of Defense Mobilization.

The greatly increased possibilities of breaching American defenses from the air, combined with the perfection of weapons of awesome destructive power, encouraged the president and later the Congress to create a new agency of government to prepare our industrial areas for attack. The Federal Civil Defense Administration was established in 1950 first in the Office of Emergency Management in the Executive Office and later by Congress as an independent executive agency. This agency is charged with developing, in cooperation with state and local authorities, plans for the protection of our civilian population in case of enemy bombing attacks. Grants are made to

states for equipment and materials for approved projects. Since 1953, this agency has also been assigned responsibilities for administering national disaster relief programs of certain types. In 1958, this agency and the Office of Defense Mobilization were merged by an executive reorganization plan into the present Office of Civil and Defense Mobilization and when in 1961 its operating responsibilities in civil defense were transferred to the Department of Defense, it was retitled the Office of Emergency Planning.

THE ARMED FORCES

Creating an effective military force has always been a troublesome problem for democratic countries whose peoples have been suspicious of the military and of militarism. It has been especially difficult for the United States. We have normally disavowed aggressive aims against our neighbors and, sheltered behind broad oceans, have felt no need for large or expensive forces to protect our safety. We have been unwilling to create a peace-time army of conscripts as the Europeans have preferred, but rather have relied on volunteers in peace and conscripts in war. Volunteering has proved effective only when very small forces are to be staffed. After mobilizing our people and resources for combat on a large scale in the two great wars of this century, we have demobilized them after victory as rapidly as possible. The development of nuclear weapons and of unmanned missiles to carry them, the collapse of the concert of victors after World War II, the spread of communist influence, the rise of Soviet Russia, and the emergence of new states from European colonial territories have all contributed to an international situation to which most of our military traditions are inappropriate. The last two decades, therefore, have witnessed not only a complete turnabout of our old military policies, and the maintenance of huge armed forces in "peace" time backed by great stockpiles of strategic materials and armaments, but also constant changes in emphasis among the types of forces and weapons systems on which we should place our major reliance. During this period we have also become intimately involved in the deployments of our allies and have had to appraise the importance of the rapid technological developments of our potential enemies.

Change in defense policies after World War II

At the close of World War II, despite the warnings of some of our statesmen and several of our allies, under the spell of our well-established traditions we dismantled our war machine about as fast as we could and thus made it impossible to oppose Soviet adventure except by all-out war and remobilization. Deterioration of our relations with the Soviet and the loss of China to the Reds spread deep concern in high Washington circles but did not and perhaps could not at that time have convinced our people to reassemble our armed might and reverse our traditional peace-time military posture. We knew only war—full scale with all our resources mobilized—or peace with an army deployed for Indian fighting and a Navy to patrol our shores and protect the canal. Korea offered the occasion and the justification for rearmament

Rearmament after Korea

short of total mobilization. Comfortable in our superiority in atomic weapons, no longer, unfortunately, a monopoly, we then felt that we must in concert with our European allies organize ground and sea forces large enough to halt or to delay the overwhelming ground strength of Russia. Two major policies ensued: (1) a call for Universal Military Training in the United States; and (2) the organization of substantial Western European armies including those of West Germany. Both of these called for heavier peace-time military expenditures than we had ever believed to be bearable. They also assumed that given our air and atomic bomb superiority the Soviets would probably attack in Europe with their own superior ground forces.

The nuclear deterrent

The economic burden of these policies on the American taxpayer was a matter of grave concern to those elected to office in 1952 who feared the collapse of our economic strength upon which our military effectiveness must inevitably rest. Universal Military Training like Korea and rearmament was widely unpopular and was never fully implemented by Congress. Furthermore, it could legitimately be argued that any attack in Europe would have to be halted there by the troops on hand. We would not be given time to mobilize reserves in the earlier fashion and then bring them into action months after the start of hostilities. Korea and its demand for ground forces was ended by armistice. With these concerns we decided to reduce our reliance on traditional forces and to depend henceforth largely on nuclear weapons delivered from the air to break up or to prevent Soviet aggression. We brandished our nuclear warheads, talked of "massive retaliation," and curtailed ground and sea forces. The risk of these policies, as several critics pointed out, notably General Taylor, was that we might leave ourselves unable to deal with new Koreas, Quemoys, Suez Canals, or Congo revolutions except by a nuclear holocaust.

The new emphasis on conventional arms

Sputnik, in 1957, virtually spelled the end of this era. Soviet technology having opened the secrets of the atom in 1949 and produced a hydrogen bomb in 1954, had now caught up and perhaps passed our own in rocketry and missiles. Russia was no longer dependent upon its ground superiority. It could now threaten, not only Europe on the ground, but also America from the air and our airplanes could not certainly stop their rockets and perhaps could not even survive a first strike in sufficient numbers to launch a counter attack. We were thus obliged to catch up in rockets and missiles at any cost. Assuming that a balance of deterrent power existed, we came back to the earlier policy of strengthening our conventional forces to deal with "crises" and to allow us to limit their spread. This has proved, of course, the most costly of all our post-war military policies and seems likely to commit us to a very high-level of expenditure for many years to come. Our statesmen are still wrestling with these difficult decisions. Few believe that our present posture is wholly satisfactory. Some feel that we already have superior nuclear armaments and that so long as this is true no attack will be started against us and we should act on this basis. Others, that there is a "missile gap" yet to be closed between our capabilities and those of the Soviet Union.

Present military posture

In the democratic system, shifts in emphasis and changes in direction are rarely clean cut. Many of the dispositions, institutional arrangements, statutory authorizations, and expenditure patterns of each phase are carried on—perhaps slightly modified—into the new phase. We have, at present, therefore, a complex and not wholly consistent set of military policies and procedures on the basis of which our armed forces are recruited, trained, equipped and deployed. We are now spending for these forces between $50 and $55 billion annually compared to $12 billion in 1948 and to $35 to $40 billion in 1953 to 1957. We have 2.7 million men under arms in various forces backed up by another 950 thousand reserves in various conditions of training and readiness. These are organized into 16 army and 3 marine divisions, 88 air combat wings, 135 air combat support squadrons, and 873 commissioned warships. While we do not have a full-fledged system of universal military training, we do have peace-time conscription under which young men register at age 18 and are called up for service as needed for periods up to two years. The reserve apparatus, including the national guard, has been reorganized—mainly in 1955—and tightened to maintain more effective control over the preparation of those in the "Ready" or immediate reserve components. Missiles of various types are rolling off production lines and numerous sites have been "hardened." We maintain a string of bases—air and missile—in various friendly countries around the defense perimeter of the West and have missile-firing submarines patrolling the oceans.

NATIONAL CONTROLS IN WARTIME

Half a dozen clauses of the Constitution suggest that for carrying on a war Congress may tax, borrow, raise troops, and build ships practically without restraint, with the president exercising the broad and undefined functions accruing to him as chief executive and commander-in-chief. But they convey little idea of what this may mean either for the machinery and processes of government or for the national economy—industry, transportation, communications, labor, prices, manpower, and daily civilian life. To visualize these things, one has rather to recall what happened during two world wars, during the Korean struggle, and, in part at least, continuing right up to the present. No two wars are alike; certainly an atomic war would differ from any we have known. Up to now, however, war's impact on government and economy can best be apprehended in terms of World War II; and a word on that chapter of our experience will be in order.

Expansion of powers and agencies

Fundamentally, wartime controls are exercised by the regular peacetime authorities. Congress stays in session and broadens and deepens its regulations as needs require, with little, under the circumstances, to fear from the courts. As chief executive, and particularly as commander-in-chief, the president mounts from peak to peak of directing authority, reading more and more power into his constitutional prerogatives and drawing almost equally from delegations by Congress. The executive departments and independent estab-

lishments intensify their activities in all that relates to the war effort. With new and vast specialized tasks developing, however, need arises for additional machinery, created directly by Congress or more frequently by executive order implementing some broad congressional grant. Even before we entered World War I, a top-level Council of National Defense was set up; and during that conflict a War Industries Board furnished a nucleus for new regulatory and administrative agencies. Again, the defense effort of 1940 called into existence, a year and a half before Pearl Harbor, an Office of Emergency Management, lodged in the Executive Office of the President and becoming a framework under whose broad roof were later gathered 15 major establishments concerned with wartime control, administration, and research. These agencies and others, in turn, provided hooks from which were suspended, as time went on, a maze of additional offices, boards, commissions, and the like, so numerous and so frequently reshuffled as to bewilder even the near-at-hand observer in Washington. Under stress of war, a government already big inevitably grows bigger.

Some areas of control:

1. Military service

The principle is clear that the government may, insofar as it finds need, draft into its armed services able-bodied men of all ages and conditions, and women too for duties appropriate to them. Conscription was resorted to (for the first time) not only during the Civil War, but on a vast scale during World Wars I and II—in the latter instance, indeed, at a stage when war merely seemed probable. When raising forces in this way, Congress fixes age limits for men liable to induction, specifies or authorizes classifications and priorities in terms of number of dependents and occupational usefulness for war purposes, and determines exemptions. Room is left for volunteering, especially by women. But, within bounds of reason, expediency, and humanity, the government always can dig as deeply into the reservoir of potential combat and auxiliary forces as circumstances seem to it to require.

2. Industrial production

Aside from a steady stream of trained men, the prime necessity in present-day war is abundant munitions and supplies. With a view to assuring ample production of these, the government may build plants (operating them directly or more often through private corporations under contract), finance the establishment or expansion of others, require plants to be turned to war production, take over and operate establishments crippled or threatened by labor difficulties, curb or suspend production of nonessential consumer goods, build stockpiles of necessary raw materials, and establish priorities for funneling materials to war industries most in need of them. Largely through a major agency known as the War Production Board, all of these things actually were done during World War II.

3. Civilian life

In line with the same objective of all-out effort in prosecuting a war, the government may take any needful measures for maximum utilization of the nation's civilian manpower and womanpower, even to the extent of registering all able-bodied personnel of both sexes, imposing a "work or fight" rule, and assigning people to jobs. Although urged in some quarters to do so, Congress did not go this far during World War II. But almost immediately after Pearl

Harbor the draft as already operating was broadened to require all men up to the age of 64 to register for conscription in the armed forces or for noncombatant duty; and throughout the conflict a War Manpower Commission, although without authority actually to compel men and women to work at particular jobs in particular places, promoted maximum use of personnel by measures calculated to keep people employed in jobs and places where they were most needed and to discourage moving around in quest of more congenial and better-paying positions. Strikes in industry and transportation never were expressly outlawed, and some occurred. But the conditions under which they could legally be declared and carried on were circumscribed, and heavy penalties were imposed upon labor leaders fomenting them.

4. Wages, prices, and distribution of goods

A war of any proportions instantly starts a chain of dislocations in the national economy. An upsurge of government expenditures, re-enforced by augmented employment, produces a rise of prices; higher prices push up wages; higher wages, more spending power, and increasing scarcity of consumer goods stimulate further price rises. Unless brakes are applied, the spiral ends in heavy inflation, particularly devastating for people of fixed incomes but eventually disastrous for the entire economy. Speaking broadly, whatever checks are imposed must come from government; and, with various wage and price controls during World War I as precedents, an Office of Economic Stabilization early in World War II fixed wage ceilings for different industries, while an Office of Price Administration placed and kept under some restraint prices of commodities (rents also) likely to be most affected by prevailing scarcities. In connection with price controls, the O.P.A. also rationed among consumers, the country over, long lists of commodities (automobiles, tires, gasoline, fuel oil, farm machinery, shoes, coffee, sugar, meats, and many other things), demand for which was out of proportion to supply. Proposals at the beginning of the war that wages and prices be "frozen" all around never were adopted. At the end, the country was left with a considerable heritage of inflation. Matters, however, would have been far worse without the wartime stabilizations achieved.

5. Transportation

Almost as vital as the production of war materials is the transportation of them (and of troops) to places where they are needed; and here the government, with full power over interstate and foreign commerce, has especially free scope. During World War I, the railroads were taken over and operated. During World War II, no need for such a course arose. But, within the framework of pre-existing transportation controls exercised by the Interstate Commerce Commission and allied agencies, an Office of Defense Transportation correlated the services of railways, inland waterways, air transport, motor transport, coastwise shipping, and pipe lines in the interest of maximum contribution to the war effort. When neighbors took to group-riding to relieve other carriers and save tires and gasoline, they were acting in the spirit of O.D.T. requests.

6. Communications

War is waged not only with men, munitions, and materials, but also with ideas. Every wartime government (at any rate in a democratic country) must concern itself not only with getting to the people the information it wants them

to have and with cultivating a public opinion favorable to the war effort, but also with keeping from the enemy information useful to him and with preventing both the enemy and enemy sympathizers from damaging the national morale through open or secret propaganda. The story of our government's efforts during World Wars I and II—in the first instance through a Committee on Public Information and in the second through an Office of War Information—to keep the nation (and friendly peoples abroad) discreetly informed on war aims and developments would reveal a good deal of fumbling, yet reasonable attainment of the ends sought. During World War II, responsibility for guarding against dissemination of information or opinion in ways injurious to our cause was intrusted to an Office of Censorship set up almost as soon as hostilities started. Here, too, the record of achievement was generally good. On the one hand, there was literal and positive censorship, in the sense that all mail, cablegrams, long-distance telephone calls, radio messages, and other communications going out of (or in the case of mail coming into) the United States were minutely inspected, with objectionable passages deleted or even the entire message intercepted. In the case, on the other hand, of domestic publications and radio broadcasting, the milder method was employed of relying upon voluntary compliance of the press and the broadcasting companies with "codes of wartime practices," telling them what they must not print or put on the air—although, of course, with no lack of power to compel obedience where not otherwise forthcoming. Closely related in wartime are, of course, laws and enforcing agencies designed to repress espionage, sabotage, and sedition, and especially to protect the armed forces against subversive influences.

7. Civilian defense

The conduct of war is definitely a national function, but collaboration by state and local governments, and by voluntary citizen groups as well, is essential to solidarity of effort. During World War II, state and local machinery was employed in operating the Selective Service System, the rationing system, and to some extent the system of price control. Civilian defense—aimed chiefly at protecting people and property against the hazards of air raids, but later principally at promoting morale and encouraging productiveness—was organized also largely on a state and local basis. Every state eventually set up a defense council; several thousand cities and counties did likewise: and, in all, millions of men and women rendered various voluntary services.

A new program of controls instituted in 1950

Greatly amplified after war came, the system of controls described had its beginning in 1940-41, during days of nominal peace; and 10 years later, with the country also technically at peace, although engaged in military action in Korea, a new defense effort brought such controls again into the picture. With resolution formed in government circles to embark upon a major program of military preparedness, and with Congress and the country won to full support, President Truman, in September, 1950, stressed as three great requisites: (1) production of the materials and equipment required, (2) new taxation to meet the costs involved, and (3) prevention of inflation. A special revenue act of September marked the first stage of the heavier taxation con-

templated; and powers for pursuing the other objectives were supplied in a Defense Production Act conveying authority to control wages and prices and to introduce rationing; and authority also (for a year longer) to requisition materials and plants necessary to rearmament, to allocate goods in short supply, and to advance money for encouraging output. Most of the controls were discontinued after 1953 as a result of armistice in Korea and of the election of an administration pledged to reduce restrictions on the private economy. Many of the powers, however, remain in the statute books ready to be invoked should a new "emergency" occur.

ATOMIC ENERGY, NUCLEAR WEAPONS, AND DISARMAMENT

On August 6, 1945, the first atomic bomb was dropped upon Hiroshima, Japan, by the United States armed forces, killing 78,000 and wounding 150,000 more and introducing a new technique of destruction unparalleled in the history of the world. It is appropriate that we conclude this discussion of national defense with some notice of the consequences of this new and terrible threat to the continued existence of life on this planet.

Efforts to achieve international control of atomic weapons

As the result of a suggestion by Albert Einstein, President Roosevelt put scientists to work early in the war to discover if the power of the atom could be unlocked for military purposes. Thousands of scientists—American, Canadian, and British—worked in this secret project for more than four years and finally achieved an explosive with the force of 20,000 tons of TNT. A successful explosion was set off at Los Alamos, New Mexico, in the summer of 1945 and, when Japan rejected the surrender ultimatum issued by the Allies at Potsdam on July 26, President Truman decided to drop the bomb. The Japanese surrender came within a few hours of the dropping of the second bomb on Nagasaki on August 9. Guided by the group of scientists, statesmen, and soldiers who had directed the successful research, the government now faced the problem of the future use of this dread weapon. Certain that they could not keep the secrets of its composition and manufacture indefinitely, fearful of the holocaust which might result from widespread use of the bomb in war, confident that peaceful uses of atomic energy of great benefit to mankind might be discovered by energetic application of many scientists, the three nations concerned, Great Britain, Canada, and the United States, proposed that the U.N. establish a commission to study and recommend a program for the control of atomic weapons and for the peaceful exploitation of the energy potential unloosed for the first time in man's history.

The U.N. created such a commission and before it the United States submitted a plan for the international control of atomic energy with an international agency equipped with inspectorial authority to enforce such controls upon the nations of the world. When and if such an agency should be established, the manufacture of atomic weapons should be prohibited. The Russians countered with a proposal for the outlawing of such weapons immediately, the prohibition of their manufacture in the future, and the destruction of all those

in existence at the time. They would not agree to any procedure which involved inspection of their industrial operations by outsiders. Months of subsequent negotiations failed to move either major power from its central position.

Atomic Energy Act of 1946

Meanwhile, in the United States, President Truman seeking a more permanent arrangement for the domestic control of atomic energy research and weapons manufacture, proposed to the Congress, in late 1945, that a civilian commission be created in the executive branch for this purpose. And the Congress passed in 1946 an Atomic Energy Act creating an independent five-man commission to exercise complete control over the production of atomic energy and the research program associated with it. The Commission was assigned full ownership of all domestic uranium and other materials essential for the production of the bomb. The principal battle of civilian versus military control of atomic energy was thus largely resolved in favor of the civilians. Extremely rigid security regulations, since made even more rigid, were enacted to control virtually all phases of the Commission's operations. Many scientists have since contended that the "secrecy" requirements have inhibited effective private scientific inquiries and have thus limited the search for peaceful and constructive application of the scientific knowledge of the Commission's experts. The fact that the measure gave to a government agency complete ownership and control over a source of power which might some day replace other energy sources both at home and abroad did not at that time precipitate much controversy. Later, however, growing criticism of the atomic program on the grounds that private enterprise ought to have a larger share in the exploitation of the peaceful possibilities and that too much emphasis was placed on the military phases by the Commission paved the way for a new Atomic Energy Act of 1954. This act opened the way for private industry to construct atomic furnaces and to carry on experiments of many kinds, under Commission supervision. A Joint Committee of the Congress on Atomic Energy established by the Act of 1946 provides continuing legislative oversight of the Commission's program.

The hydrogen bomb

On the international scene, the problem of control of atomic weapons has become more and more acute in the years since 1946. The Soviet Union, in part at least through a clever spy ring and with the help of some captured scientists, acquired the secret of the bomb—an atomic explosion occurred in Russia in 1949—much sooner than the Anglo-American allies anticipated. The AEC scientists—after some bitter internal controversy—produced the hydrogen bomb, a weapon more deadly than the atom bomb and carried their researches to the very threshold of a bomb that would wipe out the entire human race. The Russians, on their part, produced a hydrogen weapon also. Thus the very real possibility that a war between the two great powers would result in extermination of life over much of the earth's surface has for more than a decade faced the nations of the world. Hoping to realize some of the constructive benefits, President Eisenhower in December, 1953, proposed to the U.N. an international pool of atomic energy resources and offered to make an American contribution to such a pool. An international conference on

peaceful uses of atomic energy held in Geneva in 1955 helped to pave the way for the creation in 1957 of an International Atomic Energy Agency supported by 80 nations. Our participation, including the donation of fissionable materials, was approved by the Senate and the implementing statute by the Congress.

Nuclear test bans

Throughout these developments, the AEC scientists continued by test explosions to study the effects of various types of nuclear weapons and the administration continued to seek agreement on international control that would include inspectorial enforcement. Adlai Stevenson, in the campaign of 1956, reflected the view of a growing body of scientific opinion that fallout of radioactive particles from the test explosions was sufficiently dangerous to life and health that testing should be halted and that America should take the lead in this matter. Our position remained, however, that until or unless international agreement could be reached containing "adequate" guarantees we must keep perfecting our knowledge. Just as we were about to launch a new series of tests early in 1958, Russia announced that it was suspending its testing and would continue to do so if the Western powers would stop also. After the completion of our test series, we also halted further testing and continued to press for international agreement. Negotiations for a permanent test ban continued thereafter for month after weary month—the Americans insisting that available long-range detecting devices were not completely reliable and that we must have neutral inspection—the Russians, that inspection was a facade for western spying. The test suspension as a year-to-year policy continued, however, until 1961 when as an outgrowth of the Berlin crisis of that year, the Russians announced the resumption of testing and launched a series of new tests. President Kennedy then announced that in self-defense we must resume our tests and a new series of text explosions began in April 1962 and continued into the summer and fall. Russia, thereafter, announced that it would also launch a new series of tests.

The test ban treaty

Perhaps stimulated by a threatened rupture with its Chinese allies over Soviet cold war strategy, the Soviet leadership began in mid-1963 to take a more conciliatory tone in disarmament negotiations at Geneva. These had been going on for many months under continuing pressure from the U.N. General Assembly. President Kennedy announced in June a suspension of tests pending the outcome of negotiations to be started in Moscow among Britain, Russia, and the Soviet Union. A limited test ban treaty was finally agreed upon by these powers on July 25, 1963. This treaty prohibits the signatories from conducting nuclear tests in the atmosphere, in outer space, or on the seas. It does not apply to tests underground. Other nations are invited to subscribe to these terms and each party reserves the right to terminate its commitment if it decides that "extraordinary events . . . have jeopardized the supreme interests of its country." The treaty has been approved by the Senate and signed by the President.

The friendly atmosphere of the test ban negotiations led to other proposals for reducing cold-war tensions. The Russians are calling for an East-

West nonaggression pact, a mutual reduction of military forces in Berlin and a freeze on military budgets. The United States has indicated that it will not make any agreement which constitutes recognition of East Germany or in any way reduces its rights in Berlin.

SPACE SATELLITES

"Sputnik"

American complacency in our military superiority based on our advanced nuclear research, our ready fleet of great bombers, our network of bases in N.A.T.O. countries, and in our scientific and technological superiority was suddenly and devastatingly shattered in October, 1957. The Soviet Union launched the first artificial earth satellite. Scientists and military leaders appreciated that rockets with a thrust capable of hurling a 184 pound (later a 1120 and then a 2925 pound) device hundreds of miles into space might also hurl nuclear warheads upon Pittsburgh or Chicago with little chance of interception by man-driven airplanes. The Soviets then followed this by a successful moon-shot in 1959 and by several manned space flights each year to the present. The Soviet Union thus demonstrated that it had the capability of leaping over our protective bases and striking directly at the United States.

The lag in American rocketry

The American rocket and missile program, it appeared on subsequent investigation, had languished for some years—a victim of budgetary economies, inter-service rivalries, and unwarranted satisfaction with our air-bomb retaliatory power. Congress assembled in 1958 in a mood to spare no pains and no expense to catch up scientifically and militarily to the Russians in missiles, rockets, and space explorations. The Army finally thrust a 31 pound satellite into orbit in January, 1958. This has been followed by several breath-taking thrusts into outer space and by the widely publicized orbits of several astronauts in 1962 and 1963. We are now spending more on rockets than we did on the atomic bomb; we have shifted our military arrangements to lesser dependence on airpower and have increased our missile bases and rocket capabilities but as yet no one seriously contends that we have equalled or surpassed the Russians in penetration of outer space.

Disarmament acquires new urgency

One consequence of these frightening developments has been that our interest in international controls of nuclear weapons and in making progress in disarmament has become greater than ever. The Russians have repeatedly proposed in the U.N. that the only solution to the arms race is universal and complete disarmament—this was the theme of Premier Khrushchev's address in 1960. President Kennedy took up the challenge and in the critical months of the fall of 1961 also proposed to the U.N. that a start be made toward complete disarmament. He also persuaded the Congress to create a new Arms Control and Disarmament Agency as a semi-autonomous unit under the general direction of the Secretary of State.

Debate over military policy

Another related development has been the increasing controversy about our whole military program and policies outlined previously.

A third development has been the growing emphasis on exploration of

outer space. A new Aeronautics and Space Administration created in 1958 spearheads the nonmilitary research and experimentation aimed at probing the universe. It is surely a wondrous new world when the President of the United States in 1961 soberly tells the Congress that we intend to land a man on the moon. Late in 1963, the President further proposed that the Soviet Union and the United States cooperate in their efforts to reach the moon.

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C. FINANCES

22

Financing the National Government

THE RESPONSIBILITIES of the national government, described in the preceding chapters, are heavy and the demands of the people for services are great. Sooner or later all discussions of public affairs must come to grips with the costs involved and the resources available to pay them. We, too, must turn now to the melancholy subject of paying the bills for the services the government performs. The complex structure of the national government, described in an earlier section, is obviously a costly one to sustain, and courts, Congress, and executive require millions of dollars for their effective functioning in the modern world. These costs are, however, but trifles compared with the billions required to equip and maintain our great military establishment, to sustain our allies, to uphold the economy of the farmers, to sustain the poor, the aged, and the unfortunate, to care for the veteran, to reclaim wasteland, and to harness the power of our great rivers. Measurable changes—up or down—in our national budget result largely from changes in the services rendered and all the structural tinkering conceivable would affect the costs of government but slightly.

THE SPENDING POWER

> The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; . . .
> —Art. I, Sec. 8, cl. 1

Constitutional basis

The Constitution has rather more to say directly about raising revenue than about spending it. A government, however, that could not spend would be no government at all; and in the case of the national government, power to

spend not only is expressly granted but is clearly implied in numerous provisions conferring authority to do things which could not possibly be done without spending money, for example, raise and support armies, provide and maintain a navy, establish post offices and post roads, and maintain a system of courts. If necessary, spending power could probably be deduced also from the granted powers to tax and borrow, since manifestly there would be no point to raising money if it could not be used. Only three specific restrictions are imposed: (1) that appropriations for the support of the Army shall not be "for a longer term than two years"; (2) that "no money shall be drawn from the Treasury but in consequence of appropriations made by law"; and (3) that "a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Some broad interpretations

Nevertheless, throughout much of our national history the spending power of Congress has been a prolific source of constitutional controversy. Primarily, the question has been whether the power to spend is restricted to purposes connected with the exercise of *other* powers delegated in the Constitution, or whether it is a power independent of, and in addition to, other powers and properly to be exercised for *any* purpose so long as having to do with "common defense and general welfare." In early days, strict constructionists like Madison took the first view, loose constructionists like Hamilton the second. The more liberal interpretation eventually prevailed, with Congress falling into the habit of regarding its spending power as properly extending to any and all objectives rationally associated with defense or welfare. Nay, more: no appropriation made on this assumption was ever—simply as an act of spending—successfully challenged in the courts. And not only so, but the Supreme Court has gone out of its way to assert that "the power of Congress to authorize the expenditure of public moneys [or to tax] for public purposes is not limited by the direct grants of legislative power found in the Constitution," and further that such expenditure is constitutionally legitimate so long as the welfare at which it is aimed can be plausibly represented as national rather than local, with Congress the judge, subject only to judicial veto if discretion is exercised arbitrarily or unreasonably.

The matter of grants-in-aid

A good while before these principles were so securely established judicially, the spending power was brought into significant controversy by the rise of grants-in-aid. With Congress appropriating funds to states for promoting agricultural education, building roads, protecting natural resources, maintaining employment offices, and performing other functions traditionally regarded as state rather than national, taxpayers sometimes objected to diversion of their contributions to such purposes. In 1923 the Supreme Court was confronted with a case brought by a taxpayer, and also one brought by the state of Massachusetts, challenging the constitutionality of a measure of 1921 appropriating money to aid states in reducing maternal and infant mortality on the ground that the act was serving purposes not national but only local, and invading the sphere of self-government reserved to the states under the Tenth Amendment. No direct affirmation of the act's constitutionality resulted. But

in a consolidated decision of the two cases the Court (1) brushed aside the contention of Massachusetts by pointing out that under the law no state was obliged to accept the grant unless it chose, and (2) set aside the taxpayer's protest on the ground that her share of the funds granted under terms of the legislation was too inconsequential to give her reasonable ground for suit. And from that day, the swelling stream of national funds flowing into the states and localities in the form of grants-in-aid has found sanction in these considerations—reinforced by the Court's later ruling that Congress has power to appropriate money for any purpose comprehended within "common defense and general [i.e., national] welfare." For a good while, national officials were fearful lest such undertakings as slum clearance and other housing activities be regarded judicially as "out of bounds"; but a decision of 1945 allayed such apprehension. So long, therefore, as a general-welfare purpose can be shown (and this usually offers little difficulty), the way for grants to states and their subdivisions seems wide open. Nor is it essential that grants be matched with state funds; and as for the regulatory power commonly going along with grants, the Supreme Court has said that it is natural and proper for the government "to regulate that which it subsidizes."

PLANNING AND CONTROLLING EXPENDITURES—THE BUDGET SYSTEM

The role of Congress

Not a dollar of money can be expended legally except in pursuance of authorization, direct or indirect, by Congress. Voting the great appropriations becomes one of the most laborious but important tasks of the two houses at every regular session. In appropriation acts, Congress in effect instructs the Treasury to supply the executive departments and other spending agencies with stipulated sums, according to specifications set forth in great detail. Indeed, one of the chief means by which Congress exercises control over administration is this minute and itemized allocation of money, cutting off an activity here by leaving it without funds, adding an activity or agency there by making the necessary financial provision, and in these and other ways predetermining —not always to the satisfaction of all concerned—the lines on which the government's work shall be carried on.

Loose methods of appropriation before 1921

For many years before the adoption of a budget system in 1921, appropriation bills were drafted and introduced by no fewer than nine separate House committees—the bills themselves commonly numbering 14—and these in the Senate were handled by as many as 15 different committees. Based upon requests made by the various spending agencies, and merely swept together and transmitted to Congress in an undigested mass by the secretary of the treasury, these bills were not only framed, but considered and reported by the several committees, in little or no relation to one another—and, what was worse, in little or no relation to the condition of the Treasury or to the outlook for revenue. With no single guiding hand to exercise restraint, they were likely to emerge in even more swollen form than when they first made their appear-

ance. Although the president might, if he chose, warn and admonish, he as a rule could do nothing in the end except affix his signature, since to do otherwise might mean halting essential government activities. Under such division of responsibility, log-rolling became a fine art, the "pork-barrel" an inexhaustible resource.

The Budget and Accounting Act of 1921

In the days when expenditures were relatively modest and revenues usually adequate to meet them, criticism of such haphazard procedures had little or no effect. The startling upswing of national outlays during World War I, however, lent new force to a growing demand for reform; and in 1921 a national budget system, long talked about, became a reality. The essence of a sound budget system consists in careful planning of the expenditures of a given fiscal period (usually a year) in relation to anticipated income, by a single authority, which not only will correlate income and outgo, but see that all reasonable economies are practiced. While the plan introduced by the Budget and Accounting Act of 1921 left, and still leaves, a good deal to be desired, it in general meets this basic specification.

The Bureau of the Budget

The planning and coordinating agency set up by the act is the Bureau of the Budget, originally attached loosely to the Treasury Department, although in effect an independent establishment. As supreme director of national administration, the president is, however, the logical authority to bear primary responsibility for preparing integrated programs of spending and revenue-raisings. After Franklin D. Roosevelt became chief executive, the Bureau was drawn into closer relations with the White House, until eventually, under authority conferred in the Reorganization Act of 1939, it was definitely placed in the new Executive Office of the President. It thereupon became the chief executive's largest and most important staff agency—his arm for all contacts and dealings with the financial side of the government.

Its expanded role

Moreover, with the passage of time there has been a remarkable expansion of functions. From an agency concerned with coordinating requests for funds in relation to anticipated revenues and putting them into coherent shape for transmission to Congress, the Bureau has developed into the principal aid to the president in planning and guiding the operations of the entire executive branch of the government. Conceptions of the budgetary process itself have been broadened to include not only the formulation of well-defined financial programs for the various departments and establishments, but also supervision of and control over the execution of such programs, including continuous study of problems of administrative organization and business methods. Resulting in part from the enlargement of governmental activities in fighting the depression of the thirties, the Bureau's new role arose to an even larger extent from situations created by the defense effort and war.

Such service the Bureau is able to render through the broad power given the director to "assemble, correlate, revise, reduce, or increase" the estimates of the several departments and agencies—a power from which flows wide discretion over the substance of department programs, not only in the planning stage but also later. After the programs have received Bureau approval,

and after Congress has voted the necessary appropriations, the departments and establishments still must obtain the Bureau's approval for their financial procedures in carrying out their programs, including the periodic (usually monthly) allotment of funds and the maintenance of reasonable reserves for contingencies. In addition, since 1939 a division of legislative reference in the Bureau has examined and reported upon all measures pending in Congress which, if enacted, would impose a charge upon the public treasury or otherwise affect the president's fiscal policy, the purpose being to determine the relation of such measures to the "financial program of the president"; indeed, if the Bureau does not think well of a measure passed, it may, and sometimes does, prepare a veto message and advise the president to sign it. The legislative division also acts as a central clearing house for all legislative recommendations emanating from the executive branch. All bills proposed by anyone in the executive establishments must be checked by the Bureau to see if they conform to presidential policy.

Preparing a budget

Although the government's tax year, the year for which taxable income is computed and in which most taxes are paid, corresponds to the calendar year, and therefore starts on January 1, its "fiscal" year, the year for which expenditures are planned and accounts made up, opens on July 1. A fiscal year hardly begins before systematic work on the financial arrangements for the ensuing year is started. First of all, every spending agency is asked by the Budget Bureau to compile detailed estimates of the funds that it will need in the next fiscal year and to submit such estimates not later than September 15. In larger agencies, this is done by special budget officers, in lesser ones by members of the staff detailed for the purpose. For many weeks conferences go on between these or other agency representatives on the one hand and Budget Bureau officials on the other—the former commonly pressing for as generous allotments as they can hope to get, the latter raising questions, offering objections, and seeking to whittle down requests regarded as extravagant or at any rate impracticable. On larger matters, the budget director is brought into the discussions; and, subject only to reversal by the president, his word is law for every department, bureau, board, and commission as to what expenditures (and in what amounts) shall be recommended to Congress and what ones shall not. Meanwhile, the Treasury Department, on its part, has been asked not only for data concerning interest charges on the national debt, but also for detailed estimates of the revenues that may be expected in the period, together with proposals for increasing such revenues in case they promise (as nowadays they almost always do) to be insufficient. Since 1947, the Council of Economic Advisors may also, at this stage, be asked for information on the impact of spending, borrowing, and taxation on the national economy. With all the estimates and other information finally in hand (ordinarily by December 1), Bureau officials total up the amounts, arrange data in logical order, and work the whole into a volume of 1200 pages or more—the "budget"—which, by the close of the calendar year, is placed on the desk of the president. The president is then free to revise or strike out

items. Usually he has already assented to most of them. Congress comes into regular session normally on January 3, and his budget message is due within the first fifteen days. In this message, the president presents his fiscal plan covering not only appropriations but revenues and, if necessary, proposals for deficit financing or for new taxes.

A budget before Congress

In 1920, with the adoption of a budget system imminent, the House of Representatives prepared for the new order of things by enlarging its appropriations committee to 35 (now 50) members, giving it jurisdiction over all appropriation proposals, and authorizing it to employ as many as 15 subcommittees (the present number is 13) for handling proposals relating to particular departments or agencies. Received in the House, a budget's revenue proposals are turned over at once to the committee on ways and means, and its far bulkier proposals for expenditure to the appropriations committee. With a view to more coordination of the two committees, the Legislative Reorganization Act of 1946 interposed a new procedural stage by requiring that, upon the president's proposals for a given fiscal year being received, the House committees on ways and means and appropriations and the corresponding Senate committees (on finance and appropriations), or duly authorized subcommittees thereof, should form themselves into a joint committee and, with the president's recommendations before them, work out a "legislative budget" fixing ceilings for expenditures and providing for any necessary borrowing, and report the results to the two houses by February 15 (or later date agreed upon) as recommendations for adoption. As tested in sessions of 1948 and 1949, however, this plan almost totally failed to yield the expected economies; "ceilings" tentatively established in legislative budgets were afterwards largely ignored; and in 1950 the experiment was abandoned.

Framing and adopting appropriation bills

Whether adhering to the president's recommendations or striking out on more or less independent lines, appropriations subcommittees in the House evolve 10 or 12 separate appropriation bills providing for departments and establishments, singly or in groups. After being approved by the main committee and passed by the House, these several measures are transmitted to the Senate. The Senate appropriations committee usually confines its activity to reviewing changes made in the president's requests by the House. Thus, the major weight in Congressional review of spending is clearly in the House. Conference committees ordinarily reconcile the conflicting views of the two houses and as the session nears its end the bills go to the president. In 1950, a "single package" plan was introduced under which, before appropriations finally were voted, all major ones were brought together in one bill, after the manner of the single great annual appropriation bill in the British Parliament, and also of consolidated appropriation bills encountered in some of the American states. By decision of the House appropriations committee, however, the device—although warmly supported by many members of both branches as in the interest of unity and economy—was abandoned after one trial. In almost every session since 1950 supporters of the consolidated appropriation bill and of the joint committee on the budget have introduced legislation to reestablish,

with some modifications, the procedures recommended in the Legislative Reorganization Act of 1946. While support for some or all of these innovations has been strong at times, the two houses have failed thus far to agree on a new procedure.

Some benefits realized

During the 40 years since the budget system went into operation, it has abundantly proved its worth. Even though we have had many years of deficit financing, no one would dream of returning to the earlier procedure. The system has imparted unity and responsibility to the spending program which otherwise would have been lacking. It opens a way for thorough and impartial review of the estimates of all spending agencies, and for reduction of those found questionable, before they are sent to Capitol Hill, and enables Congress to act with fuller information concerning spending proposals, the state of the country's finances, and the state of the national economy.

Possible further improvements

There is, however, room for improvement. While general appropriation bills are no longer introduced except by the regular appropriations committee, representatives and senators freely exercise their privilege of presenting bills calling for the expenditure of money for particular projects—building a post office, constructing a dam, dredging a harbor, or "improving" a river—in which they (at any rate the voters back home) are interested. Some of these are usually approved and the expenditure totals thus increased without, in most instances, providing any additional revenues. Furthermore, the enactment of a dozen or more major appropriation bills each year at different times makes it very difficult to keep the Congressional eye on the revenues which might be needed. The "legislative budget" provided for by the Legislative Reorganization Act of 1946 was based on a good idea, but has proved abortive. Many experts propose that by constitutional amendment, the president be given power to veto separate items of appropriation bills as governors in all but nine state have been authorized to do.

A "performance budget"

In one of its 1949 reports, the Hoover Commission sharply criticized the budget as "an inadequate document, poorly organized and improperly designed to serve its major purpose, which is to present an understandable and workable financial plan for the expenditure of the government." Two main improvements were urged: (1) clear separation of capital outlays, for example, on public buildings, from current operating expenditures, and (2) presentation of the latter, not in terms simply of who is to get how much, department by department and bureau by bureau, but in terms rather of functions, services, and activities—in other words, of "performance." Both recommendations found ready acceptance. Congress at once passed a resolution requiring the new performance principle to be applied to budgeting for the military department. The president requested all other spending departments and agencies to follow the same pattern; and the general budget for fiscal 1951, presented in January, 1950, embodied, as far as possible, the first effort at a "performance budget" in our history. Moreover, a Budget and Accounting Procedures Act of 1950 made the new type of budget a permanent statutory

requirement. The second Hoover Commission reaffirmed the "performance" system for presenting budgetary data and urged continued experimentation to spread its use and to improve its effectiveness. The Congress, in 1958, accepted one suggestion originating with the Commission and attempted by statute to modify its method of handling, in each appropriation, obligations arising under previous legislation. The House Appropriations Committee, however, has not thus far elected to follow the procedure suggested in the law.

Executing the budget—the General Accounting Office

In its report of 1937, the President's Committee on Administrative Management criticized the Budget Bureau for concentrating too much upon the preparation of budgets and not giving enough attention to "supervision over the execution of the budget by the spending agencies." As the Committee was frank to recognize, the Bureau had never up to that time been given sufficient staff or money to enable it to perform this added task. The situation has now been measurably corrected; and much is done by way of checking up on the use actually made of funds voted and supervising the transfer of funds from one agency to another. There is need for such work, notwithstanding the existence of another establishment—the General Accounting Office. This office was created by the same act of 1921 which brought the Budget Bureau into existence, and by the Legislative Reorganization Act of 1946 is expressly declared a part of the legislative branch. In addition to auditing the accounts of spending agencies and prescribing their form, this large independent agency —particularly independent because its head, the comptroller general, is appointed by the president and confirmed by the Senate for a 15-year term and is removable only by impeachment or, for cause, by joint resolution of Congress—has as a main function the validation of payments for services, supplies, and so on, as a means of seeing that all such outlays fall within the purposes and limits of appropriations made by Congress. Without the comptroller general's approval, money for such purposes cannot be drawn from the Treasury, or, if drawn and paid over, must be refunded. After 1933, the General Accounting Office became a focus of vigorous controversy, partly because the then comptroller general, personally hostile to the New Deal, held up numerous payments in connection with New Deal enterprises as lacking proper authorization in congressional appropriations. In 1937, the President's Committee made recommendation, warmly supported by the President himself, looking to abolition of the Office, transfer of "pre-audits" to the Treasury Department, and retention of post-audits in a new agency to be headed by an auditor general. Sharply clashing views developed, however, and no action resulted. Reverting to the subject in 1949, the Hoover Commission proposed retention of the General Accounting Office (as an agent of Congress) for purposes of post-auditing, but urged the introduction of a chief accounting officer in the Treasury Department (as an agent of the executive) with the title of accountant general of the United States, to take over the administrative work of pre-auditing expenditures and of prescribing and enforcing day-by-day admin-

istrative accounting methods in all departments and agencies with a view to a single system of fiscal accounts, elimination of duplications, and a degree of uniformity then lacking. The Budget and Accounting Procedures Act of 1950, while it gave departments and agencies fuller accounting functions than before, nevertheless continued the system of dispersed responsibility. It directed the Treasury, Budget Bureau, and General Accounting Office to collaborate in prescribing accounting systems but left principal authority in the latter office. The Second Hoover Commission in 1955 suggested that the Budget Bureau ought to develop its accounting services for other agencies and did not grapple with the thorny problem of where ultimate authority ought to reside. The basic issue here is between the Congress and the president with the Congress reluctant to curtail the authority of its own agency.

THE GROWTH AND PRESENT PATTERN OF NATIONAL EXPENDITURES

The tables and charts here and elsewhere in this volume tell better than words the astounding story of the growth of the expenditures of the national government since the founding of our nation. A few observations are justified. In the first place, the shift in public expenditures among the various levels of government has been pronounced. Prior to the depression of the thirties, the national government accounted for about 35 per cent of the total govern-

PATTERN OF EXPENDITURES

NATIONAL GOVERNMENT

FISCAL 1963

(In Millions)

National Defense	$ 53,000
International Affairs and Finance	2,900
Agriculture and Agricultural Resources	6,700
Natural Resources	2,400
Commerce and Transportation	3,300
Housing and Community Development	500
Health, Labor, Public Welfare	4,900
Education	1,400
Veterans Benefits and Services	5,500
Space Research and Technology	2,400
Interest	9,800
General Government	2,000
Trust Fund Payments (Social Insurance, Highways, Veterans Insurance, etc.)	27,300
Total	*$122,100*

THE GROWTH OF NATIONAL EXPENDITURES
(In Millions)

Period	Yearly Average
1789-1800	5.7
1801-1810	9.1
1811-1820	23.9
1821-1830	16.2
1831-1840	24.5
1841-1850	34.1
1851-1860	60.2
1861-1865	683.8
1866-1870	377.6
1871-1875	287.5
1876-1880	255.6
1881-1885	257.7
1886-1890	279.1
1891-1895	363.6
1896-1900	457.5
1901-1905	535.6
1906-1910	639.2
1911-1915	720.3
1916-1920	8,065.3
1921-1925	3,579.0
1926-1930	3,182.8
1931-1935	5,214.9
1936-1940	8,267.2
1941-1945	64,242.5
1946-1950	42,801.4
1951-1955	63,332.3
1956-1960	73,088.0

Adapted from *Statistical Abstract of the United States, 1961.*

mental expenditures in the United States, the states about 15 per cent, and the local units about 50 per cent. Today, the national government spends about 70 per cent, the states about 12, and the local units 18. In the second place, national governmental income has equaled or exceeded outgo only about half the time in our national history. Presidents Lincoln, Grant, Hayes, Garfield, Arthur, and Franklin Roosevelt never experienced one year of balanced budgets during their tenures of office; and Madison, Van Buren, Tyler, McKinley, Wilson, Truman, and Eisenhower had more years of deficits than of balances. In only five years since 1930 has the government lived within its income. In the third place, the towering costs of modern government at the national level are attributable, as a noted senator has said, to the "warfare" world rather than to the "welfare" state. More than 75 per cent of our national

expenditures have, since 1942, steadily gone into war, its aftermath, its conduct or preparation for it. The total national budget as outlined by the president did not until 1963 include a substantial part of the actual income and outgo. All payments into and out of trust funds like those for O.A.S.I., the long-range highway programs and others were not included and receipts of large government enterprises like the Post Office and T.V.A. were not counted. Finally, the mere size of the present national budget has overborne the laudable efforts described earlier to develop a rational procedure in the executive branch and in Congress for handling the annual tax and expenditure programs.

SOURCES OF NATIONAL FUNDS

1. Loans

Governments on all levels habitually live partly on borrowed money. In a given year, they may take in as much as they spend and thus have the comfort of a "balanced budget." But hardly ever are they out of debt; and in periods of stress their borrowings may mount to disturbing totals. Borrowings are not revenue. A man borrowing $1000 from a bank may have the money in his pocket, but he is not taxed on it as income; for of course it is *not* income. At some specified rate of interest, he may have the use of it for a while. But he will have to pay it back. Nevertheless, borrowing is a source from which for a good many years, even in peacetime, our national government has been deriving a considerable part of its current operating funds.

2. Non-tax revenue

Most of the actual revenue commonly comes from taxes. There is, however, a good deal of nontax revenue. To begin with, the government carries on business, or quasi-business, enterprises and pockets the receipts from them as any private business man or corporation would do. One thinks instantly of the postal service, from which in 1963 the government drew more than $3.8 billion—not *profit* certainly, but that is beside the present point. There are receipts also from the mints, the Government Printing Office, the Tennessee Valley Authority, the Alaska Railroad, the Panama Canal, the Inland Waterways Corporation, and other such diversified sources. In the second place, there is income from fees charged for services or privileges, as when a patent is applied for, a book copyrighted, or a lawyer admitted to practice before the Supreme Court. Third, there are fines levied in the courts, penalties for nonpayment of taxes, and forfeitures of property taken from transgressors, for example, liquor or tobacco on which the required excise taxes have not been paid, or liquor, jewelry, perfumes, and the like confiscated from smugglers or from importers and travelers making fraudulent declarations. There are sales of property, too—public land or surplus war equipment. There are rentals from grazing lands and irrigated areas. There is interest on loans to farmers and to homeowners. There are even gifts, as the National Gallery of Art in Washington (presented by the Mellon estate) eloquently testifies. Rela-

tively, the national government enjoys less nontax revenue than do many of the states, especially with their heavy national subsidies in the form of grants-in-aid.

3. Taxes

Nevertheless, the national government lives principally from taxes. A major difference between the government under the Articles of Confederation and that under our present Constitution is that, whereas the former could raise money (aside from borrowings) only by making requisitions upon more or less reluctant and negligent states, the latter can reach down past the state governments to the individual citizen, levy on his business transactions, income, inheritances, and the like, and enforce payment, if necessary, by seizing and selling his possessions. Very appropriately, the long list of powers given Congress in the eighth section of the Constitution's first article starts off with the power "to lay and collect taxes, duties, imposts, and excises." Nor was it simply by chance that the Constitution's framers employed all of these different terms. To them, "taxes" meant primarily levies, like poll taxes and land taxes, falling *directly* on persons or property, and with the burden impossible to shift to other shoulders; "duties" and "imposts" denoted levies on imports and exports, respectively (what we commonly call tariff or customs duties); and "excises" were levies on the production, distribution, or use of commodities—"internal revenue," as we early fell into the habit of terming this form of tax in distinction from revenue derived from foreign trade and collected at the ports. Moreover, in contrast with "taxes," duties, imposts, and excises are *indirect*, in that, they can be, and commonly are, passed on to the consumer in the form of higher prices for goods, so that it really is he who pays the duty or excise, even though he may not realize that he is doing so. The various terms employed in the taxing clause are therefore not without significance, even though in everyday usage it is customary to lump all of the different levies together under the general heading of "taxes"—which, indeed, we shall do in the present chapter.

A tax (in the broad sense indicated) is, of course, a levy or charge imposed normally to raise money for public purposes—"an exaction," the Supreme Court has said, "for the support of the government." It may be assessed upon individuals or upon corporations or other groups. It may take any one of many forms (not all employed by the national government)—property taxes, income taxes, excise taxes, sales taxes, license taxes, inheritance taxes, poll taxes, tariff duties, and still others. It may be direct or indirect. Always, however, a tax is compulsory; one may choose whether to pay rent or wages or prices, but not whether to pay taxes. Furthermore, while justified solely as a contribution in return for government service rendered (in at least some broad sense), tax burdens necessarily are apportioned among payers according to their property, income, business transactions, and the like, and not at all on the basis of benefits individually received. It may be presumed, however, that when tax money is employed for police or military protection, for example, the big taxpayer has more to be protected and in that sense gets service in some proportion to what he pays.

THE TAXING POWER

Restrictions:

Under the Constitution's taxing clause, Congress has general freedom to tax persons and objects within the national jurisdiction, and with nothing said about the rates that may be imposed. If the people at large think themselves taxed oppressively, they will find remedy, not in the courts, but in electing a Congress—perchance also a president—pledged, or at least predisposed, to a different tax policy. Comprehensive, however, as the taxing power is, it can be exercised only in accordance with certain express or implied restrictions.

1. Purpose

To begin with, Congress is not free to levy taxes for any conceivable purpose whatsoever, but only (as the Constitution plainly says) "to pay the debts and provide for the common defense and general welfare of the United States." "Debts" and "defense" are sufficiently definite terms. "General welfare," however, is so broad that there always have been differences of opinion as to what activities and objectives may be read into it. It no longer, however, offers much of a hurdle for tax- and spending-planners to surmount.

2. Uniformity of indirect taxes

Down to World War I, the largest part of the national revenue always came from indirect taxes; and, as we shall see, a large share is still derived from that source. In laying taxes of this kind, Congress, however, is bound by the constitutional provision that "all duties, imposts, and excises shall be uniform throughout the United States." The requirement does not prevent tobacco excises, for example, from falling more heavily upon regions where tobacco products are manufactured extensively than upon others where there is little industry of the kind; it means merely that, in general, all cigars or cigarettes of a given kind or condition must be taxed at the same rate in all parts of the country. A tax may fall with very different weight on different areas, on different businesses, or on different classes of people. But—save as qualified with respect to tariff duties—it must bear with the same weight on the same objects of taxation wherever found.

3. Uniformity among ports of entry

To reinforce this principle, the Constitution further enjoins that in regulating commerce Congress shall not authorize customs duties to be collected at one rate at one port and at a different rate at another, or to be computed at different ports according to different rules. At one time, this meant absolute uniformity at all ports for any given kind or class of imports, whatever their place of origin. Under Supreme Court decisions since 1901, however, rates on commodities coming from the insular dependencies may differ from those on imports from other areas; and under the trade agreement system instituted in 1934 there is much additional variation, according to the foreign country from which given commodities are received. The constitutional restriction mentioned, however, is fully preserved; the duty on a box of cigars from Puerto Rico may differ from that on a box from Brazil, but each will be uniform at all ports.

The taxing power is further limited (1) by a constitutional provision forbidding duties to be imposed on exports, although Congress is authorized

4. Other express restrictions

to regulate export trade in every way other than by taxation; and (2) by a requirement that directs taxes shall be apportioned among the several states according to population. As interpreted in earlier days, to include only poll or capitation taxes and taxes on land (and at one time slaves), direct taxes have been laid by Congress only four times in our history, most recently in 1861. Taxes on incomes laid in 1862 were held by the Supreme Court to be excise, not direct, levies. When, however, the validity of a new income tax law was challenged in the last decade of the century, the Court ruled differently. Ultimately the obvious impossibility of taxing incomes in accordance with any mathematical apportionment among the states led in 1913 to adoption of the Sixteenth Amendment, brushing aside the entire question of whether income taxes are or are not direct taxes and expressly authorizing Congress to "lay and collect taxes on incomes, from whatever source derived," without apportionment.

5. Implied restrictions

Finally may be mentioned restrictions nowhere specified but up to now regarded, with judicial support, as implicit in the nature of the federal union: restraints from taxing (*a*) the property or essential functions of state governments or their subdivisions, and (*b*) securities issued by such jurisdictions or incomes derived therefrom. As observed elsewhere, the restriction relating to securities probably will in time be abrogated by Congress, with Supreme Court sanction, as a similar one on the taxation of state and local salaries already has been.

Taxation not primarily for revenue

Most laws imposing taxation can readily be classed as revenue measures, that is, measures in which the primary, if not sole, purpose is to produce income for the government. As intimated above, some measures are tax laws in form but intended mainly or entirely for regulative purposes and, if yielding revenue at all, do so only incidentally. A good example is tariff schedules planned for the protection of American industries against foreign competition. Insofar as goods affected find their way to our ports notwithstanding heavy duties payable on them, revenue results. But high productiveness is not expected. Indeed, Congress has at times gone so far as to impose taxes with the avowed purpose of destroying a business enterprise altogether—taxing it out of existence and thereby rendering it wholly unproductive. A case in point is the act of 1865—in form a tax measure pure and simple—imposing so onerous a levy on notes issued by state banks that, as was the intention, it became unprofitable to issue them and their issuance ceased. In general, measures of the kind have been sustained whenever the courts considered that the taxing power was being used in pursuit of a purpose expressly or impliedly within the scope of congressional authority. Protective tariffs, however, have commonly been upheld, quite apart from the taxing power, on the basis of power to regulate foreign commerce.

Taxation and "general welfare"

Is a tax constitutional when not clearly either a revenue measure or a device for rendering effective some delegated or implied power, but rather is aimed principally or solely at promoting the general welfare of which we have spoken? This question was raised pointedly by laws of 1886 and later laying

burdensome excise taxes on wholesale and retail sales of oleomargarine colored to resemble butter; by an act of 1912 taxing the manufacture of poisonous white phosphorus matches (and almost completely ending the industry); by laws of 1914 and 1919 imposing taxes on registered dealers in narcotic drugs; by the child labor law of 1919 laying a special tax on the profits of industrial establishments employing children under the age of 16; and by the Agricultural Adjustment Act of 1933 imposing levies on processors of grains, meat, cotton, and other commodities as a means of raising money for a program of curtailing agricultural production. In cases coming before it at different times, the Supreme Court upheld the oleomargarine and narcotics laws as revenue measures, refusing to inquire into the legislative intent behind them; and the constitutionality of the phosphorous match law has never been judicially tested. When, however, the child labor law was challenged, the Court fixed attention on the motive animating Congress and held the measure invalid for the reason that the tax imposed had as its sole purpose an objective—the regulation of child labor—regarded by the justices then sitting as a function reserved to the states. Similarly, the Agricultural Adjustment Act was overthrown not only because, said the justices, the processing taxes for which it provided were not true taxes in the sense of levies for general support of the government, but also because these taxes, too, were being employed to extend the national regulating arm into a field—the control of agricultural production—belonging to the states. In other words, the taxing power might not properly be invoked, even for the sake of the general welfare, when the effect would be to project national authority beyond limits constitutionally fixed, and as understood by the judges.

A changed attitude

Since these decisions were rendered, however, there have been changes. A Court with different personnel and viewpoints has broadened its concept of national power (especially under the commerce clause) as illustrated by the justices' approval of the social security taxes introduced in 1935. General welfare now can be promoted by levies which once would hardly have escaped judicial condemnation; and the presumption is that to the many occasions on which the national taxing power already has been used in advancing social and economic ends, with considerations of revenue wholly incidental, will in future be added still others of major significance. When the question is one of justifying taxing or spending on the basis of welfare, not only Congress itself but the Supreme Court as now constituted is rather more easily satisfied than before. In much of our pre-World War II income and inheritance taxation, indeed, the purpose of curbing "swollen fortunes" can be discerned almost as clearly as that of obtaining revenue. In messages to Congress in 1935 and on other occasions, President Franklin D. Roosevelt, pushing farther ideas advanced by Presidents Theodore Roosevelt, Wilson, and Hoover, warmly advocated such a policy, with a view to more equitable distribution of wealth and economic power. Since 1940, the problem has very nearly been taken care of automatically by tax schedules drawn to meet the heaviest demands for revenue in the country's history.

THE ENACTMENT OF TAX MEASURES

Origins and frequency of tax legislation

Appropriations are usually made for some specified and limited period, most commonly a year, and consequently a sheaf of appropriation bills must be passed every 12 months, with deficiency measures interspersed as needed. Measures imposing or readjusting taxation, on the other hand, are usually without time limits; a given tax once levied, or a given rate once established, continues operative as long as not repealed or amended. It is true, however, that in recent years Congress has exhibited a tendency to enact temporary or "emergency" taxes. Every annual budget transmitted to Congress by the president contains estimates of the revenue to be anticipated from existing sources. Along with these commonly will be submitted proposals for increasing the inflow by new or amended taxation if the yield does not promise to be sufficient, or for decreasing it if it promises to exceed needs, or perchance for maintaining the yield but redistributing tax burdens. On its part, Congress, too, may—as in the case of two tax-reduction bills killed by presidential veto in 1947 and one passed over a veto in 1948—initiate revenue measures wholly outside of the executive's budget plans and even conflicting with them. Accordingly, tax legislation (if not in the form of a comprehensive over-all revenue act, at least in that of a more or less significant amending measure) is to be anticipated with substantially the same yearly regularity as appropriation acts.

The handling of revenue bills

All measures for raising national revenue are required by the Constitution to originate in the House of Representatives. All portions of the president's annual budget message relating to the subject are immediately referred to the ways and means committee of that body; and to this group it falls to whip into shape a tax bill, sometimes following closely, sometimes less so, the plans and recommendations of the chief executive and his budget director. Working for weeks, through subcommittees when necessary, and with help from conferences with the chief executive, budget director, Treasury officials, bankers, businessmen, and others, the committee finally emerges with a measure which for further weeks absorbs much of the time and energy of the House. Passed by that body, the bill goes to the Senate, where, notwithstanding that the House was originally intended to enjoy substantial primacy in controlling the national purse, most revenue measures are more or less drastically altered, either in the finance committee or on the floor. There is, indeed, nothing to prevent the Senate from amending a House revenue bill by striking out all parts after the enacting clause and inserting an entirely new bill; and something of the sort has happened on several occasions. It is even possible for a bill which in effect, and almost in technical form, is a bill to raise revenue to be passed in the Senate before the House has taken any action at all. In any event, a major tax bill, after passing in both branches, will certainly have to "go to conference." Commonly it is in the form in which it emerges from conference that the two houses finally enact it and the president signs it. Throughout the entire procedure, the country—especially the business element—

watches with interest, and even anxiety, to see what new taxes will be decided upon, and what increases or other changes will be made in existing ones.

THE PATTERN OF TAXATION

Earlier situation

On the basis of "incidence," that is, the point where the actual burden falls, taxes may be classified as direct and indirect—the former assessed upon and paid (as in the case of land taxes and poll taxes) by persons who cannot shift the impact to other shoulders; the latter imposed and collected commonly at some stage of production or distribution, and afterwards passed on (in the form of higher prices for commodities) to consumers. Back in the eighteenth century, the national government started off by relying almost entirely on indirect levies, principally duties on imports designed to shelter the country's developing industries as well as to yield revenue. So satisfactorily were tax needs met in this way that until the Civil War direct taxes were invoked only three times, and even excise taxes (indirect) only in two brief early periods. The exigencies of the conflict between the states, however, not only forced a temporary reversion to direct taxation, but brought excise taxes once more into use; and from then on these had a place in the tax structure. Tariff duties were, however, dominant for a good many years. Sometimes the point was made that people would be more tax-conscious, and therefore more concerned about economy and efficiency in government, if taxation were less disguised. But politicians always considered it good strategy to keep the tax burden well concealed.

Later changes

Throughout a long period of our history, the country's tax structure was thus relatively stable: state and local governments lived principally from the proceeds of the general property tax, the national government principally from the yield of customs duties. The past 50 years, however, have brought changes greatly complicating the tax picture. Mounting expenditures, increasing inadequacy of the general property tax, tempting new resources for revenue like motor cars and gasoline, and newer tax ideas and objectives, have attracted the states to numerous forms of taxation rarely or never employed before. On its part, the national government has revolutionized its tax pattern, with customs duties relegated to an insignificant position and reliance now placed mainly upon levies on incomes, the production and consumption of goods, and inheritances. The shift in the national sphere came shortly before World War I, when, with the idea growing that the nation's principal tax should be based on ability to pay as measured in terms of individual and corporate incomes, this newer (although not wholly untried) form of levy, validated by the Sixteenth Amendment, established itself promptly and firmly in our system. One of the advantages of income taxation is its flexibility—the ease with which, by juggling a few rates and brackets, it can be made to yield vastly more or vastly less as desired. Under the impact of the then unparalleled wartime expenditures of 1917-18, the national revenue from this source rose to first place—a position which it consistently maintained until 1933. With de-

pression conditions deepening in the early thirties, taxes on personal and corporate incomes yielded steadily diminishing returns. Once more the bulk of national revenue began to come from customs duties and excises, even though languishing commerce and slackened business caused these also to produce less than formerly. Some measure of prosperity, however, having been regained, the income tax stream began rising again in 1937; and under wartime tax legislation after 1941 it became a torrent, quite transcending all other tax sources.

RECEIPTS OF THE NATIONAL GOVERNMENT

FISCAL 1963

(In Millions)

Individual Income Taxes		$ 47,300
Corporate Income Taxes		21,200
Employment Taxes		16,600
Excise Taxes		13,112
Alcoholic Beverages	3,477	
Tobacco	2,088	
Manufacturers (Gasoline, oil, autos, home appliances)	5,509	
Retailers (Jewelry, furs, luggage, cosmetics, etc.)	436	
Stamp Duties	164	
Misc. (Transportation, admissions, communications, etc.)	1,438	
Estate and Gift Taxes		2,060
Customs Duties		1,278
Fees, Fines, Licenses, Sales, Rentals, etc.		4,408
Total		*$105,958*

1. Income taxes:

The largest single source of revenue of the national government today is the individual income tax. As enacted in 1913, this tax fell upon only 2 or 3 million persons and at a graduated rate beginning at 4 per cent on net taxable income in excess of $5500 for a married man. Under the pressure of war emergencies the rates have been revised upward quite sharply and the deductions and exemptions downward, so that 90 million persons now file returns. In other words, the great majority of the wage earners of the United States today pay a tax on their incomes to the national government. A large proportion of modern income tax payers pay their taxes "painlessly" through a scheme introduced in 1943 of employer withholding of a portion of their wages each pay period and transmitting the deducted portion to the government. A reckoning, of course, still occurs on April 15 when each taxpayer

a. Individual

computes his tax liability for the previous year and pays any amount still owing or, perchance, files a claim for a refund from the total already paid for him by his employer.

The modern income tax is a tax on "net" income rather than on total receipts. From the total earnings from all taxable sources, there may be subtracted: (1) personal allowance of $600 for each person dependent on the taxpayer including the taxpayer himself; (2) expenses incurred by self-employed, professional, and wage-earning taxpayers in earning the income; (3) privileged personal expenses, for example, donations for religious, charitable, or educational purposes, abnormal medical expenses, interest paid on loans, and taxes of many kinds paid to other governmental units. On the balance of the income after these allowances and deductions are taken, a graduated tax is imposed. The rate of this tax in 1963 was 20 per cent on the first $2000, advancing by steps to 91 per cent on net income in excess of $200,000. The graduation or "progressivity" in the tax rates is designed to make larger incomes pay a proportionately larger tax on the theory that the higher the income the greater the ability of the taxpayer to support his government.

b. Corporate

A tax is also imposed on the annual net income of corporations and this ranks next to the individual income tax in the size and importance of its yield to the national government. This is undoubtedly the most complex tax used by the national government. Most of its complexities arise from an earnest effort of lawmakers to have the tax fall on the "net" income of corporations after allowances are made for legitimate expenses in earning the income. Others arise from various efforts to encourage plant expansion, oil deposit exploration, and other corporate practices deemed good for the national economy. The rate of tax on corporate net income is 30 per cent on the first $25,000 and 52 per cent on the remainder. During World War II and from 1951 to 1953, the corporation income tax was supplemented by an "excess" profits tax designed, in theory at least, to levy on the swollen corporate earnings of wartime so as to recapture as much of the abnormal profit as possible. In general and with numerous exceptions, the tax fell on the difference between "normal" earnings and those of the years in which the tax was imposed. The most recent "excess" profits tax, associated with the Korean combat and rearmament was fixed at 30 per cent of the abnormal earnings, but the combined corporate income and "excess" profits taxes could not exceed 70 per cent of the net income.

2. Estate and gift taxes

On a number of occasions from the Civil War onwards, the national government imposed some form of tax on estates of deceased persons or on inheritances of portions thereof. Since 1916, an estate tax has been a regular feature of the national tax pattern. Formerly, exemptions ran as high as $100,000, and rates in lower brackets were relatively moderate, although high in upper ones. Naturally, under wartime taxation, exemptions were reduced (to $60,000) and rates stiffened. In order to reach wealth that might escape estate taxation by being given away by the possessor with that end in view, a gift tax (on a graduated scale approximately three-fourths as heavy as estate taxation)

was introduced in 1924, repealed in 1926, and reimposed in 1932. In order to protect existing state inheritance taxes, a credit of 25 per cent against national tax liability for taxes paid to a state was inaugurated in 1924. It was increased to 80 per cent in 1926. The Revenue Act of 1954 substantially reduced this credit. Estate tax rates were increased during World War II. The present rate is 3 per cent on the first $5000 above the $60,000 exemption, graduated to 77 per cent on estates of more than $10 million. Combined with "progressive" income taxes, estate and gift taxes now operate powerfully to check the growth and transmission of large fortunes.

3. Excise taxes

Everybody pays national taxes, although many people do so without realizing it. Even persons of means too modest to be reached by the income tax make their contributions when they buy articles like a package of cigarettes, priced so as to cover the excise tax due the government from the manufacturer or distributor. Traditionally, excise, or "consumption," taxes have been planned to fall principally on luxury goods, and therefore to be paid chiefly by the comparatively well-to-do. The theory, however, never was completely adhered to in practice; and excises were progressively broadend during World War II until long lists of articles were covered which, for many people at all events, were everyday necessities. In 1947, existing heavy rates on tobacco, liquor, motor fuel, theater admissions, cosmetics, and scores of other articles were continued indefinitely by Congress. By 1950, however, popular demand for relief reached a point where both President and Congress became agreeable to a readjustment (the President on condition that lost revenue be made up in some other way). The Korean crisis, however, quickly turned the government's concern from remitting taxes to increasing them. It was not until 1954 that a Republican Congress was able to make a general reduction in excise taxes. A few more reductions were made in 1959 and in 1962.

4. Payroll taxes

A special form of excise is a tax imposed upon employers for support of state systems of unemployment insurance under the social security program. Levied by the national government, the tax differs from others in that its proceeds are not for general government purposes; only about 10 per cent of the yield actually accrues to the national government at all, the remainder being simply held by the Treasury for requisitions by the states for paying benefits. Even the 10 per cent is employed in meeting administrative costs of the system. Of similar nature (although without the states involved) are payroll taxes on both employers and employees for support of the old age and survivors insurance system.

SOME QUESTIONS OF TAX POLICY

The close of World War II and later of the Korean conflict naturally left the country vitally concerned about reduction of the extraordinarily heavy tax burden carried over from the war years. Despite some lowering of income and excise taxes, such concern is still deeply felt. No one, however, pretending to any understanding of the current world situation and of America's relation to

it, or of the financial implications entailed, looks forward to a return in the foreseeable future to the level of taxes of the twenties or thirties. "Cold war" with the U.S.S.R., preparations for eventualities if cold war should suddenly break into armed conflict, assistance to nations we hope to have on our side in such a situation, a huge debt largely incurred in past war, to say nothing of mounting costs of social security and other domestic services—indicate a continuance of high levels of taxation. Barring unexpected developments, such as a Russian collapse, people and politicians will for a good while be most concerned about tax programs in terms of an immediate crisis. There is one school of thought, however, which holds that substantial and immediate tax reduction will provide a strong stimulus to economic growth and that the continued high level of unemployment accompanied by many signs of economic sluggishness make it highly desirable that taxes be cut now. These views, strongly urged by President Kennedy, include also the hope that economic growth will result in higher yields from existing or reduced tax levies, and that, therefore, the budget gap can be closed in a few years without curtailing necessary expenditures.

1. Readjustment of national taxation

Long before World War II, however, criticisms of our tax methods, policies, and objectives suggested need for general reconsideration and overhauling of our system. A few of the older long-term issues may at least be called to mind. For example: Should any new forms of taxation be introduced, for example, taxation of income from state and local securities, or fees for licenses, certificates, and other papers now issued gratis? Should the income tax base be broadened by terminating exemptions now enjoyed by a lengthy list of interests and enterprises, such as farm and consumer cooperatives, mutual insurance companies, rural electrification undertakings, surplus funds of labor unions, and even philanthropic and educational organizations in so far as engaged in business enterprises? Should the taxation of incomes be deliberately kept at levels, in the higher brackets, making accumulation of wealth difficult or impossible? How can adequate revenue be raised without unduly impairing the volume of production and the general level of national income? Should tax policies be modified to encourage plant expansion, capital investment, or accumulation of liquid reserves? How should corporate dividends and stock splits be treated for tax purposes? To what extent should tax rates be raised or lowered to curb inflation, promote economic growth, or encourage domestic industries? Should tax concessions be made to industries willing to locate in areas of chronic employment? And what about the time-honored issue of duplicating, or "double," taxation? A word here on this last-mentioned matter is perhaps in order.

2. "Double taxation"

With both nation and states reaching out in recent decades for new sources of revenue, it has come about that frequently they are found taxing the same objects. In recent years, indeed, no less than 90 per cent of national and state receipts came from the same sources. To be sure, the national government leaves the general property tax entirely to the states (principally for local use) and, as we have seen, relies for the major part of its revenue upon

personal and corporate income taxes, estate and inheritance taxes, and consumption taxes of different kinds. But nearly all of the objects affected are taxed by some or all of the states as well. Indeed, apart from the general property tax and customs duties, there are few if any important forms of taxation not claimed by both national and state governments, each without much regard to the other. Often (indeed almost invariably in these days) the sums collected by the national government within a state from a given tax exceed the amounts collected from that tax by the state itself. Persons finding their salaries or the gasoline they buy taxed twice sometimes harbor an idea that such double imposition is unconstitutional. In this, they are wrong. The Constitution has nothing to say against double taxation; it in effect presupposes it by leaving broad and general taxing powers to two largely independent governments, both resting directly upon the people. Even though not unconstitutional, however, the existing situation imposes handicaps on business and industry and sometimes excessive burdens on individual taxpayers, and one will not be surprised to learn that a good deal of thought has been devoted to it not only by tax experts but by business organizations, taxpayer associations, and state officials. Sometimes it is suggested that the national government withdraw from gasoline taxation (a field which it entered only in 1932), while the states give up taxing tobacco and its products; or that, in return for a monopoly of taxing liquor, the states give up taxing incomes. Often it is urged that the national government stop competing with states and localities by taxing amusements, local telephone calls, retail electrical energy, and other things. The issue is further entagled in the complexities of the grant-in-aid controversy. Those who propose the abandonment of some national aids to states, of course, expect the national government to abandon some taxes so the states can take up the burden more easily. A recent extensive staff study in the Treasury Department, however, stops short of any definite recommendations on these or related lines, as does the study of President Eisenhower's Commission on Intergovernmental Relations. In a period when all governments instinctively shy away from proposals looking to drying up sources of revenue, it is doubtful if any sources will become the exclusive property of one jurisdiction or another.

BORROWING MONEY—THE NATIONAL DEBT

The borrowing power

When expenditures and revenues are approximately equal, a government is said to have a "balanced" budget. If, on the other hand, expenditures exceed receipts, there is a deficit, and the budget is said to be out of balance. In ordinary times, and for ordinary purposes, income derived from taxation, supplemented by receipts from nontax sources, ought to be, and much of the time has been, sufficient to meet the government's needs. In time of war or threat of war, however, or other unusual strain, for example, a depression, or to meet the cost of some special undertaking like the Panama Canal or a Marshall Plan, the government must borrow. The accumulated obligations thus incurred

THE NATIONAL DEBT

Selected Years, 1791-1963

Year	Gross Debt in Millions
1791	75
1801	83
1816	127
1821	90
1831	39
1840	3.5
1851	68
1861	91
1866	2,755
1871	2,322
1881	2,019
1891	1,005
1901	1,221
1911	1,154
1919	25,482
1931	16,801
1941	48,961
1946	269,422
1951	255,222
1961	289,211
1963	303,500

give rise to the national debt. Power to borrow not only is expressly conferred in the Constitution, but is one of the very few powers entirely unencumbered by restrictions—with the result that Congress may borrow from any lenders, for any purposes, in any amounts, on any terms, and with or without provision for the repayment of loans, with or without interest.

Methods of borrowing

Borrowing may take any one of several forms. By authority of Congress, the Treasury may sell notes or certificates attractive to banks and other institutions; and this is constantly done. To accelerate tax receipts, it may issue "tax anticipation" notes to large taxpayers, to be turned in by the corporation or individual at tax time at face value plus interest received on what has been in effect a loan. It may and does, in effect, borrow from itself; that is to say, it may arrange for interest-bearing loans out of funds accumulated and held for specific purposes by national agencies, for example, old-age, unemployment, veterans, and bank deposit insurance funds and postal savings deposits. Of far greater importance, however, is the sale of long-term interest-bearing bonds in large denominations to banks, insurance companies, administrators of trust

funds, and the like, and in smaller denominations (down to $25 savings bonds) to individual savers and investors. For some years now there has been a continuing controversy between the Treasury and Congress over the statutory ceiling (4.25 per cent) on interest on new long-term government bonds. The Treasury has argued that this has forced it to place too much of the debt (80 per cent in 1963) in relatively short-term securities with more marketable interest rates. The Congress has taken the position that removing the ceiling will stimulate a general rise in interest rates. The position of banks is such that they can virtually be compelled to purchase. In the case of private individuals, if in time of special need the investment motive, reinforced by patriotic appeals and high-pressure salesmanship, fails to bring about voluntary purchases in sufficient amounts, the government may force them by "deferred-savings" devices of one kind or another.

The problem of liquidation

During the past half-century, the United States has been added to the long list of countries laboring under a huge national debt. The national government, after two decades of deficit financing, now owes $1650 for each man, woman, and child in the United States. People who think seriously about such matters are by no means of one mind on how a debt of such proportions might be expected to affect the country's future. Some, comforted by the circumstance that we "owed the debt to ourselves" and not to foreign lenders, thought that, with moderate national prosperity, the burden could be carried and the debt itself gradually reduced with no perceptible lowering of living standards. Others could not see how owing the debt to ourselves made any great amount of difference (we still *owed* it), or how the dead weight of so stupendous an obligation could fail to retard economic and social progress over a long period of years. Certain it was that generations as yet unborn would feel the impact of debt burdens which we in our time had improvidently piled up. Favored by a very high level of national prosperity, as well as by a combination of fiscal circumstances too complicated to be explained here, the government actually did contrive to shave off about $25 billion from the peak debt at the end of World War II. Rearmament, Korea, and the "cold" war, however, renewed deficit spending and the debt has now climbed past the height reached in 1946. If the nation cannot tax itself sufficiently to pay the going expenses of the government during a period of unprecedented prosperity and high standards of living, the outlook for any significant lowering of the debt is dark indeed.

There is a school of opinion holding that we ought not to expect in our day to do much more than simply "maintain" the debt, paying interest scrupulously, but not making much effort to reduce principal, with the country meanwhile "growing up" to the debt by attaining such population and wealth that, proportionally, the burden would in time be materially reduced. Such rationalization of our current lack of progress with debt reduction (almost as fantastic in one direction as it is, in another, to expect the country ever to be literally debt-free) certainly does not appeal to many thoughtful people.

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III

STATE GOVERNMENT

23

The States and Their Constitutions

THE ROLE OF THE STATES

ROBERT E. LEE, confronted in 1861 with a choice between serving the central government and serving his state of Virginia, chose Virginia. Such a decision by a major figure in public life today would be unthinkable. The United States is today one people. All of the fierce loyalties of nationalism center around our government in Washington, D. C. and our institutions of production, distribution, finance, religion, communication, and entertainment which transcend state lines. The division of governmental responsibilities between the nation and the states, although rooted in historical necessities, is continued by habit and convenience. The state is a regional unit of government performing highly important functions in the American system but it is not now and is not likely to become a self-contained, politically conscious community in the sense that Belgium or Holland are such communities. No time-worn cliché of American politics is more misleading about the realities of American life than that which refers to the "sovereign" states. It is true that many decisions made by state officials may not be reviewed or countermanded by any superior. It is also true that the states are legally equal. But loyalty to the state as such, except in Texas, is one of the more lightly regarded of American civic obligations.

Are the states sovereign?

Schools of regional writers remind us that our national "oneness" embraces many smaller cultures within the national whole. The patterns of thought and of politics differ widely among New England, the Plains, the Pacific Coast, the Old South, the Middle West. In so far as the states have any identifiable diversities, they arise from these regional affiliations. Probably

Regional differences among the states

the most determined regional loyalties are those of the Old South. Here is the stronghold of "states rights" and of regional autonomy. Regional boundaries are far from precise, however, and many states have no clear regional affinity. Some embrace more than one region and several are microcosms of the nation rather than of a particular region. In general, however, our state governments are best understood in terms of the cultural and economic regions within which they are located.

Many efforts have been and will continue to be made to make each state government the focus of a homogeneous local ideology different in some important way from the national culture. School children are, in some cases, required to study the history of their state; local historical societies try to perpetuate "state" traditions; state advertising campaigns designed to attract tourists or industrial facilities describe the "unique" qualities of a state's environment; national political campaign etiquette requires candidates to celebrate the separate traditions or characters of the various states. Few of these efforts are really achieving anything substantial in the way of creating unique systems of law, government, literature, art, or philosophy in each of the 50 states. All of them are overborne by the growing impact of national institutions of culture and communication.

The states as national instrumentalities

The American state is indeed a peculiar institution. If it is an institution which tends to perpetuate and, perhaps even exaggerate, regional loyalties, it is also an institution of national culture. In its name, Senators are elected to the national Congress, electors are chosen to attest to the selections of our chief executives, delegates and committeemen are chosen to sit in national political conventions and conferences, also amendments to the national constitution are submitted for ratification to its officials. National programs, such as those for the aid of unemployed workers, are administered through its bureaus or departments. Furthermore, like the national government itself, the state acts as a softener and reconciler of economic, educational, social, and religious antagonisms. Few states are predominantly one class, one culture, or one system of production and the great and decisive conflicts of interests occur within states as well as within the central organs of power.

The functions of the states

The American state also acts in *loco parentis* to thousands of units of local government. It provides legal authority, funds, advice, commandments, for, as well as resolute restraint upon, cities great and small, counties, boroughs, villages, townships, parishes, and school districts. Through these agencies, the American takes care of most of his schooling, a large part of his network of roads and streets, many of his erring and unfortunate brethren, and all of the housekeeping essential to modern urban, suburban, and exurban living. In many parts of the country, state loyalty is a sickly cousin not only to national patriotism but to local pride.

Similarities among the states

To a student of political institutions, the most striking thing about the American states is not their regional peculiarities but their great and abiding uniformities. The government of every one of the 50 states is based upon a written constitution. The first written instruments of government in this country

were established at the time of independence by the original 13 states. The national constitution leans heavily on those of New York and Massachusetts and the constitutions later enacted by the other 37 states closely parallel the national document and those of the original states. The frame of government provided by these fundamental laws in every case follows the American pattern of limited, representative government organized around three separated and mutually restraining organs of power. Every state constitution contains a bill of rights guaranteeing to the inhabitants the basic American freedoms in much the same language and to much the same purpose as those added to the national constitution and discussed in an earlier chapter. Major differences center around the character of the guarantees of separation of church and state and the protection, or lack of it, afforded to Negroes, Mexicans and other minority groups. Every state has a single chief executive, the governor, elected by popular vote and a representative legislature also directly elected and, in every state but one (Nebraska), composed of two equal bodies. An elaborate system of courts is also characteristic of the states but many of the judges of these tribunals are elected. Each of these main branches of government is endowed with some power to check or restrain the other two, much as they are in the national government. Unlike the national constitution which makes no important provisions for the organs of state government, the state constitutions universally provide in some detail for a system of local governments and an assignment of powers to the various types. The states also impose numerous and detailed restraints upon the lawmaking powers of their legislatures arising from a long history of abuses and not duplicated in the national constitution by any comparable restraints upon the powers of congress. Furthermore, the politics of the state centers around contests within and between the two major political parties. Every state also has numerous organized interest groups which seek to influence the conduct of public affairs at the state and local levels. In every state but one (Louisiana) also the whole system of civil and criminal law is based on the English common law brought here by our forefathers.

STATE CONSTITUTIONS

States have made numerous constitutions

Underlying the governments of the 50 American states are written constitutions legally superior to the enactments or decrees of the officers of the government and providing the assignment of powers and duties among the branches of the state government and between the state and local units of government. These constitutions have, typically, proved more fragile than the national constitution. Not only have most of the state constitutions been amended far more frequently than that in Washington but many states have completely scrapped two or even three constitutions in the period since 1789. Only three states are now operating under eighteenth century constitutions and each of these has been extensively amended. The states collectively have had, thus, much more experience of constitution building—and destroying—than has the nation. This is especially true of the states of the Old South. Secession

and reconstruction account for at least 2 constitutions in most of the southern states.

Contents of a typical constitution

The typical state constitution is divided into articles and like the national constitution contains: (1) a bill of rights; (2) a section on the organization, powers, and duties of the legislature; (3) a section on the mode of selection and the powers of the governor and other executive officers; (4) a section on the court system, and (5) a section on the amending process. In addition to these well known features many state constitutions provide sections dealing with: (1) the structure and powers of local units of government; (2) the organization and financing of the state system of public education; (3) the qualifications for voting and the conduct of elections; (4) the procedures governing and the regulations imposed upon the chartering of corporations; (5) the organization and operation of programs of public health and welfare; and (6) the levying of taxes and the conduct of the state's fiscal affairs. Partly in consequence of this last list of provisions, most state constitutions are considerably longer than the national constitution. Partly, however, this is due to the greater penchant of state politicians and voters to load up the fundamental law with details of state policy, such as highway location, and with rules of a temporary character. Frustrated by state executive or legislative inaction, interested citizens rush into the constitution, occasionally by popular initiative, details of policy and administration which later prove to be wholly inappropriate and new amendments have to be drafted to get rid of them. Legislatures, too, are prone to solidify into constitutional prescription public policies which they hope to place thereafter beyond legislative tinkering. Louisiana, for example, is now working on its 10th constitution. It has amended it 407 times and it contains 200,000 words.

CONSTITUTIONAL REVISION

No serious effort has been made since 1787 completely to rewrite the national constitution although Article V prescribes a procedure by which this might be done. No such myth of sanctity surrounds our state constitutions and in most states the revision procedures have been tried two or three times. Thirty-nine of the present state constitutions prescribe the assembling of a special convention for this purpose. It is probable that even in the other 11 states conventions might validly be called by the legislature. State Supreme Courts have suggested, for example that of Rhode Island in 1935, that the right to have a convention for this purpose is inherent in the people and may be exercised without express constitutional authority.

Calling a convention

The first formal step toward holding a convention is, typically, a decision by the state legislature to submit to the voters the questions of whether they desire one. In a few states, this question may be placed on the ballot by a popular initiative petition. Some state constitutions require that this question be submitted periodically to the voters: in New Hampshire (where a convention is the only valid means of proposing constitutional changes), every seven

GENERAL STATUS OF STATE CONSTITUTIONS
1963

State	No. of Const.	Effective Date of Present Const.	No. of Amendments Proposed	Approved
Alabama	6	1901	290	157
Alaska	1	1959	—	—
Arizona	1	1912	97	42
Arkansas	5	1874	(Not Available)	49
California	2	1879	498	335
Colorado	1	1876	(Not Available)	59
Conn.	1	1818	(Not Available)	52
Delaware	4	1897	(Not Available)	77
Florida	5	1887	166	110
Georgia	8	1945	(Not Available)	45
Hawaii	1	1959	4	3
Idaho	1	1890	(Not Available)	55
Illinois	3	1870	28	13
Indiana	2	1851	47	20
Iowa	2	1857	(Not Available)	19
Kansas	1	1861	73	45
Kentucky	4	1891	40	18
Louisiana	10	1921	518	407
Maine	1	1820	104	85
Maryland	4	1867	132	107
Mass.	1	1780	98	81
Michigan	4	1963	0	0
Minnesota	1	1858	175	87
Mississippi	4	1890	104	35
Missouri	4	1945	15	8
Montana	1	1889	44	31
Nebraska	2	1875	139	87
Nevada	1	1864	94	53
New Hamp.	2	1784	105	41
New Jersey	3	1947	6	4
New Mexico	1	1912	118	51
New York	6	1894	174	133
North Car.	2	1868	(Not Available)	(Not Available)
North Dak.	1	1889	(Not Available)	70
Ohio	2	1851	161	87
Oklahoma	1	1907	131	48
Oregon	1	1859	249	110
Pennsylvania	4	1873	86	59
Rhode Island	1	1843	68	35
South Carolina	6	1895	362	239
South Dakota	1	1889	130	68
Tennessee	3	1870	21	9
Texas	5	1876	233	144
Utah	1	1896	(Not Available)	31
Vermont	3	1793	193	44
Virginia	5	1902	98	92
Washington	1	1889	(Not Available)	35
West Virginia	2	1872	54	32
Wisconsin	1	1848	93	61
Wyoming	1	1890	46	23

SOURCE: Council of State Governments, *Book of the States 1962-63* (Chicago, 1962) 12.

years; in Iowa, every 10 years; in Michigan, every 16 years; and, in Maryland, Missouri, New York, Ohio, and Oklahoma, every 20 years. In most of these states, of course, the question may also be submitted at other times. After popular approval has been gained—in several states extraordinary popular majorities are required to sanction conventions—the legislature by statute fixes the date and place of the convention and the number and distribution of the delegates. In states where the cities are underrepresented in the legislature, they are likely also to be underrepresented in the conventions. Once assembled, the convention will normally function very much like a legislature with officers, committees, hearings, and debate.

There is a growing disposition to provide technical assistance to conventions through advance preparation of materials on the major questions confronting them. This work is usually done by specialists in these fields. The convention for Illinois in 1920-22 was aided by 15 bulletins prepared for its consideration; 12 volumes were prepared for the New York convention of 1938; 30 monographs were prepared for the New Jersey convention of 1947. In many cases the advance staff work is done under the direction of an advisory or preparatory commission appointed by the governor or by the legislature for this purpose.

Growing use of preparatory commissions

There is also a developing trend to use preparatory commissions to inquire into whether and to what extent constitutions need revising and even to prepare drafts of proposed new sections for consideration by a convention or by the legislature and electorate if it is decided to attempt amendment rather than revision. Such a commission was recently established in Florida (1955), for example. The Florida Commission prepared a draft of a new constitution and submitted it to the legislature. The failure of its efforts led to the creation of a new commission in 1958. Such agencies have also been recently created in Minnesota (1948), Kentucky (1957 and 1960), North Carolina (1957), Kansas (1957), Pennsylvania (1957), Texas (1957), Georgia (1963), and West Virginia (1957). These commissions are easier to create, less expensive to assemble, and better prepared to deal with the problems involved than most conventions are likely to be. The trend toward their use as a substitute for conventions is likely to continue and to become even more pronounced.

The form of constitutional conventions

Constitutional conventions have the primary function of drafting new fundamental laws or formulating amendments to existing ones. Some conventions, like that in Illinois in 1862, have gone further and assumed actual management of the state government, displacing existing officers, substituting others chosen by the convention, and attempting to supersede the legislature in various respects. Occasionally the legislature, in making provision for the meeting of a convention, has attempted to impose limitations upon its work which the convention has wholly or in part disregarded. Several times, conflicts have resulted as to the proper powers of a convention; and out of them three theories have developed. According to the first, the legislature is supreme, and in the act of calling the convention may limit the powers of that body for example by excluding from its consideration amendments to certain sections of

the constitution, by requiring it to propose amendments to certain other sections, or by prescribing the manner in which its work shall be submitted to popular vote. Those who take this view hold that the convention has no right to disregard or to deviate from any of these statutory restrictions. According to a second theory, the convention has all the sovereign powers of the people, and accordingly is, during its period of existence, the supreme body in the state. It is superior to the legislature and to all other branches of the state government, and may disregard any or all limitations which the legislature seeks to impose upon its activity, and may, indeed, legally exercise whatever governmental functions it cares to assume—as the Illinois convention of 1862 tried to do.

Prevalent view of convention powers

Each of these two theories has some support in convention precedents and judicial opinion. But the view now most generally held is that a convention is neither sovereign nor wholly subject to the legislature—that, on the contrary, the two are coordinate bodies, each supreme within its proper sphere and bound by the provisions of the existing constitution and statutes. If the constitution authorizes the legislature to impose restrictions on the convention, the latter is bound to respect such limitations; on the other hand, if such authorization is lacking, the legislature cannot bind the convention as to what shall be placed in the revised constitution, or lay other restrictions upon it. The convention, furthermore, may neither supersede any existing organs or agents of state government nor exercise any of the powers assigned to them. Its functions are limited to proposing a new constitution or amendments to the existing one.

Ratification of a convention's work

Although a minority of state constitutions require it, the almost universal practice among the state is to submit the results of the conventions' deliberations to the voters for approval. The vote required for approval is typically a majority of those voting on the question but several states make approval more difficult by requiring approval by a majority of those voting in the election.

Method of submitting convention proposals

A convention may submit its work in one of three different forms. It may, for example, present it as a series of specific amendments to be voted on separately, as was done in New York in 1938 and in Tennessee in 1953. This is practicable only when a comparatively small number of amendments are proposed. Or it may submit a complete new or revised constitution, to be accepted or rejected as a whole, as in Illinois in 1922, in Georgia and Missouri in 1945, in New Jersey in 1947, and in Michigan in 1963. This method has the disadvantage of compelling articles or clauses not widely opposed to suffer the same fate as others stirring controversy. Opposition to the initiative and referendum, or to some change in the system of taxation, for example, may be so strong that, rather than see a proposal of the kind adopted, its opponents will vote against the entire document, although everything else may be satisfactory. The sum total of such fractional opposition may mean the entire constitution's defeat. In this cumulative fashion, the proposed new constitution for New York was wrecked in 1915 and that for Illinois in 1922.

The third method is a compromise between the two mentioned. A substantially complete revision may be submitted for ratification or rejection as a whole, with at the same time one or more especially controversial articles or sections submitted separately, thus enabling the electorate, if so inclined, to approve the convention's work in general while yet disapproving specific features. Care must be taken, however, to see that articles or sections independently referred are truly separable from the main text, so that, if they are rejected, a balanced and coordinated document will nevertheless remain.

CONSTITUTIONAL AMENDMENT

Amendment by legislative proposal

Although the 50 states have assembled more than 200 constitutional conventions since 1776, complete revision remains a relatively uncommon method of formal change as compared to simple amendment. Every state constitution provides a procedure by which particular provisions may be changed. In every state but one (New Hampshire) amendments may be proposed by the state legislature. In 35, affirmative action may be taken at one legislative sitting. However, a majority of these states require an unusual majority vote to do so —a two-thirds vote in 19 states and a three-fifths vote in 7 states. In the remaining states (14), affirmative action by two distinct sessions of the legislature is required.[1] In Delaware the action of two legislatures completes the process but in all the other states, an amendment proposed by the legislature must be placed before the voters for ratification. Typically, legislatures may propose any number of amendments at any time but a few states, where the framers were so taken with their product that they wanted it modified only slightly if at all, limit the legislature to two or three amendments at a time—Arkansas, Kansas, Kentucky, and Montana, for example. Vermont's constitution may not be amended at all except at 10 year intervals. Occasionally legislatures have proposed wholesale revision rather than isolated amendment. The New Jersey legislature did this in 1944 on the authority of a referendum but its handiwork was rejected by the voters. An attempt in 1911 by the Indiana legislature to do this was invalidated by the courts.

Proposing amendments by popular initiative

An alternative method of laying amendments before the voters is now authorized in 14 states. This is the popular initiative which originated in Oregon in 1902 and rapidly gained favor over the next two decades. It has attracted little favorable notice since 1920. By this procedure a proposal may be drafted by any person or group and then if a sufficient number of voters' signatures can be obtained on a petition demanding it, the proposal must be placed before the voters for ratification at an early election. Support for the popular initiative stemmed from distrust of or disgust with the behavior of state legislatures in blocking reforms. Experience with it suggests that the only effective alternative over the long run to a corrupt or incompetent legislature

[1] New Jersey has an unusual provision that requires a three-fifths vote of approval of the membership of one legislative session or a simple majority vote in two successive sessions. Hawaii has a similar arrangement requiring a two-thirds vote in one session.

is to elect better legislatures. Little is really gained, except increased voter weariness, by running to the electorate with new duties every time the legislature misbehaves.

Popular vote necessary for ratification

In the vast majority of states, the popular vote required to ratify a proposed amendment is a majority of those voting on the question. Several of the state constitutions, however, make approval exceedingly difficult to obtain by requiring a majority of those voting in the election. Experience indicates that rarely do more than 60 per cent of those who participate in an election pay any attention to referred proposals which may appear on the ballot. Thus a large portion of those who do not vote on the question at all are, in effect, counted as if they voted "no." Other requirements of unusual majorities are imposed in a few states.

Elaboration of constitutions by other means

The frequent use of the amending and revising processes in order to keep state governments abreast of the times does not mean that state constitutions are not elaborated, embellished, and greatly modified by legislation, executive order, judicial construction, and unwritten custom. Just as in Washington, every act of officials in state capitals subtly interprets, enlarges, supplements, or changes the basic framework of government provided by the constitutions. Furthermore many institutions of American political life have grown up and flourished outside the constitutional prescriptions. The whole system of political parties, the activities of organized interest groups, the character of voter participation, the use of cabinets by governors, and many other practices and institutions are rarely mentioned in state constitutions.

State constitutions too detailed

Experience of state constitution making suggests, however, the wisdom of the framers of the national document. They had the good judgment to avoid "minutious wisdom." Trusting in the good sense and high purpose of those who came after them, they left to future statesmen the task of adapting the government to the needs of the times without the necessity of procuring unusual majorities for each decision. Constitutions which are frequently amended or revised lose much of their value and a great deal of their prestige. The principles underlying our system of government are few and can be set forth in a few carefully written paragraphs. The statesmen of one generation are rarely successful in compelling their successors to achieve these goals only by certain well defined paths. The world will not stand still despite the perfection it may be thought to have reached in one moment of time. If, as some fear, the central government may come ultimately so to dominate our polity that the states are no longer significant, our failure to apply in the states the constitutional wisdom of the nation may bear part of the blame. A national commission appointed in 1953 to examine our modern federal system and, if possible, to halt the trend toward centralization reported: ". . . most states would benefit from a fundamental review and revision of their constitutions to make sure that they provide for vigorous and responsible government, not forbid it." [2]

[2] The Commission on Intergovernmental Relations, *A Report to the President* (Washington, D.C., 1955) p. 56.

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24

The State Legislature

Importance

THE MAJOR CENTER of democratic policy-making at the state level in the United States is the state legislature. It occupies a position in both structure and ideology closely akin to that of Congress at the national level. Many of the conflicts of the body politic are here resolved and the entire machinery of state government provided with purpose and method. Unlike the Congress vis-à-vis the states, the state legislature exercises a wide control over the structures and policies of local governments. State political interest groups concentrate their energies on efforts to influence the legislative process. For all of the activities within the scope of their concern, the legislatures of the states are the main centers of decision.

The decline of the state legislature

In the beginning of our national history the state legislatures were the major centers of political power in the nation and they remained so until well into the nineteenth century. Their importance and prestige, however, suffered several sharp declines and today they are nowhere near as important as they once were. The first major setback to the power of the state legislature was, of course, the Constitution of 1787. It was designed to restrict the power of state legislatures and was drafted by men who were deeply disturbed by the policies and personnel of the state assemblies. During the Jeffersonian era, however, the national power was in the hands of men friendly to state power and some of the ground was recaptured. The more serious decline in state legislative power and influence was a product of the American industrial revolution. The development of a national economy linking farm and factory by means of the railroads created problems with which the state legislators were unable to cope.

Caught up in the ruthless push of greedy land speculators, railroad promoters, currency manipulators and corporate minions, the lawmakers succumbed to temptation or fought vainly against wealth and power which were too big to be contained. Scandal after scandal rocked one state capitol after another as legislatures buckled beneath the irresistible forces of industrialization. Public confidence in the honesty and wisdom of the legislators sagged sharply. The solution to this state of affairs (typically American) was to prevent evil-doing by restraining the powers of the doer. If a public body is restrained from evil, it is usually at the same time restrained from doing good and to the humiliation of lack of confidence was added the frustration of lack of valid power. Into state constitutions from 1865 onward for two or three generations were written a growing list of inhibitions and restrictions on state legislative power under which most legislatures labor even today. Meanwhile, the growth of a genuinely national economy effectively placed beyond the competence of states a large number of problems which have required national attention in this century. It is ironic to observe that many of those who have complained so bitterly over the "unwarranted" rise of the power and prestige of the national government have also helped to forge the fetters which constrain the states.

There are some signs, increased pay and more frequent sessions, for example, that public confidence in our state lawmakers is slowly rising. Most of the state assemblies, however, bear the scars of the blows rained upon them in the last half of the nineteenth century.

FUNCTIONS OF STATE LEGISLATURES

Functions: 1. Constituent

Like the national Congress, the state legislatures perform a wide variety of functions. Many of these are not, strictly speaking, legislative. In the first place, the legislature of virtually every state (New Hampshire is a conspicuous exception) is the major, if not the sole, originator of constitutional amendments as described in the previous chapter. The upper houses of our state legislatures also universally share the appointing power of the governor. The scope of the executive power is, typically, more limited at the state than at the national level because of the widespread practice of electing several of the major state administrative officials. In a few states and for a few officers, state senators are relatively more powerful than their counterparts in Washington because of their participation in the governor's removal power. In a few states, also the legislature has some independent appointing power: judges, for example, are named by the legislature. State legislatures, like the Congress, also have an important hand in supervising state administration. They create administrative machinery, prescribe the procedures to be followed, and review the conduct of the executive branch in connection with appropriation enactments. They may and do conduct investigations of administrative behavior much as the Congress does. In a few states, legislative control over administration is limited by unnecessarily detailed constitutional prescriptions of administrative structure and procedures.

2. Executive

3. Judicial

The lower house of virtually every state (Oregon is an exception) is endowed with impeachment authority over state officials and the upper house with the power to try impeached officers. Several states authorize their legislatures to oust judges by a procedure which does not involve a trial but may require a special vote of the two houses.

4. Representation before Administration

The state legislator first and last spends a good part of his time, just like the congressmen, in representing his constituents before administrative agencies and intervening, if he can, in their behalf.

5. Legislative

The typical activity of the state legislature, however, is lawmaking and to it lawmakers devote most of their time and energy. Apart from the vast differences of power as between the state and the nation, the most significant legislative difference arises from the time and attention which state lawmakers must give to the problems, structures, powers, and procedures of the thousands of local and special units of government which they must regulate. Congress, although exercising a profound influence upon states through the grant-in-aid procedure, does not enact the comprehensive and detailed prescriptions for the states that the states do for their local subdivisions.

STATE LEGISLATIVE POWER

Powers are residual and unenumerated

Speaking broadly, a state legislature has the power to enact laws relating to any aspect of our society unless it is forbidden by the Constitution of the United States expressly or by implication, or by the constitution of the state. Under the American federal system, the states are entrusted with all the residue of powers not specifically delegated to the nation and, therefore, a precise delineation of the scope of state legislative power is impossible. A casual perusal of the statute books of an American state reveals that legislatures deal with a vast array of topics of wide social concern. The most important of these are: elections, natural resources, education, veterans' benefits, crime and correctional administration, health, welfare, local government powers and structures, highways, bridges, and airports, agriculture, weights and measures, trade practices, industrial safety, labor-management relations, aeronautics, banking, interest, sales, partnerships, corporations, real estate, domestic relations, judicial organization and procedure, inheritance, trusts, and professions. In almost every matter, however, state legislative authority is confined and restricted in various ways.

Limitations on state power: a. Those arising from the federal system

One significant source of limitation on the states is, of course, the federal system. We have observed in Chapter 3, how the delegation of powers to the national government has, in many instances, placed certain subjects beyond the power of state officials and how, by implication the courts and the Congress have broadened and deepened the overriding power of the national government in those areas of our national life generally entrusted to the central government. Clearly, the states have little effective power in all of those aspects of our economy now gathered under the swelling umbrella of "interstate commerce." We have also noted in the same chapter that the Constitution imposes

certain specific obligations upon the states in their dealings with one another. Further, it expressly prohibits certain state actions in such fields as foreign affairs, currency management and taxation and by implication in the field of interstate commerce. We have also observed how the central government has swung its mighty arm around a large number of public activities once considered the sole preserve of the states by means of the grant-in-aid procedure. In the broad areas of highways, welfare, education, and health, the states, while not expressly forbidden to act, are nevertheless constrained to act within the boundaries of national policy and national standards.

b. Those arising from guarantees of civil rights

A second source of limitation on state power is the American dedication to constitutionally recognized civil rights. In considering the American system of rights in Chapter 4, we noted that the "due process" and "equal protection" clauses of the 14th amendment provide the legal foundation for a national system of rights, uniformly applied and judicially enforced upon the states and their officers and agencies. The Constitution of the United States also expressly prohibits states from passing ex post facto laws or bills of attainder, from impairing the obligations of contract, and from depriving citizens of the vote on account of race, color, or sex. Every state constitution also guarantees certain rights to its citizens and restrains legislatures, executives, and courts from impairing or infringing these guarantees. Every person in this country is, therefore, protected in the exercise of certain rights and from arbitrary governmental procedures by a double guarantee in state and nation. However, there are many variations from state to state in the detailed guarantees of state constitutions. For example, several state constitutions define religious freedom so as to prohibit state appropriations for parochial or seminary instruction. The Supreme Court of the United States does not so define the religious freedom guaranteed by the 14th amendment nor do the constitutions of several other states. Some state constitutions, further, forbid imprisonment for debt, some forbid distinctions as to property rights between citizens and aliens, and many do not now require indictment by grand jury nor unanimity of decision by trial juries in all cases. Even where guarantees are cast in identical language, "due process of law," for example, courts in different states have given various meanings to these words. The rights of citizens are, therefore, somewhat differently stated and applied in the states.

c. Those imposed by states on themselves

A third group of limitations on state legislative power was imposed by the voters or by the legislators themselves and accompanied the decline in legislative prestige in the period 1860-1910. Hundreds of constitutional changes were adopted in this period which confined legislative authority. These may be summarized under a few main headings. One large class of restrictions has to do with special, local, or private laws. Many state legislatures are forbidden to pass such enactments dealing with one or more of the following subjects: municipal corporation charters; business corporation charters particularly in the fields of banking and public utilities; divorce; county government structure and powers; location of seats of local government. There is no doubt that legislative efforts to deal with problems peculiar to one person,

corporation, city, or county were frequently incompetent, occasionally corrupt, and rarely discriminating. The prohibitions, strictly applied however, have prevented wise action also in cases where account must be taken of unique circumstances. Moreover, clever lawmakers find ingenious methods of evading the spirit if not the letter of the constitution. A common method in dealing with cities, for example, is to classify them according to size making quite sure that the larger are each in a class by themselves. Classification schemes are subject to court review of their "reasonableness" in the light of the object sought. While many have been overthrown, few judges have ever thought that putting New York, Chicago, Pittsburgh, Cleveland, or San Francisco each in a class by itself was "unreasonable." An even more ingenious evasion is to word a statute, ostensibly applicable generally, in such a way that in reality it fits only one or two cases. In many situations, it must be said, these evasions are both wise and desirable. Large cities, particular associations, or corporations do have peculiar problems and it is highly desirable on occasion to deal with them without disturbing all the cities, associations, or corporations.

1. Prohibition of local and private laws

Another group of constitutional restrictions deals with legislative sessions and procedure. Among such are requirements that: (1) all bills be printed in advance of final action; (2) statutes not be amended by cross reference but that all amended portions be included in full; (3) all bills be given three readings; (4) roll call votes be taken on final passage; (5) sessions of the legislature not last longer than a specified time—usually 60 days. Legislatures have found ways of living with these rules although there are few that are not evaded or ignored on occasion. The attempt to get short sessions by constitutional fiat is little short of absurd in these days of growing government.

2. Regulations of legislative procedure and sessions

Still another category of restrictions on legislative authority are those dealing with taxes, appropriations, and debts. Most states forbid the loan or pledge of public credit to private ventures or to local units of government. Many forbid appropriations except for a "public purpose." Many forbid extra compensation for public officers or contractors. Many states are required to tax property only at a uniform rate based on valuation. In some, like Illinois, such a clause has been interpreted to forbid a graduated income tax. A large number but not a majority forbid borrowing except to suppress insurrection or repel invasion. Another large number require popular approval by referendum of each borrowing operation proposed by the legislature.

3. Restrictions on taxes, loans, and appropriations

To restrictions expressly imposed by constitutions have been added others evolved by state courts: such principles as (1) that any clause empowering the legislature to act in a particular manner is to be regarded as a denial of its rights to act in any other manner; and (2) that every pertinent provision of a constitution is to be construed as limiting legislative power *to the greatest possible extent*. In several states, the upshot of these remarkable interpretations is that, whereas in theory the legislature has all legislative power not denied to it by terms of the national and state constitutions, in practice it has tended to become a body with delegated powers. Few factors have con-

Implied or resulting limitations

tributed more to deaden popular interest in the work of the legislature, and to deprive the state of the services of its best citizens, than the shriveling of legislative power under express constitutional restrictions, reinforced by narrow judicial canons of interpretation.

THE STATUTORY INITIATIVE AND REFERENDUM

Of all the restrictions upon legislative freedom enacted in the period of popular distrust of state lawmakers none was more sweeping than the statutory initiative and referendum. These two devices, usually associated, are designed, in part at least, to vest lawmaking directly in the hands of the electorate. The referendum allows the voters to disallow laws passed by the legislature and the initiative allows them to place on the statute books measures which the legislature has been unable or unwilling to enact. Starting in South Dakota in 1898 the movement for popular legislation swept through the nation but made most headway in the plains states and in the far west. In the next two decades, constitutions were amended to provide for the initiative and referendum in 18 states and for the referendum only in two other states (Maryland and New Mexico). Then the movement came to an abrupt halt and has made no converts since that time.

Forms of the referendum

Initiative and referendum arrangements although varied in detail are similar in essentials. One form, the optional referendum, takes place when the legislature, desiring an expression of popular sentiment upon an act that it has passed, specifies that the measure shall not go into effect until it shall have been approved by the voters at an election. The legislature may also leave districts or counties to determine, each for itself, whether a certain law (licensing of liquor sales for example) shall apply to them. In this form, referenda may be and are used all over the nation. The referendum under consideration, however, is the mandatory type, and independent of the legislature. Where it prevails, provision is usually made for suspending all general legislative enactments for a certain period (usually 90 days) in order to give the people of the state an opportunity to pass judgment on the work of their lawmakers. If during the interval a prescribed number or percentage of the voters (most commonly 5 per cent) decide that a given measure is undesirable, they can, by filing a petition, prevent it from taking effect until it has been submitted at the polls and approved by the electorate.

Procedure under the initiative

The initiative may be invoked whenever any considerable number of people believe that the legislature has failed to enact necessary or desirable laws. A citizen or group of citizens, usually a political-interest group, may then, draw up a bill. This done, the next step is to obtain the signatures of a specified proportion of the voters (usually 5 or 10 per cent of the number of votes cast at the last preceding election for governor or some other specified office) to a petition requesting that the bill be enacted into law. The petition is filed with the secretary of state and then either of two courses may be taken, as the law prescribes. One is called the direct initiative; the other, the indirect. Under the

direct form, the measure is submitted to the people at the next regular election or at a special election, with the popular verdict final and the legislature entirely passive. Under the indirect form, the bill must be submitted to the legislature at its next session; and if that body acts upon it favorably, it becomes law without any popular vote. If, however, the legislature fails to act favorably, the bill is referred to the people and becomes law if approved by the required majority. In most states, the legislature is not permitted to amend any bill originating under the popular initiative. In some, it may put before the people a rival or substitute measure. The governor may in no case veto a measure enacted by initiative and referendum.

Results

Popular lawmaking has not accomplished most of the expectations of its sponsors. In some states it has rarely, if ever, been used. In others, notably those on the west coast, it has been used excessively. Where it is used, voters in large numbers have shown a great lack of interest in the propositions placed before them. In a few cases laws which were difficult to administer and impossible to finance have been placed on the statute books. In one case (Missouri in 1921-22) the device was used by a minority party to prevent laws enacted by the majority from taking effect. Interest groups, some of whose ambitions the devices were designed to thwart, have been as effective in "selling" the people as the legislators. There is little evidence that the legislative process has been improved by inviting the voters to take a direct hand in the matter.

STRUCTURE OF STATE LEGISLATURES

The two house legislature

The states are firmly wedded to a two-house legislature. Nebraska enjoyed a moment of national fame in 1937 when it established a single-chambered body after a vigorous and stirring campaign led by the late Senator George Norris. None of the disasters pictured by the supporters of the old two-house system have occurred but neither have some of the glowing hopes of the proponents been realized. For a time, the question of one house or two was debated up and down the land and the Model State Constitution continues to recommend the one-house system, but interest has subsided and nowhere is this "reform" getting serious consideration. There is really no compelling reason for two houses in the state legislature such as that which created the Senate and the House in Washington, D. C. Local governments are not like states in any legal sense. They had no separate existence before, during, or after the Revolution and there was not then and is not now any good reason for representing them as such. Our continued use of the two-house system in states indicates how much we are influenced by habit and tradition. It also indicates that there is nothing so bad about the bicameral plan as to encourage vigorous efforts to change it.

Differences between the two houses

In most states, the major differences between the two houses are: (1) the upper house member serves a longer term than the lower house member—usually 4 years to 2 years; (2) the upper houses are smaller and, therefore, the constituencies of the members are larger—usually from two to three times as

large; (3) in one house greater weight will be given to area considerations in fixing the district boundaries than in the other; and (4) the terms of members of upper houses are usually staggered so they do not expire at the same time. The same electorate selects the membership of both houses.

Basis of representation

The major controversy over the structure of legislatures today is that dealing with the basis of representation. Should legislatures represent people counting each as one or should they also represent area or predetermined units of government? Or should people be represented in one house and area or governmental unit in the other? In most states the legislature itself determines how large each house will be and draws the district boundary lines for the seats. In many, however, this decision is controlled, or at least influenced, by constitutional prescriptions of three types: (1) those fixing an upper limit on the size of one or both houses; (2) those requiring the districts to be redrawn after each census; (3) those modifying a strict population basis for representation by requiring, for example, that each county have at least one member in one of the houses or by forbidding one county to have more than a specified proportion of the total seats in one house or by prescribing equal representation of towns or counties.

Urban underrepresentation

The result of past legislative and constitutional decisions is that in virtually every state the sparsely populated regions are overrepresented and the growing urban and suburban areas underrepresented in the legislature. A majority of state legislators in both houses come from districts embracing a minority of the states' populations. Typically, the rapidly growing great metropolitan areas of the United States are discriminated against in state systems of apportioning legislative seats. Cook County, Illinois (Chicago), for example, contains about 52 per cent of the population of the state but in neither house are the legislators from this county in a majority. In California, the three most populous counties (containing Los Angeles and San Francisco) have a majority of members in the lower house but only three out of 40 members of the Senate. New York City has more than half of the population of New York State but fewer than half of the legislators. Just as in Congress many districts are also gerrymandered for partisan advantage. Why is this so? In the first place, the national example suggests to many people that population should be recognized as a basis of representation in only one house and governmental jurisdictions (counties mainly) regardless of size should be represented in the other. This argument would have greater weight if the jurisdictions had any recognizable separate identity but most of them were created by and remain creatures of the state legislature. Secondly, adjusting districts to population requires that legislators in stable or declining areas give up seats and this they are usually reluctant to do. Thirdly, our great cities have on many occasions been dominated by highly organized, corrupt, and ruthless machines which the rural and small town people fear and despise. Then too in many large cities organized labor is quite powerful if not decisive politically and the merchants, bankers and farmers of the rural areas and small towns are implacably opposed to increasing its influence. In many cases also, one party

STATE LEGISLATURES
SIZE, TERM, AND SESSIONS

State	Lower House		Upper House		Frequency of Regular Sessions
	Size	*Term* (Years)	*Size*	*Term* (Years)	
Alabama	106	4	35	4	Biennial
Alaska	40	2	20	4	Annual
Arizona	80	2	28	2	A
Arkansas	100	2	35	4	B
California	80	2	40	4	A
Colorado	65	2	39	4	A
Connecticut	294	2	36	2	B
Delaware	35	2	17	4	A
Florida	95	2	38	4	B
Georgia	205	2	54	2	A
Hawaii	51	2	25	4	A
Idaho	59	2	44	2	B
Illinois	177	2	58	4	B
Indiana	100	2	50	4	B
Iowa	108	2	50	4	B
Kansas	125	2	40	4	A
Kentucky	100	2	38	4	B
Louisiana	105	4	39	4	A
Maine	151	2	33	2	B
Maryland	123	4	29	4	A
Massachusetts	240	2	40	2	A
Michigan	110	2	38	4	A
Minnesota	135	2	67	4	B
Mississippi	140	4	49	4	B
Missouri	157	2	34	4	B
Montana	94	2	56	4	B
Nebraska	—	—	43	2	B
Nevada	47	2	17	4	B
New Hampshire	400	2	24	2	B
New Jersey	60	2	21	4	A
New Mexico	66	2	32	4	B
New York	150	2	58	2	A
North Carolina	120	2	50	2	B
North Dakota	115	2	49	4	B
Ohio	139	2	38	4	B
Oklahoma	121	2	44	4	B
Oregon	60	2	30	4	B
Pennsylvania	210	2	50	4	A
Rhode Island	100	2	44	2	A
South Carolina	124	2	46	4	A
South Dakota	75	2	35	2	B
Tennessee	99	2	33	2	B
Texas	150	2	31	4	B
Utah	64	2	25	4	B
Vermont	246	2	30	2	B
Virginia	100	2	40	4	B
Washington	99	2	49	4	B
West Virginia	100	2	32	4	A
Wisconsin	100	2	33	4	B
Wyoming	56	2	27	4	B

SOURCE: Council of State Governments, *Book of the States, 1962-63* (Chicago, 1962) pp. 41, 42-43.

(usually the Democratic) is in power in the city and another (usually the Republican) in the small towns and farming areas. Since for a century the flow of people has been from farm to small town to city, the burden of change is on the city people and inertia or deadlock serves the cause of the overrepresented. Finally, there is some evidence to suggest that the city voters do not take their representation in the state legislature seriously. Many political posts—councilman, magistrate, mayor—in our cities are more lucrative and more honorific than the post of legislator. In the country-side, the legislator is relatively more important and the post more widely sought. Our state legislatures, in consequence, are commonly dominated by the outlook—economic, political, and social—of the small town while our society is metropolitan. The typical state legislator is a country seat lawyer, a prosperous farmer, or a small town merchant. Frustrated in the state legislature, powerful urban groups like organized labor carry their demands to Washington and lend support to the growing influence of the central government.

Reapportionment by commission

A few states have tried to remove reapportionment from the legislative arena by entrusting all or part of the responsibility for adjusting districts to changing population patterns to some other agency. In Arizona, the secretary of state certifies to each county the number of members of the lower house it is entitled to elect. This certification occurs every two years on the basis of the vote cast for governor. California has a reapportionment commission consisting of the lieutenant governor, attorney general, secretary of state, controller, and superintendent of education. These officers are charged with reapportioning if the legislature fails to do its duty. Similar bodies with slightly different powers and members are provided in South Dakota, Texas, and Ohio. Missouri, in the constitution of 1945, provided a commission of 10 members selected by the governor from lists submitted by the central organs of the two major parties. This body is charged with redistricting the Senate and if it should fail to do so in good time the whole Senate must be elected at-large. The secretary of state reapportions the lower house in Missouri on the basis of a formula expressly provided in the constitution. Illinois has also instituted a system for both houses much like the Missouri system. Hawaii and Alaska entrust the responsibility to the governor with the help of an advisory board and allow any voter to seek a court order to compel the governor to act properly. Michigan, in its new constitution, provides for a reapportionment agency made up of eight legislators named by their parties—two each from four regions into which the state is divided. These efforts seem to point the way toward the achievement of more equitable systems of apportionment in the states.

Since inequalities in systems of apportioning seats are in many instances contrary to the spirit and the letter of state constitutional prescriptions, state courts have been invited on numerous occasions to intervene. Typically, they have refused to do so and, commonly, have justified their refusal on the grounds that one branch of the government cannot compel another to do its duty. Until 1962, the Supreme Court of the United States also declined to

The Supreme Court intervenes in legislative apportionment

intervene in these matters. However, in one of the most controversial decisions of its history, the Supreme Court in May, 1962, held that the allocation of seats in state legislatures could be reviewed by national courts for compliance with the "equal protection" clause of the 14th Amendment. By implication, the state courts were also invited to review alleged inequities in state apportionment schemes. In consequence of this decision, suits challenging the validity of apportionment systems in which, generally speaking, city voters are underrepresented have been entered in at least two-thirds of the states. Legislative district arrangements for one or both houses have been found invalid in about half the states and new systems have been adopted or are pending in almost all of these. The case law on what constitutes "equality" is developing very rapidly in view of the wide variety of practices under review. It is not, therefore, possible to state precisely what standards of equality will finally be imposed except that everywhere some latitude is being tolerated. Perhaps the most difficult pending question concerns state constitutional prescriptions that require that area or governmental unit be given weight in the allocation of seats in one or both houses. Thus far, the Supreme Court has not accepted such prescriptions as necessarily binding and in Michigan the state Supreme Court held invalid the system then extant. Meanwhile, with litigation pending almost everywhere, several state groups have concerted a movement in opposition to this "new encroachment on state power" and are pushing for the adoption of a national constitutional amendment which will deprive the national courts of jurisdiction in state legislative apportionment cases.

Single-member district system

State legislatures are, unlike the Congress, not addicted to the single-member district system of representation—a system widely believed to be closely tied to our two-party system. A majority of states use multimember districts to some extent and several (Washington, Maryland, and Illinois, for example) use them exclusively for their lower houses. In fact, very nearly half of all members of lower houses are elected in districts assigned two or more representatives. In Illinois, the multimember district system in the lower house is geared to a unique system of cumulative voting which assigns each voter three votes to assign as he wishes among the candidates for the three seats in each district. This system is intended to guarantee minority representation and it apparently has done so. In the other states the multimember district system has resulted from other but related considerations.

ORGANIZATION OF THE LEGISLATURE

The officers, committees, rules, and party apparatus of state legislatures are, without major exception, patterned very closely after those of Congress. Leadership is provided through the party system; the real work is done largely in the standing committees; the rules are based largely on Jefferson's Manual modified by constitutional prescription; the lobby is filled with energetic spokesmen for the major economic, religious, and social groups of our society.

Let us, therefore, concentrate our gaze upon significant differences from the national pattern.

Officers

The speakership in the lower house of state legislatures is nearly everywhere relatively more powerful than his counterpart in Washington. In the vast majority of states, the speaker appoints the members of the standing committees, as he did in Congress until 1910. Further, his control over the procedure is not shared, typically, with a powerful Rules Committee. Since the body he dominates is usually much smaller than that in the Congress his dealings with his colleagues are more direct, personal, and informal than is possible in Washington. Only the majority floor leader closely approaches him in ability to shape the product of his branch of the legislature.

A number of states have abandoned the office of lieutenant governor and replaced it, in part, by a presiding officer elected by the Senate itself. Where this has occurred, this official resembles the speaker in power and influence rather than the Vice President. In some states where the national scheme of electing a president *pro tempore* is used, this official appoints the standing committees. In many, however, a small committee on committees elected by the Senate does this job.

Committees

Standing committees in each house in every state act exactly like those in the Congress. In an effort to avoid the duplications and deadlocks of the two-house system, several states make much greater use of joint committees (including members of both houses) than is done in Washington. Massachusetts, Connecticut, and Maine conduct most of the legislative business through joint committees and several states outside New England use joint committees to shape appropriation and taxation measures. Many observers and students of the legislative process believe the joint-committee system has real advantages over the traditional arrangements.

Legislative councils

State legislatures also make use of special committees meeting between sessions to conduct studies, carry on investigations, and shape legislation for the future. Whereas in Congress the trend has been to have more investigating and research done by the regular standing committees and to rely relatively less often on special or select committees, in the state capitols the trend is toward consolidating special *interim* committees into one grand legislative council or research commission supervising all *interim* inquiries and generally preparing a program of legislation for the next session. Little investigating or systematic research is performed by standing committees of state legislatures. Typically, only the major *interim* study commissions or councils are equipped with expert staff assistants. Few regular committees at the state level have anything more than clerical aid. California and several other states have been developing staffs of budget analysts for their appropriations committees and a few states like New York, Oregon, Florida, and Hawaii make some professional staff available to other committees, but elsewhere the congressional staffing program has not been imitated by the states.

Congressional reorganization in 1946 of its committee system reducing the number of committees and of assignments has stimulated a number of the

states to do the same. Despite the reduction in the last few years, the typical legislature has far too many standing committees and the typical legislator too many committee assignments.

Secrecy

In a great many states the committees' activities are neither reported nor recorded and the rules and traditions encourage a great amount of secrecy in the legislative process. In a few, however, the process is surrounded by an openness unknown even in Washington. Wisconsin, for example, requires committee meetings to be open to the public, requires that due advance notice be given of hearings on proposed bills, requires that all bills be reported out of the committees before the session ends, and in other ways attempts to open its deliberations to public view. Part of the problem everywhere stems from the fact that legislative sessions are not nearly so well covered by reporters as are the sessions of Congress.

Rules

Every state legislative body has developed an elaborate and complex set of rules. There are among these many thousands of rare and exotic specimens. In the main, however, the states follow the congressional precedents. Typically, debate is not quite so closely limited as in the House of Representatives nor so open to filibuster as in the Senate. A two-thirds majority in either house can usually ride roughshod over the normal procedure but this is rarely obtained by any faction or party. Most of the states have made little effort to modernize their rules or to adjust them to the growing volume of legislative business. In this respect, however, they are aping Washington quite skillfully. The most striking thing about state legislative procedure is the almost complete lack of documentation. Only a handful of states keep any kind of record of the debate either in committee or on the floor. A journal or record of votes and actions taken is about all the record available to a student of the legislative process. There is thus little guidance for the courts in determining legislative intent or for the citizen trying to understand either the process or the result.

The party apparatus

In the states as in Congress the two major political parties claim the loyalties of an overwhelming majority of all the legislators. Party affiliation produces also an informal structure of leadership operating through caucuses, floor leaders, and policy committees. This structure is, in general, extremely important in determining committee assignments and in determining the holders of the official positions of speaker and president of the Senate. The patterns of party politics in the states, however, differ so strikingly one from another that no further generalizations about the party in the legislature can safely be attempted. There are, in the first place, a large group of states (perhaps as many as 18, including most of those in the Old South and some in Plains and New England) where one party so completely dominates the state government that its influence in the legislative process is impossible to assess. In these states, factions within the dominant party vie with one another for control of the elected officers and influence on the conduct of the government. These factions act very much as parties act elsewhere except that they are much less formal in organization and much less stable and enduring. Party caucuses and formally designated leaders are virtually unknown in most of these one-

party states. There is another smaller group of states where one party normally has a majority in both houses but where the other party has some representation. In these also, factionalism in the majority party is quite common and the institutions of party government in the legislature are not highly developed. The closest parallel to the situation in Congress exists in those remaining states (perhaps 20-22 including most of the large states like New York, Ohio, Pennsylvania, Illinois, California) where the two parties are more closely matched and engage in vigorous and continuing competition. Even in some of these, however, the party is less influential than the interest group in legislative decision-making. In many of the two-party states the instrumentalities of party government are more active than in Congress. In several the caucus meets every day that the legislature is in session and considers all the major matters on the calendar. Less reliance is thus placed on the floor leaders and speakers for carrying out party policy.

Finally, in two states, Nebraska and Minnesota, formal party affiliation is prohibited by law to members of the state legislature. All of them are elected on a nonpartisan ballot. In these, factions tend to form and to act like parties do in the other states. This effort to rid the legislature of the "evils" of party politics has not, thus far, been imitated elsewhere.

In summary it appears that the influence of party affiliation on state legislative decision-making is weaker in most states than in the Congress. It is greater where genuine two-party competition exists. Nowhere, not even in Congress, is it decisive. It should be noted further, that the party organizations in many of the states take less interest in the selection and financing of state legislators than they do in Congressmen and that even the successful candidates are unlikely to feel so strong an obligation to the state party.

THE LEGISLATIVE PROCESS

The effect of limited sessions

One of the great differences between state legislative and national legislative operations arises from the limits placed by many states on the amount of time the legislature may be in session. Most state legislatures meet regularly only once every two years. About half the state constitutions limit even these sessions to a specified number of days (36, 40, 60, 90 or 120 days with 60 the most common) or limit the number of days for which legislators may be paid. Congress meets each year for as long as its leaders feel is necessary to realize the possibilities of that session. The national procedure is, therefore, relatively deliberate and even leisurely. State legislatures faced with several hundred bills and resolutions in a session of 60 days every other year must abandon deliberation and the chance of careful second thoughts. Since legislative business is growing increasingly complex and voluminous, artificial time limitations play havoc with the careful, studied, and unhurried processes contemplated by the rules and traditions of American legislative bodies. Initiative in legislation passes to state executives, dominant interest groups or powerful

party leaders and measures are either passed or defeated. There is little time for debate, amendment, conference or research.

"End of the session rush"

One particular manifestation of efforts by law or custom to restrict legislative activities is the "end of the session rush." In many states, the last few days of a session are confused and hectic with hundreds of bills taken up and passed or rejected in a few short hours. On occasion no member nor any presiding officer or floor leader is fully in command of the proceedings and certain as to what has been done and what left undone. In part this has been traced to the legislative habit of beginning each session in the leisurely and deliberate manner specified by the rules and then sprinting to the finish under the lash of the constitutional deadline, a determined governor, and the majority leaders. Various states have experimented, as Congress has not, with devices for abating the storm. Several forbid new measures to be introduced after a certain period without the support of an unusual majority or the scrutiny of a special committee for the purpose. A few have tried the "split session." In the first part of the session bills are introduced and referred to committees for study then after a recess the bills are debated and decisions on them reached. California made the most use of this plan but finally dropped it in 1959. West Virginia and New Mexico tried it and abandoned it. Massachusetts is authorized by its constitution to use it but has never done so. A great many states have sought to expedite the consideration of measures by the use of electronic voting devices by which roll calls can be completed and votes recorded in a few seconds as compared to the time taken in Congress for this purpose.

Massachusetts has perhaps done as much as any state to improve the uneven flow of legislative traffic. The joint-committee system already described, has helped materially. Committees are required, with some exceptions, to report all matters referred to them not later than early March and in many cases within three days of their receipt. None of these has been wholly successful in helping legislatures avoid the confusion of the last few days of the session.

Lobbying

The imprint of the activities of political interest groups on the state legislative process has been deep and continuous for several generations. Public concern was earlier attracted to the problems at the state level and has been more widely aroused for a longer period than at the national level. In many states the result of this concern has been to fasten shackles on the legislature so that it can do less harm if corrupted by the "interests." A few have grappled directly with lobbying and the lobbyist and have tried to bring the practice and the practitioner under regulation. In fact some of the experience of these states was incorporated in the national effort at regulation. Outstanding efforts have been made by California, New York, Wisconsin, and Massachusetts. The general pattern of regulation now widespread among the states includes: (1) requiring all lobbyists to register with a state official their names, employers, and the scope and character of their legislative interests; (2) requiring lobbyists to file at intervals or at the close of the session a statement of their expenditures for lobbying purposes; (3) forbidding employment of lobbyists on

a contingent fee basis. Where honestly and capably administered, these regulations have made it possible to publicize the extent and character of lobbying and have accomplished little else. Wisconsin, in 1957, took the latest and most drastic step to "purify" the lobby by forbidding any lobbyist to buy or give any legislator anything (meal, drink, or even cigar).

The "enemy" in all of these efforts is the paid lobbyist acting directly on the legislature. Few laws deal with the interest group itself and fewer still with efforts to influence public opinion (indirect lobbying) or to bring indirect pressure on legislators or administrators.

Uniform state laws

Americans are, on the whole, proud of the diversity of methods and policies for dealing with the problems of our society that 50 separate state governments encourage. There are some areas of state legislative interest, not as yet controlled or standardized by national programs, which invite if they do not require greater uniformity of treatment, state to state, than results from our federal pattern. Many examples could be cited in the field of commercial law, crime, highway rules and others. Since 1892 a National Conference of Commissioners of Uniform State Laws has been actively promoting such uniformity. This voluntary agency composed of representative lawyers and professors of law from each state designs and recommends such laws to each state for adoption. More than 75 of these have been prepared and offered to the states on such subjects as: negotiable instruments, bills of lading, declaratory judgments, narcotics, criminal extradition, rules of criminal procedure, divorce, reciprocal enforcement of support. Thirty or more have been adopted in a vast majority of states, several more in a sizable number of states, and many in a few states.

TECHNICAL ASSISTANCE FOR LEGISLATORS

One of the most notable changes of the past few decades in the state legislative process has been the growth of technical and expert aid for the legislators. Few subjects demanding the attention of modern legislators can be dealt with intelligently without knowledge of the problems or without aid in casting the proposed solutions into appropriate legal language. The movement from pioneer frontier to complex urban industrial environment has increased the difficulty of legislative problem-solving many times over. The hearing given to bills might be supposed to elicit all the relevant data needed by the legislator to make a wise decision, but unfortunately this is not always the case. Much of the testimony is special pleading and large segments of the public, although concerned, may be inarticulate.

1. Legislative reference bureaus

One of the oldest and most useful aids is the legislative reference bureau. Such an adjunct was first introduced in New York and Massachusetts in 1890 as a function of the central state library and in Wisconsin in 1901 as a permanent agency and nowadays, under some form or name, is found in virtually every state. Two main purposes are served: (1) assembling, shelving or filing, and indexing for ready use the statutes of the various states, judicial

decisions interpreting and applying such statutes in concrete cases, administrative reports and other materials throwing light on the workings of various laws, governors' messages, and a wealth of miscellaneous materials on all manner of subjects—taxation, transportation, labor, public utilities, insurance, pensions, agriculture, corporations, and education—likely to come up during a session; and (2) providing special research service to legislators to compile in ready form information on any selected topic.

Originally, many of the reference bureaus also provided bill drafting assistance to help legislators put their ideas into proper statutory form. A few continue to do so. Generally, however, the bill drafting function has been detached and separately organized. In many states, it has been joined to the long-standing function of statutory revision—continuous revision of the state laws to eliminate with legislative approval, anachronistic, contradictory and inconsistent provisions.

2. Legislative Councils

Beginning in Kansas in 1933 a movement for central, bipartisan research commissions spread through the nation. These agencies are usually called legislative councils and, in general, are designed to aid legislatures by making extensive studies of the major state problems and by developing suggested legislation for dealing with these problems. Many of the councils or commissions do most of their work in the interim between sessions and are aided by research assistants regularly employed in the staff of the council. The hope of the sponsors of this development that a self-produced program of major legislation might be prepared at leisure by the leaders of the legislature and that by this method some of the leadership in legislation lost to the executive branch might be recaptured has not been fully realized in most of the states that have created such agencies. A few have been outstandingly successful. Many councils, however, have been obliged to spread their efforts over too many subjects, or have been denied funds to hire competent staff, or have become embroiled in party or factional contests. Several have aroused the animosity and suspicion of the members of the legislature not selected to participate in their deliberations.

3. Fiscal review agencies

The growth of state expenditures in recent years has stimulated increasing legislative concern for more effective fiscal review and post-audit practices. In the past decade, several states have created and staffed agencies responsible solely to the legislature which conduct continuous review either of executive agency spending proposals and practices or of the actual expenditures made. The California Joint Legislative Budget Committee established in 1941 is the best and one of the earliest examples of this type of legislative service agency.

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25

The Governor and The Executive Branch

THE PRINCIPAL political officer of each state is the governor. He is also the chief executive, a major law-maker, an important party leader and the ceremonial head of the commonwealth. His major task is to devise a program for the conduct of the affairs of his state and then to seek appropriate legislation, necessary financing, and popular support to carry it out. To the public he is the state and they expect him to find a remedy for every ill of the body politic. He is rarely, however, able to work his will by command. Exhortation is his most widely used method and close bargaining with those whom he cannot dominate his daily exercise. The governorship in America is a miniature presidency but without many of the president's most powerful tools. Unlike the presidency, however, the governorship is not the summit of a public career but rather a small hill on which to learn the art of mountain climbing. The governor's office is the testing grounds for statesmen and the men who occupy it usually expect to go on to the Senate, the cabinet, or the presidency itself.

Importance of the office

In every state the governor is today elected by popular vote on a partisan ballot for a term of two or four years. The office was not originally so conceived. In only two colonies (Connecticut and Rhode Island) was the governor chosen by the people and in 11 of the 13 original states he was selected by the legislature. Popular election gradually won its way during the early half of the past century and prepared the ground for the emergence of the popular and powerful leader of the present era. The general trend has been toward lengthening the governor's term and whereas several decades ago two years was typical now the governor serves four years in all but 15 states. Fear of unrestricted

tenure, as in the case of the presidency, has led in a number of states to constitutional restrictions on continued eligibility. In 15 states, the governor may not succeed himself and in 7 states he may serve no more than two consecutive terms. Many of the great industrial states which have produced so many strong presidential aspirants (*e.g.* Ohio, Illinois, California, New York) have four year terms without restrictions of this type. New York, for example, has had only six different governors in four decades. In these states, furthermore, party competition is unusually keen. Many of those with eligibility restrictions are one-party states. In summary, the trend everywhere is toward creating a more powerful position manned by more experienced leaders.

Nomination and election

In every state the governorship is now selected under party auspices in a partisan election. In a few states candidates for the major parties are nominated by state-wide conventions (*e.g.* New York) of locally-elected delegates. The typical method is by popular voice in state-wide direct primaries. In several of the states where primaries are used, however, the party seeks through official conventions or semiofficial and informal caucuses and conventions to present to the voters aspirants bearing the approval of the organization. In most of the Southern states, the primary is more important than the election since Democratic nominees virtually always win in November. In an effort to secure majority choice, many of these states have two primaries with the two candidates finishing at the top in the first heat contesting in a second or "run-off" primary election. Three states have used a modified electoral college system weighted somewhat in favor of the rural and small town populations in connection with the gubernatorial election. In Mississippi a legislative-district, electoral-vote system has been used in the election and the winner must obtain both popular and electoral majorities. In Georgia and Maryland a system based on counties was used in the nominating procedure but not in the final election. The Supreme Court has recently declared these schemes invalid as contrary to the "equal protection" clause. The character of the procedure for entering the gubernatorial sweepstakes is to a large degree influenced by the existence of real two-party competition. In general, the more competitive the parties the more nearly the process resembles that for the presidency. But in the numerous one-party states the contest is really an intraparty affair and many kinds of informal organizational and campaign patterns exist. Whatever the method of reaching this high office, in every state there are numerous practices, customs, and traditions which influence selection and are collectively of greater consequence than the qualifications as to age and length of residency written into the constitutions.

Removal

The governor, as well as other major state officials, may be removed by impeachment and conviction on the national pattern in every state except Oregon. As in Washington, this procedure is rarely used: only 13 governors have ever been impeached and of these only 6 were convicted and removed from office. In a dozen states governors may be recalled by popular petition and vote. Only one governor—Frazier of North Dakota in 1921—has been

ousted by this method. Typically, the lieutenant governor succeeds to the office on the death, resignation, or removal of the governor. Several states without this office, place the secretary of State, president of the Senate, or Speaker of the lower house next in line.

THE GOVERNOR AND LEGISLATION

The modern governor invests a large part of his energy in procuring the legislation and fiscal resources to carry out his program. Popular election, the organization of political parties, and partisan campaigning have all contributed to the emergence, in most states, of the governor as a major influence in lawmaking. This development closely parallels that of the office of president and is supported in large measure by factors outside the formal constitutional assignment of powers and duties. Many of the newer state constitutions and amendments, however, reflect the increasing importance of executive leadership in the legislative process and provide to the governors a more extensive and more compelling set of legislative powers than the president can command.

Constitutional position and powers:

State legislatures, typically, meet less frequently than does Congress and the sessions are, in many states, rigidly limited as to length. The power of the governor to call the legislature into special session is relatively of greater importance, therefore, than that of the president. Typically, the governor by declaring the purposes of the session, may bar consideration of other subjects. Of course, the governor cannot compel the legislature to agree with his proposals.

1. Special sessions

Like the president, the governor is obliged by constitutional prescription to inform the legislature on the condition of the state's affairs. Ordinarily the major message which opens the regular session is delivered orally and attracts a wide audience. This "state of the state" message is commonly followed by numerous messages on particular subjects from time to time during the session. Bills exactly designed to achieve the governor's suggestions also flow from the executive office in a steady stream. In many of our large and influential states his is the principal initiative in lawmaking.

2. Messages

Year in and year out the most important set of executive recommendations are those embraced in the budget. Virtually every state has since 1910 adopted the executive budget system which places the governor in the leading role in preparing and recommending a fiscal program for his state. In discharging this responsibility, the governor gains, probably, his greatest influence over the conduct of the state administration and, at the same time, initiates the most important bill or set of bills in each regular legislative session.

3. Budget proposals

Originally the states bestowed the veto power grudgingly or not at all (Massachusetts and South Carolina made the only provision for it among the original thirteen states). As popular election gradually freed the governor from his early dependence on the legislature, the veto became an important adjunct to his position. It is authorized in every state except North Carolina.

4. Veto power

Furthermore, in all but a handful of states, the veto extends to items in appropriation bills (a power for which several recent presidents have pled vainly). In Washington the item veto extends to all measures and in Oregon to bills declaring an emergency. The item veto equips the governor with power to deal with riders and with the expenditures outside his budget suggestions and tends to enhance his influence in legislation. In a few states, Massachusetts, Tennessee, Pennsylvania and California, for example, the item veto has been construed to permit the governor not only to strike out particular appropriations but reduce the amounts. This places him in an even more powerful position to determine the character and scope of the state's fiscal commitments. It also encourages legislative extravagance and irresponsibility. The legislators rely on the governor to whittle the appropriations back down to the limit of the state's income and, of course, to accept whatever onus attaches to this procedure.

Like the Congress, state legislatures may override a veto but the vote necessary to do so varies from a mere majority in Connecticut and a few other states to two-thirds of the full membership in each house in almost half of the states. Most states allow the governor five days to consider a bill after he receives it when the legislature is in session. After adjournment, many states give the governor more time. Some give him a pocket veto but in others he must actually veto the bill to prevent its becoming law. New Jersey provided in its new constitution for a practice which, in fact, had been used increasingly in several states of reassembling the legislature at a specified time after adjournment to consider the governor's vetoes of measures passed in the closing days of the session. This has the effect of eliminating the "pocket" veto—*i.e.* vetoing a bill by inaction.

All things considered, the typical governor has a stronger and more effective negative on legislation than does the president. At both levels of government, however, vetoes are rarely overridden and largely occur after the legislature has adjourned. At best, however, the veto is a negative influence and can be transformed into positive leadership only by skillful bargaining.

The governor's influence over legislation, and it is usually considerable, really arises like that of the president from his posture as the leader of his party, his superior ability to gain public interest and support for his program, his near monopoly on the creation of statehouse news, his ability to dispense favors large and small to legislators who follow his lead, and his power to punish by veto, refusal of appointment, or publicity those who obstruct his programs.

THE GOVERNOR AS EXECUTIVE

Weaker than the president in:

If as legislator, party leader, and popular hero, the modern governor closely resembles the modern president, as an executive and as manager of the administrative machinery the two are poles apart. The president's towering and lonely position as director of a huge and complex administrative appa-

ratus, as commander of great military forces, and as deviser of the foreign relations of the nation is unmatched at the state level.

1. Constitutional power

In the first place, few state constitutions assign executive authority to governors in clear and unambiguous terms. Some say that he shall take care that the laws be faithfully executed but rarely is he assigned any agencies of law enforcement under his direct control. Some say that he shall be chief executive but on several occasions state courts have held that this endows him with little or no inherent executive authority. Many grant to him certain power of appointment and removal but this too is in many states hedged around with inhibitions.

2. Control over departments

Further, in every state one or more officials of the state administration are directly elected by the voters and are in no sense subordinates to the chief executive. Most commonly, the offices of Attorney General, Secretary of State, Treasurer, Auditor, and Superintendent of Public Instruction are filled in this way. Each presides over an important agency which is thus largely removed from oversight by the governor. In many of the new constitutions, notably those of New Jersey, Alaska, and Michigan, this group of independently elected state executives is either sharply reduced or eliminated. In many states, other major departments or agencies are controlled by lay boards appointed for long and staggered terms. Such boards usually select the executive officer of the department and serve as screens between him and the chief executive. These arrangements blur, if they do not obliterate, any sense of subordination by the agency directors. A movement inaugurated in Illinois in 1920 by Governor Lowden and subsequently spreading to many other states has sought to sweep away the board system of department management and, to some extent, the elected department head system and replace it with single, governor-appointed heads along the lines of the national executive branch. Several of the largest and most important states have adopted what has come to be called "the strong executive" plan but a large number cling to the system described earlier in this paragraph.

The presidents appointing and, by inference, his directing authority is limited, as we have noted earlier, by the spread of the civil service merit system throughout the national administration. The same thing on a small scale has happened in the state houses. In general, however, the "merit" system has made relatively less progress among state employees and thus executive patronage is somewhat more extensive. It may be argued that "patronage" strengthens the governor's hand in party affairs and in dealing with the legislature; it does not improve his position as an effective state executive.

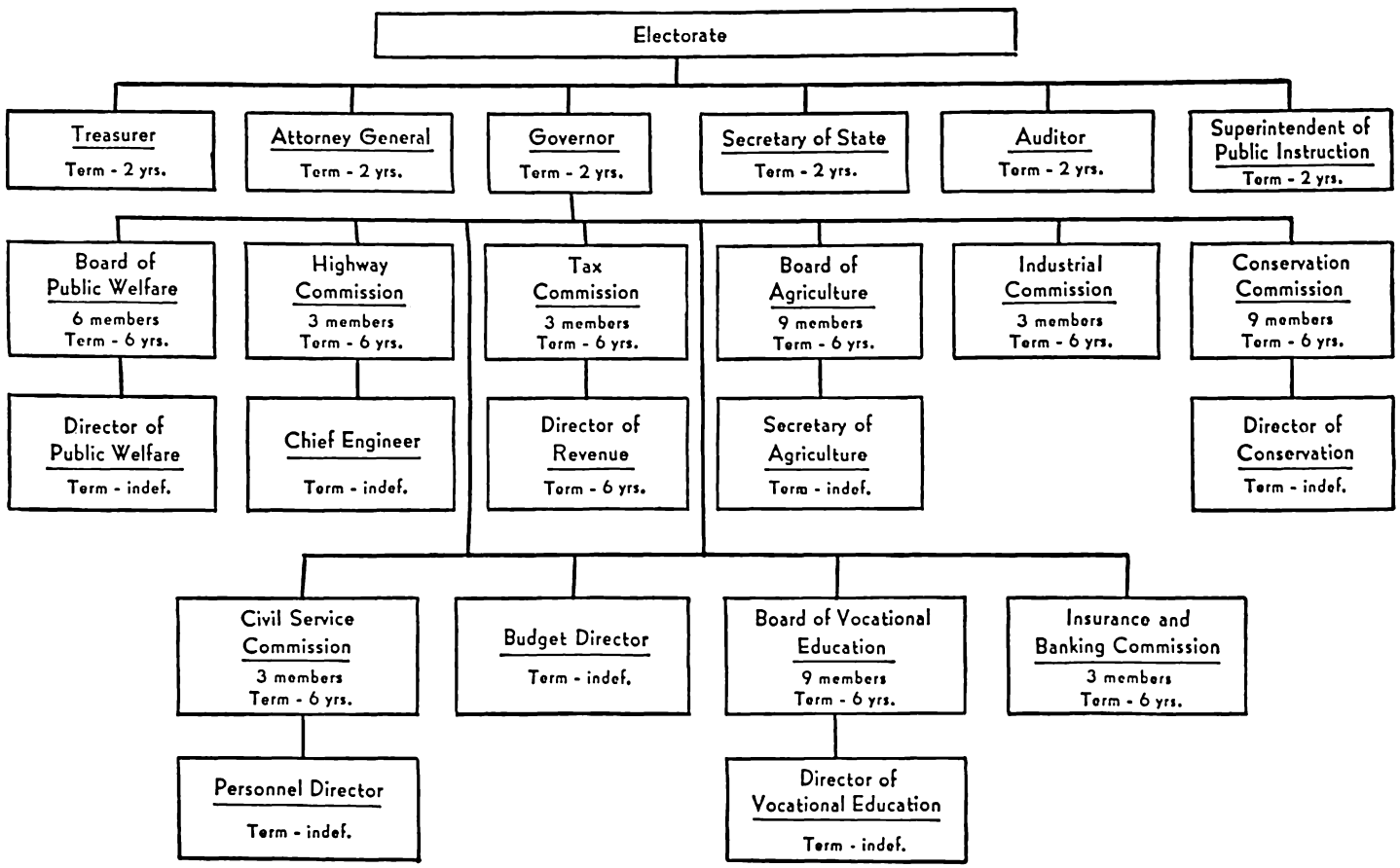
3. Requirements of confirmation

As in Washington, D. C., executive appointments, typically, must be confirmed by the upper houses of the state legislatures. In a few states, notably North Carolina, Massachusetts, New Hampshire, and Maine, some appointing authority is shared with an executive council or council of state.

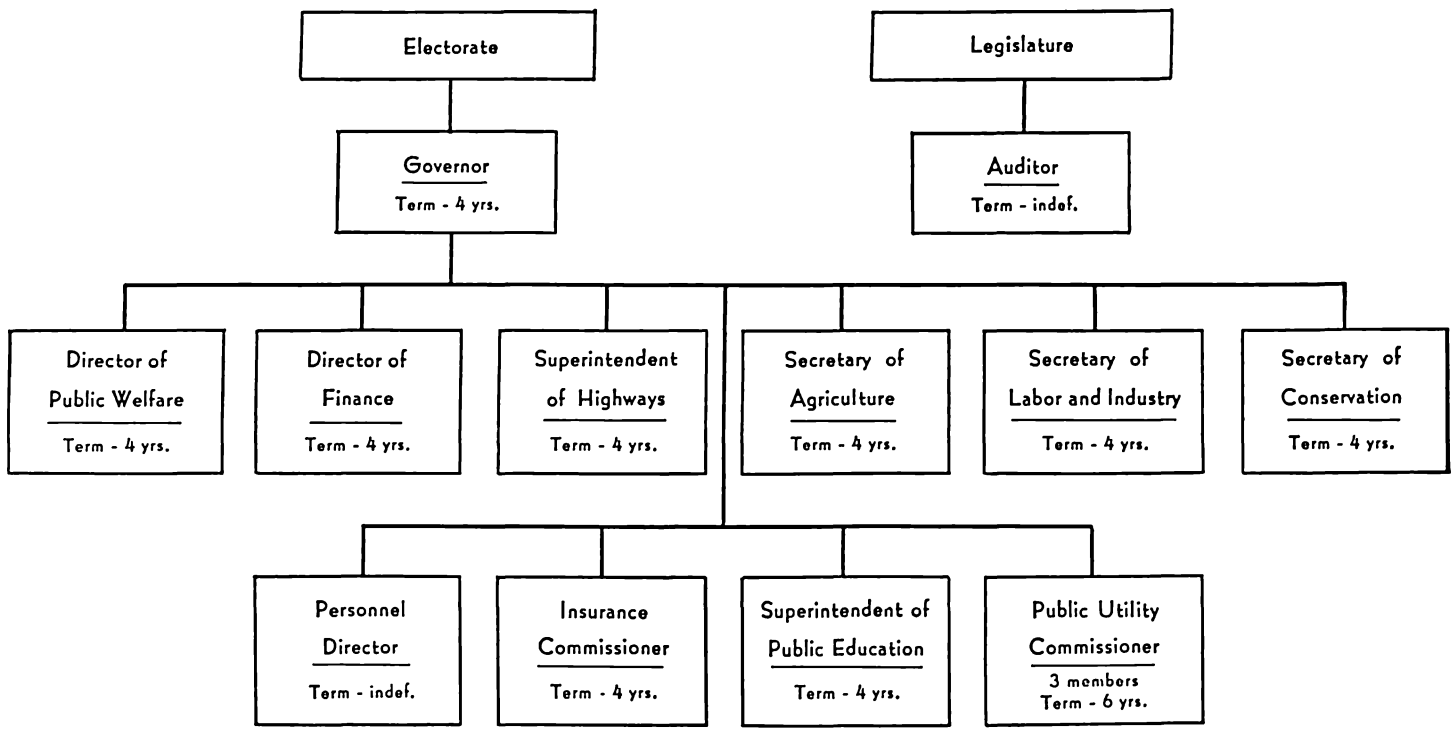
4. Reliance on local officials

Finally, the state executive everywhere must rely heavily for law enforcement and the provision of some state services on locally elected and locally controlled officials such as mayors, sheriffs, prosecuting attorneys and coroners.

"WEAK" EXECUTIVE TYPE OF STATE ADMINISTRATIVE ORGANIZATION



"STRONG" EXECUTIVE TYPE OF STATE ADMINISTRATIVE ORGANIZATION



Except that the governor is empowered in several states to remove these officials for sufficient cause, they are largely beyond the reach of his direction and owe him no particular loyalty or deference. Presidents, as a result of the decision made in 1787-88 suffer no comparable disadvantage in discharging their responsibilities.

It is apparent that few governors are in as commanding positions over their state administrations as the president is over his. The trend everywhere is to improve the governor's position in this regard. The movements for the four-year term, the elimination of many independent agencies, the reduction of the number of elected administrators, the substitution of governor-appointed department heads for boards or commissions, the executive budget system all are designed to achieve this end. In many of our great states giant steps have already been taken and some steps have been taken in almost every state but the typical governor is still not a powerful executive.

THE EXECUTIVE BRANCH

Importance of administration

The growing services of modern state governments are provided through numerous agencies, departments, commissions, and bureaus grouped, usually rather loosely, into the executive or the administrative branch. Administration at all levels of government in the United States has been growing at a phenomenal rate for many decades. In total effort, however, the states are still far behind the government at Washington. Our local governments, in fact, spend more than the states. Nevertheless, administering governmental programs at the state level is a tremendous enterprise and occupies the time and energy of more than 1.6 million persons and an annual expenditure in excess of $32 billion. The typical state will employ 30 to 40 thousand people organized into 20 to 30 separate agencies at an annual cost of $300 to $400 million. All of the problems of effective and responsible administration of public policies which have been discussed in connection with the central government are also present, albeit on a smaller scale, in the states.

Organization:

In comparing the administrative machinery at the national and state levels, it is well to recall the comparatively feeble sweep of the typical governor's directing influence. There is, for example, nothing at Washington quite comparable to the autonomous executive departments found in nearly every state headed by elected officials. The most important of these by far are the departments of public instruction or education which regulate the provision of public education throughout the state. The other autonomous departments, treasury, state, attorney general's, are relatively less important in most states but nevertheless constitute separate, single-headed, executive departments responsible only to the electorate.

1. The use of autonomous departments

2. The use of single headed departments

The general use of any type of single-headed department responsible to the chief executive is a relatively new phenomnon among the states and may be found as the predominant mode of administrative organization only in those states like New York, Illinois, New Jersey, Michigan, which have

undergone extensive overhauling since about 1920. In many states, the provision of major services, such as highway planning and construction, the care of the needy and unfortunate, the operation of institutions of healing, correction, or rehabilitation, is carried on by a commission, or board of plural membership and part-time service. Most of these boards employ full-time directors to manage the service retaining, however, power over general policy and program.

3. Continued reliance on boards and commissions

The board system of administrative direction was the preferred system in most states for many decades and developed particularly in the field of institutional management. As state responsibilities for prisoners and the mentally ill and defective developed in the last century, a board of trustees to oversee the warden or director seemed to many the most appropriate method. As the number of institutions expanded and as states sought by parole, probation, mental hygiene programs, and public assistance to keep people out of the institutions, the board system became cumbersome and inapproriate and demands for its abolition became more insistent and gradually more compelling. The board system, however, was never confined to institutional management and has been and is being widely used for the regulation of agriculture, the conservation of resources, the promotion of business, the administration of labor laws and many other purposes.

4. The regulatory commission

In the delicate area of regulation of the rates and profits of public utilities the states have almost uniformly followed the national pattern of adjudication through the independent regulatory commission. Everywhere these are staffed by full-time, relatively well-paid, commissioners appointed by the governor and serving staggered terms of 6 to 9 years. In more than a dozen states, however, the public utility or railroad commission members are elected by popular vote and, in at least one state (North Carolina) are selected by the legislature. It is not uncommon to require that members on such commissions be drawn from more than one political party.

5. The corporation

The government corporation may also be found in several states but nowhere is it used as extensively as in the national government. The most widely used state-corporations are those for the administration of toll roads or turnpikes, liquor stores, building construction, and power distribution. Commonly the state corporations have relatively greater freedom to arrange their finances than do the other types of agencies.

Growth of management services

Modern state administration is characterized by the rapid growth of management services. In fact many services such as central purchasing, consolidated budgeting, pre- and post-auditing, maintaining buildings, and procuring personnel were tried out initially in state and city governments. The success there attained commended them to other state capitals and city halls, and to the central government in Washington. Whereas in Washington, all of these management agencies are ultimately responsible to a single executive head, the president, in many, if not most, states this is not the case. Almost everywhere, for example, legal advisement is provided to the departments or agencies and to the governor by the Attorney General's department and this

official is separately elected in all but a handful of states. Auditors, treasurers, and controllers charged with prescribing systems of accounts, keeping track of cash, and reviewing fiscal transactions either before or after the incurring of the obligation are also almost universally elected in the states. Typically, purchasing, building construction and maintenance, budget preparation, and central printing are closely associated with the executive office and, therefore, more directly subject to executive authority but there are numerous exceptions among the 50 states. In several states, administrators of service functions are insulated against executive direction by long terms or merit selection with tenure.

As in Washington, the growth of centralized management services has accompanied the demand for more efficiency and economy in governmental administration. The controls exercised by such agencies arose, however, in response to charges of "spoils" and "boodle." The problems of responsibility for the accomplishment of public policies raised by the growth of management services are many and have been discussed in connection with the national government. A different and additional set of difficulties characterizes the growth of these services in states without strong executive direction and without a coordinated executive branch. In many cases, the purchasers, auditors, accountants, legal advisors, printers, engineers, architects, and personnel administrators may, in fact, be responsible to no one in the entire executive establishment. On the other hand, governors lacking direct and specific directional authority over state departments and agencies have on many occasions sought to achieve influence through the management services attached to their offices or under their direction. When this has occurred, the management services have become instruments of control and direction over state affairs in a way that may also threaten the position of the line administrators. The most sweeping moves in the direction of strengthening the executive through management controls have occurred in Minnesota, Wisconsin, Alaska, Vermont, Indiana, and a few other states where the major management functions have been gathered into Departments of Administration and placed directly under the governor.

Management services in weak-executive states

Continuing efforts at reorganization

The administrative apparatus of the states like that in Washington, D. C. can never be fully and finally organized. New services, new methods, new ideas make change both inevitable and necessary. Reorganization is, therefore, a continuing concern in the states. Initiated in this century largely by Governor Lowden of Illinois and Governor Smith of New York sweeping changes have been made in the direction of strengthening the governorship and streamlining a hodgepodge of agencies and services. No sooner had this set of reforms swept through many states than new demands for change occurred. The Hoover Commission, for example, stimulated many states to follow the national lead and from 1949 to the present one state after the other has established study commissions—in some cases several—to review administrative organization and procedure and to make suitable recommendations for reform. It would be hard to picture the net impact of all these studies. Many have been abortive

and without substantial result; others have led to far-reaching changes. In general, the greater changes seem to have been made in states that had avoided or resisted the reforms of the twenties. Most state legislatures have proved unwilling to go as far as the Congress in implementing reorganization studies by endowing the executive with the authority to make changes by executive order subject to legislative veto. New Hampshire in 1949, Michigan in 1958 and Oregon in 1959 are the only states that have, with various limitations, endowed their governors with this power. The new state of Alaska grants this authority in its constitution. In many states, also, administrative organization is prescribed for part or all of the executive branch in the state constitution and effective reorganization may require changing the constitution as well as the statutes. The principal beneficiary of most of the studies and most of the successful reform efforts has been the governor and thus reorganization efforts may be classed with other developments already described as part of a general movement to strengthen the governor as chief executive of the state.

STATE PERSONNEL ADMINISTRATION

Importance of personnel policies

No administrative organization can be very much better than the quality of the people who service it. To the states the problem of recruiting and maintaining an able body of public servants is one of continuing importance and difficulty. The civil service reform movement which led to the growth of the "merit" system of personnel administration in the national executive branch also sought comparable results in the state houses. A few states, notably Wisconsin in 1905, adopted sweeping merit system laws and a few others (New York in 1883, Massachusetts in 1884, *e.g.*) adopted merit systems for some employees but most resisted the removal of partisan appointment and by the mid-thirties only a small minority of states had very effective merit systems for a majority of their employees. The great expansion in state merit systems occurred after 1936 as a result of the requirement of the Social Security Act of that year that states participating in national grants under that law must install merit system selection and protection for employees in the various assistance, insurance, and health programs. Thus by national compulsion a large number of state employees in every state were brought under an approved merit system. Since that time gains have been made in Indiana, Oregon, North Carolina, Vermont, Montana, Nevada, Oklahoma, Kentucky, Alaska, Hawaii, and a few other states. There remain, however, a large minority of states without state-wide merit systems of personnel administration.

Spread of state "merit" systems

Continuing state personnel problems

The adoption of the "merit" system has by no means solved all the personnel problems of the states. There is a persistent tendency for merit systems to become routine, mechanical, and unimaginatively directed. Much more positive efforts at recruiting talent, maintaining attractive wage and benefit schedules, encouraging public careers, and overcoming the undue rigidities of classification schemes are necessary even in states most widely committed to merit selection. The three-man civil service commissions, so widely used for

enforcing merit rules, have scores of critics. Many reorganization studies have suggested single-headed personnel departments as more appropriate under modern conditions and many have sought to enlarge the power of the governor to influence personnel administration. In general, states without extensive merit systems, however, continue to lag far behind the others in the national search for talent to man the services of the states.

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26

State Functions and Services

Growing list of state services

RECALLING FOR A MOMENT the enormous array of national services and controls, we might well ask if there is anything left for the states to do. The answer is: a great deal. States have never been so active, spent so much money, or provided such comprehensive services as they do today. There is scarcely an aspect of our society untouched by the state. The states and their local government units are the primary protectors of life and property; they are deeply engaged in regulating and stimulating economic activities inside their boundaries; they provide the most extensive system of public education for their young people ever known; they succor, rehabilitate, and care for the sick, the poor, the handicapped, the veteran, the neglected, the criminal, the aged; they engage in many kinds of internal improvements including particularly the most complex and elaborate system of highways and airports in the world; they act to protect consumers, preserve resources and manage elections. The list could be extended for several pages. More than two-thirds of the states' fiscal resources, however, are expended on three programs: public education; highway construction and maintenance; and public health and welfare.

PUBLIC EDUCATION

The greatest single public enterprise of the states and their local subdivisions is the provision of education to the youth of the nation. In the numbers of persons involved and, probably, in social consequences this is the

greatest public effort at any level. It is topped in dollars spent only by the huge national defense effort of the nuclear age and the "cold war." In 1963, more than 40 million pupils attended public primary and secondary educational facilities; they were taught by more than 1.6 million teachers; and the expenditures on their behalf exceeded $18 billion.

Education a state and local responsibility

From the earliest days of this nation the provision of free public education has been considered a cornerstone of the American way of life. Even before the adoption of our present constitution, the Congress had required that public lands in the territories be set aside for the support of schools (Northwest Ordinance of 1787). Throughout our history, however, education has been regarded as a state rather than a national responsibility. Certainly, throughout the last century the national government was concerned only slightly and mainly at the college level. In the states the main burden of building, staffing, and managing the schools was carried for generations by the localities with the state governments concerned largely with providing a legal framework for the local discharge of these responsibilities. Administratively and financially the state involvement was modest. Largely to avoid partisan, political influences on the school system, separate units of local government—the school districts—have been the principal agencies for managing education. These districts—usually coterminous with some other local political unit—were operated by elected boards and were financed almost exclusively by levies on property.

The schools in 1900

At the turn of the century the typical rural school district operated one school building with one teacher and offered instruction through 6 or occasionally 8 grades to 15-20 pupils. City school systems had already widely substituted the multiple-teacher platoon system or the grade and subject specialist system for the one teacher per school arrangement. The high school was also becoming increasingly common in the cities. About 17 million young people were enrolled in 1900 and the typical American youth might average 6-8 years of school at public expense.

Rapid expansion of educational programs

As this century progressed the demand for educational services and opportunities grew rapidly. The high school became well-nigh universal, kindergartens and nursery schools reached pre-school-aged children, vocational courses were developed on a large scale both inside and outside the regular school organization, recreational programs during and after school hours were begun, libraries in the schools and in the communities were established, evening classes for adults were started, efforts were made to reach out to the handicapped, the abnormal, and other categories of children unsuited to the normal classroom situation. By 1945, the school systems were reaching more than 23 million young people and more than 60 per cent of those of high school age were actually in school. All of these developments added greatly to the costs of education and brought sharply into focus the remarkably unequal abilities of local school units to finance these programs from levies on local property. During this period, therefore, the state governments came to play an increasingly active role in financing and supervising the school

program. State educational departments, heretofore largely hortatory in method and limited in function, were professionalized and given more active supervisory responsibilities. One state after another: (1) established minimum standards of teacher training, curriculum coverage, and adequacy of physical facilities below which impecunious or incompetent local management might not sink; (2) brought to the aid of hard pressed local units fiscal resources gathered from a broader tax base; (3) developed public teacher training institutions to supply the growing need for competent teachers; (4) assumed full responsibility for special educational programs for handicapped, neglected or abnormal children; (5) expanded the coverage and stiffened the enforcement of compulsory school attendance laws; and (6) during the depression made numerous special grants to succor distressed districts and to aid school construction.

State responsibilities

The postwar period has brought greater demands on the school system than ever before. The rapid rise in the birth rate—from 18.4 per 1000 in 1936 to 27.0 per 1000 in 1947—launched a period of unprecedented growth in school enrollments. First the elementary schools were flooded; now the high schools; in a few years the colleges. Enrollments have been growing at the rate of almost 1 million a year for over a decade. Second, the heavy migration of population from farm to city and from central city to suburb has left many old schools without pupils and brought together hundreds of thousands of children without adequate schools. Third, the continuation of early trends toward lengthening schooling has kept these new millions of youngsters in schools longer than their fathers. Fourth, the tremendous scientific and technological advances of the past few decades have sharply increased the need for competent instruction while many of the potential instructors have been lured into industry, government and institutions of higher learning by better pay and greater social recognition.

Impact of birth rate rise on schools

The upshot of all of this is that the states are more deeply involved—legislatively, financially, and administratively—in the provision of schooling from kindergarten through university than ever before. The major controversy today is whether the national government should not now enlarge its responsibilities in education and bring its vast tax resources to the aid of states that are finding it increasingly difficult to finance an adequate educational program from their own resources.

A major effort of modern educational statesmanship, despite the growing power and influence of the state governments and the nation, has been to strengthen the local district by vastly enlarging its size so that it might through a broad enough tax base and a large enough child population be able efficiently to provide an adequate educational program. The number of districts has declined from 127 thousand in 1932 to 36 thousand in 1962. A dozen states have made the county the smallest unit for school administration and one state (Delaware) has a state-wide school unit. The number of one-teacher schools has fallen from 149 thousand in 1930 to 20 thousand in 1962. Nevertheless, many experts believe there is much yet to be done. They cite the

School district reorganization

7,000 districts which operate no schools at all, the 19,000 districts with fewer than 50 pupils, and the continued sharp discrepancy in the burden of taxes required to support adequate programs. On the other hand some of the great metropolitan systems have become such giants that effective management is well-nigh out of the question. No doubt these developments have strengthened many local districts that have survived reorganization and consolidation. They have been achieved, however, largely by stern state control and by heavy commitments from the state treasury. Perhaps the most difficult and most important of the remaining problems of district organization is the small high school. Most experts believe that it is financially prohibitive and administratively wasteful to attempt to offer modern education in a school of fewer than 450-500 pupils. Nevertheless, of the 25,000 high schools in America only 4,000 are as large or larger. Almost one-third of the nation's high school pupils attend schools of inadequate size, and therefore, of inadequate depth or breadth of subject matter. The high school, however, is the center of the social life of many small communities; without one the possibilities of growth are thought to be small. The residents, therefore, tend to cling to these outworn facilities with desperate and bitter determination.

States' heavy fiscal commitments

The major source of continuing and expanding state influence in American education is the growing reliance on the states' fiscal resources to finance it. In 1930, about 16 per cent of the cost of public education through high school was provided from state tax funds and virtually all the rest from locally assessed taxes on property. Today (1962) more than 40 per cent comes from state taxes, another 4 per cent from the national government and only 56 per cent from local sources. The major aim of state participation is, of course, to equalize educational opportunities by supplementing inadequate local means. However, the state appropriations are also widely used to encourage district consolidation, for example, by paying a large share of the costs of bus transportation essential to the enlargement of the pupil-service area. As has been true of the national grant-in-aid system, state grants have typically increased the regulatory and supervisory power of state departments of education. Typically, money is distributed to local districts on the basis of formulae established by law. These commonly take into account: (1) local ability to pay measured by the value of taxable property per pupil or per school unit; (2) the number of pupils in attendance or the number of teacher-pupil units; (3) the amount of tax actually levied. Compliance with certain minimal standards is usually required of units receiving state money. These may relate to number of days or hours of schooling, the qualification, pay, and tenure of teachers, the variety of the courses offered, and the characteristics of the physical plant. State subsidies are also used to stimulate the development of special services such as libraries, medical and dental services, vocational guidance or to finance school lunch programs, special services to handicapped children and building planning.

The state legislature and education

The chief battleground in the development of state educational policy is the legislature. Here the whole pattern of state aids has been hammered out

in countless long and difficult sessions. Virtually the whole code of laws governing the provision of public education has, of course, been enacted and revised by the legislature. All local school units are, legally, creatures of the state and their organization, management, powers, and functions are spelled out in the state law in considerable detail. Underlying the states school program is in every state a compulsory school attendance law requiring, typically, young people from age 6-16 to be in regular attendance at some school and authorizing employment for youths 14 or over only under carefully regulated conditions. The movement for consolidation, the elimination of the one-room school, the attack on the small high schools, the demand for better paid and more broadly trained teachers these and many other struggles occur in the legislative halls of every state and at every session. Taxpayer groups, chambers of commerce, labor unions, and educational associations of every type may be found pressing their respective and differing views on state legislatures throughout the nation.

State educational administration

The administration of the states growing educational commitments is entrusted everywhere to a department of education or instruction insulated in most cases from gubernatorial influence. In most states today and in nearly all of them a few decades ago the chief of this department (commissioner or superintendent) is or was elected by the voters for 2 or 4 years and in many cases on a nonpartisan ballot. In the past few years, however, a movement to replace popular election by selection by a state board of education has gained momentum and this is now the mode of selection in 22 states. All but a handful of states, now, associate a board of education with the chief educational officer. Typically these boards are appointed by the governor, although in some of the states the members are elected and in a few states are selected by the legislature. The state board commonly has broad policy making functions and, in some cases, authority to utter detailed rules and regulations governing various aspects of school administration. However selected, the chief educational officer presides over a department with professional and clerical assistants and through them administers school aids, inspects facilities and curricula to enforce state standards, certifies as teachers properly qualified persons, collects and correlates statistical material on expenditures, teachers, attendance, and in other ways discharges state responsibilities.

Vocational education

The concentration of the early high schools on college preparatory courses not entirely suited to the 90 per cent of the graduates who did not attend college, the demands for skilled workers caused by rapid technological advances, and the stimulus of national subsidy begun in 1917 combined to foster the development in every state of a more or less elaborate system of vocational education at the high school and post-high school level. In most states vocational programs and schools are managed at the local level through the regular school organization. At the state level, however, it is not uncommon to find vocational and adult education separately organized and financed. There may be, as in Wisconsin, a state board of vocational education with a subordinate director and staff administering state aids and exercis-

ing supervision or there may be separate bureaus or offices within the state department of education. Commonly there is a pattern of financing and a code of laws unique to the vocational system. Until quite recently, in fact, state supervision of vocational education was more detailed and more elaborate than that for the regular schools.

State library services

Virtually every state maintains a state library or libraries serving the needs of lawyers, historians, legislators and citizens at the capital and in many instances providing some state-wide library services. A growing number of states—26 in 1962—now also provide financial aids to local public libraries. Usually these aids are based on population or area or both served by the library and involve some imposition of standards of library management. Congress, since 1956, has also been appropriating national grants to states for library services largely in the rural areas and this has stimulated greater state participation in the development of local library programs.

State colleges and universities

Every state now includes as part of its system of education one or more institutions of higher learning supported in large measure by public funds. Although there were a few public colleges and universities—mainly in the midwest—established prior to 1862, the famous Land Grant College (Morrill) Act of that year marks the beginning of the era of rapid growth of public colleges. This famous law set aside public lands for each state, the proceeds from the sale of which were to be used to endow and maintain at least one college in each state for the purpose of providing instruction particularly in agriculture and mechanical arts. A few states (Massachusetts, New York, New Jersey, and Pennsylvania) arranged for existing private institutions to carry out this purpose of the law but all the rest established or assigned to existing public institutions the responsibilities indicated. Thus grew our great American land-grant or public universities. In the Midwest, Plains, Far-West, and South these are in most states the major institution of higher learning. State legislatures subsequently matched many times over the national grants and the state universities and colleges gradually expanded to their present importance. To these, most states subsequently added normal schools for teacher training and these then grew into teachers colleges and finally into general colleges with diverse curricula. In recent years, as the demand for college education has grown, locally sponsored junior or community colleges have been added to the school systems of several states. These, although locally managed, are, typically, heavily supported by state aids.

States' heavy fiscal commitments

Rise of college enrollments

The famous G.I. Bill which sent veterans of World War II to college at government expense coupled with the rising demand for more and more technical and professional training have in the postwar era started a trend toward college going of surprising dimensions. Whereas in 1920 perhaps one high school graduate in ten went on to college, today more than a third do so (5 out of 10 in California). This rise in the proportion of 18 year olds seeking further education and the sharp upturn in the birth rate described above are flooding our colleges (public and private) and causing heavier and heavier

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demands upon state financial resources. Although originally it was hoped that the public institutions would be free to natives of the various states, the great pressure for adequate income has caused most states to impose higher and higher tuition charges on the public university student. The state schools have also, over the years, greatly expanded their research programs not only in the fields of agriculture and engineering but throughout the subject-matter disciplines. Led by Wisconsin they have also undertaken wide programs of service to the citizens of the states bringing to farm, factory, union meeting hall, professional office, governmental headquarters, and private home the knowledge and technical competence developed on the various campuses. In this decade the national government has moved in with research contracts, fellowships, facilities grants and dormitory loans to augment greatly the aids long provided to the colleges. The national treasury has thus become a growing source of support for the public—and private—institutions of the land.

Government of public colleges

Public institutions of higher learning are almost universally governed by lay boards of trustees appointed by the Governor, elected by the voters, or, in a few cases, selected by the legislature. Usually there is one board for each institution but a few states (Oklahoma, New York, New Mexico, and Oregon, for example) have placed all or most of the institutions under a single governing body. These boards select the president, deans, and other administrative officers and through them direct the institution. In many states, Michigan and Minnesota are good examples, the government of the state university is provided for in the constitution and the institution occupies a position of administrative and fiscal autonomy somewhat different from the typical state department.

PUBLIC HEALTH AND WELFARE

The attack on communicable disease

In the long struggle against contagion, plague, and infectious diseases, a struggle which has wiped out one after another of the death-dealing epidemics, the states and their local subdivisions have borne the major responsibilities. By the support of local hospitals, the administration of vaccination, the distribution of sera, the imposition of quarantine, the purification of water, the regulation of food handling, the administration of tests and check-ups and countless other procedures local officials have helped to eradicate the great scourges of the past. The states began to assume responsibilities for disease control in the last quarter of the nineteenth century. Massachusetts created the first state department of health in 1869 and within 50 years every state followed suit. State activities were early designed to supplement and strengthen the local programs by the distribution of aids, the imposition of standards, the stimulation of lagging areas, and by the financing of institutional care for certain illnesses, mainly tuberculosis. Although ceaseless vigilance and the maintenance of support for preventive inoculations are still essential, the major battle against contagion has been largely won in the United States. To be sure, some of the germ-caused diseases continue to resist efforts to suppress

them. Tuberculosis continues to require state and local diagnostic programs and the maintenance of sanatoria. The death toll, however, has been gradually falling and many states find their facilities only half used. Venereal diseases also present continuing problems. After a sharp decline from 1937-1953 the incidence is once again on the rise. Rheumatic fever continues to take its toll but a major effort has yet to be made to deal with this crippler. The major health problems of modern Americans, however, are of a far different sort. The chronic and degenerative diseases are the great killers and cripplers of the mid-twentieth century.

The attack on degenerative diseases

As was noted in discussing the national health programs, cancer and heart and circulatory disorders are the leading causes of death today and chronic disabilities such as arthritis, mental illness, cerebral palsy, epilepsy, and muscular dystrophy are the main incapacitators. None of these respond to the methods used to fight germs. State programs, thus far, are largely educational and are designed to promote early diagnosis, better diet, and proper living habits. A few successes have been achieved, for example in the early detection of uterine cancer by the widespread administration of the Papanicolaou testing procedure. In general, however, major advances must await the discoveries by research scientists of causes and then perhaps of cures. Meanwhile, every state carries a heavy load of institutional care and relief grants for the poverty-stricken disabled.

Mental illness

Of all the chronic cripplers none presents the states with more baffling and more expensive responsibilities than mental illness. Every state maintains one or more institutions for the custody and treatment of the mentally disturbed and in four states (New Jersey, Wisconsin, Iowa and Michigan) these are supplemented by county hospitals or asylums. On the average, more than 500,000 patients occupy these facilities at an annual cost of nearly $1 billion. For decades the major concern of the states was to protect and preserve family and community welfare by the removal and incarceration of those who were dangerous or unmanageable. The story of the long struggle to free these hopeless sufferers from chains, strait jackets, rocking chairs, and cells, not to say the occasional brutality of their keepers has been well told. Staggering problems remain however. Despite the widespread provision for voluntary admission and the growing emphasis on prompt diagnosis and intensive treatment, far too many people come to the state hospitals only in advanced stages of mental breakdown when rehabilitation has become nearly hopeless. Every effort at accelerated and intensive treatment has been embarrassed by the very short supply of qualified psychiatrists and by the inability or unwillingness of the states to offer sufficiently attractive financial rewards. A growing number of senile persons (accompanying the lengthening life span of our people) for whose illness there is little hope, is filling the beds of the state institutions. Enormous obstacles remain to recruiting and maintaining an adequate staff of nurses and attendants. There is still much to be learned about the types, causes, and pathologies of mental diseases. The modern state efforts, therefore, are directed to: (1) formation of community clinics and local hospital

programs aimed at early diagnosis and prompt treatment; (2) encouragement of specialized facilities for the senile, the emotionally disturbed child, the violent, and other categories; (3) development of more widespread public understanding of the nature and symptoms of mental breakdown; and (4) in collaboration with the national government, stimulation of research. Of course, many states have a long way to go to bring their institutions up to the level of those in the more progressive states.

Mental deficiency

The institutional care offered by the states also includes facilities for those who are born hopelessly, and, in the state of present knowledge, incurably defective. About 126 thousand mentally retarded children are born every year. Modern practice is to encourage the early and lifelong institutionalization of those who are hopelessly defective rather than to leave them amidst family and community. The result of this and of the higher birth rate has been to throw an increasing load on the already hard-pressed facilities in most states. Also, the effectiveness of the antibiotics in curing germ diseases has kept these unfortunates alive longer. Most state institutions for the mentally defective or retarded provide training in simple laboring skills for those able to profit by it and are likely thus to send some into gainful employment.

The care of the aged

The rapid rise in the number of persons over 65 in our society has had far-reaching implications. Not the least of these is the increasing numbers of persons suffering from the degenerative ills of age and for whom public assistance or old-age insurance payments are scarcely adequate to pay for protracted medical care. In most states, old age assistance payments have continued to rise to help cover these costs and Congress has had to increase sharply the medical benefit payments under the old-age and survivors insurance programs. Many states also are introducing licensing, regulation, and inspection for the growing number of private nursing homes catering to these aging citizens. Colorado is experimenting in state-provided homes for the aged. Connecticut, New Jersey, New York, Massachusetts, and Minnesota are encouraging local construction of low rent housing projects designed particularly for the aged. A White House Conference on Aging held in 1961 sponsored by Congress encouraged the states to reconsider their programs to give priority to constructing special geriatric institutions, to encourage more community housing projects, to seek wider employment opportunities, to improve home-nursing services and, in other ways, to bring the best knowledge and experience to the aid of those in the sunset of life.

Health administration

The health department through which most of these programs are carried on is, in most states, headed by a director or health officer appointed by the governor. Usually a lay board of health is associated with the director for policy-making and in a dozen states this board appoints the health officer. In most states, these departments are woefully understaffed due, in part, to the acute shortage of qualified doctors, nurses, and technicians available for public employment. It is not uncommon for states to separate the administration of institutions, such as those for the mentally ill, from the educational and regulatory health functions and to provide a separate agency, board, or

department for institutional management. Typically, state health programs are largely achieved through local health offices and departments, especially in the cities, and the state staff provides technical aid and assistance. In addition to the more costly programs already described, state health services commonly include: (1) collection, analysis, and publication of vital statistics; (2) regulation and testing of public and private water supplies and administration of controls over pollution and sewage disposal; (3) inspection of food handling and food processing; (4) development and promulgation of regulations aimed at improving industrial hygiene and at alleviating disability arising from poisonous, noxious, or disease-causing industrial processes; (5) promoting better maternal and infant hygiene; (6) administration of national and state grants for hospital construction; (7) provision of laboratory diagnostic services to physicians and hospitals not serviced by local facilities; and (8) in a few states, development of controls over air pollution.

Public assistance

Although illness or disability may be a big factor in producing poverty, improvements in the nation's health have not eliminated, as yet at least, the need for elaborate programs for the care of the needy. We have noted that beginning in 1935 the national government has played a major role in financing public assistance and that state responsibility has thus been greatly diminished from the days of the poorhouse and the soup kitchen. Nevertheless the principal burden of administration and a substantial part of the financing still falls upon the states and their local units. In general the determination of who is to receive aid and, within broad limits, the amount of aid each is to receive is determined by local welfare agencies through professionally trained social workers. The state welfare departments keep the books, prescribe standards, coordinate local efforts, and assist local units that cannot carry their part of the financing. Everywhere, under the present national-state-local arrangements, the states and the local units are jointly or separately wholly responsible for the relief of all those who cannot qualify for categorical assistance or whose payments under the national programs are inadequate to the exigencies of their situations. This "general relief" responsibility embraced in 1962, more than 400,000 persons.

"Indoor relief"

Despite the heavy emphasis in modern public assistance on cash grants to individuals, there remains a large residue of "indoor" or institutional care provided, mainly by counties, to the unfortunate. County poorhouses, homes for the aged, and hospitals for the infirm continue to serve those who are unable to look after themselves in the community. Many states, in fact, are encouraging by aids or grants the expansion of county or city institutional facilities especially for the aged who require nursing care.

The care of offenders

It is not uncommon for states to include among the responsibilities of departments of public welfare, the incarceration and rehabilitation of offenders against the criminal laws of society. Some states, of course, organize this function separately in a department of correction. Modern penology is based on the idea that criminals are largely so because they are sick or poor or underprivileged and that correctional programs should place greater stress on

treatment, education, and rehabilitation than upon discipline and isolation. For this reason many of the procedures and policies suited to care of the mentally ill, relief of the poverty stricken, and education of the neglected are, with appropriate modifications, the basis of correctional programs and are administered by agencies with these other responsibilities.

Developing role of the state

The role of the state in correctional administration has been a slowly developing one. Counties and cities had in the beginning the major responsibility for keeping in their jails or lockups those convicted of criminal offenses. Early in the nineteenth century, movements for prison reform swept through much of Europe, the British Isles, and the United States. The reformers demanded, among other things, that hardened or habitual offenders and those convicted of grave offenses be removed from local facilities where, mixed with those awaiting trial, witnesses, and minor offenders of all ages, they tended to spread their malevolent influence and to require costly security measures not suited or needed by the other occupants. States began to build penitentiaries where those guilty of felonies—as distinguished from misdemeanors—would be guarded and cared for at state expense. Later as studies revealed the desirability of further classification of offenders, states built and operated separate institutions for female offenders, for juveniles, and for those not really requiring maximum security incarceration. By the end of the century most of the states operated several correctional institutions. In many cases each was directed by a warden and a separate board of trustees.

State programs in this century

In this century, dissatisfaction with the results of penitentiary administration arose from: (1) high rates of recidivism; (2) high costs of construction and management of maximum security programs; (3) continued high incidence of crime; and (4) the belief that, in some way as yet scarcely tried, a large number of criminals could be made socially useful citizens. Further classification of offenders was proposed and the supervision of a large portion of the prison population in medium and minimum security camps, farms, and training schools was widely adopted. Parole was introduced as a method for supervising the return of the offender to society, cushioning the shock of freedom, and restoring to useful labor those who should no longer be locked up. Under the same kind of extramural supervision by welfare agents, systems of probation were developed for those who might be harmed rather than helped by incarceration, provided, of course, the dangers to society from their freedom were minimal. Within the institutions greater and greater stress has been placed on vocational training, regular education for those who had not received much schooling on the outside, and physical and psychological therapy based on prompt and extensive physical and mental examinations. Working more and more with the courts, state correctional agents have sought more flexible sentencing—relating the sentence to the needs of the criminal rather than to the nature of the crime—more supervision before and after and even in lieu of incarceration.

No one is yet entirely satisfied with results. The states vary widely in the degree to which they have accepted and put into practice the theories of

modern penologists. Although most of the newer programs such as probation and parole are considerably cheaper per offender than immuration in a maximum security penitentiary, the penitentiaries are still used and appropriations for correctional programs are everywhere rising. There are still not enough specialized minimum security installations in most states according to the experts and the case loads of parole and probation agents are usually excessive. Juvenile and sex offenders continue to present troubling problems. Putting prisoners at useful labor, especially, manufacturing, has everywhere attracted the opposition of organized labor. Few states are able or willing to afford the kind of medical and psychiatric attention for prisoners that some experts demand. The century-long debate over the value of capital punishment continues almost unabated especially in the 42 states that have not abolished it. In 1962, there were more than 190,000 prisoners in state institutions.

HIGHWAY CONSTRUCTION AND MAINTENANCE

States as builders

Every state must, of course, provide itself with public buildings, a capitol, a state office building, university and other educational structures, hospitals, asylums, and what not. All have built airports; a few have constructed harbor works (as at San Francisco, New Orleans, and Mobile); and New York built, owned, and operated the Erie Canal. Dams and reservoirs have been constructed for flood control; and parks and forest preserves have been laid out and provided with suitable buildings and other facilities. By all odds the most important public works with which any state has to do, however, are highways. These are increasingly the life blood of the state economy, bringing food and fibers from farm to market and supporting village industry and merchandising everywhere. There is no more persistent drive for larger and larger state expenditures in any field of state service than that for wider, thicker, smoother highways.

Highways become a state concern

The record of highway construction, financing, and administration in this country is a story of progressive shifting of activities from smaller areas to larger ones, until finally the states came to occupy a predominant role. Originally, roads were built and repaired wholly by towns, townships, villages, and cities. With the advent of the automobile and the resultant demand for paved roads linking up various mercantile and manufacturing centers, the county became involved. Finally, in the early nineties, Massachusetts and New Jersey led the way to substantial management by the state. Legislatures began giving financial aid to local highway authorities to be expended under state supervision and with the advice and assistance of state officials. Then they started taking over main roads, often to the great advantage of counties financially unable to provide the thoroughfares everywhere demanded by the modern motorist. With the advent of national subsidy in 1916, state authority was increased and systems of state trunk highways were established linked up by national influence into a system of interregional roads for the whole nation.

Typically, however, no unit ever completely abandoned its interest in or control over some portion of the highways. Today we find township roads administered, frequently with state aid, by townships, village and city streets maintained by those units, county trunks, and state highways.

The highway situation today

County and township roads still comprise some 75 per cent (2.3 million miles) of the country's total highway mileage. The city motorist usually tries to avoid them, because only about two-thirds of this mileage has hard surfacing and most of this is gravel or crushed stone. Altogether they carry less than 15 per cent of the nation's total traffic. As farm-to-market roads and as feeders to the state system, they, however, are indispensable. Farm-to-market roads are controlled in some states mainly by towns or townships, in others by counties; while roads of a little more importance, often described as "secondary" and linking up county seats and other such centers, usually are chiefly county-controlled. Heavily traveled main thoroughfares are everywhere parts of the state system and in many states most of the feeder roads are also. Thus: (1) Four states—Delaware, Virginia, West Virginia, and North Carolina—have centralized the management and financing of *all* roads in the state government; (2) four New England states divide responsibility for farm-to-market and secondary roads between the state and the towns; (3) 27 states divide it between the state and the counties; and (4) the remaining states apportion it three ways: among state, counties, and towns or townships. In all cases in which local units function, funds come in considerable measure as aids from the state treasury. "Primary" roads, comprising the *state* system, constitute only a quarter of total mileage (600 thousand miles), but link up the principal cities, usually are well paved, and carry 85 per cent of the traffic. All primary and some secondary roads are heavily subsidized by the national government and are built and maintained in close cooperation with the supervising Public Roads Administration in the Department of Commerce at Washington. Particularly significant is a trunk-line network of some 40,000 miles constituting a National Interstate Highway System planned during recent war and postwar years by state highway departments and the Public Roads Administration, and linking up 42 of the 50 state capitals and indeed all but a few of the country's cities of over 50,000 population. On this system more than 70 per cent of the current aids paid to states is being spent.

Administrative arrangements

All states administer their highway programs through either a separate highway department or a highway division of a public works department, usually the former (by national requirement they must have one or the other if they are to qualify for grants-in-aid). In more than one-third of the number, the department head is a full-time, salaried highway commissioner or a director of highways; in the remainder, a part-time highway commission of from three to seven members, functions through a director. All are commonly appointed by the governor, although in some instances they are elected. In counties, highway functions sometimes are kept immediately in the hands of the county board or one of its committees but often are entrusted to an appointive or elective highway commissioner or supervisor. In New York, New

Jersey, and Pennsylvania, and in 22 other states one or more state roads have been placed in the charge of a turnpike or toll road authority. The toll road authority is a popular device for constructing very expensive, multi-laned, grade-separated, limited-access superhighways for through traffic and levying a special charge on that traffic for these unusual facilities. In this way, the state highway income is reserved for providing less adequate but more widely distributed highway service to the state motorists. The standards of construction on the new national interstate system are so closely parallel to those of the toll roads that it is doubtful if new roads in any numbers will hereafter be built by this procedure.

If the simple and rather straightforward description of state highway developments set forth in the previous paragraphs suggests that all is going smoothly in highway matters, such is far from the case. We now have almost 75 million motor vehicles registered in the United States traveling more than 750 million miles per year. In addition to the increasing rate of obsolescence of our highways which the rapid growth of vehicular traffic and the vastly increased driving speeds have brought about, there are 38,000 persons killed annually in auto accidents and perhaps 1,000,000 seriously injured. By 1955, in fact the number of persons killed on our highways in this century surpassed the numbers killed in all of the wars thus far fought by our soldiers. This terrible and continuing toll of life and limb has meant increased costs of insurance and increased costs of safety enforcement programs. A growing portion of our uniformed police forces, state, county, and municipal is assigned to regulating traffic and is not available for protection of persons and property against criminals. Then too there is the question of who should pay for the highways and streets and the relative contribution of each: the abutting property owner, the municipal resident, the passenger car operator, the trucker, the farmer, the merchant. In general, the abutting property owner in municipalities pays on the front-foot basis for original paving and for curbs and gutters. The property tax payer pays for much of the cost of maintenance and reconstruction of most city streets, and some town roads. The state and national treasuries pay from gas tax or other taxes on autos or drivers for through streets connecting state trunks, state and many county trunks. Many experts feel that the trucking industry pays less than its share of the cost of the highways since trucks contribute most to serious maintenance and reconstruction costs. Urban residents feel that they get too small a share of highway user taxes in view of the fact that such a large part of the vehicular mileage is on city streets. The farmers feel that urban interests are the major beneficiaries of the state and national road systems. The railroad owners and workers, of course, argue that the highway program is subsidizing their demise. Finally, there are the troublesome questions of highway planning: which roads should be surfaced and when; what kinds of surfacing should be used; what controls should be exercised over the development of signs, taverns, and other commercial enterprises along the roads; what course should main highways follow —through towns or around them?

PROMOTION AND REGULATION OF PRIMARY ECONOMIC INTERESTS

1. BUSINESS

Basis of state control

By virtue of its police power, a state is entitled to regulate all business activities within its borders except those instituted by the national government or those involving transactions in foreign or interstate commerce. A good while ago, the courts developed a category of businesses, including public utilities, banks, and insurance companies, regarded as of particular concern to the public, and hence specially "affected with a public interest." These have been held to require more intensive regulation than business in general. Few forms of business, however, are not now of concern to the public in one way or another. While the "public interest" concept has by no means been discarded, the present tendency is to look upon all businesses as subject to whatever regulation may be required for protecting public health, safety, morals, and welfare—so long as there is no deprivation of life, liberty, or property without due process of law, or denial of equal protection of the laws.

Corporations: 1. Status

Many people engage in business (usually on a modest scale) requiring no government authorization. Most medium-sized and larger businesses, however, are carried on by partnerships or corporations fully subject to state control. The formation and dissolution of partnerships and the rights and liabilities of partners are amply covered by state law. A corporation cannot operate, or even exist, without a charter issued by a government. Certain corporations, for example, national banks, are chartered by Congress but the overwhelming majority of business corporations are chartered by the states. Originally, corporations were chartered individually by special legislative act. From this, however, arose so much favoritism and corruption that even before the Civil War most states substituted a general corporation statute under which any responsible group of persons desiring to incorporate may do so by meeting prescribed conditions and applying to the proper administrative authority, usually the secretary of state. Today nearly all state constitutions either forbid incorporation by special act or severely restrict it. A corporation chartered in one state may do business in other states, but only as a "foreign corporation" subject not only to the same regulations as "home" corporations, but also to any special requirements that may be imposed upon it or its class.

2. Regulation

With charters easy to obtain and operation under them commonly advantageous, the corporate method of doing business has become general. The most comprehensive regulation of the business community as a whole arises in most states, thus, in connection with the initial granting of corporate charters. Certain types of business operations, however, have been selected for special attention by state legislatures. Among these are financial institutions (banks, savings and loan companies, insurance companies), utilities, stock brokers, milk distributors, and manufacturers. Certain practices of the busi-

ness community have also been subjected to regulation, for example, monopolistic price fixing.

Anti-monopoly regulations

Early in the history of corporate enterprise, concern was stirred by the rise of business combinations prone to squeeze or drive out competitors, control prices, and indulge in other monopolistic practices. Much legislation aimed at curbing "trusts" was enacted. With business, however, taking on an increasingly interstate aspect, the problem outgrew the capacities of the states; and in 1890 the Sherman Antitrust Act started a long and even yet by no means wholly effective program of national action. Virtually all the states, however, still have copious antitrust laws (applicable, of course, only to strictly intrastate situations and actions) and codes of fair business practices similar, within their spheres, to the national laws enforced by the Federal Trade Commission. As on the national level, enforcement is, typically, left to the attorney general who has neither the means nor time to do much. A few states have launched successful suits against undertaking combines, gasoline dealers, milk distributors and other local enterprises. On the whole, the state record in this field is, if anything, less successful than that of the national government. Furthermore, in recent years several states have partially reversed the traditional concepts of competitive enterprise and have authorized price-fixing agreements of certain types between manufacturers and dealers. These acts have been underwritten by a national law of 1937 (amended in 1952) authorizing such price-agreements wherever state laws support them. All but a handful of states have enacted these "Fair Trade" Acts, but the highest state courts in 21 states have declared all or part of such laws unconstitutional. The "fair trade" program is, therefore, in decline.

Regulation of financial institutions

Two commercial banking systems exist side by side in the United States —national and state. National banks, of course, are chartered and regulated by the national government, but state banks by the several states. State control, within its field, extends to bank organization and management, capital stock, liabilities of stockholders and directors, assets and investments, loans, reserves, other forms of protection for depositors and customers, and arrangements for periodic inspection of records and accounts by representatives of the state banking department or other designated agency. Trust companies, building and loan associations, and similar financial institutions are regulated in the same general manner. Any bank or other such concern becoming insolvent or otherwise embarrassed may be taken over by state authorities and operated until it can either be put on its feet or liquidated. Most state banks are, however, members of the federal reserve system and this brings them under the scrutiny of the Federal Reserve Board and all savings institutions are members of and inspected by the Federal Deposit Insurance Corporation. A large amount of needless duplication of examining of banks and savings institutions is avoided in many states only by administrative arrangements among the national and state examiners. Small loan companies and pawnbrokers continue to be regulated, more or less effectively, by the states alone.

Every state also regulates all forms of insurance, with a view to protecting the public against exorbitant rates, requiring companies to honor valid claims for insured losses, and, in the case of life insurance, maintaining the security of invested savings. General laws prescribe the conditions which a corporation must meet in order to engage in insurance business in the state. Usually each company and all of its agents must be licensed by an insurance department or other authority; detailed regulations cover forms of policies, reasonableness of rates, types of securities in which funds may be invested, and volume of reserves that must be held for covering policies as they become payable; and full provision always is made for periodic reports and for official inspections as in the case of banks. As pointed out earlier, the Supreme Court, in 1944, reversed an earlier ruling by holding that insurance is interstate commerce. While this opened a way for national regulation under the commerce clause, Congress has thus far been content to leave the matter to the states. Many states in late years have been strengthening their regulatory statutes in the hope of staving off such intervention. A few states, such as Wisconsin, have actually entered the business of providing some types of insurance in competition with private companies. In recent years also a few states, led by New York, have expanded the scope of their state insurance agencies to embrace inspection of labor-union welfare and pension funds.

Regulation of public utilities

The most stringent, steady, and effective state regulation is reserved for public utilities—businesses which although as a rule owned and operated by private persons and concerns, are preeminently "affected with a public interest," enjoy special privileges (such as the use of streets and highways and the right of eminent domain), and either are or tend to become "natural monopolies." Included are all public transportation facilities such as railroads, street railways, air transport, bus and cab lines, and all enterprises providing electric light and power, water, gas, and telephone and telegraph services. All of these are subject to state (and in varying degrees also local) control, except that the interstate aspects fall within the jurisdiction of the Interstate Commerce Commission, the Federal Communications Commission, and the Federal Power Commission. State regulation, under a multitude of laws, and in every state except Delaware through a public utilities commission (or its equivalent), touches such matters as permits and franchises, financial structures, securities issues, accounting and reporting, quality of services, rates, and general safety and convenience for the public. Since 1900, too, the basis of action has largely shifted from municipal franchise regulation under the contract power to direct state regulation under the police power.

Promotion of business

All of the states' interests in the business community are not repressive and regulatory. Many states spend generously to promote industrial development within their boundaries. Departments of Commerce, Bureaus of Industrial Development, Planning and Development Commissions have been springing up all over the nation in the past two decades and each of them is dedicated to attracting more industry and to facilitating expansion of the

industry already established. One business, apart from those identified with agriculture, has been selected for special support through state advertising in many states, that one is the resort business.

2. LABOR

For many years regulatory legislation to protect factory workers from the abuses of industrialization was left almost entirely to the states. But as the national economy continued expanding, with more and more employment connected in some way with interstate and foreign commerce, inadequacies of state control stimulated national activity. As shown in an earlier chapter, labor legislation and the enforcement of labor regulations have developed, especially since 1933, into one of the principal functional sectors of our national government. Even yet, nevertheless, millions of workers produce only for intrastate commerce, and accordingly, as workers, are subject only, or at least primarily, to state authority. Half a dozen ways in which states meet their obligations may be mentioned.

1. Health and safety

Springing in part from pressures exerted by organized labor, in part from voluntary legislative recognition of the obligation to promote general well-being, laws protecting health and safety of workers—in some instances dating back 60 or 70 years—have multiplied on state statute books. Aimed especially at health are, for example, laws restricting the hours of continuous work for women in industries, stores, and hotels, forbidding employment of women in mines, regulating the labor of children not covered by the national Fair Labor Standards Act, requiring proper heating, lighting, and ventilation and the removal of dust and noxious fumes in factories, and fixing standards of sanitation. Directed at safety are measures designed to avert or mitigate the effects of industrial accidents and diseases by requiring safeguards for dangerous machinery, exits, fire escapes, equipment of street cars and local trains with safety appliances, and by providing for the safety of laborers on buildings, bridges, and other public works, together with periodic inspection of factories, workshops, and mines. Laws in this comprehensive category often are necessarily rather broad and general, with appropriate administrative authorities, usually commissioners, left to prescribe more detailed rules and regulations. Undoubtedly the frequency and severity of industrial accidents have been reduced by these state efforts.

2. Workmen's compensation

Closely related to safety and health regulations are the elaborate systems of workmen's compensation insurance established by the states. Occupational accidents are, by these programs now treated as a proper charge upon industry. Some of the systems are compulsory and some optional; some apply to all accidents of the kind and others only to those in the more hazardous occupations. Most grant compensation for some or all occupational diseases. Employers in every state are required to procure insurance either from the state or from private firms providing coverage for their employees in case of on-the-job accidents. State agencies of various types closely supervise the

program to assure prompt and adequate recompense to the injured worker. Coverage, however, is almost everywhere confined to manufacturing. Construction, transportation and agricultural workers are not protected. Benefit schedules also have hardly kept pace with postwar inflation. With the related problem of sickness among wage-earners, little has been done, although New York is pioneering in the development of a state program of insurance for nonoccupational illness. Since Congress passed the Vocational Rehabilitation Act of 1920, state and national governments have cooperated in restoring to self-supporting capacity persons who have been disabled in industry, or in any legitimate occupation, or by disease; and thousands have been refitted to earn a livelihood.

3. Labor standards and relations

Much of the early effort of several progressive states in establishing by law standards of employment, including maximum hours, minimum wages, and special protection and prohibitions for working women and children, has now been overshadowed by the national effort in these fields. The national laws, however, still leave a numerous working population over whom the states may and do claim jurisdiction. Most states, therefore, have some kind of regulating agency in these fields. The touchy and controversial field of labor-management relations is also characterized by state activity. Most of the states which have enacted labor relations laws have done so in the past 15 years and most of their laws follow rather closely the National Labor Management (Taft-Hartley) Act of 1947 rather than the earlier act of 1935. They impose restrictions on unions as well as on employers. A growing stream of state legislation in the past decade has been directed against the practices of labor unions and their leaders. Much of it is aimed at the "closed" or "union" shops, boycotting, jurisdictional disputes, and work stoppages in public utilities. So-called "right to work" laws aimed at the closed or union shop have been passed by several states in recent years. The jurisdiction of state labor-management agencies is not yet completely settled but on any definition of national power, some workers and employers are under control of the state. The Eisenhower administration attempted with some success to narrow the national activities in the field and to allow state agencies to operate in border-line cases.

4. Unemployment compensation

Little more need to be said here of the elaborate state programs of public employment service and unemployment compensation which have been established under national supervision in the past two decades.

5. Fair employment practices

President Truman's efforts to secure a national fair-employment-practices law were successfully resisted by southern and other elements in the Congress. A number of state legislatures, however, have declared discrimination against Negroes and other minority groups in matters of employment to be contrary to public policy. A few states have also provided educational agencies and conciliatory procedures to achieve this policy, for example, Colorado, Indiana, Kansas, and Wisconsin. Since World War II four (those of New York and New Jersey in 1945, Massachusetts in 1946, and Connecticut in 1947) have gone even farther by enacting penal statutes forbidding any employer of more

than six person (five in Connecticut) to refuse to hire any applicant, or to discharge or discriminate against any employee, because of race, creed, color, or national origin, and also forbidding labor unions to exclude, expel, or discriminate against any person for such reasons. New Mexico, Oregon, Rhode Island, and Washington more recently have enacted compulsory laws of this type. In the first two and one-half years of New York's experience, the fair-employment-practices commission set up for purposes of enforcement was able to dispose of over 1000 complaints received without resorting in a single instance to criminal proceedings, or even to formal hearings.

3. AGRICULTURE AND CONSERVATION

Agriculture and natural resources are important in the economy of every state and, in most instances, basic. Furthermore, the rural members dominate a large number of state legislatures. Every state, therefore, has an active and well-supported program of benevolent aid to farmers and farming. Ample constitutional authority is supplied both by the police power and by the power to levy taxes and spend money for general-welfare purposes.

1. Research and education

Every state maintains an agricultural college and in connection therewith an agricultural experiment station and an agricultural extension service. In these institutions scientific studies are carried on relating to soils and fertilizers, land use, the breeding and care of plants and live stock, agricultural marketing, and indeed every resource, operation, and activity of concern to the farmer. Bracketed with research also is education in the form not only of agricultural training at the college level in classrooms and laboratories, but wide circulation of bulletins and reports, extension courses bringing new ideas to people on the farm, and counseling and demonstration work carried on by county agricultural agents and (for the benefit of the farmer's wife) home demonstration agents as well. All of this, as we have observed, is supported in part by national subsidy.

2. Suppression of diseases and pests

Aside from bad weather and adverse marketing conditions, the principal agricultural hazard is a legion of plant and animal diseases and pests—boll-weevil, corn borer, Mexican fruit fly, Japanese beetle, and other insects in the case of plants; hoof-and-mouth disease, hog cholera, brucellosis, bovine tuberculosis, and the like, in animals. In every state, means of eradicating or curbing the ravages of these scourges are objects of study; and inspections, quarantines, and other controls are provided both through legislation and by administrative action. Weed eradication receives attention also; and in sparsely-settled western areas, protection of flocks and herds against predatory animals.

3. Marketing

Because so largely interstate, agricultural marketing falls mainly within national jurisdiction. Room remains, however, for state (1) regulation of the grading, packaging, and labeling of products, (2) control of marketing through commission merchants, (3) encouragement of farm cooperatives (for buying as well as selling and shipping), (4) assistance to state and local agricultural

fairs, and (5) country-wide advertising of the state's products—the citrus fruits of Florida, the dairy products of Wisconsin, the wines of California, Washington apples, and Idaho potatoes.

4. Conservation

Closely related to promotion of agriculture is the mapping, development, and conservation of natural resources. On the legal theory that wildlife is owned by the state and held in trust for the people, virtually every state licenses and otherwise controls hunting and fishing, and also carries on propagation activities at game farms and fish hatcheries. Forest lands are protected against fire; private owners are encouraged and aided in forest development, in some states by "forest crop laws" deferring taxation of growing timber; three-fourths of the states maintain state forests; and others (notably Wisconsin) develop and protect county or other local forests for both conservational and recreational purposes. For 50 years, states having important oil and gas resources have combatted waste, first with regulations designed to prevent unchecked flow and to control the spacing of wells. More recently also, and chiefly, in the case of oil, with production quotas fixed and enforced by some administrative agency and operated in a large group of states in accordance with a significant interstate compact on the subject. Of particularly wide concern, too, is soil conservation, carried on in conjuntion with the national government in soil conservation districts, established in the several states under supervision in each case of a state soil conservation committee and operated by district boards of supervisors or directors in part locally chosen.

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Financing State Government

ALL OF THE SERVICES, regulatory programs, and administrative organizations described in the last chapter cost money. Each passing year, in fact, they seem to cost more than they did the year before. Rare indeed is the state legislature which is not bedeviled every session by financial problems of the most difficult kind. With the public demanding more and more services, the growing resistance to tax increases, the heavy exactions of the national government on the one hand and the urgent pleas for aid from the local governments on the other, to maintain the solvency of state government requires the highest caliber of statesmanship. Given these exigencies of modern life, the miracle is that many states are as well off as they are. It is not at all surprising that some are in desperate straits.

Limitations on state independence

The states are not in as strong a position to cope with this situation as might be imagined. Constitutionally, it is true, the federal system permits them a great deal of leeway. Under their reserved powers, they can tax almost anything except national property and income from national securities, spend at least as freely as the national government, and borrow at will. Practically, however, there are limitations. From considerations of prudence, most states have tied their own hands with constitutional provisions severely restricting state borrowing, or even in some instances forbidding it altogether. Nearly everything of importance, except general property, which states undertake to tax—incomes, inheritances, gifts, motor fuel, liquor, tobacco, and what not—is already taxed heavily by the national government. At best the states can merely share in the over-all proceeds. Urgently needing more tax revenue, all

have watched the national government steadily moving in on them with tax programs and rates siphoning off most of what the people believe they can afford to pay for government's support. In the foreseeable future no more favorable situation can be envisaged. National activities and commitments are not likely to diminish; national pressures for tax money will hardly abate. In terms of expendable funds, the balance may be, and to considerable extent already is, redressed by multiplied and augmented national subsidies. But grants-in-aid are supported by tax money which the states otherwise might raise for themselves; they certainly do not contribute to state and local financial independence. More than one leading student of intergovernmental relations is urging that current trends be reversed by giving state and local governments exclusive access to more tax sources, for example, motor fuels, and in this way discouraging the habit of depending on the national treasury.

Growth and pattern of state expenditures

The table indicates better than words what is happening to the costs of state government in this century. To be sure, post-World War II inflation caused a sharp upturn in expenditures without proportionate increases in the services rendered. It should be observed also that grants from the national treasury

GROWTH OF STATE EXPENDITURES
Selected Years, 1902-1960

Function	Total Expenditure (in millions)				
	1902	1932	1942	1952	1960 *
Payment to local governments	$ 52	$ 801	$1,780	$ 5,044	$ 7,521
Education	17	278	391	1,494	3,557
Highways	4	843	790	2,556	6,070
Welfare	10	74	523	1,410	3,704
Health and hospitals	32	215	299	1,132	2,072
Police	—	15	40	106	251
Natural resources	9	119	159	539	862
General government	23	114	164	361	663
Interest on debt	10	114	122	144	536
Veterans' services	—	—	1	142	112
Employment security	—	—	59	177	313
Correction	14	87	80	223	433
Other	15	106	141	369	1,133
Liquor stores	2	—	288	723	907
Insurance trust (retirement and unemployment compensation)	—	63	505	1,413	3,461
Total	$188	$2,829	$5,342	$15,833	$31,595

SOURCE: Bureau of the Census, *Historical Statistics on State and Local Government Finances*, 1902-1953 (Washington, D.C., 1955); and Bureau of the Census, *Summary of State Government Finances in 1960* (Washington, D.C., 1961).

* Includes Hawaii and Alaska.

make up an increasing part of the income supporting the outlays listed. Many of the payments to local units, for example, are simply passed through the state treasuries on their way from Washington to city hall and county courthouse.

METHODS OF APPROPRIATION—BUDGET SYSTEMS

Earlier appropriation methods

One factor that has added immeasurably to the burden of state legislatures in dealing with their fiscal problems has been the pitiful inadequacies of state budget and appropriation methods. Prior to about 1913, it was impossible in virtually every state either to make comprehensive plans for the distribution of public revenues among the state's direct activities and state-aided local enterprises or to control, in any strict and effective way, the use of state money or property. With demands often pouring in from 100 or more state agencies and institutions, and with no method of balancing claims upon the treasury against one another, and of distributing appropriations on the basis of a full consideration of the state's requirements, unseemly scrambles for funds invariably took place whenever the legislature came into session. The departmental and institutional estimates were either merely "compiled" by some officer, such as the treasurer or auditor, and transmitted by him to the legislature, or presented directly and independently to the appropriations committees by heads of departments and institutions themselves. No administrative officer acquainted with the entire business of the state reviewed such estimates, compared them, cut them down to actual necessities, measured them against estimated revenues, and laid before the legislature a carefully prepared financial program. Furthermore, every member of the legislature was at liberty to introduce as many bills as he chose carrying charges upon the treasury. When the legislature adjourned, no one pretended to know, even approximately, how much money had been appropriated.

Meanwhile, without any knowledge of what the total of authorized expenditures for the next fiscal period would be when the governor had finished vetoing bills and items, the legislature would pass revenue bills prepared by separate committees with little or no relation to the work of the committees in charge of appropriations. Neither the governor nor the legislature could be held to a proper degree of accountability by the citizens of the state who had to foot the bills.

Adoption of budget systems

Relief from these conditions became imperative as the cost of government mounted. It has been found, in greater or lesser degree, in plans of budgetary procedure introduced by statute, or in a few instances by constitutional amendment, in all of the states after Wisconsin and California set the example in 1911—ten years before a budget system was adopted for the national government.

Various state budget systems

The states have adopted a wide variety of budget systems differing in detail and in fundamentals. Most important among points of variation is the budget-making agency—in other words, the location of responsibility for

formulating the budget or program of expenditures in relation to anticipated revenues. On this basis, the systems fall into three fairly distinct classes. (1) In one state, Arkansas, the budget is "legislative," prepared and submitted to the legislature by the Legislative Council. In recent years, however, the Council has been assisted by a budget division in a recently created Department of Finance and Administration. California and Texas have established legislative budget agencies in recent years which serve the legislature only. Formally, however, the budget in both states is prepared by the governor. (2) Five states have budgetary boards or commissions, consisting usually of the governor and one or two other executive officers and a few members of the legislature, or made up solely of the principal executive officers. (3) The remaining states have what is called the executive type of budget. In some of these, the governor is made directly responsible for formulating the program of state expenditures; in the others, budget-making is in the hands of a comptroller, a budget director, a budget bureau, or some other official or agency whose work is performed, at least nominally, under the governor's supervision. Concentrating responsibility in the executive officer best situated to be informed on the financial needs of all branches of the state government, the executive type is generally regarded as best.

Some states have budget systems which concentrate power in the executive to a greater degree even than that of the national government. In New York, Maryland, West Virginia, and Nevada, for example, the legislature may reduce or strike out any item in the budget, but may not (with slight exceptions) increase any amounts requested or insert new items. Elsewhere, however, amounts may be increased and new items inserted.

Essentials of a sound budget system

Some of the requisites of a sound budget system for a state—many of them still lacking in some states are: (1) Each department, office, or institution should be required to submit to a central budget-making agency, two or three months before the legislature meets, an estimate of its financial needs for the ensuing fiscal period, upon uniform sheets having items arranged in accordance with some uniform system of classification; (2) the central budget-making agency under the supervision of the governor should then make a careful review, revision, and compilation of the estimates submitted; and to aid in this work, it should be given a staff to conduct investigations and make reports; (3) at some time within the first few days of the legislative session, this budget-making agency should submit a complete budget, that is, a comprehensive program of recommended expenditures and estimated revenues, and accompanied by a balance sheet, a debt statement, and a statement of the financial condition of the state for each year covered by the budget; (4) all appropriations should be consolidated in a single appropriation bill; (5) as far as possible the budget should state the services or programs to be financed by the proposed expenditures; (6) the legislative committees should forthwith proceed to a consideration of the budget proposals, and should report their appropriation bills in ample time to allow full debate, criticism, and amendment, so that the bills may be passed well before the close of the

session; (7) no supplementary or special appropriation measures should be enacted until after the final passage of the budget bills. Even if made effective on all of these lines, a state budget system would not serve all of its purposes unless accompanied by such ancillary reforms as (1) concentration of the handling of all appropriation measures in a joint committee of the two houses; and (2) a grant to the governor (where he does not already have it) of the power to veto items.

SOURCES OF STATE REVENUE

Over the years there has been a decided change in the tax and revenue program of the states. We have already noted how national grants-in-aid have multiplied in the twentieth century to the point where state expenditure programs are heavily dependent upon the national treasury. These subsidies today constitute the largest single source of state income. This fact alone is a compelling cause of the continuance of the grant-in-aid program at a high level. A second striking change in the state revenue picture has been the gradual abandonment by the states of the property tax as a source of income. As recently as 1902 the general property tax produced more than half of the tax revenues of the states and throughout most of the nineteenth century it was almost the sole revenue source. Virtually all of the states have, however, in this century relinquished this revenue source to their local units. It now yields less than 10 per cent of the states' total income. There has been an increase in this century also in the receipts from state-operated enterprises, the most important of these being: (1) the liquor stores operated by several states after repeal of the prohibition amendment; (2) the turnpike and toll road authorities; and (3) the sale of power in a few states. The automobile and the elaborate highway programs accompanying its introduction have drastically altered state tax practice. Since 1920, the gasoline tax and motor license fees have become one of the largest sources of state receipts. New Hampshire in 1963 inaugurated a new source of state income which may start a new trend in state financing: it established a state sweepstakes lottery with tickets sold through state liquor stores and at the two state-regulated racing tracks.

THE GENERAL PROPERTY TAX

Nature and basis

Although the property tax is no longer an important source of state income, nevertheless many states continue to concern themselves in its administration and to seek methods of overcoming its limitations. It remains, furthermore, the very heart of local government financing. Looking at the tax program of the United States as a whole it is one of the two or three most important supports of our governmental system.

In its broadest meaning, the general property tax is a tax on the estimated exchange value of property, levied at a common rate for all property in the same taxing area. It is thus universal and uniform; it is imposed on the prop-

COMPOSITE PATTERN OF STATE INCOME—1960
All States

Source	Amount in Millions
TAXES	
General sales	$ 4,302
Motor fuels	3,335
Liquor and beer	650
Tobacco	923
Other sales and gross receipts	1,300
Motor vehicle licenses	1,468
Liquor licenses	84
Corporation—miscellaneous licenses	944
Individual income	2,209
Corporate income	1,180
Property	607
Death and gift	420
Severance	420
Miscellaneous taxes	194
PAYMENTS FROM OTHER GOVERNMENTS	
National	6,382
Local	363
RECEIPTS FROM STATE SERVICES AND ENTERPRISES	2,583
PAYMENTS FOR INSURANCE AND TRUST FUNDS	
Employee retirement	1,558
Unemployment insurance	2,316
Workmen's compensation	363
Miscellaneous	109
BORROWING	2,312
	$35,149

SOURCE: Bureau of the Census, *Summary of State Government Finances in 1960* (Washington, D.C., 1961).

erty where it is located; and it is paid by the owner. Taking, of course, a multitude of forms, property nevertheless falls broadly into two categories: (1) real estate, consisting of land, buildings, and permanent fixtures, and (2) personal property—the one immovable, the other movable. Personal property, in turn, may be either tangible, for example, livestock, grain, merchandise, household furniture, machinery, and automobiles, or intangible, as stocks, bonds, promissory notes, mortgages, and bank deposits. Where the general property tax is really general, these distinctions are, at least in theory, of no great significance; all property of equal value is supposed to pay the same tax regardless of classification. In the majority of states, however, some categories of property are set apart for special (usually lower) rates of taxation, or indeed are exempted altogether; so that the term *general property tax* must often be taken in an approximate rather than a strictly literal sense.

The "tax calendar"

Although numerous, complicated, and varying somewhat from state to state, the stages or steps involved in administering the property tax—the "tax calendar" of which the experts speak—may be summarized as follows. (1) First comes the tax levy, the competent authority (usually the legislative body) of each unit of government, including the state itself where sharing in the proceeds, determines the amount of revenue that must be raised from this source and then imposes it as the year's tax burden, so to speak, on the property concerned. (2) The property is valued by local (county, township, or city) assessors in order to determine the valuation on which the owners' tax obligations shall be computed. Personal property is assessed annually, real estate also annually in about half of the states, but in other states at longer intervals ranging from two to four years; and all assessments are supposed to indicate value on a certain day. (3) Valuations determined by local assessors are far from uniform, and property-owners often raise objections. Hence a third step involves inspection of the assessments, with adjustment of inequalities and injustices, by a county, city, or township board of review.

(4) A fourth step is "central assessment or equalization." Along with the locality, the county, and in many instances the state, makes a property-tax levy. Each taxing jurisdiction might, of course, set up its own separate assessment machinery. But this would involve expensive duplication, and what happens is that each takes the locally-made assessments as a starting point and on the basis of them makes such equalizations and other adjustments as boards of equalization employed for the purpose may decide upon. Sometimes the work is performed on the state level by a board of equalization consisting of certain elective state officers serving ex officiis, but often it is in the hands of a specially appointed body known as the tax commission. This commission is likely to have the important functions of (*a*) issuing instructions to assessors and other tax officials regarding the proper performance of their duties, including methods of procedure, accounting, and recording, and (*b*) making the original assessments of certain kinds of property which are difficult to assess locally, especially railroads, telegraph and telephone systems, express and sleeping-car services, and other public utilities. Incidentally, it would, of course, be possible to let the state do *all* of the assessing; and this would make for considerably greater uniformity than even assiduous equalization authorities can hope to achieve. Local assessors, however, are supposed to have the advantage of familiarity with local property; and, although yielding grudgingly on many other forms of centralization, local jealousy of state authority has been at this point difficult to break down. (5) Once the results of assessment and equalization, the state over, are known, taxes can be apportioned and rates determined. In the city, township, or other local assessment district, the clerk or other proper official has only to figure out how many cents on the dollar, or dollars on the hundred, will be necessary to produce the revenue required locally. From the county will come similar information for purposes of county revenue, and finally also from the state for its purposes, except, of course, where the state no longer shares in the proceeds of the tax. Adding

to the local rate the rates certified to him by the overlying units, the local official arrives at the total tax rate; and tax bills are made out and sent to property-owners accordingly.

Completing the tax calendar are three further stages which for present purposes require only to be mentioned: (6) collection of the taxes as levied, commonly by a local collector or treasurer, who forwards the county and state shares to the proper officials; (7) efforts to collect taxes that become delinquent; and (8) appeals from dissatisfied taxpayers or tax districts, first to the state tax commission, and afterwards, if desired, to the courts.

Advantages of the tax

For 150 years, the general property tax has been a cardinal feature of the American fiscal system. Notwithstanding its many and serious faults, there are many points in its favor. Property receives protection from government, and may logically be asked to contribute to government's support. Lending itself particularly well to local use, the tax is in keeping with the persisting spirit of home rule. Its easy elasticity—the facility with which its yield can be moved up or down by simple manipulation of the tax rate—fits it to meet varying needs after other sources of income have been exhausted.

Disadvantages: 1. Concealment of personal property

Nevertheless, the tax has some serious defects. First may be mentioned the unfairness arising from frequent concealment of intangible personal property, resulting in complete escape from taxation. In early times, nearly all property was in the form of real estate or of tangibles such as livestock, furniture, merchandise, farm implements, and grain. Nearly everything could be located and its value determined by the tax assessor, and little, if any, taxable property failed to pay its just share. From this relatively simple situation, we have moved to one in which the value of stocks, bonds, mortgages, bank deposits, and other intangibles often exceeds that of real estate and tangibles. Furthermore, it has become virtually impossible for tax assessors actually to see and appraise all tangible personal property, to say nothing of intangibles. The common practice is to require taxpayers themselves to make out sworn statements of their personal property and simply hand them to the assessors —a method which amounts to self-assessment. Still further, while real estate and personal tangibles are usually immune from national taxation, intangibles (or at all events the income derived from them) are taxed so heavily from Washington that when national taxes and state taxes are added together, they amount to onerous exactions, at least in the eyes of many who pay them. Under these circumstances, vast amounts of property which the tax assessor has no chance to see are never reported to him—the portion actually reported depending almost entirely upon the personal honesty of the taxpayer in the given case. Responding to these and other difficulties, legislatures have exempted many kinds of personalty from taxation and have thus aggravated the inequities for those who still pay the tax.

2. Defective assessments

A second main defect of the general property tax arises from inequitable assessment of property actually reached. The reasons for such deficiency are numerous, but doubtless the chief one is that a substantial proportion of the thousands of assessors functioning particularly in the rural areas and small

towns throughout the country are part-time elective officials, with little training qualifying them to weigh the many factors entering into the determination of property values; "much of what they do is mere guesswork." Many of the full-time assessors of the counties of the South and Southwest are also elected. There are architects' tables, land-value maps, and other equipment which would be of assistance; but only rarely are they used. Directions from the state tax commission and readjustments made by equalization boards help considerably, but not enough to assure satisfactory results. In the outcome, what purports to be a uniform general property tax is in many states neither uniform nor general, and of course not equitable. Real property usually bears more than its fair share; and often there is glaring inequality in the valuations placed upon real estate located in different parts of the same state, and even within the same county. Personal property, on the one hand, either is shockingly undervalued or, because of being easily concealed, escapes taxation altogether.

Modes of improvement: 1. Classification for tax purposes

Problems connected with these and other defects of the property tax have received much study, and in a good many states improvements, although certainly not full solutions, have resulted. Most important among changes undertaken has been the abandonment of constitutional or other requirements of uniformity, in order that property may be thrown into different classes for taxation at different rates. Approximately two-thirds of the states, in fact, have adopted classification at least in principle, and in half or more some classification has been carried out. Here and there, as in Minnesota, classification has been sufficiently extensive to admit of quite a number of rate levels. In most instances, however, it has not gone beyond differentiating intangibles from tangibles, on the theory that lower rates on the former will lessen the incentive for concealing them and draw them out of hiding. Gains undoubtedly have been realized; although concealment of intangibles is still common and yields sometimes have actually been smaller than before classification was undertaken. Because of the inequities referred to, several states are moving toward the abolition of personal property taxes.

2. Appointive assessors and reviewers

Two or three other approaches to improvement have commanded attention. One relates to the quality of assessments. The need is to get away from untrained, part-time, popularly elected local assessors, and substitute a plan under which assessors would become state or local civil servants, appointed on a merit basis by the state tax commission or by the city mayor, manager, or county executive. A second improvement well might have to do with county and other boards of review or equalization, now composed commonly of members serving ex officiis and, for obvious reasons, hardly better equipped than the assessors themselves. If there is virtue in having assessors appointed by the state tax commission, the same arrangement well might be applied to members of equalization boards. Any plan tending to obviate the tug-of-war between members representing rural and urban taxing districts would be a clear gain.

Still another step in advance would be to place on the tax rolls a great

3. Reduced exemptions

deal of real estate now exempted—nearly one-sixth throughout the country as a whole. Real estate used for religious, educational, and philanthropic purposes long has been immune, on the ground that the institutions owning it are run, not for profit, but for performing essential community services. Presumably this is justifiable. But some states go farther—for example by partly or entirely exempting property of veterans, manufacturing plants, farm implements, growing crops, and (in more than a dozen instances) homesteads, that is, urban or rural dwellings occupied by the owner, with the sites on which they stand. All such exemptions narrow the tax base and increase the tax rates on remaining taxable property. With heavy pressure for augmented public revenues promising to continue through the years, we are likely to see determined efforts to bring on the tax rolls much property now exempted, even though perhaps at reduced rates or valuations.

PRINCIPAL STATE TAXES TODAY

The general property tax has been crowded out of the state tax picture—and even on the local level is of diminished importance—partly as a result of distress of property-owners during the depression of the thirties, partly through taxpayer efforts to curb mounting public expenditures by influencing legislators and constitution-makers to surround property taxation with new restraints, but in large measure also because of the discovery of newer tax sources having the merits of liberal yield and easier and surer collection. If, for example, intangibles cannot be reached for taxation directly, they still may be made to contribute their share by taxing income derived from them, and also the transmission of them by inheritance. For local purposes, the general property tax still is indispensable; for state purposes, however, it no longer appears necessary. Several forms of taxation have, in most states, largely or wholly superseded it for state purposes. Each of six such taxes have of late yielded the states more revenue than the property tax: (1) general sales, gross receipts, and use taxes, (2) motor fuel taxes, (3) income taxes, (4) motor vehicle license taxes, (5) liquor taxes, and (6) tobacco taxes.

1. General sales and use taxes

State as well as national taxes on sales of particular commodities, for example, liquor, tobacco, and motor fuel, long have been familiar. Desperate fiscal needs during the depression of the thirties led one state after another, however, to carry the principle farther by instituting *general* sales taxes. In terms of yield such taxes (along with related gross receipts and use taxes) have now taken top place in the over-all state tax picture. Beginning with West Virginia in 1921—somewhat before the depression indeed—a total of 35 states introduced the general sales tax in one form or another, most of them between 1933 and 1936 and several more in the 1950's. In some instances, the step was inspired, at least partly, by fear of inability, in the lack of such a tax, to meet the obligations imposed by the new social security system at a time when state revenues were sagging. In most cases, indeed, the

tax was adopted as a supposedly temporary or emergency measure. The early unpopularity of the general sales tax because of its "regressive" character, bearing with greatest proportional weight upon consumers least able to pay, has largely given way before the compelling needs of the states for large and stable sources of income. Thirty-five states, located in all sections of the country, now rely heavily on this tax. Typically, the tax is imposed on retail sales only, but in some instances on sales by manufacturers and wholesalers as well. In most of the sales-tax states a compensating "use" tax is laid on the use, storage, or consumption of commodities that would have been subject to the sales tax if bought in the state instead of brought in from outside.

Yield

Wherever tried, the sales tax has been highly productive, and it is difficult to see how some states could have avoided bankruptcy without it. The rate of the tax is now, typically, 3 per cent and the yield exceeds $4.3 billion to the states that levy it. This is more than from *any* other source except grants-in-aid. Whether, as a matter of social policy, it is justifiable to deflect tax burdens in such degree from property and incomes to the mass of the people as consumers may be, and is, warmly debated. In some states the impact is alleviated by exempting food and other necessities; and in any event urgency for revenue seems likely to continue to overbear all scruples on the point in many states.

2. Income taxes

The first significant chapter in the history of income taxation in this country was written on the national level (starting in 1861), and culminated in the Sixteenth Amendment and the income tax law of 1913. In the states, there were a few earlier unsatisfactory experiments, but the first permanent and effective law was passed in Wisconsin in 1911. Two years later, Massachusetts, Delaware, Missouri, and Mississippi enacted similar legislation; in 1915, New York and North Dakota joined the growing list. Thereafter the movement spread until at present (1963), 38 states have income taxes applicable to either individuals or corporations, and usually to both. In aggregate yield the income is the fourth most important source of state tax income. But in a few states, notably Wisconsin, it is the main support of the state government. Though differing in details from state to state, the principal features of the tax are (1) taxation of net income only; (2) exemption of specified amounts (usually from $500 to $1000) for single persons and of larger amounts (commonly $2000 or $2500) for a married couple, with allowances ranging from $200 to $400 for dependents; (3) a scale of rates rising from commonly 1 per cent on the first $1000 of taxable personal income to usually 5, 6, or 7—but in a few instances as high as 10 per cent in the highest bracket; (4) a "normal" rate sometimes supplemented by surtaxes (general or for specific purposes such as education) after a certain point is reached; (5) usually a flat, but sometimes a progressive, rate on incomes of corporations; and frequently (6) review and collection, not by local officials, but—as started in Wisconsin in 1911—through the state tax commission and a force of civil service employees. In the state as in the national field, the graduated,

or progressive, income tax is widely regarded as the most equitable tax form. However, the possibility of realizing more from it is sharply restricted by the extremely heavy (and increasing) taxation of both personal and corporate incomes by the national government.

3. Motor fuel and vehicle taxes

Until comparatively recent times, highways and streets were financed almost entirely from the general property tax. The advent of the motor vehicle to almost universal use led, however, to demand for more and better roads, and prompted the idea that the highways, rural and urban, used by the insatiable motorist should be paid for and kept up by him. The result has been the development of the country's present remarkable network of hard-surfaced thoroughfares and the rise to great prominence of a newer group of tax levies, essentially in the nature of privilege or service charges, and often referred to as the "motor vehicle tax family." Chief among the members of this family are (1) the motor vehicle license, which in essence is an annual charge for the privilege of operating a motor vehicle on the highways, and whose yield exceeds the yield of state income taxes paid by corporations; and (2) the motor fuel tax, starting as simply a gasoline tax in Oregon in 1919, and now employed in every state. Currently the rates range from three to eight cents a gallon and the average is about six cents. Over the protest of rural and road-building interests, not to mention automobile associations, varying portions of motor vehicle and motor fuel proceeds were, in depression years of financial stress, diverted, in two-thirds of the states, to education, welfare, and other state purposes. Efforts to halt such diversions have been successful in a large number of states. At the same time, even with no such diversion, proceeds throughout the country as a whole have never sufficed (except during wartime suspension of construction) to meet the full outlay on roads and streets. The property tax still supplies a good share of the costs of local streets. Both motor vehicle and motor fuel taxes have the great merits of being highly productive and easy to administer.

4. Liquor and tobacco taxes

Prior to the prohibition era, the states, while making license charges in connection with the liquor traffic, left excise taxation of liquor to the national government. Subsequently, however, they, too, entered the excise field. Combined with license fees on dealers when there is no state monopoly and on bars and taverns almost everywhere, the taxes on liquor yield about half as much as do state income taxes. In the more than a dozen states where the traffic is a state monopoly, income from licenses is replaced by profits from the operation of dispensaries. Like excises on liquor, taxes on tobacco and tobacco products represent a more recently developed source of state revenue; as in the case of liquor, also, dealers usually are licensed and the commodity itself taxed. Nearly all states tax cigarettes (most commonly at about five cents a package), and several tax tobacco also in other forms. Like liquor, tobacco is subject also to heavy national taxation. Few taxes are as popular as those on liquor and tobacco for by them the state can encourage virtuous living and raise revenue at the same time. The only limits to these taxes would appear to be those fixed by rising enforcement costs.

TAX ADMINISTRATION— THE COLLECTION AND CUSTODY OF FUNDS

Tax collection

In times when nearly all state revenue was derived from the general property tax, the state financial authorities had little to do except receive the money passed along after being locally collected. Nowadays, the situation is different, because the taxes on which the state depends have become highly diversified, and many are collected by officers or other representatives of the state itself. The general property tax is still gathered by local collectors or treasurers, county or city, with the proceeds apportioned among the various taxing units (including the state where it shares) according to the different rates that have been imposed. A difficulty often presented is that of tax delinquency, which became serious indeed during the depression of three decades ago, with often as high as 30, 40, or even 50 to 60, per cent of the amounts due in individual taxing districts going unpaid. With considerable uniformity, the states provide for (1) a regular payment period (on the basis of payment either at a single time or, in about half of the states, in instalments), and (2) an additional period during which, if payment is not made, accrued interest must be included, with often the amount of the tax somewhat increased also by way of further penalty. Procedures in cases of persistent delinquency vary, but in most states there are "tax sales" enabling the taxing authorities to get their money, and giving private purchasers ownership of, or at least an interest in, the properties involved.

Local vs. central collection

Local collection of virtually all other forms of state revenue is not economical, the expense entailed often consuming a large share of the sums gathered. Centralized collection has therefore grown in favor, especially in connection with income, estate, inheritance, motor vehicle, sales, and business taxes. In Wisconsin, the founder of the modern income tax, taxes on incomes are collected by income-tax assessors, selected according to merit principles and each functioning in one of four districts, where their duties are performed under direction of the state tax commissioner. This is an exact reversal of procedure in the case of the property tax, in that 60 per cent of the proceeds of the income tax in that state, is turned over to counties and other local areas. All other states employing income taxes have substantially similar arrangements, at least for collection and several (12) of them also share the proceeds with local governments. Revenues gathered by state agencies and retained for the state do not always, however, go into the state general fund. Fees collected by the secretary of state or the insurance commissioner, for example, frequently are used to pay the expenses of the office collecting them, only the surplus, if any, being returned for general state use. Much of the money paid directly into the treasury is earmarked for particular purposes, for example, education, highways, and conservation, making it necessary for the fiscal officers to maintain an accounting system permitting of separate accounts for various funds. Among experienced persons, sentiment is growing in favor of

concentrating all state tax administration in the state tax commission or some other single department and all state revenues in a single, general, all-purpose fund.

The care of funds

In some states, all state funds are kept in the state's vaults, with no interest received. Elsewhere the practice is to deposit such money in banks located in different parts of the state and designated as depositories. Of course the latter plan opens a way for favoritism and collusion in selecting the banks, and for losses arising from bank failures. After unhappy experiences at these points, most states, however, have protected themselves, at least against loss, by requiring depository banks to furnish adequate guarantees of security; and some profit to the state usually accrues from interest at a modest rate on deposits made.

STATE CONTROL OVER LOCAL FINANCES

It must be apparent at this point that the finances of a state and of its political subdivisions are so intermingled that neither can be understood in isolation from the other. For the ordinary taxpayer, the finances of his local governments (there almost always are more than one) are, in fact, more important than those of his state. Such governments, in the aggregate, spend more than do the 50 state governments combined. These local governments, however, raise by no means all of this money by their own efforts; and this leads, first of all, to a word about the sources from which local revenues are derived.

Sources of local revenue: 1. Local taxes

(1) First among these (mentioning only the most important) is locally imposed taxes, supplemented by many kinds of license and other fees. On this matter, little need be said. The one universally employed and chiefly important local tax is the general property tax already described. The great bulk of the proceeds of this tax (in many states all of them) goes for local needs; and it is difficult to see how the tax, with all its faults, could be replaced by any other. (2) Next may be mentioned the proceeds of "shared taxes." These are taxes (like several we have mentioned) which, although imposed, and usually collected, by the state, are by law so administered that some agreed proportion of the yield is automatically turned over to counties and other local units. Technically, the general property tax is not such a tax, because although the taxpayer gets a single tax bill, he is really paying, by a single transaction, two or more property taxes—county, city, state—included in one bill for purposes of convenience. A taxing unit on any taxing level can put into the composite bill whatever proportion it desires. The truly "shared" tax is *one* tax, state levied, and with the locality having no part in it except to receive such percentage of the yield as has been allocated to it by law. Good examples in different states are motor vehicle license taxes, motor fuel taxes, and in varying numbers of states, income taxes, liquor taxes, and general sales taxes.

2. Shared taxes

(3) Finally, there are grants-in-aid—extended almost as generously by

state governments to localities as by the national government to the states. For the year 1960 the states extended $7.5 billion (including shared taxes) to their local subdivisions. However, a share of this originated in the national treasury and the state acted only as intermediary in the transaction. Aids may be distinguished from shared taxes in that, whereas under the shared tax the state automatically hands over to the localities from year to year such proportion of the proceeds of a given tax as has been fixed by law, under the grant-in-aid system the state bestows on the localities such amounts, for such purposes, and on such conditions, as it may choose. In the one case, the amount distributed is dependent on the yield of a particular tax; and usually the distribution is such as to return the money to the communities where it was collected. In the other case, a fixed amount for a given year, from general funds, is distributed by appropriation and commonly on some basis of demonstrated need. Funds received by localities from shared taxes may usually be expended for any purposes whatsoever, but those from grants-in-aid only for purposes expressly indicated in the grant. Both shared taxes and grants-in-aid have attained their present proportions fundamentally because of (1) the greatly superior taxing means and powers (as well as borrowing facilities) of the state governments as compared with local governments, and (2) the general trend in later times toward centralization, expressing itself in fiscal relationships as well as in other ways. 3. Grants-in-aid

Even in imposing their own taxes, local units are likely to be subject to constitutional or state statutory restrictions, for example, as to the maximum tax rate they may employ. In any case, local assessments are likely to come under the scrutiny of the state tax commission or other equalization agency, which may readjust them or even (usually on appeal from taxpayers) cause reassessments to be made. In spending their funds, too, local governments are under some state controls. (1) Grants-in-aid are received on condition that the services for which they are earmarked are kept on a satisfactory level of efficiency. The states have a good deal to do with establishing such levels and, through inspection and direction, seeing that they are maintained. (2) Local budgets often are subject to review by state authorities, who may protest items which they consider excessive or otherwise unjustified. Deficiency appropriations and transfers from one fund to another also may come under the critical eye of a state auditor, board of accounts, or other agency. (3) Local finance officers often are required to use uniform systems of records and accounting; and in any event, in nearly all states, representatives of a state finance officer or department pay annual (usually unannounced) visits to spending officers of local governments, look over their accounts, require carelessness to be corrected, and cause embezzlers to be brought to justice. (4) Debt limits commonly are imposed. While borrowing within these limits usually may proceed without intervention from the outside, a county board or city council proposing to issue bonds to build a highway, develop a park, or construct a court house or city hall may find a group of taxpayers arguing before a competent state authority that the outlay is unnecessary, extravagant, or ill-advised at the par- Forms of state control

ticular time, and may be obliged to convince state examiners that the proposal is sound, on penalty of seeing it vetoed at the state capital. In protest against all of these forms of state intervention, many people cry out that the sacred principle of home rule is being violated, and that the officials who impose and enforce the restraints are too far away to know the needs and conditions involved. In some states, however, large sums have been saved by protection given in these ways against the looseness and waste too often characterizing the local administration of affairs by inexperienced, careless, partisan, or even corrupt, public officials.

STATE AND LOCAL DEBTS

State debt

A final phase of state and local finance requiring a word of comment is borrowing and indebtedness. Unlike the national government, which can borrow without constitutional restraint, the governments of all but three states (New Hampshire, Vermont, and Connecticut) are restricted by constitutional provisions designed to prevent a recurrence of the reckless piling up of debts which marred the work of many state legislatures before the Civil War and during the Reconstruction period. Despite these limitations, state borrowing has increased many fold in this century. Today every state carries some debt, even though in some states (Wisconsin, for example) the debt is not a charge on the general resources and in several others this debt is quite small. As of 1960, the total long-term debt of the 50 states was $18.5 billion. Some of this was covered by accumulated sinking funds.

Local debt

Debt burdens incurred by counties, cities, and other local units weighed heavily on taxpayers during the great depression, and Congress came to the relief of embarrassed local governments through a Municipal Bankruptcy Act under which any of them unable to service their debts could voluntarily go into a bankruptcy court and get plans approved for readjusting their obligations. After 1940, the wartime economic upsurge enabled local governments of all kinds to reduce indebtedness, but in the postwar years the trend has reversed and local debts are again increasing. The main pressure on local income nowadays is in the field of education. In order to house the flood tide of new children, school building is pushing on the debt limits of local units almost everywhere in the country. As of 1959 the outstanding debt of local governments in the United States exceeded $47 billion.

Methods of borrowing

State and local governments borrow money ordinarily by issuing interest-bearing bonds running for periods of from 10 to perhaps 20 years, and taking the form of either sinking-fund issues or serial issues. Under the sinking-fund plan, all bonds of a given issue mature at one time, and a definite sum is set aside each year from current revenues to meet principal and interest in full when the date arrives. Serial bonds, on the other hand, mature in instalments or series, thus enabling a definite proportion of a given debt to be extinguished every year, or at other stated intervals, by payments from current revenues which, under the other system, would go into the sinking fund. Serial bond

issues have grown rapidly in popular favor in the past three decades and are fast supplanting the earlier sinking-fund system.

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28

The State Judiciary

Functions

ROUNDING OUT the government of every state is a system of courts providing means for (1) adjusting disputes between private parties, and between such parties and state or local governments; (2) determining the guilt or innocence of persons accused of violating the state's criminal laws; (3) protecting the constitutional rights of individuals and corporations; (4) keeping the executive and legislative branches of government within the bounds fixed for them by the state constitution; and (5) promoting adjustments of sundry kinds, including the settlement of estates of deceased persons.

Some general features:

Three cardinal features of these state courts require emphasis at the outset. First, the "state judicial system" embraces not only tribunals operating on a state-wide basis (of such, in fact, there are few), but those functioning in counties, cities, and other local areas as well. From justice of the peace and police court to supreme court—and regardless of whether created by the state constitution or established and regulated only by legislative act—all of the courts on all levels form parts of a single system, even though not completely integrated. Second, and contrary to a common popular impression, the state judicial system is in no way subordinate to the national system. The two sets of courts are separately rooted and mount through their successive grades on parallel lines, each with its own field of jurisdiction and operating independently within it. Any case, it is true, originating in a state court, but involving determination of a right claimed under the national constitution, laws, or treaties may be removed or carried on appeal to a proper national court. The great majority of cases coming before the state courts do not, however, raise

1. Scope

2 Status

any such "federal question," but involve simply the adjudication of rights claimed under the state constitution, the state statutes, or the common law when not modified by state legislation. Nearly all judicial actions started in a state court are completed there with just as much finality as if there were no national courts at all. A third fact is that, while many suits may be instituted in either a state or a national court, and while the dockets of national courts are nearly always crowded, the great bulk of judicial business the country over—probably nine-tenths of it—is transacted in the courts of the states. Under the principle of delegated powers, the national courts have only such jurisdiction as the national Constitution expressly gives them, and in general are confined to administering national law. Under the principle of reserved powers, the state courts have everything else, the state law which they administer covering not only a wider and more indeterminate range of matters, but matters often peculiarly provocative of legislation, and consequently of litigation. Much of the time, state courts and their decisions do not attract as much attention as those in the national sphere. Nevertheless, here it is, rather than in the national courts, that most people, as plaintiffs, defendants, jurors, or witnesses, have their contacts (if any) with the judicial process.

3. Jurisdiction

THE SYSTEM OF COURTS

Regulated partly by the constitution and partly by statute, the court structure in almost every state has some individual features. In general, however, differences are minor and the court systems of the states tend to follow a standard pattern as follows: (1) justices of the peace and other courts of petty jurisdiction, (2) intermediate courts, (3) courts of general trial jurisdiction, (4) appellate courts, and (5) supreme court.

1. The lowest courts: a. Justices of the peace

At the bottom of the scale stand tribunals of purely local character, consisting of justices of the peace, municipal magistrates, or other officers of similar grade. Originally, justices of the peace functioned in rural and urban areas alike, and some still are found in cities of considerable size. The tendency, however, has been to displace them in urban centers by other magistrates, and today they are largely confined to rural communities. As a rule, justices are chosen by popular vote in townships or other subdivisions of the county, and for short terms (usually two years); although in a few states they are appointed by the governor. In any case, their jurisdiction commonly extends throughout an entire county, and includes both petty civil suits (involving up to perhaps $100) and breaches of the peace and other minor infractions of law. They may also issue warrants for the arrest of persons charged with more serious offenses, may hold preliminary hearings, and if the evidence warrants may bind over a suspect to await action by a grand jury or prosecutor. In contrast with other state and local courts, the justice courts have no official seal, no clerk, and keep no permanent official record of their proceedings. Accordingly, they are not "courts of record," as are most of the others. Furthermore, they may render final decisions in only the most petty misdemeanor

and civil cases. In all others, appeal lies to the next higher court, which, however, ordinarily will consider an appealed case *de novo*, without reference to what has taken place in the justice's court.

b. Municipal or police courts

In most incorporated places of appreciable size, the functions elsewhere performed by justices of the peace are assigned to one or more minor tribunals variously known as municipal courts, police courts, or magistrates' courts, with jurisdiction confined to the given municipality. Sometimes the judges of these courts are elected by the people, sometimes they are appointed by the mayor or even by the governor. In any event, their handling of the multitude of petty cases coming before them too often is inept if not actually corrupt. Unhappy experience with such tribunals, especially where two or more were found operating in the same jurisdiction, has led most large cities, for example, New York, Chicago, Philadelphia, Detroit, Boston, and Baltimore, to coordinate and integrate all work of the kind in a single municipal court. Of necessity such a tribunal must parcel out its tasks among sections or branches dealing with cases in particular fields such as traffic, juvenile offenses, domestic relations, small claims, and the like. The jurisdiction of courts of this nature usually transcends that of justices of the peace.

2. Intermediate courts

In many states, the next level above the justice and municipal courts is occupied by courts of general trial jurisdiction in which most important litigation originates and most persons accused of crime are tried. In others, however, there are courts intermediate between these tribunals and the justices, organized frequently on a county basis and with jurisdiction so defined that a plaintiff may choose whether to sue before a justice or in an intermediate court.

3. General trial (county, district, or circuit) courts: a. Organization

Even where such intermediate courts exist, however, greater importance attaches to the courts of general trial jurisdiction on a somewhat higher level. In many states, a tribunal of this grade is called the county or superior court, and there is a single judge in each county. More often, however, two or three counties are grouped for the purpose, with a district or circuit court serving each group, and with usually a single judge except in urban or other areas where the volume of work requires more. In any case, a "trial" court session is held at least once a year in virtually every county, either by the county court judge or by a district or circuit judge making his rounds in accordance with a regular schedule. It is in these court sittings that trial juries are most extensively employed. In 34 states, all county, district, or circuit judges are chosen by popular vote, and for terms most commonly of four years. On this level and above, too, all judges may be assumed to be men of legal training.

b. Jurisdiction

Whether held by a local county or superior judge or by a district or circuit judge making periodic visitations, county courts regularly have both criminal and civil, and also both original and appellate, jurisdiction. On the criminal side, they handle all cases except those of a petty nature taken care of by the justices of the peace or magistrates, or by an intermediate court. Ordinarily their decisions are final insofar as questions of fact are concerned,

although if disputed matters of law are involved, a case may usually be carried on appeal to a higher tribunal. Jurisdiction in civil cases is commonly unlimited, although in a few states restricted to actions involving less than $1,000 or some other stated amount. Here again most cases have their first hearing, although some are brought up on appeal from decisions of justices of the peace or magistrates. In populous counties, the settlement of the estates of deceased persons and the discharge of functions relating to the property, custody, and welfare of minor children and other persons under guardianship are in the hands of a separate probate, surrogate, or orphans' court. Elsewhere, however, these duties commonly devolve upon the regular judges, who also, in several states, have important administrative duties in connection with the enforcement of certain state laws and with specified phases of county government, for example, poor relief.

4. Appellate courts

Above their general trial courts, and with a view to relieving congestion in the supreme court, about one-fourth of the more populous states have placed one or more appellate courts. The judges are sometimes appointed but usually elected from a few large judicial districts into which the state is divided for the purpose and sit in "benches" of three or more, with decisions reached by the majority. Limited original jurisdiction is occasionally conferred by the legislature, but most of the time of these courts is devoted to hearing appeals from the general trial courts and rendering decisions which in many classes of cases are final. As a rule, only questions of law are involved, with juries therefore not employed.

5. Supreme courts: a. Structure

The highest state court is usually called the supreme court and consists of either five or seven judges (including a "chief justice") sitting together when hearing cases. In at least one-third of the states it is permissible to sit in sections. In any event, a majority of the whole number of members of the court or section must concur in any decision rendered. The judges are nearly always elective, most often on a state-wide nonpartisan ticket, although in a few states by districts. There are instances in which nominations are made in districts, but with election by the voters of the state at large. Ranging all the way from two years in Vermont to 15 and 21 years in Maryland and Pennsylvania, respectively, and "good behavior" in Massachusetts, New Hampshire, and Rhode Island, the term of office is most often six years (in 18 states). Salaries vary from $10,500 in Vermont to $36,500 in New York.

b. Functions

The work of the supreme court consists almost entirely in hearing and deciding appeals on questions of law coming up from the lower trial courts or appellate courts where they exist. In most states the court may also issue certain writs, and in a few others it may give first hearing to cases of one or two types, for example, those in which the state is a party. In performing its appellate functions, the court not only adjudicates cases, but becomes—like the Supreme Court of the United States within its sphere—the highest interpreter of the constitution and laws. Its decisions and interpretations, too, are final, except for those which may be carried to the national Supreme Court.

STRUCTURAL DEFECTS AND REMEDIES

The system of courts outlined is far from uniform in detail from state to state and undergoes frequent minor changes in any particular state. Viewed in the large, however, it is deeply rooted in American practice. This being the case, a general overhauling such as virtually all experts agree to be needed has proved difficult to bring about.

Principal faults: 1. The outmoded justice of the peace

Of structural faults challenging attention, the first centers in the layer of courts closest to the people and for many years handling more cases than all other tribunals combined: the courts of the justices of the peace. Usually these leave a good deal to be desired. To begin with, the justices themselves are invariably devoid of legal education, with the justice which they administer likely to be of a more or less rough and ready sort. Of course there are handbooks of law for them to consult. On the elementary level on which they operate, lack of formal training may be offset by a good stock of common sense. Nevertheless, if they are to be continued, some surer guarantee of competence is highly desirable. Equally serious is the circumstance that, with rarely any salary attached to the office, the justice normally must look for his compensation to such fees as he can collect. In the great majority of instances, he derives but little from this source—perhaps a few hundred dollars a year, perhaps less. There have been instances, however, in which favorably located justices pocketed thousand of dollars a year. A system of justice which puts a premium on drumming up business and squeezing the utmost out of every offender is hardly to be commended. Too often, it has been marred by fee-splitting with conniving constables, "speed-trap" abuses on public highways, and other forms of chicanery and extortion. In the early history of the country, when travel to the county seat (where the higher courts dispensed justice at infrequent intervals) was difficult and time-consuming, rural justices of the peace performed useful, if not indispensable, functions as tribunals near at hand for adjusting minor differences between members of the same community. With the greatly improved means of travel and communication existing today, such usefulness has largely disappeared.

2. Lack of judicial articulation

A recent thoughtful writer has ventured the observation that the most serious weaknesses growing out of existing state judicial organization are (1) lack of specialization, (2) inequalities in the distribution of work, and (3) lack of uniformity in interpretation and administration of the law. And he goes on to comment as follows: [1]

> By and large, the organization of our courts on a geographical rather than a functional basis prevents any substantial degree of specialization. Each court usually serves a city, county, district, circuit, or some other geographic area, and handles all types of cases therein. Hence it is practically impossible for a

[1] C. F. Snider, *American State and Local Government* (New York, 1950), 281.

judge to become a specialist in any particular kind of cases, such as criminal, equity, or domestic relations. Moreover, under the geographic basis of organization the dockets of some courts are crowded while those of others are light, and no adequate provision is made for transferring judges temporarily from courts having little to do to those that are overworked. Finally, in the absence of central supervision, judicial administration is far from uniform, especially in the field of criminal law. Considerable discretion is commonly vested in the courts with respect to criminal penalties to be imposed, with the result that a given offense is likely to draw widely different penalties at different places in the same state, depending upon the attitude of the particular judge before whom the case is tried.

In our study of state administration, we saw how disadvantageous is the usual lack of unified supervision and control over the many separate administrative officers and agencies. Unhappily, the same lack too often interferes with the most effective functioning of the state's judicial machinery. It seems self-evident that all of the courts belonging to the so-called *judicial system* should be closely articulated with one another, and that there should be some chief justice or other authority in a position to coordinate the work of the several courts, devise plans for a useful division of labor among them, transfer cases, assign judges, and do other things needed to promote speed and efficiency. Instead of this, however, we find in the majority of states "a jumble of disconnected and disjointed courts, each pursuing its own way, with little regard to any other" — a "heterogeneous assortment of miscellaneous courts of miscellaneous and often overlapping jurisdiction." In earlier and simpler days, there was some unity and coherence; but so much new machinery has been tacked on without regard to system that any former articulation has almost disappeared.

Likewise, in the case of any particular court, it seems manifest that efficiency calls for a chief justice or effective head clothed with authority to supervise the work of all judges belonging to that court, to require them to make periodic reports showing the state of business on their dockets, to admonish the careless and indolent, to relieve the overworked, and to keep all reasonably busy. As matters stand, however, in nearly every part of the country the judges in the same court are elected independently of one another and seldom are made subject to any actual directing or supervisory control. Each judge can hold court when he pleases, for as few hours a day as he pleases, and hear cases on such calendars as he pleases. Whatever co-operation, teamwork, or division of labor exists depends almost entirely upon voluntary cooperation of the judges constituting the court.

3. Inadequate reporting

With so loose organization, or lack thereof, it is not surprising that there are few reliable statistics showing what our different state courts are doing or how much they are costing the taxpayers. Of most of our states it may truly be said that "the judiciary is the one department which publishes no data bearing upon the efficiency of its work"—though without such data there is

no adequate basis for judging how well it is performing its duties or what changes are needed to increase its efficiency.

Some limited improvements:

For many years, crime commissions and other analysts of judicial administration have urged abolition, state by state, of the entire justice-of-the-peace system. The obstacles are great—and not merely tradition and inertia, but the necessity (in most states) of constitutional amendment, and also the influence of existing justices with local electorates. In only a few states—Missouri (1945) New Jersey (1947) Connecticut (1959) North Carolina (1962)—has the system been suppressed outright. In some half-dozen others, however, the essential purpose has been wholly or partially attained by constitutional or legislative action stripping justices of their power to try cases, even though leaving them authority, for example, to issue warrants and subpoenas and perform marriages. Thus Virginia, in 1934, supplanted former justices for purely judicial purposes by salaried "trial justices" appointed for each county by the circuit court, and supervised by it; Tennessee has replaced justices in certain counties by salaried "general sessions" courts and in 1961 will replace those in most of the remaining counties; North Carolina in 1937, and Indiana in 1939, empowered counties (only more populous ones in Indiana under an amendment of 1941) to create courts with appointive and salaried judges handling most cases formerly tried by justices; Maryland in 1939 made such courts state-wide. Missouri in 1945 replaced justices altogether by magistrate's courts, at least one in each county; and New Jersey in 1947 replaced them by district and municipal courts under appointive magistrates. California in 1951 replaced them with district courts in the most populous areas of the state. Hawaii and Alaska entered the union without justice courts. Wisconsin in 1961 transferred most of their duties to county courts. Justices have been dispensed with also in a number of cities, for example, Chicago in 1905 and Milwaukee in 1945. The justice of the peace is clearly on the way to oblivion.

1. Justices of the peace abolished or partly superseded

2. Coordination through state departments of justice

An important aid to the efficient functioning of our state courts would be a state department of justice, charged with exercising general supervision over the administration of both criminal and civil justice, and also with collecting and publishing judicial statistics covering the entire state—an agency performing for the state courts functions analogous to those now performed for the national courts by the Department of Justice and the Administrative Office of the United States Courts at Washington. A few have provided themselves with such a department but in no one of the number does the establishment appear to be working effectively as an agency for imparting vigor and uniformity to the administration of criminal justice. In addition, about one-fourth of the states have conferred upon the attorney general limited power to supervise the work of county or other local prosecuting attorneys. Here again results have not proved impressive. Undoubtedly the attorney general's office might be made a nucleus around which to develop an effective state department of justice, as envisaged in California under a constitutional amendment adopted in 1934.

In about a dozen states, including Wisconsin, Missouri, and Louisiana,

NEW JERSEY'S COURT SYSTEM UNDER NEW CONSTITUTION

SUPREME COURT

Chief Justice and 6 associates. Jurisdiction—final appeals in selected cases as defined by the Constitution.

SUPERIOR COURT

Court has state wide jurisdiction and is divided into 3 divisions.

APPELLATE DIVISION	LAW DIVISION
	CHANCERY DIVISION

Decides appeals from Law and Chancery Divisions and County Courts.

COUNTY COURT

Minimum of 1 Judge in each county. Jurisdiction includes that of 5 former county courts. Equity powers when required for complete determination of case. Jurisdiction subject to change of law.

INFERIOR COURTS

Either created prior to and not abolished by the Constitution or created by law subsequent to the Constitution. All subject to abolition or change by law.

DISTRICT COURTS	MUNICIPAL COURTS
JUVENILE & DOMESTIC RELATIONS COURTS	SURROGATE'S ACTIONS ARE PARTIALLY JUDICIAL

All judges appointed by Governor with approval of Senate except Municipal Judges, who are appointed by governing body excepting where serving in two or more municipalities and then appointed by the Governor. Surrogates are elected.

3. Judicial councils

the constitution vests in the supreme court "a general superintending control" over all inferior courts. As yet, however, the contemplated authority has rarely been employed to bring about any notable measure of unification and coordination. More significant has been the establishment, in approximately three-quarters of the states, of investigative and advisory judicial councils charged with collecting and studying judicial statistics, formulating rules for the equalization and more efficient handling of court business (with power in California and a few other states to put them into operation), and recommending to the legislature desirable changes in the laws governing court organization and procedure. In these states, as elsewhere, however, many desirable improvements remain to be made, with often the adoption of a constitutional amendment a necessary first step.

4. Unified state courts

Impressed by the efficiency of a highly integrated judicial system in Great Britain, the authors of the National Municipal League's "model state constitution" provide in their plan for a "general court of justice," or unified state court; and many bar associations and other interested groups have endorsed it. The proposal is (1) that in each state all courts of the various grades (at least those having civil jurisdiction) be merged into a single state-wide tribunal, organized in branches or divisions (with probably subdivisions) permitting judicial business to be distributed more logically and judges to develop more specialized experience and talent than now; (2) that all judges be members of this unified court and subject to service at any point in the state where needed; (3) that the court be headed by an elective chief justice, perhaps with power to appoint all other judges from panels presented by the judicial council; and (4) that the chief justice, acting singly or in conjunction with the judicial council under his chairmanship, be vested with broad supervisory powers, including assigning judges to the various branches, transferring them from courts with light dockets to others with heavy ones, requiring systematic reports, and imposing rules designed to speed up business and promote uniformity of action. Plans of court organization based on similar principles have yielded good results within the narrower limits of several of our larger cities. With adoption on the state level manifestly promising large gains, it is significant that Missouri, in her new constitution of 1945, went a considerable distance by empowering her supreme court to make rules for all courts and to transfer judges from court to court; and that New Jersey in 1947 went farther (also in a new constitution) by boldly adopting the unified state court system in all of its essentials. Both Hawaii and Alaska provide for a completely unified system of state courts in their new constitutions. Wisconsin in 1959 began an extensive court reorganization. Virtually complete unification has also been achieved in Arizona (1960), Colorado (1962), Illinois (1964), and North Carolina (1962). Impressive steps toward integration have also been taken recently by New York, Michigan, Nebraska, and Montana. Judicial reformers hope and expect that as other constitutions are rewritten or amended, similar advances will be made.

JUDICIAL PERSONNEL—SELECTION AND REMOVAL

Prevalence of popular election

In most foreign countries (except the U.S.S.R.), and in our own national government, judges are appointive rather than elective. And so they were in all of our earlier states, with appointments made either by the governor and council or by the legislature. In 1812 Georgia, and in 1832 Mississippi, made judges of certain courts popularly elective. In this, they stood alone until near the middle of the century. Then, however, general change set in, reflecting somewhat belatedly the democratic impulses associated with the rise of the West and with the equalitarian philosophy of the Jacksonian era. Curiously, it was an eastern state that led off—New York in 1847. But New York was strongly infected with the democratic spirit; and most of the middle states were borne along on a current of judicial popularization which by 1860 engulfed everything west of the Alleghenies. After that time every new state admitted came in with the elective plan until Hawaii came in with an appointive system and Alaska with a combination of an appointive and elective system. Today in 34 states judges are elected by popular vote, usually in partisan elections.

Defects

Long experience has disclosed two inherent weaknesses in the elective system. The first is that it is no more likely to result in the choice of persons qualified to perform the highly technical work required of the judiciary than it is to secure the selection of experts in other branches of state government or in the field of municipal administration.

A second defect of popular election, too, is that what passes under that name often is only a fiction, being in reality nothing more than a method of appointment by partisans who succeed in putting their judicial "slates" through so-called nonpartisan primaries, or through party primaries, or through nominating conventions. All that is generally left for the voter on election day is to endorse one or the other of two judicial tickets thus submitted by persons not interested primarily in the efficient administration of justice, and therefore quite unlikely to pick candidates having the qualities most needed in a judge, namely, unquestioned integrity, dignity, independence, judicial temperament, and adequate legal training for highly technical duties.

Some partial remedies

It is not to be inferred that results under popular election are invariably bad. Our state judiciary, the country over, contains plenty of judges deficient both in learning and in ability, but also many who measure up exceedingly well both in learning and in other qualifications. In a good many states (Notably New York, Pennsylvania, Maryland, Michigan, Wisconsin, Minnesota, and Iowa) the elective system has proved at least moderately satisfactory partly because of a strong local tradition in favor of reelecting incumbents. All in all, nevertheless, the plan's shortcomings usually outweigh its advantages—in some states very heavily. A great many people are now prepared to concede that a different one well might prove superior. So firmly

entrenched, however, is the system where it prevails, and so warmly would state and local political leaders resist abandoning it, that most proposals for reform do not go beyond devices aimed at securing better choices with popular election still operating. One such device—subject to discount because of the manner in which politicians frequently manipulate it—is the choice of judges on nonpartisan ballots; and this method is employed in 16 states. Another, aimed also at minimizing partisanship, is the holding of judicial elections separately from others. And a third, utilized to advantage in a few states, takes the form of nomination of candidates for higher judicial posts, not in the usual primaries or conventions, but by the state bar association, as a body presumed to have special knowledge of the qualifications to be sought and of the fitness of persons aspiring to judicial preferment.

Three notable plans: 1. California

Three plans of judicial selection, however, which are attracting increasingly favorable attention are those operating in California, Alaska, and Missouri. They combine the better features of appointment and popular election and at the same time provide safeguards not offered by either of those methods alone. In 1934, the voters of California approved a constitutional amendment under which (1) a judge of the supreme court or of a district court of appeals may, as the end of his term approaches, declare his candidacy to succeed himself, and the people at the ensuing election simply vote for or against him; (2) if an incumbent chooses not to seek another term, the governor nominates someone for the post, and he similarly is voted on without any opposing candidate; (3) if in either case the popular vote is unfavorable, or if a judicial vacancy occurs otherwise, the governor makes a temporary appointment until the next general election, when the voters approve or disapprove of the person appointed, with a defeated candidate, however, ineligible for appointment to another judicial vacancy; and (4) as a further check upon the governor, all judicial appointments must be approved by a majority of a commission consisting of the chief justice of the supreme court, the presiding justice of the appellate court of the district involved, and the attorney general. The plan is not expressly made applicable to superior (county) court judges; instead, each county is left free to employ it or not as the voters choose. The system has several significant advantages. In the first place, judges are nominated by intelligent and responsible agents, while the ultimate selection nevertheless remains in the hands of the people. Secondly, a nominee is not running against somebody, but on his own record as a judge or as a lawyer, thus greatly diminishing the likelihood that irrelevant considerations will influence the voters. Finally, sitting judges are relieved of the necessity of devoting a large amount of their time to political activity in order to retain their positions; all they need do is fortify the judicial record on which they will appeal to the electorate.

2. Missouri

The Missouri plan, adopted by popularly initiated constitutional amendment in 1940 and continued with little change by the constitution of 1945, is so similar that only two differences (neither fundamental) need be mentioned. (1) When temporarily filling a higher judicial vacancy, the governor

must appoint one of three persons nominated by a nonpartisan commission consisting of the chief justice of the supreme court as chairman, three lawyers named by the organized bar, and three laymen named by the governor. (2) On lower levels, the plan is applied to circuit and probate judges in the city of St. Louis and Jackson County (Kansas City) and to judges of such judicial circuits elsewhere as may adopt it by popular vote. In these cases, nominations to the governor are made by a local five-member commission in the judicial circuit concerned. Under the new arrangements, we are told by the chief justice of Missouri's supreme court, the state judiciary is being gradually improved, with partisanship completely eliminated and judges, freed from primary and election campaigning, able at last to bring their dockets up to date—to "keep their minds on the next case and not the next election." Alaska's new constitution provides still a third plan. Under it the governor appoints to vacancies on the supreme or superior court benches from nominations made by the judicial council. Three or more years (ultimately every 10 years for supreme court justices and every 6 years for a superior court justice) thereafter the justice must run for election on a nonpartisan ballot and on his record.

3. Alaska

Some form of the plans outlined above appears to be gaining increased support and Illinois, Iowa, and Nebraska have recently changed their procedures for judicial selection in the direction indicated.

Removal of judges a difficult problem

In the national judicial system, judges retain their posts during good behavior, and the only method of removing them is impeachment. Even in times when state judges were largely or wholly appointive, there was a tendency to give them only limited terms. With the spread of the elective system, the practice became general, so that today "life" tenure survives only in Massachusetts, New Hampshire (until the age of seventy), and Rhode Island. As a rule, however, terms, in the higher courts, are relatively lengthy (4, 6, 8, 10, 15, in Pennsylvania even 21, years). How to retire incumbents proving incompetent or otherwise unworthy of public confidence presents a problem as yet not solved satisfactorily. A fully acceptable method must be one which can be put into operation without undue delay, and one which at the same time insures for the judge whose removal is sought a fair hearing before a tribunal free from partisan bias and not subject to the influence of waves of popular passion. Three or four principal methods now in use in the different states fail, in varying degrees, to meet these standards.

Methods in use: 1. Failure to renominate or re-elect

A judge sitting by popular election may, of course, be retired by failure to secure renomination, either because his character or work is considered unsatisfactory or because party leaders want his position for someone else. Even though he wins renomination, the people may retire him by failing to vote for him in sufficient numbers at the election. Popular choice, however, is almost as likely to bring wrong results as right ones, for often it happens that a judge whose work has been beyond reproach is defeated for renomination or reelection by circumstances wholly unrelated to his record as judge, perhaps because some overshadowing issue in state or national politics, wholly

unconnected with the judicial election, has swept down to defeat the entire party ticket on which his name appeared. Furthermore (apart from the recall), a popular election furnishes a means of retiring an unworthy judge only at a given time, at the expiration of his term of office. The public has also shown a very strong disposition everywhere to reelect incumbent judges, even those who have become superannuated.

2. Impeachment or legislative removal or address

In most states, judges may be removed before the close of their term only by impeachment proceedings begun in the lower house of the legislature and tried before the senate, a two-thirds vote of the latter usually being required for conviction and removal. The constitutions of about half of the states, however, provide also for removal (without trial) by the legislature (or by the governor in pursuance of legislative action) upon "address," that is, concurrent resolution, of the legislature, after the English manner. Neither impeachment nor legislative removal is without serious defects. Under either method, there is much delay; and partisan considerations are likely to exert undue influence. Furthermore, evidence sufficient to convince two-thirds of the senate may be difficult to obtain; and the dereliction may not be grave enough to seem to merit extreme measures, yet sufficiently serious to warrant public condemnation and impair the judge's usefulness. In practice, it has been found that impeachment and legislative removal do not really work, and that unfit judges sometimes remain on the bench because no other modes of removal are available.

3. Recall election

This experience has led eight states to adopt the seemingly drastic policy of authorizing special elections at which the voters may recall judges whose removal is desired. Thus far, however, the plan has proved drastic only on paper. In no instance has the recall been invoked against a judge of a superior or supreme court, and instances of its use against judges on lower levels have been negligible. At one time it was predicted that fear of recall would place judges under unfair pressure and even impair judicial independence; but no ground for such apprehension has thus far appeared.

THE JUDICIAL PROCESS

Nature and regulation

In handling a case of any kind, a court of any grade has three essential things to do. First, it must inform itself as fully as possible on the facts involved. At the lower levels, for example, in a justice's or magistrate's court, this may entail little more than hearing a police officer's charges against the defendant and giving the latter a chance to reply and explain. Farther up the scale, it is likely to entail, in civil cases, hearing the different versions of the two parties, with evidence introduced through witnesses or in other ways, and perhaps with final determination by a jury. In criminal actions there is, typically, a hearing of the case as presented by the prosecution, the defense as offered by the defendant and his counsel, with almost certainly witnesses heard on both sides and other evidence weighed, and with nearly always a jury striking the balance and declaring whether the facts as brought out

establish the defendant's guilt and in what degree. In the absence of a jury, whether the case be civil or criminal, facts are determined by the judge. In any event, the remaining two steps necessary to complete the process fall to that official. Of these, the first is to decide what provisions of law are applicable in the particular situation; and the second, to apply these provisions in terms of a specific judgment or verdict. All of these stages, furthermore, are governed by elaborate and often highly technical rules of procedure covering such matters as the rights of the accused, the admissibility of evidence, the selection of jurors, the privileges and limitations of counsel, the role of the judge, and many others. The promptness and quality of justice are greatly affected by the spirit and terms of such regulations.

Except insofar as predetermined by occasional constitutional provision, procedural rules were in earlier days made almost entirely by the courts themselves. At present, however, not only do constitution-framers write them more freely into their documents, but legislatures often enact them in such detail in statutes that residuary powers of the courts to supply whatever is needed but not otherwise furnished amount to little. Students of judicial administration, including many judges and lawyers, regard this development as unfortunate, not only because legislatures have neither the time nor the technical competence to perform the task satisfactorily, but because they sometimes are not above amending given rules at the behest of influential litigants hoping to gain some advantage in a particular case.

Kinds of law applied

The heart of the judicial process consists in applying the law in each particular case after the facts have been established. This, of course, involves determining what law is applicable. In our American situation any one or more of several different bodies of law may be relevant. First of all is national law—the Constitution, acts of Congress, treaties, and regulations of executive or administrative authorities having the force of law. Although most litigation in state courts turns on state law, national law is the "supreme law of the land," and the judges in every state are bound by it, "anything in the constitution or laws of any state to the contrary notwithstanding." Second comes state law, also constitutional, statutory, or regulatory. Even local law in the form of city and county charters, ordinances, and regulations sometimes must be taken into account, especially in lower courts. And supplementary to all else is the common law operating in the state. Classified differently, the law that may be applicable in a given case is (1) constitutional, (2) statutory, (3) regulatory or administrative, and (4) common. In descending order of priority, the judge must be guided by (1) the national "supreme" law, (2) state constitutional and statutory law, which, however, he can declare to be no law at all if found in conflict with national law, (3) state and local ordinances and regulations, which also he can hold invalid under either national or state constitutions or statutes, and finally (4) the common law.

Role of the common law

With national law always latent in the background, the law invoked in the great majority of cases tried in state courts is state law—constitutional, statutory, or common, with the third resorted to only when, and in so far as,

the others do not cover a given situation. Constitutions and statutes are, of course, *enacted* law—written, and in the case of statutes often gathered into systematic codes kept up to date by periodic revisions. Common law, on the other hand, is law originally built up by the decisions and procedures of judges in medieval England, brought to America by the colonists, carried over and gradually modified to fit the American scene (to some extent even the localized needs of particular states) after the country became independent, and operating today in all of the states except Louisiana. There, as a result of early French influence, Continental "civil law" is followed instead. In the sense that judges developed it by selecting among earlier decisions those to be followed as precedents, and by incorporating principles and rules deduced from general custom where precedents failed, common law is essentially *judge-made* law. In their use of it, as well as in their interpretation of constitutions and statutes, judges still add to and otherwise "make" law. A frequent popular conception of common law as *unwritten* law is, however, inaccurate—first, because every element of it will be found set forth, here or there, in written decisions and opinions published in court reports, and second, because in many states important portions of it have been reduced to formal codes. Suggestions for complete codification, however, have been generally opposed by jurists on the ground that this would destroy the flexibility and capacity for adaptation which always have been among the common law's principal virtues. Important as is the common law in our legal system, it applies only insofar as not modified or superseded by constitutional provision or statute.

Types of cases tried: 1. Civil

In general, cases tried in state courts fall into two broad categories—civil and criminal. The essential aspect of a civil case is that it turns on a dispute between private parties—a plaintiff and a defendant—over possession or use of property, payment of a claim or debt, execution of a contract, a wrong (or "tort") for which damages are sought, the validity of a will, an action for divorce, or any one of many other possible things. The method is that of a suit in a proper court by one party against the other. Except when (usually only with its own consent) a state or one of its subdivisions is one of the parties, no government is involved, save in the sense of having made or authorized the law under which the action is brought and of having provided the judicial machinery through which a settlement may be reached.

2. Criminal

Criminal cases are quite different. From petty misdemeanors up the scale to felonies, offenses coming under the criminal laws, although they usually involve personal or property damage, are regarded as injuries done to society; and their perpetrators are prosecuted by *public* officers, not in the name of individuals who may have suffered, but in that of "the people of the state of" New York, Ohio, or Texas, as the case may be. The object of the court action which follows is to determine whether the accused is guilty; if so, of what, and in what degree; and what penalty should be assessed. And when the verdict is in, if guilt is found, the state, which started the proceeding in the first place, finishes it by seeing that the penalty is enforced.

The jury system:

Long before the American colonies were founded, the right of an accused person to be tried by a jury of his peers was a bulwark of English liberty. On this side of the Atlantic it has been equally treasured. In the national sphere, all persons accused of crime are guaranteed the right to "a speedy and public trial by an impartial jury," and (with certain exceptions) no one may be proceeded against on a capital charge unless "on a presentment or an indictment of a grand jury." State constitutions and statutes everywhere abound in provisions of similar nature. Coming straight out of English common law, the jury in this country thus presents itself in two characteristic forms—the grand jury, which brings indictments against suspected persons, and the trial or petit jury, which (in addition to functioning in civil cases) determines their guilt or innocence. Both are important, and both are sharply criticized. They are important adjuncts of the judicial machinery of courts and prosecutors described above.

1. The grand jury

With the county, typically, as its area of operation, and with criminal, rather than civil, proceedings as its field, a grand jury is a body of normally from 13 to 23 persons, chosen by lot or by some other prescribed procedure, convening at regular intervals, and charged with bringing indictments on its own initiative against persons who in its opinion have transgressed state laws and should be held for trial. More commonly it considers such indictments after examining the evidence against persons brought to its attention as suspected transgressors by a justice of the peace or by the county or district prosecuting attorney. If, in the latter situation, the jury considers the evidence sufficiently incriminating, it endorses on the draft indictment prepared by the prosecutor the words, "A true bill"; the foreman attaches his signature; and the accused person is held for trial. If, on the other hand, the jury is not satisfied that a "prima facie case" has been made out, it instructs its foreman to inscribe on the draft indictment, "This bill not found," and the accused is discharged. Indictments found are duly reported to the county court, and the county or district attorney proceeds to prosecute.

The alternative device of "information"

Indictment by grand jury is cumbersome and expensive, and the tendency nowadays is to get away from it. In England, the land of its origin, it has been almost completely abandoned. While in the United States it cannot be dispensed with in national practice as long as the Constitution's clause on the subject stands unchanged, in the states the device is gradually breaking down. In about half of the number, grand-jury procedures still are required when felonies are involved, but optional in the case of lesser charges. In several states, the legislature is constitutionally empowered to do away with grand juries altogether. The procedure everywhere substituted is a simpler and more direct one known as "information," under which the prosecuting attorney, on his own initiative, merely files with the appropriate court a formal charge in which, upon his oath of office, he "gives said court to understand and be *informed*" that the offense described therein has been committed by the person named.

At common law, the trial or petit jury consisted of 12 impartial men

2. The trial or petit jury

chosen from the community. Its function was to judge of the facts in a case, the court itself passing upon all questions of law. Verdicts could be rendered only by unanimous vote. All criminal, and substantially all civil, cases called for jury procedure. Fundamentally, this is still the situation. Many states, however, have introduced significant modifications. (1) Whereas through long centuries it would have been inconceivable that jurors be other than men, 45 states now (1963) permit women to serve, and others probably will be added to the list. (2) In a few states, for example, Maryland and Illinois, juries serve as judges of both law and facts. (3) The constitutions of 22 states now authorize civil trials by juries of less than 12 persons (most commonly six), and eight states have similarly relaxed the old rule for criminal trials except in capital cases (involving a death penalty). (4) More than half of the states, including New York, now authorize verdicts by something less than unanimous vote (usually three-fourths) in civil cases, and eight have similarly modified the old rule for criminal (but not including capital) cases. (5) Nearly all states allow jury trial to be waived altogether in civil cases if both parties are willing; and a large majority permit similar waiver in criminal cases as well if the offense is a minor one and the accused person agrees—about a third, indeed, extending the option also to cases of a more serious nature, although in no instance to capital cases.

Shortcomings

The grand jury has proved so defective, or at any rate superfluous, that it is being widely discarded. No such fate would appear in store for the trial jury, even though, as indicated, it too is not so uniformly employed as formerly. But one has only to read newspapers and law journals, or even hear lawyers and judges talk, to realize that all is not entirely well with the trial-jury system. To start with, the caliber of jurors could be improved. Jury service is supposed to be one of the primary obligations of the citizen, with the jury itself representing a cross section of the community. Many occupational groups, however, including persons in public employment, are usually exempted by statute; business and professional people rarely are called upon to serve; and the elements from which jurymen are actually drawn are neither entirely representative nor usually of the experience and capacity that might be desired. Legal exemptions ought to be cut down and the practice of letting useful people off merely because they are otherwise occupied should be tightened up. Another criticism, often heard from judicial experts, is that whereas in national practice judges are expected, and indeed required, to assist juries in understanding and evaluating evidence, state judges usually are without such authority; and that, in the absence of such help, juries often flounder and waste time, occasionally bringing in verdicts influenced by serious misconceptions. Finally may be mentioned the problem of making the lot of the juror more tolerable also by greater courtesy from court officials than sometimes is shown, and by curbing the verbosity and dilatoriness with which lawyers often draw out proceedings to inordinate length.

Judicial review

Lower state courts confine themselves to the function for which all courts exist primarily, that is, deciding cases. Like higher national courts, however,

state supreme courts, in addition, look into the constitutionality of laws and executive actions, refusing to enforce any found contrary to a national or state constitutional provision. In ten states, "advisory opinions" on constitutional questions will be given in advance to the governor if requested, and in seven of these to the legislature also. But elsewhere, judgment on such questions will be rendered only in deciding actual cases. The power of judicial review has been exercised almost from the beginning of the nation's history, but with increasing frequency in later decades (especially since about 1890), and for reasons closely associated with the overloading of state constitutions in this last half-century with subject matter, and with detailed specifications, which ought to have been left to legislative discretion. A great deal of criticism has been stirred, particularly by the frequency with which statutes, or portions thereof, are invalidated (sometimes by narrow margins of four to three or three to two) on the ground of taking property or denying liberty without due process of law. Dislike of such control over public policy in virtual defiance of the people's elected representatives in the legislative branch has encouraged (*a*) a dozen states to adopt the popular initiative for constitutional amendments as a means of circumventing obstructive courts; (*b*) three states (Ohio, North Dakota, and Nebraska) to change their constitutions so as to require something more than a bare majority for declaring a law null and void; and (*c*) some people even to propose that due-process clauses be deleted from state constitutions, leaving all protection of private rights, when involving due process, to the national courts. Unless expunged by the legislature, a measure judicially invalidated remains, of course, on the statute books; it simply can no longer be invoked against anyone violating it.

PREVENTIVE JUSTICE

Declaratory judgments

For a long time our state judicial establishments largely confined their activities to the redress of wrongs already committed, and agencies of "preventive justice" remained almost entirely undeveloped. Only within very narrow limits was it possible to clear up in advance of hostile litigation any doubt as to the legal status of persons, the title to property, or the meaning of a contract. In the last three or four decades, however, the view has gained favor that "a system of law that will not prevent the doing of a wrong, but only affords redress after the wrong is committed, is not a complete system, and is inadequate to the present needs of society; that whenever a person's legal rights are so uncertain as to cause him potential loss or disturbance, the state ought to provide instrumentalities of preventive relief to remove the uncertainty before a loss or injury has been sustained." And in pursuance of these considerations, more than 40 states, beginning with New Jersey in 1915, have authorized their courts, on proper application, to define or declare disputed rights and duties before any suit involving them has been fought through the courts. In 1934, too, the national courts were authorized to render similar "declaratory judgments."

Conciliation and arbitration

The courts always have favored the settlement of legal disputes by arbitration, or compromise, after a trial has commenced; and almost contemporaneously with the adoption of declaratory-judgment laws, legislation appeared authorizing less formal, time-consuming, and expensive methods of adjusting legal disputes than prevail in ordinary judicial proceedings. Small-claims courts have become common, especially in cities; and special courts of conciliation and arbitration have been set up, or existing courts have been empowered to adopt rules providing for such procedures. Conciliation takes place when parties to a dispute reach a settlement through the mediation of a third party called a conciliator. An agreement of the kind, however, is not legally enforceable in the courts if either party fails to abide by it. In arbitration proceedings, on the other hand, the parties submit their controversy to a third party, called the arbitrator, and agree in advance to be bound by his decision; and his award is enforceable by either side like the judgment of a regular court. Not the least among merits of these newer judicial agencies and practices is the way in which they tend to encourage a spirit of good-will between parties to a dispute, thereby lessening or averting the animosity and rancor usually attending hostile litigation.

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IV

LOCAL GOVERNMENT AND ADMINISTRATION

29

Local Government Pattern and Legal Basis

FROM SEVENTEENTH-CENTURY ENGLAND early Americans inherited a strong liking for managing their own affairs. With the ideas of limited government and popular sovereignty and the practice of representative government, the English tradition of local self-government was transplanted to America. The institutions and offices that embodied this tradition—the county, the town, the borough, the coroner, the sheriff, and others—remain with us to this day. Though adapted somewhat to the needs of the new environment and later to the growth and industrialization of the country, they have shown remarkable resistance to change. More so than any other part of our governmental system. There are many reasons for this endurance. Foremost among these is the importance of the functions they perform. Next our theories of local government have strengthened them. Lastly is the importance to the political parties of their organizations in the local units.

Importance of local government

By tradition local governments have responsibility for many of the basic functions of government. They have the primary responsibility for protecting buildings from fire and persons and property from robbery, theft, and criminal violence. In urban areas, the necessity for maintaining a pure water supply and a sanitary environment puts a large burden for public health protection on the local units. In a democratic society, education is ranked with protection as a government duty; and here again, the local units have the basic responsibility.

Theories of local self-government

Granted that the functions of local government are important, why are they administered locally? Tradition has always been an important element in the creation of local units. The English colonists brought with them a devotion

to local autonomy which has continued throughout our history. The image of the New England town meetings as the archetype of "true" democracy is firmly fixed in American political philosophy. It is commonly called "grass roots" democracy. It means both that the existence of many small units of government gives people a chance to practice democracy at the "grass roots" or home level where the issues are easily understood and the necessary knowledge upon which to base judgments is available and that the closer a political unit can approximate the conditions of the New England town with its town meeting, the purer the democracy will be that is practiced. Essentially, government in small units is personal government. The individual can identify himself more easily with this kind of government, even when it no longer represents a social community whose members have common interests. "Grass roots" democracy holds a special attractiveness for the suburbanite, partly, because it provides a rationale for his "separateness" from the city, but partly also because the suburban environment recalls the simpler patterns of life that were the base of the theory.

Local political organization

Our local governments are training grounds for party leaders. The roots of party organization are here. In the county government, especially, is usually found the base of the state organization. In these units are the strongholds of Jackson's legacy—the spoils system, the amateur in public office, many elected officials, and short terms of office. Local governments, therefore, are of paramount importance to the political parties.

TYPES AND NUMBERS OF LOCAL GOVERNMENTS

Rural forms

The general picture of local government in rural America is: towns in New England; counties in every state except Rhode Island, Connecticut, and Alaska; and, townships in sixteen states in a broad northern belt from New York westward to the great plains. In colonial New England the town was dominant and the county played a minor role. This is true today. In the old South, the county was dominant and no towns or townships existed. Because westward migration was largely along parallels of latitude, we find today that the county system is used throughout the South and West. There are very few towns or townships south of the Mason-Dixon line or west of the Rockies. In Illinois, Nebraska, and Missouri, where two lines of migration met, there are townships in some counties but not in all. In the Middle Atlantic states a mixed system prevailed and this was carried westward also. Local government in these states in general follows the New England pattern of township importance; however, the county tends to be dominant in border states such as Ohio, Indiana, Kansas, and Missouri. As a rule, civil townships are created and their boundaries may be changed by the board of supervisors or commissioners of the county in which they are situated.

Urban forms

Urban centers, both large and relatively small, are set apart and incorporated as cities with their own governments. Less populous places, desiring some of the powers and services of cities, may be similarly incorporated

as villages or boroughs. Some boroughs and villages are larger than some cities, but in general the opposite is the case. These units are termed "municipalities" because they are incorporated. Any unit as it increases in population may progress from a town or township to a village or city by using procedures prescribed by the state in which it lies.

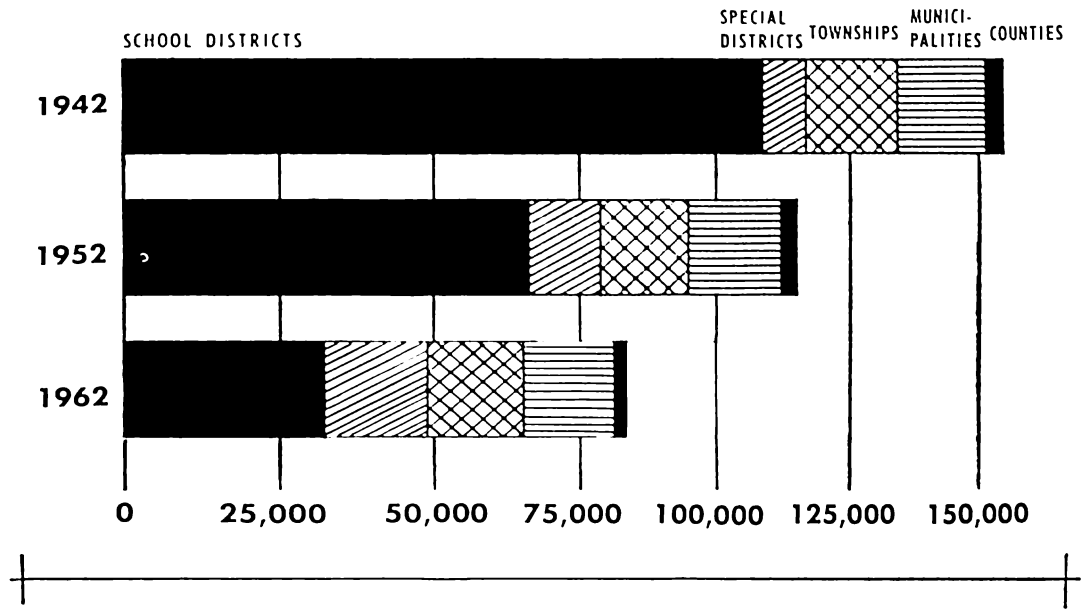
Other units

Numerous artificially constructed areas, mostly small, and seldom coinciding geographically with any of the subdivisions thus far mentioned, have been erected into school, fire protection, sanitary, and other units called "special districts."

Numbers of local government units

The variety of local government units so far described has been the result of historical development. The same can be said for the large numbers of them. The number of units in any given region does not often correspond to population. Until of late, no one—not even the Bureau of the Census—could have indicated the number for the country as a whole. Even now, all that one can say is that the figure is in the neighborhood of 91,000. The most highly saturated portion of the country is the west north central section containing the states of Illinois, Michigan, Missouri, Kansas, Nebraska, Minnesota, and Wisconsin. These states have over one third of the total number of local governments but less than one fifth of the total population (1960 Census). The most populous state, New York, ranks ninth in the number of local governments.

NUMBER OF LOCAL GOVERNMENTS IN THE UNITED STATES, BY TYPE



SOURCE: Bureau of the Census, *Census of Governments, 1962* (Washington, D. C., 1963).

LOCAL GOVERNMENT REFORM

General need

Fixed in a rural environment and before the development of rapid transportation, the local government pattern is one of too many and too small units for the management of local affairs. Our two newest states have entered the union with a distinct advantage over the older ones in this regard. Determined to profit from the experience in the older states, Alaska expressed its philosophy of local government in its constitution—namely, "to provide for maximum local government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions" (Art. X, Sec. 1). In Hawaii, the legislature may create subdivisions in addition to the county but has not done so. Elsewhere, however, people live under several layers of government, overlapping in intricate patterns.

The first effect of this is that the average voter is confused and the result is all too often a lessening of democratic control of the political process rather than the better control the advocates of "grass roots" democracy hope for. In addition, many citizens reside and work under different jurisdictions. When this is the case, they are disfranchised from having a voice in decisions that are taken by the municipality where they work. Only indirectly can they influence these. The second effect is an inefficient duplication of activities. The American people have shown a willingness to pay for this inefficiency, considering other less mundane goals more worthy. However, the recent spectacular population growth has aggravated the situation so acutely in urban areas that many concerned citizens have joined students of the subject in urging disentanglement and simplification. The most important aspect of this phenomenon is the shift of the urban population from the more crowded central cities to the less crowded suburbs and beyond to rural areas. This has brought problems to areas ill-equipped governmentally to handle them. Paradoxically, the first response of the people affected has been to *increase* the numbers of local units. Special districts have been created to provide urban services and townships or parts of them have incorporated for the same reason.

Suburbanization in detail

Cities in the United States have been growing at their peripheries for a century, but before 1920, the central cities grew more rapidly than the outlying parts. The reverse did not become a widespread pattern until after World War I though it was evident earlier in the older and more densely populated cities. Since World War II, this trend has accelerated. The following figures show the trend:

	Percent of Increase	
	1940-1950	1950-1960
U. S. Total	14.5	19.
Metropolitan Areas—		
total	22.	26.4
Central Cities	13.9	10.6
Outlying parts	35.6	49.

From 1940 to 1950 the oldest and largest central cities increased but slightly in population and from 1950 to 1960 many of them actually declined. The bald fact seems to be that given the means and the opportunity people no longer find the central city attractive as a place in which to live. The increased use of the private automobile, postwar prosperity, and national government inducements to home ownership have combined with other factors to produce a suburban spread over the landscape.

Problems posed by the multiplicity of units in metropolitan areas

In 1962, there were 18,442 local governments in the 212 Standard Metropolitan Statistical Areas of that year. Most of them were incorporated municipalities, special districts, and school districts. The surprising number of townships (2575) reflects the suburban spread. The leaders of most metropolitan areas are conscious of the disparity between modern urban living and this inherited governmental pattern that is expected to facilitate it. In almost every recent year a study of local problems has been started in some metropolitan area. The recommendations proposed in these studies are many and various but the difficulties and problems uncovered are markedly alike. The common problems reported are that: the multiplicity of governments is a serious impediment to the administration of government services; many units are so small and financial resources vary so widely that there is an inadequacy or even absence of certain services. The main problem fields are:

(1) *Transportation.* Traffic congestion and frustration is ubiquitous. An integrated system of local streets, major arterials, and mass transit is necessary for the efficient movement of people and goods. Perhaps this is an ideal impossible to achieve in the larger urban areas, but it is clear that the problem can not even be attacked without an area-wide approach.

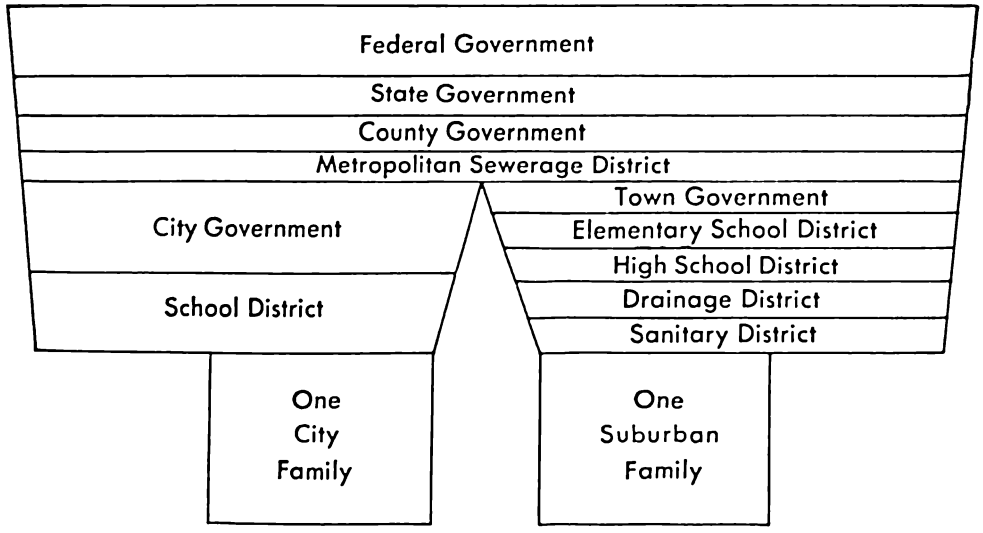
(2) *Disposal of sanitary and industrial wastes, storm water drainage, and provision for a water supply.* Adequate and equitable provision for these is virtually impossible or excessively costly on an individual basis. The result of individual effort in too many cases is water pollution, flooding of streets and basements, and mutual recrimination.

(3) *Land use planning.* Competition among units for industrial, business, and "desirable" residential development in order to bolster local finances widens the gap between units in their relative ability to provide services. Typically, too, a unit that secures a new industry does not consider the effect of this on the rest of the area—the changed traffic pattern and the new residents who find homes in other places with their needs for schools and other governmental services. In addition, it is difficult for small governments to obtain or set aside the large areas needed for parks and playing fields by an urban population.

All of these problems are particularly troublesome in rural areas that are in the process of becoming urbanized. In some instances, the needed services and controls are not provided to the detriment of other areas. Since the solutions proposed hinge on the powers and finances of the individual governments, discussion of them will be postponed until a later chapter.

GOVERNMENTAL COMPLEXITY

Taxing and Charging Jurisdictions in a Typical Metropolitan Area



A composite from units existing in the Madison Metropolitan Statistical Area, Dane County, Wis.
Total local units in the urbanized area—129 **Total local units in the county—212**
County population in 1960—222,095

LEGAL BASIS OF COUNTIES AND MUNICIPALITIES

Local units as public corporations

All units of local government are public corporations, created by, or under authority of, state law to provide services more appropriately furnished in this way than through private effort. As such, they have continuous existence, regardless of population changes, as long as the state does not revoke them; as such, also, they enjoy all customary corporate rights, such as those of suing and being sued, making contracts, acquiring, holding, and disposing of property, and exercising every power conferred. All, however, are not of quite the same nature and function. One category, known as municipal corporations proper, includes those at least presumed to have been created primarily in response to local initiative based on desire for local management of affairs. Cities, villages, boroughs, and incorporated towns are of this sort. A second category, termed quasi-municipal corporations, consists rather of units created by the state (or the county as agent of the state) on its own initiative, regardless of local opinion, and for locally carrying on state-wide activities such as enforcement of law, assessment and collection of taxes, and educational and public health services. Counties, towns, townships, school districts, and numerous other kinds of special districts are here included.

Legally, the distinction is significant; practically, it is not. Units of both types serve at the same time as organs of self-government and as areas for state administration. Many townships, counties, and special districts have also been created because the people in the area wished or asked for them. The distinction is thus one of *primary* purpose only, but it assumes some importance when broad grants of power are contemplated for counties and special districts to enable them to provide more urban-type services.

Local units as state instrumentalities

From the fact that all local-government units are created by, or on authority of, the state in which they are situated, and by it are endowed, expressly or by fair implication, with whatever functions and powers they possess, it follows that the relation between the state and its subdivisions is totally different from that existing, in the reverse direction, between the state and the United States. In the latter case, the state is not a division existing for the use and convenience of the national government; on the contrary, it is, within limits, a separate and independent area of government, in some respects on a footing of equality with the nation itself. Whether counties, towns, townships, or districts, created primarily for state purposes, or cities, villages, or boroughs, organized primarily to meet the demand for local control of local affairs, local units exist by no original or inherent right and have no reserved or residual powers. On the contrary, all (at least broadly) are instrumentalities of the state, employed by it in the enforcement of its laws, the collection of its revenues, and the performance of others of its functions. In short, the United States is organized on a federal basis, but the governmental system of each state is strictly unitary.

Legal position of the city—the charter

Every city has as its fundamental law a charter (its own separately, or one shared with other cities through the medium of a code) establishing its boundaries, defining its powers, outlining its system of government, prescribing the method of electing its council and choosing its mayor and other officials, assigning to some or all such officials their respective duties, and fixing with varying degrees of precision the relations of officials with one another. City charters (or at any rate the right to frame them) come from the legislature; and since charters or charter laws differ in no essential respect from other acts of the legislature, that body has authority to grant, withhold, suspend, alter, or revoke them at will, even against the expressed wishes of the people of any city concerned. In practice, such legal autocracy is tempered by considerations of political expediency, by moral inhibitions where charters have been made locally under express legislative grant of authority, and of course by such restrictions upon state legislative power as may be found in the national or the state constitution.

Legal position of the county

Counties are created and their boundaries fixed by act of the legislature, with, however, constitutional provisions protecting them in most states against extinction or loss of territory unless assented to by the voters concerned. Once established, they become quasi-corporations. As such, they generally have less broad powers to deal with matters of local concern and have more duties to fulfill in matters of state-wide concern. Their forms of organization, the offi-

cers they shall have, and the powers they may exercise are prescribed by state laws and constitutions. Whereas, most provisions for the organization and powers of municipalities are found in the statutes, constitutional provisions relating to county government are more numerous. For this reason, the framework of county government is more rigid than that under which municipalities operate.

State methods of prescribing for local governments: 1. Special laws

Some state legislatures grant charters and pass laws governing counties and municipalities by special act (as well as by general law). This is the practice in New England (except Massachusetts) and in parts of the South. Under this system, there may be as many varieties of city and of county government as there are cities and counties. Varying local conditions can be taken into account and change is sometimes more easily accomplished when only one unit is involved; but, since the system also lends itself to flagrant abuse, it came into disrepute during the latter 19th century—a time when local and state governments were notably corrupt. The constitutions of the rest of the states were changed to prohibit such special legislation. General laws only can be enacted in these states.

2. General laws and classification systems

General laws limit factious and arbitrary interference in local affairs on the part of the state legislature but the local governmental framework suffers from a surfeit of uniformity. The difficulty of prescribing for all cities or all counties the same powers, duties, and forms of organization, regardless of differences in size, character, or need is obvious. The result is a compromise —the classification system. The most popular and the most practicable method is to classify by population. Thus we find that cities of over 25,000 people and less than 50,000 will have a different set of rights and duties or a different form of government than cities of more than 50,000. The usual number of classes is four or five. Classification *systems* are more commonly created for cities than for counties. Though several states have set up four or five classes of county government, two is more common—one for the largest county, if it contains a metropolis, and one for the rest of the state's counties. Like most compromises, the plan has not been very satisfactory for cities. As they grow in population, they may be forced to change their form of government or assume burdens against their will. Two other and newer methods of prescribing for local governments are receiving more attention today—the home rule and the optional charter plans.

3. Home rule charters

All the above methods of providing the legal framework within which local governments operate are vulnerable from the standpoint of local initiative and local desires for self-determination and control of their own governmental destinies. The fundamental idea of home rule is that the people directly affected by their local government should have the right to draft their own charter and embody therein whatever plan of government they prefer, as well as to exercise under it all powers not inconsistent with the constitution and laws of the state and nation. The home rule method of charter drafting has been constitutionally authorized for cities in half the states and in eight additional ones the legislature has granted broad authority to some or all cities to

amend their charters or adopt new ones. More than 600 cities and villages are now operating under home rule charters including most of the thirty largest ones. County home rule is currently widely discussed for urban counties. Though the number of counties with home rule is small, the movement is spreading. The chief difficulty with framing county home rule charters is the frequent provision that separate majorities be obtained—one in the city and one in the rest of the county—to ratify them. More proposals have thus been defeated than have been adopted.

Home rule appraised

The home rule plan has a number of manifest merits. First, it enables the people of a city or county to have whatever form of government they consider best adapted to their needs and to formulate it locally rather than have it handed down to them by the legislature. In determinining, too, what is best adapted, they are free to experiment and thus to assist local governments everywhere. Secondly, home rule stimulates greater interest of citizens in their own local government. When the charter is being framed and adopted local citizen interest and participation in governmental affairs reaches a peak. Finally, the plan would seem to benefit the state legislature by relieving it of the necessity for considering a multitude of local questions that it is poorly prepared to answer intelligently, even if it had unlimited time which it doesn't. Actually, this has not happened to anything like the degree anticipated by its sponsors. No system, however, completely frees the municipality or county from state domination. Locally made charters are subject to the general state laws and state laws take precedence over local ordinances in most states. This is as it should be. A city or county is part of the state and is inextricably interlocked with the state in its interests and responsibilities. Even if the legislature is disposed to leave a city entirely free to deal with purely local matters as it desires, there is no clear line of demarcation today between things that are wholly local and those that, while perhaps primarily local, transcend city boundaries and concern the people of other portions of the state. As a method, therefore, for carving out a sphere of local autonomy for cities into which no higher level of government ought to intrude, home rule has lost much of its early attractiveness. Our society has grown too interdependent. However, as a method for reforming county government and equipping it to meet the needs of an urban population where this is necessary and for distinguishing these urban counties from the vast majority of rural ones, home rule is extremely useful.

4. Optional charters and permissive legislation

In recent years, an alternative method for providing local charters has been growing in popularity. This is the optional charter system. Over half the states now employ it for cities, including 15 home rule states, and several states provide alternative forms of county government. Noteworthy among the latter are New York, Virginia, and North Dakota. The optional charter system was designed to avoid both the disadvantages of uniform local government codes and the special law system. Like classification it permits variety within a standard framework but unlike the classification system it is not used to define local powers and responsibilities. Optional charters prescribe alterna-

tive *forms* of local government only. In effect, this system introduces a sort of *à la carte* charter service by incorporating into the general law of the state several standard types of charter providing for different forms of government —for cities the commission form, the council-manager plan, and sundry varieties of the mayor-council type; for counties alternative forms that may be used to replace the existing one. The county options all have features of reform; for instance, they usually include provisions that would consolidate offices or provide for a county executive, manager, or administrator. Each local unit can select for itself a form of government from the menu thus provided.

Permissive legislation is the same sort of menu service. Grants of authority to local units or to classes of them to perform certain functions if and when they so desire are given by the state. The desires of the local units for self-determination are more or less satisfied and questions of what is and what is not solely a matter of local concern are avoided. For these reasons, among others, permissive legislation combined with the optional charter system has worked as well as, if not better than, formal home rule.

5. State administrative supervision

The main object of all of these different plans of charter-framing, except the special-charter system, is to reduce state interference with local autonomy. While this effort has been pursued energetically and with some success, a contrary trend of almost irresistible force has been taking place: the development of administrative supervision over certain local activities by state officers or boards. Thus in New York, Massachusetts, and Ohio, the state civil service board is authorized to exercise direct supervision over the work of local civil service commissions. In order to check local abuses, several states have placed supervision of the enforcement of their election laws in the hands of a state official or board. Similarly, state boards of health or education, state finance departments or commissions, and state public utilities or public service commissions have, in a number of states, taken over in recent years many of the functions previously performed by the state legislature. A number of states go so far as to provide for state auditing of local accounts, and require the adoption of a uniform system of bookkeeping and submission of regular financial reports in a specified form to the state auditor or some other state authority. Whenever, also, a public service problem transcends the boundaries of several adjacent municipalities, there is a tendency to invoke state administrative control. Under circumstances of this kind one is likely to find a state-established park, sewerage, or police board such as now exercise authority throughout the metropolitan district of Boston. As a rule, state administrative supervision has proved more beneficial to local units directly affected than has legislative supervision. With a view, indeed, to unifying and harmonizing such supervision it has been advocated that every state create an agency concerned only with local affairs—as did Pennsylvania in 1919, when a state bureau of municipalities was set up. Small cities in particular, might be helped by such an agency.

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Rural Local Government

THE COUNTY

The county's complicated role

FROM PREVIOUS COMMENT on the nature and position of the county, one would infer that the role played by that local unit in our governmental system is difficult to evaluate; and so indeed it is. In the first place, it is not the same in all parts of the country. In New England, the county has no great importance except as a judicial unit; in the South and Far West, it controls justice, education, public health, public works, welfare, highways, and many other things; in the middle and midwestern states, it holds an intermediate position, frequently sharing many local functions with the township. In the second place, the county is at the same time an area for purposes of its own locally-controlled government and an area for carrying on state administrative and judicial activities. In fact, it is an area for the performance of a few functions promoted by the national government as well. In many instances the powers and duties entailed overlap and can be disentangled only by one willing to spend patient hours grubbing in the laws, records, and accounts stored up in the court house. Observing the steady transfer of functions from county to state in later years—to say nothing of the ever-advancing hand of the national government—some people have been puzzled about what the role of the county really is, and even have predicted that, whatever it is, it is doomed to extinction. Such observers fail to perceive that if the county as a self-governing unit is losing, it also is gaining—that, indeed, the number of functions passing under state or national control is counterbalanced by the number of new ones acquired as activities on all government levels continue

to multiply. Judged, in fact, by the variety of functions performed (for the county itself or by it for state or nation), the number of employees on its payroll, and the amounts of money expended, the county is today, on the whole, a more vital part of our governmental system than at any time past.

Confusing variety

To the governmental organization of counties, very little thought appears to have been given by constitutional conventions, state legislatures, or the general public—at any rate in comparison with the amount of attention bestowed on the government of states and cities. On this account and on account of their position as creatures of the state the governments of counties not only differ from state to state, but sometimes even from county to county within the same state. City governments are of different types, for example, mayor-council, commission, council-manager; but, speaking broadly, all city governments of the same type are much alike, allowing only for differences of population and physical environment. County governments, however, classify in no such convenient fashion. There are officers, boards, and commissions, but no standardized nomenclature; some are elected by the people, others are appointed, still others are ex officio; each often occupies a little island of separate power, with hardly a trace of supervision or coordination; there are deputies, assistants, and employees—sometimes small armies of them. The over-all impression gained by any one seeking to penetrate the labyrinth is that of jumble. Amid the disorder, however, arises one agency—the county board—which comes closest to being a central governing body.

The county board: 1. Structure

Although under different names, a county board is found in all states except Rhode Island and Connecticut where there is no county government at all. With a few exceptions (mainly in the South), it is everywhere elective, with the term two years in one-fourth, and four years in nearly half, of the counties. Structurally, there are two main types. One is a board made large by allotting one or more representatives (locally elected as supervisors) to every town or township and to every city ward within the county; and such a "board of supervisors" (found chiefly in New York, New Jersey, Virginia, Michigan, and Wisconsin, and in parts of Kentucky, Tennessee, and Louisiana) often has 40 or 50 members—in Dane County (Madison), Wisconsin, 87 and in Wayne County (Detroit), Michigan, 97. The other type is a board consisting rather of a few—commonly three, but sometimes, five, seven, or more—"commissioners" elected (usually) by the voters of the county at large, and known as a "board of commissioners." At least 70 per cent of all counties have a board of this nature. In so far as the board is a legislative body, the broader representation provided by a large membership seems appropriate; and in many localities the constituent areas of the county cling resolutely to it. In practice, however, the board's functions are far more administrative than legislative; and for purposes of administration the small board is clearly preferable. Large boards do most of their work through more or less autonomous committees, are often scenes of petty log-rolling among members owing primary allegiance to their townships, and are more expensive. If counties were adequately organized, with an integrated administrative branch and the

board simply a policy-determining agency, a board of intermediate size probably would be desirable. Given the typical administrative organization, the large board is rarely or never advantageous.

2. Organization

In some states, the county judge or some other designated official serves as ex officio chairman of the board. In a few instances, for example, Cook County, Illinois, a chairman is elected by the people. In the great majority of cases, the position is filled by the board members themselves. In any event, with occasional exceptions, the incumbent has little if any more power (except for appointing committees) than his associates. As indicated, large boards work chiefly through committees, with general meetings occurring about once a month. With committees unnecessary, small boards commonly meet more frequently.

3. Powers and functions

In powers and functions, as in other respects, the county board is purely a creature of the state. All powers conferred upon the county and not delegated by law to any other authority are regarded as belonging to the board. One important field of authority is finance. The board levies taxes for county purposes; equalizes the assessment of taxes among the different townships and cities in the county; borrows money; fixes the salaries or other compensation of minor county officials and employees; and appropriates money for various county purposes. Highways are also a major area of board concern and in recent years regulatory activities such as zoning have been undertaken. The county board also supervises elections and administers state, national, *and* county programs in welfare and public assistance. In populous counties, the board is likely to have power to fill a very large number of positions on the county payroll, and appointments frequently show the spoils system at its worst. Fourteen states, however, have merit laws applying either to all counties or to more populous ones, and in more than 300 counties some effort has been made to supplant spoils by competitive civil service examinations.

Other county officers

Besides the county board, counties, typically, have six or more elective officers, all largely independent of one another, of the county board, and usually of the officers of the state as well. Titles and duties vary widely, but the officers of chief importance are always the sheriff and the prosecuting attorney.

1. Sheriff:

Historically descended from the old Saxon *shire-reeve*, the sheriff is found in nearly every state. Usually, he is elected. In Rhode Island he is appointed by the governor, and in New York City a single sheriff for the five counties is appointed by the mayor. His term is usually two years, although three-year and four-year terms are not uncommon. In a number of states the constitution unwisely makes him ineligible for immediate reelection. Included among his prerogatives is that of appointing almost any number of deputies, whose powers become the same as his own, but with himself responsible for any official acts performed by them. In most states he is a salaried official; but sometimes both he and his deputies receive much (if not all) of their com-

pensation in the form of fees, which, in very populous counties, sometimes amount to tens of thousands of dollars a year.

a. Police duties

The duties most commonly assigned to the sheriff fall into two main groups: those relating to the preservation of the public peace, sometimes called police duties, and those connected with the operation of the courts. On paper, the sheriff's police duties are impressive, including as they do management of the county jail, arrest and safe-keeping of persons charged with crimes or misdemeanors, and enforcement of statutes against gambling, vice, and liquor-selling. Except, however, in some of the more sparsely settled portions of the country, they actually are quite limited. No county police, corresponding to a city police force, is at the sheriff's command, and as a rule neither town and village constables nor city police units are in any way subject to his control. In time of public disorder, therefore, the sheriff is likely to be obliged to summon to his aid the *posse comitatus* (such able-bodied men of the county as he may select), or even to call upon the governor for assistance from the state militia (National Guard) or—where such a force exists—the state police.

b. Court duties

The greater portion of the sheriff's time is consumed in the performance of his duties as executive agent of the courts. He attends court sessions; he serves the various writs and other processes in connection with civil suits, and also warrants for the arrest of persons accused of crime and subpoenas for the attendance of witnesses; he carries out the judgments of the courts in civil cases (for example, seizing and selling property to satisfy judgments), and executes court sentences upon persons convicted of crimes or misdemeanors. These activities are more lucrative than tracking down criminals, and thus they often are the ones to which the sheriff devotes himself most assiduously.

Although sheriffs are elected locally, they are, in law, agents of the state; and many, if not most, of their functions have to do with the enforcement of state laws. In very few states, however, do the higher state officials exercise effective control over them. In New York, Michigan, and Wisconsin, the governor may remove a sheriff for cause; and in Illinois, he must remove a sheriff who allows a prisoner to be taken from his custody by a mob.

2. Prosecuting attorney:

Of considerably greater importance is the prosecuting attorney—known in different states as state's attorney, district attorney, or county solicitor. Generally such an official is elected in each county; but in some states he is (or may be) chosen in a district containing more than one county, in which case his jurisdiction extends throughout his district. In a very few states, the attorney is appointed by the governor, as in Florida, or by the judges of some court. Selected in most instances county by county, and by popular election, such attorneys inevitably vary greatly in character and ability. They are likely to reflect the dominant sentiment of their communities toward law enforcement, a fact which partly explains the unfortunate lack of uniformity sometimes found in different parts of the same state in the enforcement of laws against gambling, vice, illicit liquor-selling, and other offenses. However

chosen and supervised, the prosecuting attorney is paid a salary in a number of states, and in others is recompensed with fees. The tendency is to substitute salaries for the fee system.

a. Civil duties

In most states, the prosecuting attorney has important civil duties: he is the legal adviser to most, if not all, of the county officials; he draws up and passes upon the validity of county contracts; he institutes and conducts suits brought by the county and defends those brought against the county, or against any officer thereof in his official capacity; he prosecutes all cases of forfeited official or bail bonds; and he cooperates with the attorney general of the state in the handling of important cases affecting the county.

b. Law enforcement

But the prosecuting attorney's most conspicuous duties, as his title implies, relate to the enforcement of criminal statutes; and the extent to which crime is repressed depends largely on his ability, judgment, and energy. He investigates crimes which come to his attention through the public press, the police, or on complaint of private citizens; he institutes proceedings for the arrest and detention of persons accused or suspected of crime and the detention of important witnesses who otherwise might leave the state; he commences criminal actions where in his judgment the facts warrant doing so, either by filing an "information" with the proper court or by drawing up indictments and submitting evidence in support of them to a grand jury; and, either in person or by deputy, he conducts the trial of criminal cases. Recommendations which he makes concerning the fixing of bail, the discontinuance or nolle-prossing of criminal actions, and the severity of sentences are usually given serious consideration by the courts. It is often his duty, also, to bring to trial public officers accused of official misconduct.

c. Demands of the office

The office is truly one of great responsibility and invested with ample possibilities for good or evil. Control of it in counties containing large cities is a political prize of the first magnitude for both the law-abiding classes and the criminal and vicious elements interested in lax law-enforcement and a "wide-open town." It should invariably go to a lawyer of unquestioned ability, a citizen of the highest character, a man forceful and fearless in the discharge of duty, and one who is above suspicion of being controlled by, or under obligations to, any corrupt organization. Courageous and efficient prosecuting attorneys often have won distinction and political advancement. The governor's chair has been attained by many.

3. Coroner

The office of coroner is of nearly the same antiquity as that of sheriff, although considerably less important. Almost everywhere the incumbent is popularly elected, for two or four years, although in six or seven states he is appointed by the county board or by the judges of one of the higher courts; in Rhode Island, he is appointed by the town council, and therefore is not a county official at all. As set forth in a New York statute, the coroner's main function is to investigate the circumstances under which any person has died "from criminal violence or by casualty, or suddenly when in apparent health, or when unattended by a physician, or in prison, or in any suspicious or unusual manner." When holding an inquest to determine the cause of a death,

a coroner acts both as a medical examiner and as a magistrate, with authority in the latter role to conduct a hearing and examine witnesses; and he may act singly or may (in some states must) enlist the assistance of a jury, usually of six, selected from bystanders or other people of the neighborhood. A verdict of natural death, accidental death, or suicide usually ends the matter. If, however, reason appears for believing some person or persons to have been criminally responsible, the district attorney or police are suppose to start work on the case, with the coroner himself empowered to issue a warrant for the arrest of any suspected person whose identity is known. In many counties the coroner's office is little more than a booby prize awarded to some insignificant adherent of the dominant political machine, with most incumbents having neither the medical nor legal qualifications presumed. A far better situation exists in five New England and two southern states, where the coroner has been supplanted by an appointive "medical examiner" (full-time in larger cities) required to have competence as a physician or pathologist, and with all legal aspects of the work left to the prosecuting attorney. The coroner well may be on his way out along with the justice of the peace.

4. Clerk

In about half of the states, there is a county clerk, nearly always popularly elected, and for two or four years. Duties vary widely, but as a rule they include (1) serving as secretary to the county board; (2) making formal records of ordinances, resolutions, and other board actions; (3) performing the duties of an auditor or comptroller where no such officer exists; and (4) issuing marriage licenses, hunting and fishing licenses, and other licenses and permits. Not infrequently, too, the clerk has electoral duties, such as registering voters, receiving nomination petitions, and supervising the preparation of ballots. In other words, he is a sort of clearing house for county business. In one or two states, for example, Wisconsin, he somewhat approaches the character of a county chief executive.

5. Other offices and boards

This outline of county offices might be continued at wearisome length. For the rest, it must, however, serve merely to enumerate the most important ever found in some counties. The general nature of the duties attached will be apparent from the name: (1) one or more court clerks; (2) a treasurer; (3) an auditor or comptroller; (4) a recorder or register of deeds; (5) a superintendent of schools; (6) a surveyor; (7) a highway superintendent; (8) an assessor; (9) a county agricultural agent; (10) a female home demonstration agent; (11) a health officer; (12) a welfare superintendent; (13) a purchasing officer; and (14) a veterinarian; and of boards, (1) a board of (tax assessment) review; (2) a board of education; (3) a library board; (4) an election board; and (5) a planning commission. In total officers and employees, about 700 thousand persons serve county governments in this country.

THE PROBLEM OF COUNTY REFORM

Forty-five years ago, a challenging book was published under the title of *The County: The Dark Continent of American Politics* (New York, 1917).

Belated recognition of a bad situation

What the author (H. S. Gilbertson) had in mind was that county government was a labyrinth whose intricate windings were known to very few people except practical politicians, and that even professional students of government had paid scant attention to it in comparison with the governments of nation, state, and city. To a considerable extent, this unfortunate situation still exists. In the interval, however, an increasing number of disinterested explorers have penetrated the jungle in different states (notably New York, New Jersey, Illinois, Minnesota, North Carolina, and Virginia), afterwards reporting significantly on what they found. And all accounts agree that in general the county has been largely untouched by reform movements which have yielded remarkable improvements in states and especially in cities; that, almost everywhere, cumbersome machinery and antiquated methods persist, along with divided authority and responsibility—defects which, until the depression of three decades ago, went almost unchallenged.

Governmental shortcomings and suggested remedies:

Troubles associated with that hard experience did what scattered reformers never had succeeded in doing; they convinced public officials and taxpayers alike that there was more ground for criticism than they had been wont to admit. Even yet, changes for the better have been only sporadic and most have occurred in urban counties, which comprise only one-tenth of the total number. The first need is the recognition that there are two main kinds of counties, urban and rural and subtypes within these. Appropriate state laws should be designed for each type. In urban counties, in particular, the powers should be enlarged and the boards made more representative. The main shortcoming of the rural counties is that there are too many of them. Common to both types is the need for internal reorganization.

1. Internal reorganization—the need for central control of county functions:

With rare exceptions, county governments are not departmentalized and correlated but are aggregations of scattered and almost independent offices and boards. In particular, too many county officers are elected. This results in: (1) lengthening the ballot and confusing the voter on election day; (2) preventing over-all direction of these officials by a responsible superior; and (3) preventing the making and administering of a comprehensive county budget.

a. Too many elective offices

As most counties now are organized, the most serious shortcoming, however, is the lack of any chief executive. Any administrative reorganization would fall short unless some such apex, as in city, state, and nation, were provided. In a few scattered counties, something approaching such a unifying authority has been supplied. Since 1900 Hudson and Essex Counties in New Jersey have had an elective executive somewhat like a weak mayor. Since the mid-thirties, Nassau and Westchester Counties in New York have had an elective executive with powers of appointment, removal, supervision and veto. An elective chief executive with powers generally similar to those of a mayor in a strong-mayor city also serves in Cook County (Chicago), Ill. and in Milwaukee County, Wis. The home-rule charters adopted in St. Louis County, Missouri, and Baltimore County, Maryland, (in 1950 and 1956, respectively) provide for a similar head.

b. Need for a chief executive

Another type of executive which is finding favor is the county manager,

patterned after the city manager now found in so many municipalities. Some counties (for example, in Georgia, North Carolina, and Wisconsin) have taken hesitant steps in the direction of a managership under authority to vest limited duties of a managerial character in some one of the older county officials—the chairman of the county board, the county clerk, or the auditor. In some counties in other states, an appointive executive will have varying degrees of administrative responsibility but without having all the duties associated with true managership. Noteworthy among these are California's "chief administrative" officers and those in two counties in Oregon. Other counties with modified manager plans are: Cuyhoga County (Cleveland), Ohio; Hamilton County (Chattanooga), Tenn.; Clark County (Las Vegas), Nev.; Wayne County, Ga.; and Charleston County, So. Car. Where true managership exists, a full-time salaried manager is appointed by the county board, for no fixed term, and presumably without reference to politics or local residence. To him is assigned, under responsibility to the board and through it to the electorate, the entire task of coordinating and directing county administration. The board continues to levy taxes, borrow and appropriate money, enact ordinances, and determine the nature and extent of county services. It is supposed to leave the conduct of administration entirely to the manager and the higher officials appointed by and responsible to him. He should be operating through the integrated departments that almost of necessity go along with the system. If the board does not approve the way in which things are done, its proper course is to change managers rather than to interfere with and embarrass the existing one.

The county managership

Authorization, constitutional or statutory, for the manager system in a few states, followed by actual adoption in 20 scattered counties by 1963, undoubtedly may be regarded as the most significant advance recently recorded in the field of county government. Many obstacles are encountered: tradition, which perhaps is nowhere stronger than in local government; popular fear of "one-man rule"; and constitutional impediments, as, for example, in Nebraska, where an optional county-manager act of 1933 was overthrown as incompatible with a constitutional requirement that all county officers be elected. In any state authorizing county home-rule, however, the plan may be adopted by any county to which the privilege applies; in other states, it usually is constitutionally possible for the legislature to approve the system for a particular county. With testimony almost universal, where the scheme has been tried, that it yields good results, further progress may be confidently predicted. The one qualification to be added is that experience thus far has been almost entirely in populous, urbanized counties, and that it is there, rather than in sparsely inhabited counties with comparatively few activities, that one would expect the system's benefits to be greatest. In strictly rural counties of small population, the advantages might be less demonstrable, although from the one such county in the present list (Petroleum County, Montana, with a population in 1960 of less than one per square mile) come no less impressive reports of successful operation.

Its outlook

2. Excessive number of counties

In early days, when travel was mainly by horse, a large number of counties in a state was required if the county seat was to be within a day's round-trip from all parts of the county. Today, despite the railroad, the automobile, and the telephone, the number of counties (3043) remains about what it formerly was, eight states having 100 or more. With the country's population shifting from section to section, and even within the same section, in response to changing economic conditions, many counties have come to be sparsely inhabited. All, however, are required by rigid constitutional or statutory provisions to maintain the same forms of government as more favored ones. All must also meet the costs of improved highways and of the multiplied social services now so conspicuously added to the older county functions—with the result that numerous small and poor counties are unable to finance themselves out of local resources. In most states the number of counties could be reduced by a third, or even half, without harm to the principle of local self-government. This could be done by (1) consolidations, (2) deorganization by local action, or (3) abolition by the state. Consolidations have been authorized in several states, but only two have been accomplished. Authorizations for counties to deorganize (go out of existence) exist in many states. This requires local voter approval. The best statutes on this subject are in the Dakotas. The record in this type of reform is virtually *nil*. Connecticut and Rhode Island have abolished their counties as we have seen, but they are our most densely populated states. Rural local government has been largely untouched by this movement to reduce the number of counties as it has been largely untouched by the other reforms. Local pride, opposition of county officeholders and county-seat tradesmen, and reluctance of legislatures to force the matter, joined to constitutional obstacles, have combined to keep the number of counties constant.

Ultimate need for constitutional amendment

An aroused public opinion might compel a county board to adopt a sort of self-denying ordinance and introduce the managership into the existing government, without waiting for special authorization from the legislature. A progressive county board might also, within limits, consolidate offices, or at least introduce more businesslike methods in them. Probably no legislature is without power to provide for a thorough survey of county government, to authorize the employment of county managers, to abolish the fee system as some states have done, or to remedy loose financial methods by state supervision, audit, or inspection of accounts and the requirement of uniform systems of accounting and budgeting. A legislature might also enact county civil service laws, such as California did in 1939 and New York in 1941, abolish any unnecessary county offices created by statute and reassign their functions, or convert statutory elective offices into appointive ones.

In most states, however, "The roots of county government are imbedded in the legal granite of the state constitution and can be removed only by blasting them out with a constitutional amendment." Even the most intelligent and sympathetic legislature is limited, under existing powers, in what it may do to promote better county government and county boards are even more limited

in what they can do on their own. There are constitutional provisions making all offices elective, frequent provisions imposing a uniform type of government upon all counties, and others. Nothing less, therefore, than a series of constitutional amendments in most states, will clear the way for the simplification and unification of county organization essential to effective local government. Reform proposals on such drastic lines, however, are likely to encounter sturdy opposition. The county commonly is the most important unit of "grass-roots" party organization and county government the chief reservoir of party resources in local political contests.

THE NEW ENGLAND TOWN

The New England town is usually a rural trade center. There are towns with populations running into the thousands, but the majority of the 1400 or more are not urban.

The town meeting

The principal organ of government is a primary assembly composed of the town's qualified voters, and known as the town meeting. Substantially all of the town's powers are exercised by this body directly or through committees or officers acting as its agents. The town meeting is convoked in the town hall once every year (in October in Connecticut, but elsewhere during the spring months), with special meetings called if needed. For every meeting an itemized list of matters to be taken up is prepared and circulated by the "selectmen," with ordinarily no topic permitted to be considered unless it appears on the list. Among items enumerated will certainly be appropriations for all of the town's supported activities (including schools), a tax-rate designed to produce the necessary funds, and provisions for borrowing if any are required. Among them, too, are likely to be proposed "by-laws" relating to public buildings, water supply, gas or electric lighting, highways, upkeep of cemeteries, and indeed anything else within the town's range of authority, including, of course, local police. Any voter present at a meeting is entitled not only to vote but also to speak; indeed even nonvoters usually may attend and sometimes may participate. Many times the proceedings, as carried on under the guidance of an elected moderator, are stereotyped and dull. But occasionally issues arise which provoke wide differences of opinion, and even divide the townsfolk into hostile camps; and when this happens, meetings may become lively, with much of the wire-pulling, speech-making, and excitement ordinarily associated with political conventions. In smaller towns, where town-meeting day takes on the aspect of a neighborhood holiday, there still is, as a rule, good attendance and plenty of action, even though to an outsider many of the matters discussed might seem ridiculously trivial. In larger places, attendance is likely to be more scant and business to be pretty much of the cut-and-dried variety. Sometimes, in fact, the moderator simply appoints a committee which brings in recommendations on the various items and the voters approve them with little or no discussion.

As towns grow in population, a mass meeting is likely to be found ill-

"Representative" town meeting

adapted to satisfactory handling of business, and one of two remedies may be adopted: (1) a standing advisory budget committee of from 10 to 40 members may be set up to expedite the work of the general meeting; or (2) a "limited town meeting" may be substituted with all voters still privileged to attend, but only 200 or 300 chosen representatives entitled to vote. The latter course has been taken thus far largely in Massachusetts. The effect is to convert the meeting, somewhat clumsily, from a primary assembly according to the original design into a rather crude *ad hoc* representative body. Sooner or later, however, an overgrown town may take the logical course of giving up the town-meeting idea altogether and applying for incorporation as a city or borough. A good many larger towns have done this. Usually there is reluctance to abandon the old usages, and many towns hold off from doing so until long after they have outgrown the homogeneity of population and the neighborliness of spirit that make government by meeting feasible.

Selectmen

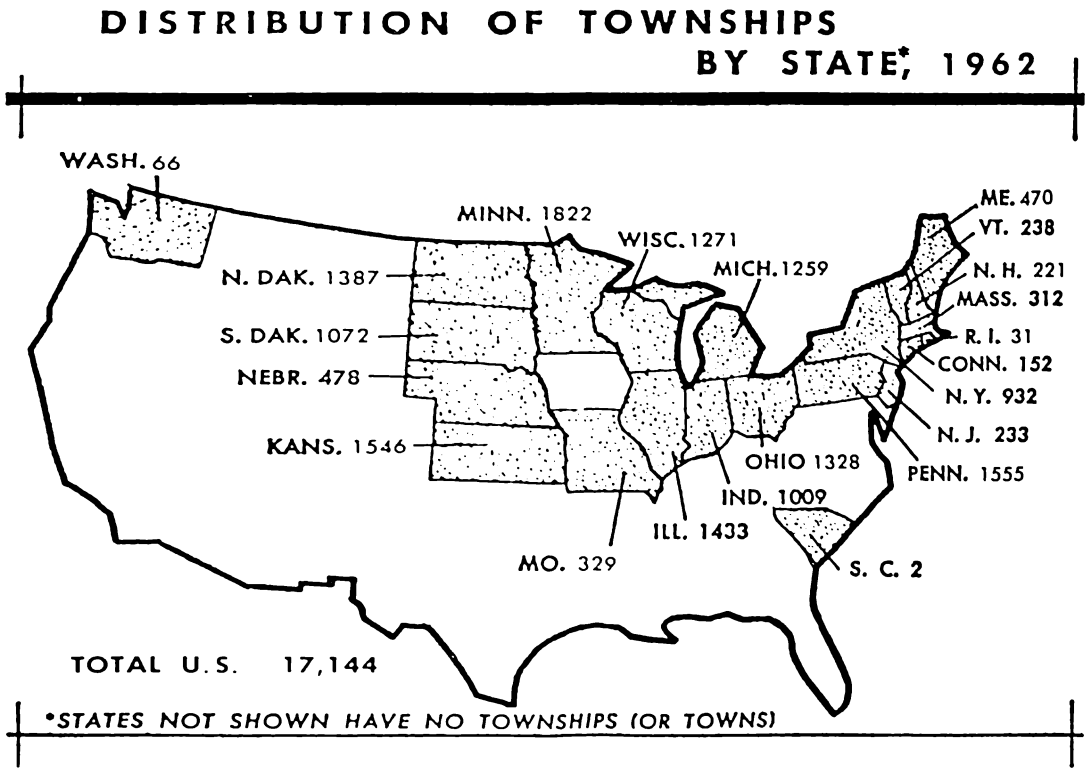
No mayor or other chief executive exists. Instead there is the board of selectmen (called town council in Rhode Island) already mentioned—a group of three, five, or sometimes as many as nine, persons chosen to serve as an executive committee of the town meeting and as such to act for that body during the long intervals between its sessions. Usually the term is one year, but in many Massachusetts towns it is three years; and in any event re-elections frequently assure fairly extended periods of service. As an executive committee, the selectmen have authority only to enforce the orders of the meeting and carry on such of the town's affairs as do not fall in the province of some different agency. They do not act as executives by wielding centralized control over other town officials because they do not appoint them. In smaller towns, purely minor officials are likely to be appointed by the selectmen, but aside from this, officials and boards are chosen by the voters—not on the floor of the town meeting as such, but by balloting carried on while a meeting is in progress, and sometimes prolonged for a day or two after it adjourns or, in a few towns, on a different date. The town selectmen may, however, grant licenses, lay out highways, care for town property, award contracts, and arrange for town meetings and elections.

TOWNSHIPS

The township meeting

From a reading of the laws, one might deduce that the township meeting required by statute in the civil townships of eight states (confined to the northernmost tier across the central portions of the country) would look and act very much like the New England town meeting on which it is modeled. All qualified voters are entitled to participate; the body has an annual spring meeting in the town hall, with special meetings as required; an elected moderator presides; and functions include electing township officers, levying taxes, making appropriations, and enacting by-laws. Almost everywhere, however, the township meeting, if kept up at all, is only a pale image of the usually well

attended and reasonably vigorous New England gathering. Interest is lax and attendance scant; often there are not enough persons present to prevent the officers from completely dominating the perfunctory proceedings. In New York, experience has been so unhappy that the meeting has been abolished; and altogether, as a recent writer has observed, "the spirit of town-meeting government has failed to take root in most . . . townships in which the meeting system has been established by law." [1]



SOURCE: Bureau of the Census, *Census of Governments, 1962* (Washington, D. C., 1963).

The township board

Whatever the township meeting may amount to in states employing it, every township state provides by law for a governing board in each township, variously termed board of supervisors or trustees, advisory board, or board of auditors, but usually consisting of three members, all elective, all ex officio, or partly both. Functions, both of the board as such and of individual members, vary widely. They are more important where there is no township meeting; for in that situation the board may become the nearest approach to a general governing authority, with usually the elective, financial, and regulatory powers that the meeting would exercise if there were one. In any case, the board frequently is charged with responsibility for any township affairs not expressly assigned to some other agency.

[1] C. F. Snider, *American State and Local Government* (New York, 1950), 357.

The supervisor or trustee

In about half of the township states (whether with or without town meetings), management of affairs, however, centers rather in a single elective officer known in New York, Michigan, and Illinois as supervisor, in Indiana, Kansas, and Missouri as trustee, and in Wisconsin as town chairman. Where such an officer exists, the function of the township board becomes mainly that of advising and checking him. In Indiana, where this chief officer's functions attain their peak, the trustee serves the township not only in its general civil capacity but as a school township as well as ex officio clerk and treasurer, with responsibility for the care of property, the administration of poor relief, the preparation of civil and school budgets, and even the selection of teachers for rural schools, though not for taxing, appropriating, or borrowing, which remain functions of the township board.

Other officers

Where the chief township officer does not serve as ex officio clerk and treasurer, there are likely to be separate officers bearing those names; and where tax assessment and collection have not been transferred to the county, an assessor also and perhaps a separate collector. An overseer of the poor and a highway commissioner will likely exist in addition unless the duties are otherwise provided for. Almost invariably there will be two or more elective justices of the peace, with an equal number of elective constables charged with tasks within the smaller area, similar to those of the county sheriff.

Township abolition

Most authorities agree that, under modern conditions of travel and communication, the township, where and as it exists, is an institution which well might be discarded. In several states, upwards of a fourth of all townships contain fewer than 400 people living outside any village or city, and in any case the area is bound to be very small—commonly only 36 square miles. In more than half of the states the township as a unit of government has never existed at all. Principal township activities usually relate to law enforcement, poor relief, and highway maintenance. All of these are at the same time functions of the county. Ordinarily, much would be gained, in both economy and efficiency, if the township were simply eliminated, with everything left to the county, or in some cases to county and city. Some progress in this direction is being made. Under a statute giving county boards the necessary power, some 96 townships in northern Minnesota have been dissolved since 1933; all those of Oklahoma (about 900) were, for all practical purposes, abolished in the same year by withdrawal of their power to levy taxes, followed by transfer of their tax-supported functions to counties. Iowa townships have also ceased to exist for all practical purposes since 1952. In Maine and Vermont in areas classed as "wild lands," townships have been deorganized by the state legislatures and their functions assumed by the states. Approximately three-fourths of the states have laws under which local units can be deorganized by local action and in North Dakota more than a score of townships have disappeared in this way, when their corporate existence proved too expensive to maintain. The functions of a deorganized unit are performed by a neighboring unit of the same level.

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31

Urban Government and Politics

CITY GOVERNMENT

THE FORM OF GOVERNMENT for American cities has been much less static than that for counties and, in many instances, a city government has a more progressive form than the state in which it lies. The impact of the industrial revolution has fallen directly on the cities. By necessity, they have had to adapt their governmental forms and methods to a more rapid tempo of life and a more complex society. Two basic forms have been invented in this century and new ones are being experimented with to meet the challenges that are constantly appearing. Urban government, therefore, is characterized by change and diversity. Amidst this diversity, however, three patterns stand out: mayor-council, commission, and council-manager.

The Mayor-Council Form

The mayor-council form, once monopolizing the field, is still found in about one-half of all municipalities of over 5000 population and in all but one of the nation's large cities (over 500,000 population). Something resembling it is found also in villages, boroughs, and a few incorporated towns. Based on the historic principle of separation of powers, its most distinguishing characteristic is a division of authority between an elective council and an elective chief executive, or mayor.

1. The council: a. Structure

Municipal councils of earlier days, especially in larger cities, consisted almost invariably of two branches or houses. A pattern borrowed from the state and nation served no useful purpose, however, and many practical disadvantages developed, with the result that municipal bicameralism has now been very widely abandoned. Only one of our 25 largest cities and four places

of over 5000 retain it. No municipality that has once discarded it has ever gone back to it. Except in Illinois and a few other states, where the number of council members is by law graduated according to population, there usually is little correspondence between population and the council's size. New York City has a council of 25 members (to be increased to 35 under the new charter); Cleveland one of 33, and Chicago one of 50; elsewhere the number runs from 20 to 30 downwards all the way to nine, even in cities as large as Detroit, Denver, Seattle, Boston, and Pittsburgh.

b. Method of election

At one time, council members were chosen almost invariably by districts, or wards, each returning one or two representatives. This still is a common method. Generally speaking it results in a larger council and often one larger than is needed. Many places (including virtually all with manager governments) have discarded it, substituting election on a general city-wide ticket giving every voter a voice in the selection of the entire membership. This latter plan, too, has disadvantages, especially in cities of considerable size; and in not a few instances some combination of the two systems is found: a small proportion of the councilmen are elected by the city at large; the majority are chosen by wards. Six municipalities elect not only by general ticket, but under a system of proportional representation. The term of members is commonly two years, but more progressive places are gradually going over to four. Formerly on a partisan basis, elections now are at least nominally nonpartisan in more than half of the cities of over 5000 population—commonly places with commission or council-manager rather than with mayor-council government.

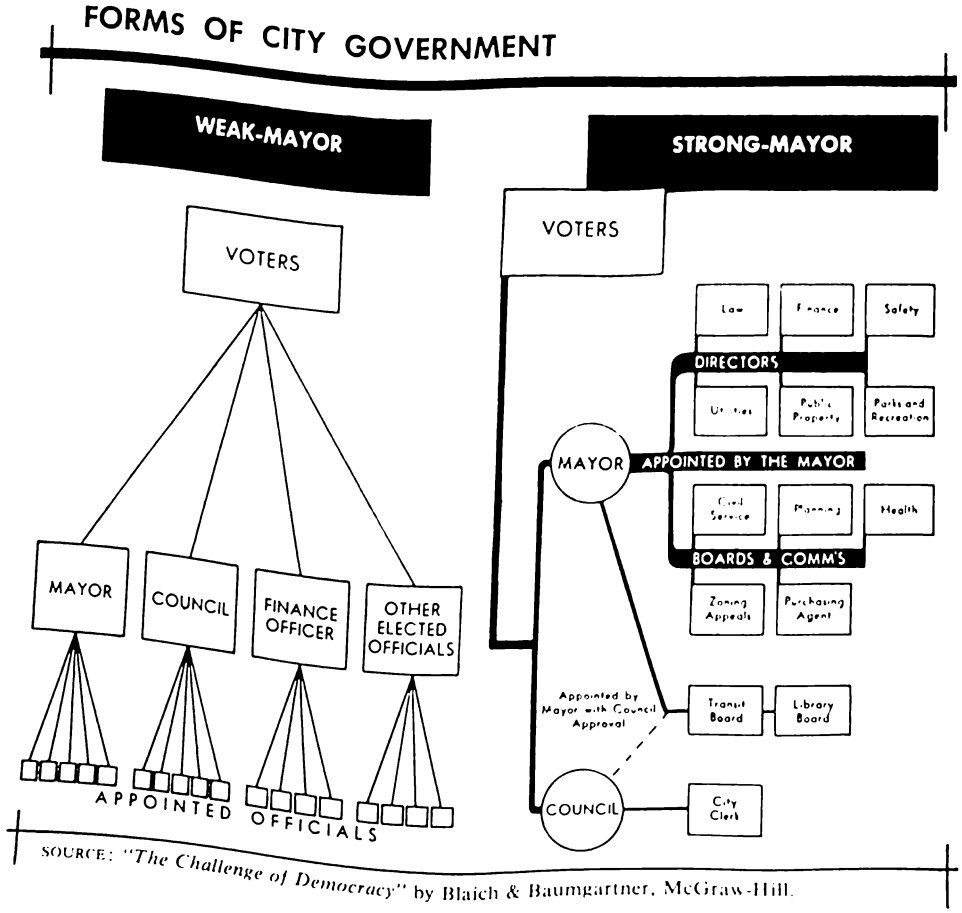
c. Functions

To the council it falls chiefly (1) to adopt the yearly municipal budget, levy taxes, borrow money, and allocate funds to the spending offices and services; (2) to grant franchises to lighting, telephone, street railway, and other public service corporations; and (3) to serve as the municipal legislature for enacting, amending, and repealing local laws, known as ordinances, on a great variety of subjects and commonly implementing one phase or another of the police power. In the state municipal code, or in individual charters, the scope of the ordinance power is always set forth in more or less detail, and no council enactment is valid and enforceable unless clearly authorized in, or properly inferred from, some code or charter provision—and, of course, unless consistent with all statutes and all provisions of the state and national constitutions. More and more, however, American city government has become a matter of administration rather than legislation—with corresponding decline of the council in activity and importance.

2. The mayor—"weak" and "strong":

In earlier days, when popular suspicion of strong executives still lingered, municipalities endowed the mayor with comparatively little authority. He could make few appointments, and only with council approval; if he had a veto at all, it could be overridden rather easily; and management of the municipal services was largely in the hands of departments, boards, or commissions subject to little mayoral control. Under this "weak-mayor" plan, the city's chief executive was in very much the position in which the governor

still is found in many states—and with the same bad effects upon unity, economy, and efficiency. In more than half of all mayor-council cities (mostly smaller ones, but including such large ones as Chicago and Los Angeles), this weak-mayor arrangement persists. In others, however, the mayor has been given considerably more authority; and some, for example, Boston and Cleveland have gone over unreservedly to a "strong-mayor" type, in which the power of appointment and removal is substantially increased, the veto power strengthened, and control over administration expanded and integrated. Although numerous other municipalities still present only varying compromises between weak-mayor and strong-mayor types, the office has been distinctly on the upgrade. In cities retaining the mayor-council form, reform movements have been aimed principally at making the mayor actual as well as nominal head of the city government, and responsible for unified management of affairs.



SOURCE: *"The Challenge of Democracy"* by Blaich & Baumgartner, McGraw-Hill.

a. Election and term

American mayors are uniformly chosen by direct popular vote—not by the council, as in Europe—sometimes on a partisan ballot and sometimes otherwise. Terms vary from one year in some smaller cities, especially in New England, to six years; in larger places, it is typically four years; elsewhere it most commonly is two. Salaries vary also from mere nominal sums in smaller

places to $50,000 in New York. The mayors of our largest cities get as much as or more than the governors of the states in which the cities are located.

b. Powers and duties

From what has been said about the varying and transitional position of the mayor in our mayor-council governments, it is obvious that no single generalized statement of powers and duties is possible. A few broad facts, however, may be indicated. Everywhere it falls to the mayor to represent the city in its dealings with other municipalities and on ceremonial occasions. Everywhere he is expected to enforce the council's ordinances, to maintain order, and in general to cooperate with the law-enforcing authorities of county, state, and nation. Everywhere, too, as chief executive, he is supposed to exercise some supervision over the work of the various city departments. How effectively he can do this, however, depends on the actual authority with which he has been endowed, and especially on his power of appointment and removal. The tendency has been to confer more independent power at these latter points. Nevertheless, in the great majority of cities appointments (and often removals also) still are contingent on approval by the council; and where removals cannot be made independently, the effect is to lessen responsibility for efficient conduct of administration.

Considerable growth of mayoral authority has come also in connection with budget-making. In earlier times, this function commonly belonged to the council exclusively, and in some cities it still does. In Boston and an increasing number of other cities, however, it has been vested in the mayor alone. Finally, may be mentioned the mayor's relation to municipal legislation, that is, ordinance-making. In most cities he presides over council meetings and convokes special sessions. Everywhere he transmits recommendations (by formal message or otherwise), along with reports of department heads or of other officials. In approximately three-fourths of all mayor-council cities he has power of veto (sometimes extending to veto of items). A veto usually may be overridden in the council by a two-thirds vote; in some strong-mayor cities by three-fourths, or even five-sixths.

3. Advantages of the mayor-council system

The mayor-council system has been criticized because legislative and administrative authority is often clumsily diffused and responsibility scattered. This criticism—in so far as the troubles come from a separation of powers—is less valid, the larger the electorate concerned. The larger cities cling to the traditional mayor-council form while many smaller places have successfully instituted forms in which legislative and administrative authority is either combined or sharply separated. The advantages of executive control of the administration can be realized to the degree in which the mayor is made "strong." The political advantages of the mayor-council system are, however, sometimes paramount. The commission and the council-manager forms seem to work best in a nonpolitical atmosphere and in a homogeneous community with more rather than less agreement on fundamental goals. The larger a city, the more complex the social groupings within it and the more diverse the social and economic goals of these groups. There is a need in these places to represent these groups, even if a large council results, and to mediate among them. (The

council-manager and commission forms typically have small councils.) There is also a need, especially in the larger cities, for political leadership and for arousing the voter to action and organizing sentiment for the public good. This the mayor—an elected executive—can do and be held politically responsible for his program. Therefore, especially in the larger cities and where the office of mayor has been strengthened, the mayor-council form is still widely preferred.

4. The public administrator

An increasingly popular practice aimed at more coordinated direction of municipal administration is the appointment of a professional administrator to serve under and at the direction of the mayor. The usual title for this post is chief administrative officer. This official differs from a city manager. He is appointed by the mayor and is responsible to him, not to the council. The mayor is still ultimately responsible for the conduct of the city's affairs. The creation of this post with adequate staff frees the mayor for policy-making and leadership. Though designed for large cities, smaller places find it useful to provide the mayor with an administrative assistant, which is a version of the same idea.

The Commission Plan

A number of cities have instituted forms in which executive and legislative powers are combined in one body. The first experiment in this line was the commission form of city government instituted first in Galveston, Texas, in 1900. This reform captured the imagination of many municipal reformers in the period 1900 to 1920. About 500 cities of all sizes, though mostly small or of intermediate size, adopted it in this period. Since that time, the commission system has lost favor and in 1963 only 251 cities of 5000 or more population still clung to it. The best known are Tulsa, Memphis, Birmingham, Portland, and St. Paul.

1. Essential features

The commission plan is remarkably simple. Instead of a large and unwieldy council, one finds a small commission, consisting usually of five full-time salaried members elected on a general ticket. All other elective municipal offices are eliminated. In this commission are concentrated all of the legislative, and most of the administrative, authority of the city government. Each commissioner serves as a legislator, fixing the tax rate and passing ordinances, and as the head of one of the five departments—such as public safety—into which the administrative work is divided.

2. Incidental features

The foregoing constitute the essential features of the system. In addition, certain incidental features almost invariably appear. The ward system has almost every where been abolished. The commissioners are elected from the entire city. Moreover, candidates are generally nominated either by petition or by nonpartisan primary, and are voted for on election day on a nonpartisan ballot. With such extensive powers vested in a small group, it has seemed wise for the public to retain means of direct and prompt control; and to this end, provision is made in most commission-governed cities (outside of Pennsylvania) for the recall of an unsatisfactory commissioner in a special election held before expiration of his term of office. Another common safeguard is the initiative and referendum in connection with ordinances. In varying degrees, all

of these devices have contributed to the improved civic conditions which usually have followed adoption of the commission plan. None is either essential or peculiar to commission government, and any mayor-council city can make use of any or all, as some do, without adopting the commission plan.

3. The mayor under the commission form

In almost all cases, a mayor is still provided for, and as a rule elected directly to the office by popular vote, although in a few cities the commissioner who receives the highest popular vote automatically becomes mayor. In New Jersey and Nebraska, the commissioners select a mayor from their own number. In any event, the commission-government mayor is traditionally little more than first among equals. Commonly he wields no veto power; usually he has no appointing power as mayor; and almost never does he have any general power of removal. To be sure, he is the nominal head of the city government, and on ceremonial occasions he acts as such. But of real authority he usually has little or none beyond that of his colleagues.

4. Decline of the plan

There is no doubt that at first it revitalized city government. How much of the improvement came from the commission system's inherent virtues and how much rather from the awakened civic consciousness that accompanied the plan's adoption was never easy to say. Certain advantages of the plan are obvious. It is simple. Theoretically it provides unified governmental policies. However, in practice, administration may be divided, each commissioner going his own way. Neither is anyone responsible for the city as a whole. In addition, the elected commissioners are (at least at first) each an amateur in the department assigned to him. If the city can hire professional technical staffs, things may go not too badly, but the essentials of good administration so necessary in a city are largely unprovided. There is no apex to the administration to insure unity, teamwork, and the proper gradation of authority. Reversions to the mayor-council form have occurred in Buffalo, Oakland, Newark, New Orleans, and Omaha. Changes from the commission form to the newer council-manager system are more numerous but have usually been by smaller cities.

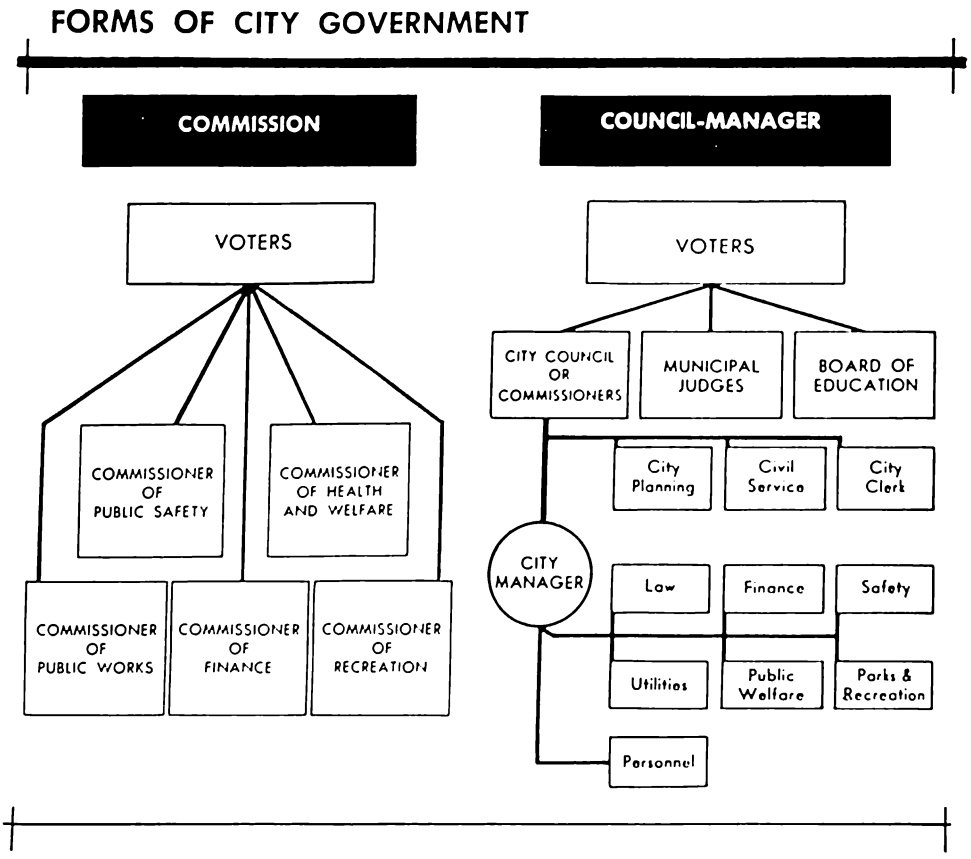
The Council-Manager system

A more enduring pattern of municipal government designed to meet the defects in the mayor-council system and also invented in this century is the council-manager system. Introduced first in any sizable city in Dayton, Ohio, in 1914, this plan has won converts steadily in the years that have followed. In fact there have been more adoptions of it in the last two decades than at any other period in its history. Its popularity has never waned. In 1963, more than 38 per cent (1151) of all cities with more than 5000 population as well as a large number of smaller places were governed under the manager system. The plan has been especially popular in cities of 25,000 to 100,000 population.

Essential features: 1. The council

Under the council-manager form, there continues to be an elective council, but always a small one. In about three-fourths of the manager cities, its members number five, and where the number is larger, it rarely exceeds seven, eight or nine. Furthermore, the council has, in general, the functions of the council in the mayor-council system except in the domain of administration—and except also for the very important function of choosing the manager. It enacts ordinances and regulations, levies taxes, votes appropriations, author-

izes borrowing, grants franchises, creates and abolishes departments, investigates the financial transactions or official acts of any officer or department—in short, serves as the supreme policy-determining and general supervisory authority of the city. Restricted, however, to these functions, it devotes only limited time to the city's affairs (rarely meeting more than once a week, and frequently not oftener than once in two or three weeks). Its members are paid only nominal sums for their services. Councilors usually are elected on nonpartisan tickets, and their work may be subject to checks imposed by the initiative, referendum, and recall. They are also, typically, elected at-large rather than by wards.



2. The manager

The really distinctive feature of the system arises in connection with administration. Under the mayor-council plan, administration is carried on in departments subordinate to the mayor, but with control considerably diffused between that official and the council and in the "weak-mayor" system among numerous elected administrators. Under the commission plan, it is vested in the commission and exercised through departments distributed among the commissioners. Under the council-manager plan, on the other hand, the entire job of administrative management is concentrated in the hands of a single well-paid official—the manager—chosen by the council and fully

responsible to it, but picked as a professional administrator and presumed to be divorced from all political connections and motivations. The council has only to determine larger matters of policy, find the necessary money, and keep a watchful eye on what goes on. Day-to-day operations of the police, fire, public works, and other departments, are not its concern. The plan is thus essentially like that of a big business corporation, with the electorate corresponding to the stockholders, the council corresponding to the board of directors, chosen by the stockholders and charged with general responsibility for the conduct of the business, and with the city manager corresponding to the superintendent or general manager, chosen by the board of directors, responsible to it, and charged with looking after all the details of the business.

The manager's functions

As the most conspicuous official in the city government and the one around whom all administration revolves, the manager has many and exacting duties. (1) With the exception of the city auditor or comptroller, the city attorney, and sometimes the city clerk (all usually chosen by the council, or even by the people), he appoints city officials—heads of departments and usually higher subordinates—and (within broad lines marked out by the council) assigns them their duties, with no power in the council to confirm or reject, although of course with due regard for whatever civil service regulations the city may maintain. The manager also can independently suspend or remove. (2) As the city's chief executive, he sees to the enforcement of all local ordinances and likewise of such state laws as the city is expected to administer. (3) He supervises and, insofar as necessary, directs all administrative work carried on in the various departments, issuing instructions, receiving reports, advising and guiding. (4) Only the council, representing the taxpayers, can adopt the municipal budget. But it is the business of the manager not only to keep the council informed on financial conditions and needs, but also to prepare the budget for council consideration and to explain the significance of its various items. Finally, (5) as the connecting link between the legislative and administrative branches of the city government, and the person knowing the city's affairs most intimately, the manager not only must attend council meetings (taking part in discussions, although of course not voting), but stand at all times ready to assist with information and advice. Members of the council are expected to refrain from meddling with administrative activities and from attempting to influence the manager in selecting department heads, awarding contracts, and the like. This they do not always do, and in many places sound traditions as to the proper sphere of the council under the system remain to be established. Properly the council's functions are exhausted when it has picked a good man for the manager's job, set up adequate machinery with which he may work, laid down any broad lines of policy that it wants to see followed, provided the necessary funds, and placed itself in a position to keep informed on what the manager is doing and to avail itself of the information and advice that he can give.

The foregoing enumeration of managerial functions and duties carries obvious implications as to the qualifications that a city manager should have.

Qualifications and selection of managers

In all cities employing the plan, the council makes the selection. Appointment usually is for no definite term, the understanding being that an incumbent will be retained as long as he gives satisfaction. The salary is fixed by the council, usually at whatever figure it becomes necessary to pay in order to obtain the person desired. Manifestly, the manager must be a man of energy and of demonstrated executive ability; he must be skillful in dealing with people, yet interested in administration rather than in politics. It is desirable that he shall have had previous experience as a manager, presumably in some smaller city, or at all events as a mayor, council member, or other municipal official. He need not be an expert in any one branch of municipal activity, for example, public works or public health, but he must have at least some acquaintance with all branches and an intelligent appreciation of the importance and interrelations of all. City managership is now a profession followed by many hundreds of experienced people.

Results achieved

The steadily lengthening list of council-manager cities suggests that the manager plan has come to stay. Eighty cities that have tried it have, it is true, given it up (sixteen of them later went back to it). The most conspicuous abandonment was that of Cleveland. Sometimes partisan politics has been allowed to scuttle the system, or it has been abandoned for other reasons not reflecting on the plan's intrinsic merits. In scores of cities, administrative personnel has been improved, better business methods have been introduced (especially with respect to purchasing, accounting, and awarding of contracts), budget making has been placed on a more scientific basis, debts have been reduced and expenditures held within the limits of revenues, partisan politics has been eliminated from administrative planning and operation, and general administrative efficiency has been promoted. Not all of the credit should go to the plan as such; some of it is due the awakened civic interest which led to adoption of the plan in the first place. Unquestionably the managership has in plenty of places demonstrated its very great merits.

Impediments and problems

There is, however, no golden road to efficient, economical, and completely satisfactory municipal government, and the council-manager plan has its obstacles and problems as does any other. The initial high hurdle is the selection of the manager himself. The manager is the key figure in the system, and unless he is the right man, things will not go well. A second problem is that of the proper functioning of the council under the system, often aggravated by the almost incurable inclination of legislative bodies to dabble in administrative matters about which they know little. If, as is true, the average tenure of city managers is brief (perhaps four or five years) a main reason—apart from resignations to accept better positions—is the tendency of councils to interfere with their work and make good relations impossible. Some councils go to the opposite extreme, taking the road of least resistance, thinking *all* of their responsibilities are discharged when the manager is selected, abdicating even their role of policy formulation.

There is also the question of the extent to which the manager shall assume an active leadership in municipal life and affairs. The earlier idea was that he

should be a strictly professional and almost impersonal administrator, leaving it entirely to the council not only to shape policy but to set the pace and fix the tone of municipal public life. Indeed, the professional organization of the craft—the International City Managers' Association—once expressly advised its members not to try to assume leadership in their city's general affairs. Leadership by a council or any other collective agency is likely, however, to be rather colorless; people like to see leadership dramatized in some conspicuous personality. Reports from many council-manager cities indicate a present tendency of the manager to emerge in the role of community leader, in the sense at least of giving primary public expression to municipal aims, aspirations, and objectives. Such a role involves hazards. The council may take offense, and there is danger of being drawn into politics. More and more managers are finding, however, that the risks must be taken. For leadership of a more or less personalized character there must be. If not supplied from within the city's government, it will arise outside, where it is likely to become a source of embarrassment. Leadership, however, is not dictatorship; a manager obviously will be well advised to respect public opinion and keep within the limits of what it will support.

The manager as civic leader

VILLAGES

Status

When a portion of a New England town, or of a Western township, or of a county that does not have township government, becomes more thickly settled than the rest and begins to take on a semi-urban aspect, its inhabitants are quite certain to demand more public services, such as fire protection, street paving and lighting, water supply, and sewerage facilities, than the town, township, or county authorities will be willing to provide. Sooner or later such communities are likely to be incorporated as villages or boroughs. State law often requires that a community seeking incorporation as a village shall meet certain standards of area and population, and that the question of incorporation be submitted to a popular vote. In Illinois, for example, any area of not more than two square miles, with at least 100 inhabitants, if not already within a village or city, may become a village by a vote of the people at a special election. It then remains a village until it has 1000 inhabitants, when it may (but is not obliged to) change to a city government. Incorporation gives a village power to undertake community services of the kinds referred to above, to levy taxes and borrow money to support them, and to have its own village government, distinct from the governments of township and county. There are more than 10,000 such incorporated villages in the United States, and they are found in all parts of the country, including New England and the southern and western states—although by far the greater number are in the north-central section, where Illinois alone has some 800.

Government

The government of villages is a comparatively simple affair. In some states, notably New York, there is a village meeting, much like the town or township meeting. In most states, however, there is no meeting, and control

of most matters is left to certain elected officials. In such cases, the main governing authority is likely to be a village board of from three to nine members, called by various names: trustees (New York), assessors (Maine), commissioners (New Hampshire), burgesses (Connecticut), or the village council. Other village officers include a mayor or president or chief burgess, who is the village chief executive, with sometimes a veto upon the acts of the village board; also a clerk, a treasurer, a marshall or police officer, and a police magistrate with functions similar to those of a justice of the peace. Thus, in structure and functions, the government of villages resembles that of cities, except that it is on a smaller scale. However, as a village increases in size and urbanization, it need not become a city in order to operate on a larger scale. State legislatures have heeded the desires of village residents to keep their village governments by passing permissive legislation and providing alternative forms of government. By taking advantage of these laws villages can provide essentially "city" services and modernize their governmental machinery in line with the best management practices in the same way cities can.

Villages as suburbs

Though the distinction in law between cities and villages (or boroughs) is disappearing, real differences in character exist when the latter are suburbs, especially dormitory ones. The first difference is psychological. The term, "village," is appealing to some suburbanites. It connotes a cohesive community with the old-fashioned rural virtue of neighborliness. They are, therefore, apt to cling to a village form of government even though the city form might be more advantageous. As it is, for instance, in Wisconsin where cities have more representatives on county boards than villages do. The second type of difference is social and economic. The residents in dormitory suburbs tend on the whole to have higher income levels than central city residents and to be employed in white collar, professional, and executive occupations rather than in the labor force. Lastly, these differences exhibit themselves in political behavior of a distinctly suburban flavor. In the dormitory suburb (and most suburbs are of this variety), there is a high regard for nonpartisanship in local elections, independent political thinking, and citizen participation in government. There is a corresponding reliance on amateurs. The volunteer fire company performs not only a governmental function but a social one as well. Their politics, too, are apt to be run by political amateurs who need neither office nor patronage and are usually free from the pressures of the tightly organized groups that play so prominent a part in the politics of the city. In national elections, the suburbs often return a Republican vote (*i.e.* in the north) while the city returns a Democratic one.

Altogether, these characteristics result in a bifurcation of patterns of thought and behavior and of political aims that makes a meeting of minds between a central metropolis and its suburbs difficult. When any metropolitan area tries to achieve solutions to problems that cover the entire area, a *modus operandi* that brings these diverging elements together is essential.

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Municipal Services and Functions

Influence of the physical environment

A CITY is fundamentally a physical place that is the work, indeed the achievement of man. Characterized by its built-up nature, this environment is very difficult to make and keep livable. Most of the activities of our city governments have as their prime objective the mitigation of the effects of congestion on people. Their greatest contributions to human welfare, for instance, in public health, have been made with this goal in mind. The outstanding city problems today can be traced back to shortcomings in this environment that have not yet been adequately resolved. Hardly an activity of our city governments is uninfluenced by the physical form of the city. The density pattern influences the kind and amount of police and fire protection that is needed and the kinds of streets and highways that are laid. The size of a city affects the kind of sewage disposal system that will be adequate and virtually determines what water supply sources will be required. The fact that city land is used for different purposes in different areas of the city, such as residential, industrial, and commercial areas and subclasses within these, makes simple movement a prime concern and the city government is called upon to *add to* the city's physical plant in order to facilitate it. In fact, many city governmental activities revolve around providing physical facilities that in rural areas are privately provided or virtually nonexistent—from playgrounds to garbage incinerators —because "built-up-ness" devours the open land. Lastly, like all physical things, cities decay and we find our city governments today assuming new functions like urban renewal.

The services of city government that are closely related to its physical

form are often called by the generic term, urban services, for as the built-up area expands, the same service needs are brought to other local governments outside the city proper. The prior experiences of our cities and older boroughs and other municipalities in providing these services should be invaluable to the people in these areas that are newly becoming urbanized.

PUBLIC SAFETY

The police department

In a municipality of any size a police chief is the head of a department organized on quasi-military lines into specialized divisions: patrol, detective, traffic control, vice, juvenile and women's, and housekeeping (records, etc.). The backbone of the force is the patrol division, upon whose efficiency largely depends the quality of the whole establishment. The patrolmen are the most numerous of the department's personnel and perform its most important function—patrolling the streets, day and night, on foot, on motorcycles, and in one-man or two-man "prowl cars," for the detection and prevention of crime. They also arrest offenders, gather and preserve evidence, and are usually called upon to handle street traffic and exceptional throngs of people. The detection and apprehension of criminals whose identity, or at least whereabouts, are unknown is the responsibility of detectives and plainclothes men who in the larger cities are organized in a highly specialized bureau or division of criminal investigation. Crime prevention is also a function of the department. Since juvenile delinquency is a major urban problem, women are often used since they are peculiarly qualified to work with children, advise parents, watch dance halls and other places where youth congregate, and maintain helpful contacts with social-service and recreational agencies.

Police effectiveness

The increase in criminality that has continued since the end of World War II has been blamed on the war's aftermath, the restlessness of the young in a time of cold war and an uncertain future, and on police inability to keep pace with changing conditions. The last is our present concern and is as difficult to document as the first two. Some facts and figures do, however, emerge. Our police are the best equipped in the world but our crime rate is consistently higher than Europe's. Our police are most successful against crimes of violence and least successful in enforcing those laws not supported by public sentiment. The American public is curiously apathetic about loss by theft, for instance, probably thinking that the "insurance will pay for it." The public is less tolerant when crimes against the person (violence) are involved. Public apathy, however, is not the only reason for the generally acknowledged poor record of our police departments. Public distrust and false economies instituted to "save the taxpayers' money" are also factors. Both probably go far in explaining the relatively small number of policemen employed by our cities as compared to European practice and the generally low salaries paid them. The number of police employees has increased gradually over the last ten years and has approximated the increase in total population but has not nearly kept

pace with the rise in crime. Meanwhile, more of the force has been employed in traffic duties.

Police protection outside the city limits

Across the nation the work of the police is complicated by the large number of units of government. The tradition of localism means many local police forces and uncoordinated activity that favors the extremely mobile criminal. Also the spread of urbanism has tended to bring urban crime into more areas. The inherent weaknesses of small police establishments and amateur forces in these areas has led to the establishment of state and county professional forces, that, however, where they exist, usually supplement rather than replace the traditional sheriffs, deputies, and town constables. There are vast interstate networks for radio and teletype communication. The states and the federal government have also established laboratories for the scientific examination of evidence, helped train recruits, and in other ways improved police administration and coordinated local activities without abandoning the tradition of local responsibility.

The problem of police integrity

No branch of municipal administration offers more opportunities for corrupt influences to make themselves felt than does the police force of a large city. In virtually every startling revelation of corruption connected with city government the police have been more or less implicated. It may be stated categorically that organized vice on any scale is impossible in an American city without the connivance of the police department. Temptation to favoritism, collusion, and graft besets the department's personnel on all levels; every lawless element deriving profit from its activities is prepared to share its ill-gotten gains with the police in return for immunity from prosecution. The possibilities of misconduct become especially grave when the police are expected to enforce laws not supported by the moral standards in the community, as frequently happens in the case of laws against the sale of liquor, gambling, and prostitution. However, even in cities where the citizenry and the police both have the will to stamp out the "rackets," they do not always have the means. A "gang" driven from a central city merely moves to a sympathetic suburb or county area.

Traffic regulation and control

The objective in traffic control is safety. Automobiles cause approximately 40 per cent of the total number of accidents. The duties of the police (in the largest cities a special force) are: regulating traffic flow, enforcing traffic laws and ordinances, and educating the public on traffic safety and changes in the regulations. An increasing number of cities is separating from departments of public works and streets, duties relevant to traffic engineering and putting them under a professional traffic engineer. He needs to work closely with the police but he is usually not part of their establishment. Typically, the traffic engineer designates the locations for stop and caution signs, the intersections for signals, and the locations for curb loading zones. He also often engages in planning for off-street parking, conducts mass transit surveys, and reviews plans for street layouts in new subdivisions. These specialized city activities, plus the work of highway engineers in designing safer highways, are gradually reducing the number of motor vehicle deaths in relation to the number of

miles travelled on the nation's roads, streets, and highways in spite of the growing number of vehicles engaged.

Fire departments and forces

A few decades ago, paid professional fire departments existed in only the largest cities, with fire-fighting left elsewhere to unpaid volunteer bands of citizens armed only with leather hose, buckets, and hand pumps. Now all is changed; any city, large or small, without a professional, paid, adequately equipped fire department is regarded as decidedly backward. Except in places of 25,000 or less, the basic pattern is a system of fire districts or precincts covering the city, each with a fire company operating, with full equipment, from a fire station serving as headquarters, and in large places with company commanders usually grouped under subchiefs. Like police protection, fire protection must be available around the clock, and consequently the force operates in platoons, or shifts, most commonly two, each with one day on duty and one day off, but sometimes three, each serving eight hours a day.

Fire department functions: 1. Fire-fighting

The primary function of a fire department is, of course, to fight, check and extinguish fires when they break out. For doing this American firemen have at their command equipment and facilities far surpassing any ordinarily to be found in European cities. Huge pumpers (a pumper company is the basic fire-fighting unit), ladders extensible to great heights by mechanical power, water-tower trucks, turret pipes, "fog trucks" carrying equipment for smothering fire with fine spray, asbestos clothing, two-way radio communication, special high-pressure water mains serving areas containing tall buildings are only parts of the apparatus available in large cities. Even in small ones there has been great advance since the old horse-drawn "fire engine" used to go clanging down the street.

2. Fire prevention

Despite all this, the annual fire loss in the United States is shockingly heavy—an estimated 11,000 deaths, twice as many serious injuries, and in terms of money, more than $1 billion. With inferior facilities for fighting conflagrations, Europe suffers far less from them (in peacetime), partly because less inflammable building materials are used, but partly also because of other precautionary measures. American cities in the past two or three decades have been waking up to the need for fire prevention. Through their National Board of Fire Underwriters, insurance companies look anxiously into the facilities of cities for fire fighting and into programs of prevention and advise with the proper authorities. City councils now fix areas within which inflammable buildings may not be erected and prohibit structural arrangements favorable to the spread of fire. Since more fires occur in private dwellings and the main causes are children playing with matches and careless smoking, fire departments are increasing their educational activities, especially in the public schools. Faulty electric equipment and wiring and other substandard building practices also contribute greatly to the nation's fire losses. These can be uncovered only by inspection and fire department personnel are engaging in this more and more. When private dwellings are inspected by firemen with the homeowner present and cooperating, public education in fire prevention can be furthered at the same time. In spite of all this, the number of building fires increased 33 per

cent from 1948 to 1958. Since the increase in manufacturing and mercantile building fires has been much lower than that for dwelling fires, monetary loss has not increased proportionately. The results of fire prevention activities are, therefore, mixed, but a good deal more attention and concern is required, for the last decade showed more loss of life than the previous one.

PUBLIC HEALTH AND SANITATION

Where, as in the modern city, large numbers of people are massed within relatively small areas, much is required not only to promote safety but also to safeguard health. To do this cities own and operate water supply and distribution systems to provide pure drinking water. They own and operate facilities to dispose of unsanitary and other wastes. And direct health services are provided by a department that may regulate personal conduct in the interests of the public health and in other ways provide a healthy environment for the people of the city.

Health departments

The head of a municipal health department is usually a professionally trained public health administrator. In large places, he typically heads a more or less elaborate and specialized administration with medical officers, sanitarians, nurses, inspectors, and other employees. Smaller places, considering that they cannot afford such a set-up, frequently leave public health matters to be attended to by a designated physician devoting most of his time to private practice. In such situations what is done may leave a good deal to be desired.

Health department activities and current problems

In times past, municipal health departments concerned themselves almost wholly with discovering and abating nuisances, fighting epidemics, and controlling communicable diseases. Nowadays, effort is focused far more upon preventive measures made possible by advancing medical and sanitary science. Vital statistics are gathered and compiled to afford a continuous picture of the state of the community's health; inspections of water and milk supply, and of every establishment and operation (often in both production and distribution) through which articles of food reach the consumer are carried on; campaigns of health education are carried into homes, schools, and factories; and, of course, the battle against contagion still goes on with health departments enforcing quarantines, supervising immunization, and administering "isolation" centers. Tuberculosis is still a threat, especially in some metropolitan areas where the mortality rate is comparable to what it was in the general population 20 years ago. Nor does the infant mortality rate seem to be declining as it should in some metropolitan areas. Whether or not the influx of migrants from cultures that usually experience a higher infant mortality rate is the cause, population movements do not make public health work any easier. Port cities usually have to be particularly careful. This is pointed up in the annual surveys of the American Public Health Association which reveal that suburban expansion is one of the major current problems of public health leaders. The others ironically reflect public health and private medicine suc-

cesses and our industrial progress of which we are so proud. They are: aging, chronic disease, radiological health, mental health, air pollution, rehabilitation, and accident prevention.

Waste collection and disposal:

The collection and disposal of wastes is everywhere an important municipal activity, although the job is done a good deal more effectively in some cities than in others. Few people appreciate the fact that, counting all kinds—ashes, inorganic rubbish, street sweepings, garbage, and sewage—a city's wastes exceed a ton a day per capita. In every city of size, the task of collecting and disposing of this is, therefore, immense and involves thousands of dollars and hundreds of functionaries. Collection does not pose any particular problems by now but disposal is literally as well as figuratively a mounting problem.

1. Garbage and refuse

How can a city dispose of the garbage and inorganic refuse after it is collected? The older methods of dumping garbage in a convenient stream or burning it with other combustible refuse in an open dump are no longer acceptable. River and lake water can cleanse itself of organic waste matter but this ability is lost when the amount dumped into it is too great—a situation that exists in many areas today. Open dumping grounds can no longer be found within an economically feasible distance without the fumes from them discommoding neighboring towns. The sanitary landfill method is, therefore, becoming more popular. In addition to its health advantages, economies result. The collection of garbage and trash can be combined (and the ubiquitous tin can added) and otherwise unusable land can be reclaimed for public parks or sold for private development, thereby adding either to the amenities or to the tax base. Where land is not available, cities are turning to incinerators as the second best method. Some localities, though, resist the added expense unless forced. When the public health is affected, a state can intervene. New Jersey, for instance, prohibits the open dump as a means of municipal refuse disposal.

2. Sewage

Sewage consists primarily of waterborne human effluvia from dwellings and wastes from many industrial plants such as laundries and slaughterhouses. More than other forms of waste, this bears the germs of disease; and proper collection and disposal have urgent importance for the health of the community. A prime municipal engineering activity is, therefore, the installation, operation, and maintenance of an adequate sewerage system consisting of trunk lines, lateral branches, and connections for every building used as a dwelling or for commercial or industrial purposes. The problem is not solved with the construction of a sewerage system, the chief purpose of which is to collect sewage and carry it off; there remains the question of final disposal. In cities on an ocean or a large lake or river, the matter may find ready, even if not ideal, solution. Where, however, the same lake or river serves as the source of water supply for nearby communities, different methods of disposal have to be found, or the sewage must be subjected to chemical treatment before it is turned into the lake or stream in question.

The contamination of the water in and about most of our cities has pro-

Water pollution

gressed to the point where only drastic action can restore our streams to acceptable conditions. Of the significant sources of pollution, half were municipal sewerage systems in the early 1950's. By the late 1950's, some 22 million persons discharged raw sewage into the waterways despite the more than 7000 treatment plants that served over 76 million people. Both the states and the national government have laws prohibiting stream pollution. The basic Water Pollution Act of the national government was passed in 1948, amended in 1956 and 1961. A separate division of the United States Public Health Service has been created to implement this law. The service issued its first enforcing order against a municipality in 1959. Prohibiting pollution may not be enough unless municipalities are also aided in constructing treatment plants. To this end, the same act in 1956 authorized $500 million and in 1961 an additional $570 million for matching grants to the states for municipal plant construction and other state anti-pollution activities. By 1960 over 1200 projects had been completed or were under construction under this program. Preferences under the 1956 authorization were given to small plants; therefore, the situation in metropolitan areas was not particularly alleviated. Though providing that one half of the aid should go to communities of less than 125,000 people, the 1961 amendments raised the ceiling for individual projects to $600,000 and projects that would serve more than one community could receive aid up to $2.4 million for each one. Aids are still given for plant construction only; therefore, suburban extensions to existing city systems, an urgent need, have not yet been helped.

Sewerage districts

One approach that is finding increasing favor is the sewerage district. These districts are independent units of government established usually by the voters of the area under state enabling acts. A sewerage district can be created to serve an entire metropolitan area—the central city and its suburbs—or any portion of it where the need is greatest. Once created, these districts enjoy financial and administrative autonomy under state law. They are governed by boards appointed by the governor or other state official (such as a judge) or by local officials in the areas they serve. Sometimes part of a board membership is elected by the voters of the area but very rarely do the voters elect an entire board. These boards employ professional staffs, which are usually technically proficient. One of the oldest is the Metropolitan Sanitary District of Greater Chicago.

Water supply

Though water for domestic uses is only a very small part of the amount used in cities, the necessity for keeping it pure for drinking purposes makes its supply and distribution a public health concern. American urban communities use at least 100 gallons a day per capita, but a municipality has to be able to provide more than its average need. Demands for water fluctuate and on a maximum day 50 per cent more than the average consumption may be needed and the maximum hourly demand may be two or three times the hourly average. The needs of domestic users and industry are making increasing demands. Population growth, technological advances that depend on water (such as air conditioning and home garbage disposal units) and new industrial

processes that need a lot of water (such as the manufacturing of synthetic fibers) are depleting ground water levels and burdening surface sources. The American Waterworks Association reported in 1959 that $400 million is needed every year just to keep up with increasing population and expanding uses and that one out of every five public systems is deficient in supply. Sources are being found farther and farther away from the cities and sources formerly bypassed are being reconsidered. Fortunately, purification advances have made some of these relatively economical; however, it has been estimated that over 200 million Americans in the year 2000 may have to get by with the quantity now used by 100 million. The need to conserve this vital natural resource is leading to some interesting experiments. For instance, Oceanside, California, has adopted a program of reclaiming its entire sewage flow for reuse by industry, for irrigation, or for ground water recharging.

TRANSPORTATION

About one-third of all the land in an average city is occupied by its streets and parking facilities. Though these streets comprise only 10 per cent of the three million and more miles of highways in the United States, they carry one-half of the nation's traffic.

Streets: 1. Types

One of the major advances in street and highway design during the last few decades has been classification according to use. Streets and highways are now classified as: local and residential streets, secondary thoroughfares, major boulevards and expressways, and limited access highways and freeways. Paving, width, and other elements of design should differ for each type, and the pattern of a city's arterials and access streets should be planned not only for present but for expected future use. Although breaks in paving occur because of poor drainage and extremes of weather, street paving does not often get a chance to wear out. Obsolescence is usually caused by traffic patterns that put streets to uses heavier than the ones for which they were intended.

2. Cost and financing

Constructing and maintaining streets is extremely costly. Concrete paving runs as high as $6 a square *yard*, including gutters and curbs. Construction costs of municipal streets amount to approximately $3 billion a year and this does not include the costs associated with land acquisition, demolition, and moving of utility lines. Maintenance has amounted to $1 billion annually in recent years. Not all this is financed from local sources, though most of it is. The states follow different patterns of help including direct state construction of city streets that are part of the state trunk system, financial aids, and shared motor fuel or other taxes. However, local dissatisfaction with rurally dominated state legislatures and highway administrations has led city officials to Washington. Since 1944, urban extensions of the primary and secondary federal aid system have been specifically provided for in national grants (even though the grants are still channelled through the states). A major portion of the System of Interstate and Defense Highways authorized in 1956

is being built in urban areas. It will carry not only long distance traffic but a large number of urban and suburban commuters.

3. Problems

Though all this money is being spent on city streets, traffic congestion, as most people are aware, continues to plague the urban resident. This problem arises mainly because the effect of streets on other land uses has not always been taken into account. For instance, an improved or new street is supposed to relieve congestion by moving traffic faster; but if commercial activity is intensified along its length (which usually happens), more people are brought into an area and congestion is increased. Each year more cities are taking a critical look at their streets and traffic patterns in order to plan them as part of an over-all land-use plan and to relate them to other public programs that are also changers of land use, for example, slum clearance, urban renewal, and recreational facilities.

Rapid transit

In the opinion of most experts, the decaying cores of our large cities can not be saved without dependence on transportation facilities that are more efficient carriers of persons and goods than the private automobile. One bus can carry 30 to 50 people, takes up only a little more street room, and rests in a terminal. Vehicles that run on tracks are even more efficient users of space. However, many privately owned and operated transit systems are losing money. Deficits have been attacked by raising fares and letting facilities deteriorate; then fewer people use them. Threats of abandonment have brought city officials increasingly into the picture. Municipal ownership is one solution. In 1963, more than 53 cities owned transit systems. Other cities are considering buying or leasing private systems but there is less enthusiasm for this solution than formerly. More cities and states are experimenting with tax reductions and direct subsidies designed to alleviate the financial plight of the privately owned and operated systems. Revitalizing central business districts by relieving traffic congestion is not the only goal of these cities and states. Many commuters are dependent on this form of transportation.

Terminal facilities

1. Airports

Many cities own and operate terminal facilities, usually through a business agency such as a municipal utility. The two most common are airports and parking facilities for private automobiles. The situation in airports has been characterized succinctly in the phrase—everyone wants one for his city but not near his home. The national government has encouraged even small cities to build airports with financial aid for construction. Few cities are breaking even on the operation of their airports. Of the 7700 cities and towns with airports in 1962, fewer than 10 per cent were served by commercial airlines.

2. Parking

Parking a private automobile is sometimes a desperate undertaking. Most cities of any size meter curb space, provide municipal lots, or do both. More off-street parking facilities are being provided each year at a high cost for land acquisition in high value areas and a subsequent loss of tax base. Proportionately more parking spaces are provided by middle-sized cities. Each city must decide for itself whether it is better to discourage private cars

from entering central business districts or encourage this by improving parking facilities.

A properly coordinated metropolitan transportation system that integrates mass transit facilities with streets and highways and parking facilities is recognized as a most important present need. Studies and plans of this kind are under way in the metropolitan areas of Washington, D. C., Pittsburgh and Allegheny County, St. Louis, New York, San Francisco, and many other cities.

EDUCATION

Independent status

In the great majority of cities, education is not administered by the regular city government. While many school districts are coterminous (or substantially so) with cities of various sizes, schools are usually in charge of a popularly elected school board endowed with independent power to levy taxes and appropriate school funds subject only to the requirements of state law. The objective in removing school affairs from the regular city government has always been to "keep the schools out of politics." Some also fear that city school systems would come off with diminished financial support. Educational activities are invariably the ones on which most money is spent whether the schools are an integral part of the city government or not. Much of the discussion is philosophical and no change has been made either way for many years. Most schools are well run by competent staffs and high-minded officials.

Expansion of educational activities

The last 40 years have seen a remarkable expansion of educational activities in American cities. These now include—over and above the regular work of instruction through the familiar 12-year gradation—medical, dental, and psychological examination of school children; operation of low-priced or free lunch-rooms; special classes for children found mentally or physically defective; evening classes for immigrants and illiterates; vocational preparation, including manual training, domestic science, skilled trades, and commercial courses; sometimes provision of junior colleges, or even of regular four-year collegiate institutions; and numerous other services—including training in the driving of motor cars. In hundreds of cities, schoolhouses are made available for evening lectures and entertainments and as centers of neighborhood sociability. Many school yards, too, have been enlarged and transformed into general public playgrounds equipped with special apparatus, with children of the neighborhood not only permitted, but encouraged, to resort to them outside of school hours. Hundreds of schoolhouses throughout the country, also, are now used as polling-places on election day, and even some so-called conservative New England communities permit public meetings to be held in them, including political gatherings during electoral campaigns.

Current problems

The last decade has been a serious one for public education. It has been the decade of desegregation, high birth rate, Sputnik and the resulting reexamination of educational goals, and the decade of suburban expansion. The American Society of Planning Officials has estimated that 100 new families in a community means four new teachers and four new class rooms. For fast growing communities this has meant a new school every year. The most difficult problems are in secondary education and they are reaching the critical stage now when the postwar "baby boom" is reaching the high school years. A community that can support an adequate grade school at present standards may find that it is not large enough to support a high school. Many suburbanites are caught in a vise when and if city school systems or districts reverse their past practices of admitting tuition pupils. As enrollments mount, more schools (and they are usually high schools) have had to close their doors to non-residents. In the last decade, school enrollment in the United States rose by one million pupils every year and the forecast for the '60's is two million more each year with the greatest growth expected in the high schools.

Under state school district organization laws, a district large enough for a modern high school can be formed by merging or consolidating smaller districts. Sometimes grade school districts are combined. Sometimes grade school districts join others that give instruction in the full twelve years. Where popular consent is required in the individual districts, mergers are exceedingly difficult to accomplish. Wealthier districts do not wish to merge with poorer ones, and vice versa, each certain that taxes will be raised. If a new building is required, each district wants it in its own area. If an existing building is abandoned, the district owning it objects. These difficulties are not confined to high school organization but are more intense there, for the high school more than the grade school is the center of community activities. Nor are these difficulties confined to suburban areas, but they are intensified here if cleavages between old and new residents occur, the new residents wanting the "best of everything" and the former residents hurt and bewildered that what they have been proud of is not considered good enough. Only in those few states where the county is the unit for school administration are these problems somewhat alleviated.

PUBLIC WELFARE

Because of the development of programs by the nation and the states, the city's welfare responsibility has become simply that of providing general assistance or relief (indoor and outdoor) for persons not sufficiently provided for by the state, nation, and community chests. Such relief is usually financed in part by state grants-in-aid. Numerous other activities varying from city to city and frequently related to public health are also carried on, such as vocational guidance clinics, free legal aid for the poor, day care centers for children of working mothers, visiting nurse services, public baths, race relations

advisement, and many other activities aimed at advancing people's physical, moral, and economic well-being.

PARKS AND RECREATION

Although considered by many part of the welfare program, recreational activities are becoming so important they deserve separate consideration. The shorter work week has given adults more leisure. The vacant lot for children's play has disappeared and the streets are no longer safe for them. The recognition of the relation between delinquency and idleness has stimulated a demand for more recreational activities. The old-time remedy, work, is no longer a cure-all. Compulsory school attendance laws and prohibitions of child employment have closed this door. The greatest need in this field is the need for space. The community that has enough park acreage available and has been able to keep its parks inviolate from through-traffic or has managed to acquire open land ahead of development is either lucky or unusually foresighted.

HOUSING AND URBAN RENEWAL

Slum clearance

This is, typically, a city not a suburban activity. The national program provides financial assistance to local authorities for low-rent public housing and urban renewal projects. The keystone of the city government's responsibilities is urban renewal. By participating in this program, cities may acquire, clear, and prepare blighted areas for new construction and rehabilitation. Cleared land may be used for public housing or resold to private builders for redevelopment. To be eligible for aid, a city has to commit itself to the following program: adequate building and housing codes, effectively enforced; a comprehensive planning division; analysis of its blighted neighborhoods; assumption of responsibility for relocating displaced families; provisions for citizen participation in the program; and ability to finance its part and administer the program. These commitments are approved by the Housing and Home Finance Agency and are recertified annually. After the project is planned, it too must be approved. The objective of urban renewal is not only to clear hopelessly blighted neighborhoods and reverse incipient blight but to rebuild in such a way that future blight is prevented. By the end of 1962, 1130 renewal projects had been approved in 607 different communities. In meeting project standards, cities have had the most difficulty with relocating families and businesses displaced by the projects. A special type of mortgage insurance (FHA) is available to assist communities and private builders to provide new housing or rehabilitate existing housing to accommodate people displaced by this program and other governmental action. However, some cities have had to undertake public housing projects they had previously shied away from and others have had to expand their public housing programs. The displaced families are not usually able to afford private housing that meets standards, either FHA or municipal.

Housing conservation

It has been estimated that it would take the entire national product for one year to replace all the substandard buildings in the United States. The impossibility of such a task makes rehabilitation of existing housing necessary. Such rehabilitation also serves to reverse incipient blight. Municipal responsibility in this field is mainly discharged by the enforcement of various codes that set up building standards—health and sanitation codes, building codes, plumbing codes, fire codes, etc. The newest addition to this roster is the housing code. Unlike the older ones that mostly govern structural and material requirements, a housing code sets up occupancy standards. These are usually persons per dwelling unit, persons per bedroom, or floor area or combinations of these. This type of code tries to reach directly the basic cause of deterioration, which is the crowding of more people into a building than it was intended to house. Building codes have been subject, however, to severe criticism. The most common criticisms are: outmoded structural requirements, uncoordinated enforcement, unnecessarily elaborate procedures for notification of violations and repair orders, costly and time-consuming court cases in the last resort, and fines too low to act as a deterrent. Needed repairs and alterations are either not made or are delayed while blight spreads through a neighborhood. Most cities could do more in this field, especially where relatively small areas of blight threaten otherwise good neighborhoods.

FINANCING THE SERVICES

Expenditures

Besides having to find the money to meet the new needs caused by the growth of our urban areas and the demands for better and more service by a prosperous citizenry, our cities have been hit by the high cost of living as has every other enterprise. School construction costs, for example, continue to rise (a half a point a *month*), construction costs for streets and other public works increased 50 per cent from 1950 to 1959 and advanced another 4½ per cent in 1959, municipal employment increased 16 per cent from 1953 to 1959 but payrolls rose 49 per cent. Across the nation cities and suburbs alike have been feeling the pinch. The cities have suffered a loss of income from the movement out of their jurisdictions of the very people best able to pay—manufacturing and retail trade and the middle-income group. At the same time, cities have been under increasing obligations to provide streets and other services for nonresidents, and to rebuild an aging physical plant. The suburbs have the opposite difficulty. They have been building an entire physical plant in one generation, and at inflated prices. The suburbs for their part are not able to take advantages of large-scale economies and they pay the costs of independence in other ways, too—in duplication of services and unexperienced administration.

In 1961, the operating expenditures of all local governments totaled over $42 billion. More than 40 per cent of the total was spent on education and the balance largely on health, safety, welfare, and transportation.

Revenue

Local revenue comes from sources falling into a half dozen very unequal

categories. At the top of the list, by a very wide margin, is the general property tax. In 1961, the property tax accounted for 42 per cent of all revenue received by local governments and was 58 per cent of the revenue raised from their own sources. Before 1950, the main nonproperty tax resource of municipal governments was the gross receipts tax levied on public utilities. (Counties and school districts were still virtually limited to the property tax.) Since then, more local units have adopted general local sales taxes. By 1962, over a thousand municipal, county, and school sales taxes were being levied. Most of them were in Illinois and California. In some municipalities—virtually all in Pennsylvania and Ohio—income taxes, personal or both personal and corporate are levied. Besides relieving the property tax, both these taxes reach the nonresident and force him to contribute to a government whose services he uses. Of the two, the sales tax is the more popular though both are regressive as used by local governments. Somewhat similar to taxes, but not of general application, are special assessments levied against benefiting property owners to meet part or all of the cost of pavements, gutters, sidewalks, or water and sewer mains which tend to improve property values in the neighborhood. Usually there also will be income from water rates and other utilities, such as street railways or electricity distributing plants. Charges for other services, such as care in municipal hospitals or extra street sprinkling have been common in the past also. Because of the sheer inadequacy of the property tax to support municipal services today, more places are resorting to these direct charges. The most common is the sewer rental charge. Municipalities also charge for services to outlying areas. Licenses and permit fees are extracted from a multitude of enterprises and pursuits, many of which are regulated, such as dance halls. Finally, and more important than anything else except taxes, are the proceeds of state-collected locally-shared taxes and grants-in-aid, the latter bringing cities substantial sums not only from the state treasury but, for certain purposes, for example, airports and highways, from the national treasury as well. In 1961, state and national money returned to local units accounted for 25 per cent of all local revenue.

Financial resources in metropolitan areas

Because a metropolitan area is not a legal entity, it is composed of many taxing and charging jurisdictions of unequal financial resources. These inequalities are intensified by local property assessment because it provides a means by which units can compete for desirable development, thus increasing a comparative advantage. However, equalizing assessments as described earlier would remove some inequalities. Reliance on the property tax as the main source of revenue in itself creates situations that have adverse effects on other parts of the area. In the first place, the temptation is almost irresistible for a unit to seek industry or to zone for large lots only on the theory that these types of land development can best pay for increased school enrollments and other services. Such activities can result in premature or ill-advised land use that increases sewer, water, and transportation costs for other units also. In the second place, if most or all of a community's tax base consists of low value property, the burden on it becomes intolerable. Inequality of financial

THE BUDGET OF A MEDIUM-SIZED CITY
Madison, Wis., 1960
(In Thousands)

Income	Amount	per cent
Real and personal property taxes	$13,040	54.8
State aids and shared taxes	5,644	23.7
Utility income	1,647	6.9
Special assessments	1,177	4.9
Departmental receipts	987	4.1
Interest earned	645	2.7
Licenses, permits, fines, etc.	438	1.8
Misc. receipts and taxes	208	.8
Total	$23,786	99.7

Expenditure	Amount	per cent
Education	$ 9,163	39.0
Safety	3,388	14.4
Debt service	2,617	11.0
Transportation	2,526	10.7
Health and sanitation	2,190	9.3
Recreation and parks	1,413	6.0
Management	948	4.0
Misc. and unallocated*	897	3.8
Welfare	350	1.4
Total	$23,492	99.6

* The unallocated expenditures are mostly for employee retirement, fringe benefits, and salary increases due to changes in classification.

resources is inevitable as long as separate taxing jurisdictions remain, but when services are provided on an unequal basis because of it, a situation exists that demands attention. We still do not have an acceptable theory of local taxation that takes into account the metropolitan complex. Within a city, the ability to support services differs from one neighborhood to another, yet police and fire protection are not allocated on this basis. The resources of the whole city are pooled. The only way at present that the resources of an entire metropolitan area can be tapped to provide a minimum standard of service throughout the area is the indirect one of state aid and shared taxes and national aid. State aids and shared taxes are often criticized, however, for their maldistribution. Income taxes are usually distributed according to the residence of the taxpayer, which intensifies service inequalities. It has been urged that they be distributed on the basis of need. State aids are supposedly distributed on this basis but often the formulae used assume that cities are wealthy places of high property values that need less, and that municipalities generally do not need aid to give a minimum standard of service, which is the

main concern of the state. Neither of these assumptions are borne out by the facts in many metropolitan areas. For this reason and the fact that metropolitan areas sometimes cross state lines and because of the national interest in so many urban activities, national aid is becoming an increasingly important revenue source for units in metropolitan areas.

Borrowing

Local government debts have been increasing from the same causes as expenditures. From a low of $13 billion in 1946, the local debt outstanding in 1962 has mounted to more than $55 billion. In authorizing new indebtedness, a local governing body usually operates under certain restraints. In the first place, many charters or state laws require popular approval in a referendum before new bonds can be issued; in the second place, in nearly all states, a ceiling is fixed by the constitution or a statute. The effect of these restrictions has often been adverse. Rather than producing local economy they have put local governments in a strait jacket to find ways to finance needed improvements. Enterprises that pay their own way from their own revenues commonly finance their extensions by issuing revenue bonds that need neither voter approval nor are they subject to ceilings. The popularity of special districts for providing services such as water supply and sewage disposal and many others is in part traceable to this, for they finance their capital programs this way. (And, incidentally, often charge for their services directly instead of relying on property taxes for their operations.) Commonly too, debt limits take no cognizance of overlapping governmental areas. Consolidation of units is hindered if the combined debt limit is lower than the sum of the separate units. This sometimes occurs in school district reorganization. Because debt limits are stated in terms not of a fixed amount, but of some percentage of the jurisdiction's assessed valuation, they are not applied uniformly over an area because assessment ratios vary. This results in the same inequalities in resources that resulted from the local assessments in the first place (*i.e.*, for taxation). For these reasons, and the fact that today needs are increasing faster than assessments, especially for schools, a different approach seems called for. One proposed suggestion is to use the total financial resources of the local government as the basis for a ceiling. Another is the approach used by North Carolina. A state administrative agency is authorized to handle each situation on its merits and to approve local debt proposals under broad discretionary authority.

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Government in Metropolitan Areas

THE BAFFLING THING about government in metropolitan areas is that there is none. Though a majority of these areas are contained within a single county, in no area is there a local government with authority to provide all the needed services for the entire area. There are cities that provide these for parts of areas; there are special districts that provide one or two services for an entire area. There are all sorts of unique combinations of service and area. The results as we have seen are: governmental complexity, unequal financial resources, unequal and inadequate provision of services, and lack of citizen control and political accountability. The ideal form for a metropolitan government would be a general purpose one with jurisdiction geographically corresponding to the metropolitan community. Under such a government there would be no duplication of services. There would be one tax system. And the government would receive its support from and be accountable to the people of the entire area. Most of the older methods for preventing or overcoming governmental deficiencies in urbanized areas assume that the city is the appropriate form to accomplish these ends. These methods included: (1) extraterritorial jurisdiction and services by which a municipality provides services to or extends its controls over adjacent areas; (2) annexation by which a city physically extends its boundaries and, therefore, its jurisdiction; (3) city-county consolidation by which the area of the county is put under the city government for the provision of municipal-type services; and (4) city-county separation by which the urban area is separated from the rural area and consolidated under the city government. Today the problems are more complex and extend

beyond the city's ability to encompass them. The methods most discuss day are: (1) federating all the units in a metropolitan area into a superg ment; (2) making the county an urban government with municipal pow provide urban services; (3) setting up special districts, and (4) pro services jointly.

METROPOLIS—1960 STYLE



Super metropolitan area along Eastern Seaboard, stretching from Virginia to New Hampshire, is shown in black.

SOURCE: *The New York Times*, August 13, 1961.

EXTRATERRITORIAL JURISDICTION AND SERVICES

In most states, municipalities may extend their jurisdictions and se beyond their boundaries in a radius of from one to five miles. The most mon types of jurisdiction extended are regulatory and involve the cont

land use, such as extension of a city's zoning, planning, subdivision controls, into unincorporated territory. This allows the city authorities to control the fringe areas and assure that developments won't occur contiguous to the city that would put an unnecessary burden or future responsibility on the city that it would not be able or wish to assume. Another type of extraterritorial jurisdiction is the ownership of land by a city outside its limits for parks, airports, water supply, and the like. This is sometimes objected to by the residents of the area but the city's interest is limited to that of a proprietor.

Services are provided for areas outside a city by the city's selling particular ones. Some are sold to persons directly but the common practice is for the city to sell the service to another municipality which in turn bills the ultimate user. Sewage disposal and water distribution are the most common services sold. These practices may ease the pressure on the suburbs to find other methods for solving common problems. On the other hand, the city can use its services as a lever to obtain return advantages, such as eventual annexation. Sometimes a city is compelled to sell a service by the state. For instance, New York City must furnish water to the suburbs in the vicinity of its aqueduct in Westchester County.

ANNEXATION

Current use

In the latter part of the 19th century when the urban population was expanding with the new industrialization, American cities engaged in frequent and large scale annexations. A typical example is Pittsburgh, Pa., which grew from half a square mile to 28 square miles by 1900. City boundaries kept pace with and indeed often went beyond the urban area. From then until 1945-1948, annexations were fewer and fewer in number and in the amount of territory taken in. Since the end of the Second World War, the pace has accelerated but the amount of annexed territory is still small. The average amount taken in in 1948 was less than half a square mile. In 1959 the total number of square miles annexed had increased over five times, but the average amount had only doubled. Many cities must make many separate annexations to acquire even a small amount of territory. For instance, Rockford, Ill., had to complete 53 separate actions to gain less than one and a half square miles. The use of this device is increasingly falling behind the rate of urbanization. The main reasons for this are that: (1) Many areas now contain numerous incorporated municipalities adjacent to the central city that resist annexation. (Some, like Minneapolis, Minn., are completely ringed. In older areas even incorporated suburbs are surrounded.) (2) Metropolitan areas have grown beyond state and county lines. (3) State laws are too cumbersome to apply, too stringent, and generally unworkable. Most of the recent sizable annexations have taken place in small, medium-sized, or fast-growing communities—mostly in Wisconsin, and in the South and Southwest, notably in Virginia, California, and Texas. The greatest legal difficulty is the requirement of most states that the residents of territory to be annexed must ap-

prove the action in an election. Even in the states with the most liberal annexation laws, voters in incorporated municipalities have this separate and controlling vote. It is noteworthy that none of the recent large annexations (of 10 square miles or more) has been of incorporated territory and none has required this separate vote. Most of them have been accomplished under one of the following five types of legal authorization: (1) The city council of the annexing city passed an ordinance. (2) The people of the city undertaking the annexation voted in favor of the proposal. (3) The election results in the city and the area to be annexed were counted together. (4) A state legislature passed a special law. (5) A court rendered a decision favorable to the annexation. Since the problems of metropolitan areas have the most effect on municipalities, most students feel that their ability to annex should be encouraged, that state laws should be liberalized, but that safeguards should exist to protect the public interest in the area as a whole.

State responsibility for local boundary changes

The experience of Texas, which has very liberal annexation laws and where the most amount of territory has been taken into the cities, points up the difficulties in purely local determinations of the wisdom and expediency of annexations. It also shows the relationship of annexation to incorporation. In Texas, any home rule city may write into its charter the procedure by which it will acquire additional territory that, however, must be unincorporated at the time of the proposed annexation. Most of them have taken advantage of this to write charters that permit them to annex such territory without the consent of the people in the area involved. This unilateral action has resulted in competitive actions by municipalities to acquire territory considered desirable while other areas have been neglected. It has also resulted in relay races of new incorporations to forestall annexation and premature annexation proposals to forestall new incorporations.

The states are beginning to modify the relevant laws to facilitate annexation and to limit incorporations in outlying parts of urban areas. When an area has a choice between annexing or incorporating, it is as doubtful if the merits of either can be decided in an election as it is that the local governing body can decide it. The broader aspects of local boundary changes should be considered by some procedure that takes into account the effects of the changes on the area as a whole. In Ohio, this is accomplished by having the county governing body consider proposals. In New Mexico, boards of arbitration consisting of city and fringe area residents consider proposals. The best alternatives, however, include the establishment of standards in state law and this is the current trend. In North Carolina, for example, a city council may annex territory on its own determination but has to follow certain legal standards and its action may be appealed. The application of standards by a state agency, however, is the preferred method. Virginia has been following this procedure for years and in this state annexation has had the most sustained use, possibly because of it. In Virginia, special annexation courts hear proposals that have been instituted by a city or by the governing body or residents in the area of the proposed annexation. The standards applied by

the court are written into state law and include such items as the need of the city for this territory for its orderly growth and development, the need of the area under consideration for services, the financial ability of the annexing city, and the existence of a community of interest between the two. The city council may accept or reject an affirmative finding of the court and any decision may be appealed. The chief criticism of the Virginia system has been that special courts do not accumulate and use a sustained body of information and knowledge. It is also dubious whether the adversary system is applicable to the weighing of issues and policies involved in this type of action. For this reason, the creation of state administrative agencies to pass on the merits of each proposal is receiving more attention. Besides being able to consider the impact of a proposal on the area as a whole, in the light of public policy, such an agency can initiate actions and consider alternative proposals. Minnesota and Wisconsin, to take two examples, have similar agencies that consider annexations, incorporations, and consolidations. In Alaska, a Local Boundary Commission has been created in the executive branch of the state that will consider proposed boundary changes and establish procedures for adjustments. In addition, Alaskan boroughs (counties) may not create service districts in an area that can be served by an existing one, by becoming a city, or by annexing to one.

Regardless of changes in annexation laws and better procedures, many areas will be unaided. In the first place, quite a few cities are unable to assume additional burdens. (It has been estimated that a newly annexed area will not "pay its way" for ten years.) In the second place, annexations are limited to adjacent and as mentioned above, in practice, to unincorporated territory. Even cities that have annexed considerable territory still comprise only part of their metropolitan areas. For example, Dallas, Texas, which has annexed over 80 square miles in recent years, still includes much less than one-half of its metropolitan area.

CITY-COUNTY CONSOLIDATION

Characteristics and difficulties

Next to annexation, the preferred method for reorganizing government in metropolitan areas was for many years city-county consolidation. This reform eliminates one level of government by combining the city and the county and is accomplished by extending the city's territory to the county boundaries and transferring county functions to the city. Not all city-counties are exactly coterminous in area with their respective counties and not all, or identical functions, have been consolidated. The county retains its identity and certain officials such as the coroner are commonly retained. The administration of justice usually continues to be a county function. But the pattern of consolidation has been different in each case. In the nineteenth century Boston, Philadelphia, New Orleans, and New York City were merged with their counties. The only city-county consolidation instituted in the twentieth century has been that of the City of Baton Rouge and the Parish of East Baton

Rouge, La. The following characteristics of the early consolidations are of special importance: (1) Except for the New York City consolidation, only one county was involved in each. (2) All were accomplished by state legislation. (3) Other units existing in the county were merged with the new unit. (4) Though the city area was expanded at the time of the consolidation, city-counties have been unable subsequently to enlarge. None of these city-counties now contains as much as one-fifth of its respective metropolitan area. Consolidation is still useful for small areas that embrace only one county and do not cross state lines but two main differences from the earlier situations limit its chances of success today. First, existing municipalities other than the city have commonly been retained in recent proposals. If they continue to be part of the county and, therefore, contribute to its support, they would in effect be relinquishing autonomy. Secondly, there are many more incorporated municipalities now in urban counties and to protect them state legislation today usually requires local referenda on proposals, the results of which are often counted separately in the city and in the rest of the county. At least 18 proposals for consolidations have been defeated at some stage in the twentieth century. The fact that other proposals for metropolitan reorganization have also been defeated in most of these areas shows that the common requirement of separate majorities in local referenda is the greatest single stumbling block. The Baton Rouge consolidation was accomplished by a single over-all vote. Most of the negative votes occur in the suburban and rural areas. These areas with some justification feel that their taxes will be raised to provide municipal services they either do not need or desire. There is a real difficulty in adjusting financial support for different levels of service in the hinterland outside the central city. The creation of service districts within the county with different tax rates obviates this difficulty and is one of the most promising recent developments. Since this is applicable to other forms of metropolitan reorganization, a closer look at the Baton Rouge consolidation plan which includes this device is in order.

Baton Rouge

The City of Baton Rouge and the Parish (county) of East Baton Rouge were consolidated in 1949 pursuant to a 1946 constitutional amendment. The legal identities of the parish and the city are maintained and each has its own budget. The parish provides for the administration of justice and highways and bridges for the area. Certain parish officials are retained—the assessor, sheriff, coroner, district attorney, tax collector, and clerk of court. Functions not common to the two units are supported separately. (Schools are administered by a separate unit and welfare is a state responsibility.) The city and county are under one executive, an elective mayor-president, and the city council of seven members elected at-large serves as the parish council with the addition of two members elected from the rural area. At the time of the consolidation, the boundaries of Baton Rouge were extended, almost tripling the size of the city, but a town and village were left undisturbed. Further incorporations are prohibited. To provide for the differences in service needs in the urban and rural territory, the parish is divided into three districts:

(1) The *urban service district*, in which the highest tax rate is paid. In this area, services are supplied by the city and include police and fire protection, garbage and refuse collection and disposal, street lighting, traffic regulation, and inspectional services.

(2) The *rural service district*, in which a minimum level of service is supplied at a lower tax rate by the parish. The only "urban" service is police protection. Other municipal-type services may be provided by the parish as need arises but only by creating taxing districts for them.

(3) The *industrial service district* where no residences are permitted in which municipal services are provided by the industries at their own expense. Additional ones may be provided by creating tax districts for them on petition of 90 per cent of the property owners of the area.

Urban and rural service districts

One drawback apparent in the Baton Rouge division of the area into service and taxing districts is that changing land uses would make difficult readjustments necessary. In areas of mixed uses, drawing boundaries would be so complicated as to make the plan unworkable. However, since this is one of the better ways to secure voter approval of reorganization proposals, it deserves serious consideration where applicable. The more common proposal is the creation of only two districts—a general one that would cover all the territory of the area and in which the common services at a minimum level would be provided, such as general police and fire protection, schools, parks, and recreation; and an urban service area or areas for extended services such as water and sewer mains, increased police and fire protection, street lighting, refuse and garbage collection. California, Alaska, Connecticut, Virginia, and Kentucky, for example, have authorized local governments to create these different taxing districts.

CITY-COUNTY SEPARATION

Limited use

Separation of a city from its county and the formation of the remainder of the county into a new or reconstituted county has been urged on different occasions as a means for city residents to avoid paying county taxes. There is something parochial about separation. The main benefit, a financial one, accrues to the city. City-county separation does not solve problems common to a whole area or provide an adequate answer to how to provide a minimum level of services throughout an area. It is not often urged today by students of the subject and two of the cities that were separated from their counties in the nineteenth century have since tried to institute other forms of governmental organization. As in the case of the consolidated city-counties, these separated cities were given land at the time of the separation but have been unable to annex any since. Denver is the only one that has annexed land and it still comprises only a small part of its metropolitan area.

City-county separation in Virginia

In Virginia a different situation exists. In that state separation is automatic for any city of 5000 or more population and is complete for cities of 10,000 or more inhabitants. Virginia cities have been able to expand because

of their system of annexation described above and so have avoided some of the problems of urban expansion experienced by other cities. In that state, however, the question of what happens to the remainder of the county if it becomes too small to give adequate services has not been solved. This has happened in Henrico County.

The Atlanta-Fulton County plan of improvement

The 1952 reorganization of the City of Atlanta and Fulton County, Georgia, has elements of city-county separation, consolidation, and annexation. As such, it is hoped that most of the knotty problems resulting from one or the other of these methods will be mitigated. At the time of the reorganization, 82 square miles of territory, mostly urban, were added to the city and in the following year 10 more square miles were annexed. The county was excluded from performing municipal functions. The city provides water, sewage disposal, parks and recreation, and traffic engineering throughout the area. The county performs consolidated area-wide services such as public health and rural services. Certain management functions have been merged, such as tax assessment and collection. The city health department was abolished and the county fire protection, airport, refuse collection, parks and recreation were transferred to the city. Incorporated units other than Atlanta were left untouched and some functions still overlap; for instance, schools, law enforcement, and public works are performed by both governments, but the plan has been considered a distinct step forward in improving metropolitan relationships.

FEDERATION

Advantages and present use

The obvious parallel between metropolitan areas with their sectional interests and established governments and the national government with its states has made the idea of metropolitan federation most intriguing to students of the subject. Under this type of reorganization the individual local units are retained to provide local services and meet diverse needs and a new metropolitan "federal" government is created to provide area-wide services. Citizen control of governmental decisions that affected people where they work and also where they live would be enhanced. A means would be provided for flexibility in meeting future problems. The financial resources of the entire area would be pooled to provide a minimum level of service throughout the area and an area-wide approach to common problems would be possible. Though the home rule enjoyed by the individual units would be diminished, the area as a whole would find increased ability to stand on its own feet.

There are two types of federation possible: (1) the borough plan, the prototype of which is London with its County Council, which provides common functions, and its 28 boroughs and the city, which take care of more local affairs; and (2) the district plan. The only example of a metropolitan federation in North America is Toronto. In 1953, the legislature of Ontario created a supergovernment for this area that is six times the size of the city. County functions were transferred to it and this metropolitan government was

given responsibility to provide the basic area-wide services. Local services remain the responsibility of the local units—the city of Toronto and the suburban cities and townships. The legislative body of 25 members is a metropolitan council composed of the 12 heads of the suburban governments, 12 officials from the city, and a chairman appointed by the provincial government. The basic weakness of this plan is this system of representation. In the first place, it is based on political units not on population. Each suburban unit has one representative regardless of size and the representation is weighted in favor of the city since the most rapidly growing areas are on the outskirts. In the second place the representatives have dual responsibilities—a legislative one to the metropolitan government and an administrative and executive one to their localities. For these reasons, recent proposals for federation in the United States have recommended the district system of representation.

Obstacles to federation

Because concessions are made to the local units, proposals for federation have the most chance of lasting success and it would seem also of local approval. Such, however, has not been the case. More proposals have been defeated locally at the polls than at any other stage. A constitutional amendment is usually required before a local charter can be drafted but this is usually secured. The only exceptions have been one for Cleveland that was defeated by the voters of Ohio in 1958 and one for the St. Louis area that was defeated in Missouri in 1930. Some of the reasons for local charter defeats are the same as those for defeats of other types of reorganization—fear of rises in taxes, fear of big government, fear of loss of independence, and public apathy. In addition, proposals for federation need to have more details worked out than do other types of metropolitan reform. Decisions have to be made on the distribution of powers among the units involved and the method of representation on, and composition of the governing body. The result is a long and complicated charter difficult to understand.

A federated county—Dade

The nearest approach to a federal system of metropolitan government in the United States is the one established in 1957 in Dade County (Miami) Florida. Following a constitutional amendment adopted in 1956 permitting Dade County to draft a home rule charter, a Metropolitan Charter Board appointed by the governor drew up a charter which was submitted to the voters and approved. The charter provides for a reorganized county government with a manager and the abolition of certain constitutional offices, such as the sheriff and coroner. The county is a union of 26 municipalities and Metro, which is the name given the reorganized county. Functions are being transferred to the county very gradually, though the charter gives the county control over sewage disposal, water supply, transportation, traffic, central planning, and other municipal functions to which area-wide control may be applicable. All other municipal powers are reserved to the cities. The county may set minimum standards that the municipalities may raise, for instance, in zoning and subdivision regulation. The municipalities will retain responsibility for local services such as local streets. Difficulties were experienced from the outset in allocating these functions but Metro is still in existence and has

received four distinct votes of confidence from the people. The governing body is a board of eleven commissioners, five elected at-large, five from districts, and one from the city of Miami. Other cities may have a representative when they reach 60,000 population.

THE URBAN COUNTY

Reasons for use of the county as a metropolitan government

The failures at the polls and the inadequacies of so many proposals for metropolitan reorganization have led to a reconsideration of the role of counties in urban areas. Over half of the metropolitan areas consist of one county and in quite a few others it is a major portion of the area. It is the only existing general purpose local government that approaches the area-wide criterion for a metropolitan government. In addition, many counties in urban areas are already assuming functions that are in effect municipal. Though reorganizing county governments so they would be equipped to deal with urban problems more extensively is difficult, it may be easier than trying to abolish or bypass them.

Prerequisite—county reform

At present most urban counties are not in a position to assume additional responsibilities. To transform a county into an efficient unit of government capable of performing urban functions requires first the internal reorganization outlined in an earlier chapter. Urban counties need, in addition, as we have mentioned, reconsideration of (1) their roles as agencies of their state governments and (2) the composition of their governing bodies. Counties are not municipal corporations in law. Though they are becoming more so in practice, the courts are still able to distinguish their powers from municipal ones. In some states, counties may adopt home rule charters and a few have done so. It is difficult to see how a county can perform urban functions without municipal and ordinance making powers. In some areas, however, there are also nonlegal objections to extending county powers. The greatest benefit so far in expanding county activity has accrued to suburban residents in unincorporated areas and city residents do not particularly enjoy paying through their county governments for services for others that they provide for themselves in their own units. To meet this criticism separate taxing and service districts could be used.

When county services are extended to *municipalities* in its area, an additional set of considerations arises. The composition of the county governing body becomes important. Central cities, in particular, are commonly underrepresented on county boards. If the county is to extend its operations to cities (in order to eliminate duplication and provide area-wide approaches to problems), it should be more representative. County governing bodies could be organized on a federated basis and many of them are by having township supervisors sit with city and other municipal representatives. This usually results in too large a board and has the same drawbacks as the borough plan of federation. A small board, such as has been advocated for rural areas, is not appropriate either. Urban counties are not homogeneous and sectional

interests need representation just as they do on city councils. This could be secured by district representation (Milwaukee County is an example) combined with election at-large if that is desired (such as is in use in Dade County, Fla.). This can have the added advantage of relating representation to population.

Methods for increasing county functions

When sweeping proposals have been submitted to the voters to reorganize counties and give them power to act as urban governments, they have usually been defeated. The most common method for reaching this goal is the *gradual* transference of municipal activities (with or without previous reorganization). Authorizations for this can usually be given by state enabling acts (instead of constitutional amendment) and can be accomplished then by contract between the units without voter approval. Each year additional states pass laws permitting counties to contract with municipalities to perform services for them. The actual use of this method has progressed furthest in California. A survey by the National Association of County Officials in 1958 revealed a pattern to this activity across the country. Only a very small number of urban counties reported no cooperative activity. Most formal agreements (*i.e.* contracts) were with cities. Functional consolidations accounted for the greatest number of these and the most common were in public health, prisoner care, and elections. Informal agreements were most common in police and fire protection. In the majority of agreements, fees were charged. The most common services provided free but under contract were public health services and tax assessment and collection. (Fees are not usually charged when the service is provided on an informal basis.)

The increasing use of the county to solve urban problems testifies to the popularity of this method. However, this should not be confused with metropolitan *government*. It represents rather an indication of an *emerging* metropolitan government in some areas. Although the list of urban county activities is long, it is not so impressive when compared with the problems still remaining.

SPECIAL PURPOSE DISTRICTS

Advantages

The most widely-used device for dealing with metropolitan problems has been the special-purpose district, a quasi-municipal corporation established for the performance, usually, of a single governmental function. Created because older units have been or are inadequate for the purpose contemplated or because other proposals to meet urban problems have failed to get approval, urged by those who are concerned with (to them) an overwhelming need in one particular area, popular with the general public (by analogy with the familiar school district, they are considered to be "out of politics"), appealing to some groups because of their business methods and engineering proficiency, these special purpose districts are almost universally frowned on by scholars. However, they have advantages that are generally recognized. These are as follows: (1) A special district can be organized to include an area covering one or more local governmental units. All the devices studied

so far are intracounty (with the exception of the consolidation that created New York City) either in conception or in practice and the legal and practical difficulties involved in using any of the other devices in interstate areas are or seem to be insurmountable. Special districts need not be limited to one county operation and they can be set up by interstate compact and international agreement. (2) These special districts can be established relatively easily compared to the other solutions. They are authorized by state law, not by constitutional amendment. If local approval is needed, one over-all vote is all that is usually required. (3) Once established, they have a flexible structure that can often be changed by amendment of state law without local approval, or amendment of an interstate compact, which would not require local approval in any case. In expanding their boundaries, they also enjoy flexibility. Such action can sometimes be taken under a simple court order, sometimes on petition of a small percentage of the voters or property owners in the area, sometimes by the district governing body acting alone. In a few states, expansion of the area is impossible or limited, but this is not the usual practice. (4) Their establishment does not disrupt or change the established governmental structure or affect local office holders. (5) They do not usually suffer the financial restrictions imposed by state law on other local units. (6) In their relationships with the state legislature, they do not seem to labor under the antagonism cities do. (7) They can provide an area-wide approach to an area-wide problem. (8) Finally, the wide variety existing in their uses and organizational practices makes a tailor-made plan not only possible but probable. It is not surprising, therefore, that the numbers of special districts have increased rapidly since 1942 when rapid growth of urban areas has produced so many service needs. This has led to the suggestion that the uses of special districts could be increased and their functions expanded, but this necessitates an examination of their disadvantages and inadequacies.

Inadequacies

The criticisms of the special district as a solution to problem in metropolitan areas revolve around their relationships with the other units of government in the area, the limitations on their activities, and their remoteness from the general public. The creation of a special district means that the number of units in an area is increased; local government is made more complex; and intergovernmental cooperation and planning is decreased by the withdrawal of a function from the responsibility of the general purpose governments. Of equal importance, when an expanded use of special districts is contemplated, are the limitations on their functions that result from their lack of general legislative power and their methods of finance. The types of districts we have been discussing in general have no ordinance-making power and there is no move apparent to increase this power like there is for counties. This usually debars them from regulatory activities and limits them to service functions. Their methods of finance—commonly special assessments, charges, rates, and rents—limit them to self-supporting activities. The effect of both these limitations so far has been that in suburban areas especially, water sup-

ply and sewage disposal, are usually more adequately provided for than police and fire protection.

The most serious criticism of the special-purpose district, however, is its remoteness from the general public. This occurs because of one or more of the following practices: (1) Many of their governing bodies are appointed in whole or in part by state judges or governors. In the case of interstate districts, they are appointed by the respective governors. (2) Sometimes a district is organized in such a complicated fashion that the typical voter does not know what it is or what it does. (3) Often the governing bodies are not directly elected by the people, either in whole or in part, and in some instances franchise depends on property qualifications—a voting restriction virtually abandoned for other electoral processes. All these practices place the voter at one or more removes from the district government and lessen political accountability.

Can the special district be retooled?

It has been suggested by many observers of the metropolitan scene that special-purpose districts might be transformed or evolve into multipurpose ones. In this case a very useful metropolitan government would result—provided that these districts could be made more responsive to the public. This would involve decisions on the composition and methods of selection of their governing bodies comparable to those encountered in plans for federation. It is not likely that many present single-purpose districts will evolve into many-purpose ones. Most districts at present are single purpose; a few provide related services such as sewage disposal and storm water drainage, but, even when a district is permitted by state law to give other services, the practice has been for districts not to expand their activities. Neither have these districts shown any inclination to *seek* authority to add to their responsibilities. The creation anew of a multipurpose district to serve as a metropolitan government seems even more difficult to achieve than the other forms of metropolitan reorganization.

JOINT AGENCIES AND COOPERATIVE ACTIVITY

The conclusions on the possibilities of metropolitan government reached by many are that local units are incapable of creating broader mechanisms of government to solve the urban problems of an expanding population. Though more special-purpose districts will be created and more urban counties will undertake additional functions, other proposals have little chance of success. The stake of the national government in the economic and social vitality of our great metropolises and the legal responsibility of the states mean that they will undoubtedly participate more and more in solving metropolitan problems. On their own endeavors, however, the local units have made progress in cooperative arrangements. Sanitation, health, fire protection, water supply, airports, and library services are among the functions that with increasing frequency are being turned over by individual governmental units to joint

agencies. Minnesota, Louisiana, Missouri, Georgia, New Jersey, and California are among the states that permit local units to perform jointly any function they may perform separately. The Municipal Authorities in Pennsylvania are an outstanding example of joint activity. The advantage of this form of endeavor is that it can be intercounty and interstate. The latest addition to cooperative activity among local units is metropolitan councils. These are associations of local officials who study the problems of their areas (with the help of professional staffs). They may make plans for their areas and recommend lines of action to their local units. The largest is the Metropolitan Regional Council for the New York area. Similar agencies are also functioning in Denver, Washington, D.C., and Wichita, Kansas. Of less broad scope are regional planning commissions such as those operating in the Twin Cities (Minneapolis and St. Paul), the Northeastern Illinois, and Detroit areas. Though many avenues of approach can and should be taken simultaneously by the largest areas, probably the only all-inclusive methods possible for them on local government terms (short of the creation of "city states") are these councils and commissions for discussion, study, and planning.

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APPENDIX

The Constitution of the United States of America

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section I

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years,[1] and excluding Indians not taxed, three fifths of all other persons.[2] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The

[1] Altered by the Fourteenth Amendment.
[2] Rescinded by the Fourteenth Amendment.

number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.[3]

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Section III

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof,[4] for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.[5]

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of the President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

[3] Temporary provision.
[4] Modified by the Seventeenth Amendment.
[5] Modified by the Seventeenth Amendment.

Section IV

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.[6]

Section V

Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section VI

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section VII

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

[6] Superseded by the Twentieth Amendment.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Section IX

The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.[7]

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section X

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its in-

[7] Temporary provision.

spection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II

Section 1

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years,[8] and together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.[9]

[8] Modified by the Twenty-second Amendment.

[9] Superseded by the Twelfth Amendment.

The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident of the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

Section II

The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section III

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the

time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

Section I

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section II

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State,[10]—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.[10]

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

[10] Restricted by the Eleventh Amendment.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV

Section I

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section II

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.[11]

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.[12]

Section III

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or any particular State.

Section IV

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

[11] Made more explicit by the Fourteenth Amendment.

[12] Superseded by the Thirteenth Amendment in so far as pertaining to slaves.

ARTICLE V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legisatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article,[13] and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation.[14]

This Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

[Signed by] [15]

[13] Temporary clause.
[14] Extended by the Fourteenth Amendment.
[15] The signatures are omitted here.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES [OR CONVENTIONS THEREIN] PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION:

Article I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article II. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Article III. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Article V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Article VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article X.[16] The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article XI.[17] The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the

[16] The first ten amendments took effect December 15, 1791.
[17] Proclaimed January 8, 1798.

United States by citizens of another State, or by citizens or subjects of any foreign State.

Article XII.[18] The electors shall meet in their respective States [19] and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such a number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March [20] next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII.[21] *Section* 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV.[22] *Section* 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States ac-

[18] Proclaimed September 25, 1804.
[19] Modified by the Twenty-third Amendment.
[20] Superseded by the Twentieth Amendment.
[21] Proclaimed December 18, 1865.
[22] Proclaimed July 28, 1868.

cording to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article XV.[23] *Section* 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Article XVI.[24] The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.

Article XVII.[25] The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

[23] Proclaimed March 30, 1870.
[24] Proclaimed February 25, 1912.
[25] Proclaimed May 31, 1913.

Article XVIII.[26] *Section* 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.[27]

Article XIX.[28] *Section* 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Article XX.[29] *Section* 1. The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

Section 3. If at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified, and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

[26] Proclaimed January 29, 1919.
[27] Rescinded by the Twenty-first Amendment.
[28] Proclaimed August 26, 1920.
[29] Proclaimed February 6, 1933.

Article XXI.[30] *Section* 1. The Eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Article XXII.[31] *Section* 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Article XXIII.[32] *Section* 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice-President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Article XXIV.[33] *Section* 1. The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[30] Proclaimed December 5, 1933.
[31] Proclaimed March 3, 1951.
[32] Proclaimed March 29, 1961.
[33] Proclaimed January 24, 1964.

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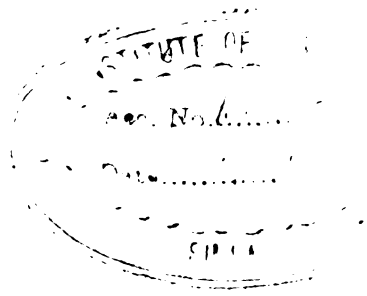
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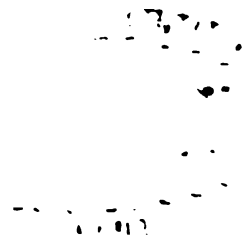
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