VOL. II, NO. 3 APRIL, 1917

Smith College Studies in History

JOHN SPENCER BASSETT
SIDNEY BRADSHAW FAY
Editors

THE DEVELOPMENT OF THE POWER OF THE STATE EXECUTIVE

WITH SPECIAL REFERENCE TO THE STATE OF NEW YORK

By MARGARET C. ALEXANDER, M. A.

NORTHAMPTON, MASS.

Published Quarterly by the
Department of History of Smith College

Entered as second class matter December 14, 1915, at the postoffice at Northampton, Mass., under the act of August 24, 1912.

SMITH COLLEGE STUDIES IN HISTORY

JOHN SPENCER BASSETT
SIDNEY BRADSHAW FAY
EDITORS

THE SMITH COLLEGE STUDIES IN HISTORY is published quarterly, in October, January, April and July, by the Department of History of Smith College. The subscription price is fifty cents for single numbers, one dollar and a half for the year. Subscriptions and requests for exchanges should be addressed to Professor SIDNEY B. FAY, Northampton, Mass.

THE SMITH COLLEGE STUDIES IN HISTORY aims primarily to afford a medium for the publication of studies in History and Government by investigators who have some relation to the College, either as faculty, alumnae, students or friends. In aims also to publish from time to time brief notes in the field of History and Government which may be of special interest to alumnae of Smith College and to others interested in the higher education of women. Contributions of studies or notes which promise to further either of these aims will be welcomed, and should be addressed to Professor JOHN S. BASSETT, Northampton, Mass.

SMITH COLLEGE STUDIES IN HISTORY

VOL. I

No. 1. "AN INTRODUCTION TO THE HISTORY OF CONNECTICUT AS A MANUFACTURING STATE"..... *Grace Pierpont Fuller*

Nos. 2, 3. "THE OPERATION OF THE FREEDMEN'S BUREAU IN SOUTH CAROLINA" ..... *Laura Josephine Webster*

No. 4. "WOMEN'S SUFFRAGE IN NEW JERSEY, 1790-1807" *Edward Raymond Turner*

"THE CHEROKEE NEGOTIATIONS OF 1822-1823".. *Annie Heloise Abel*

VOL. II

No. 1. "THE HOHENZOLLERN HOUSEHOLD AND ADMINISTRATION IN THE SIXTEENTH CENTURY"..... *Sidney Bradshaw Fay*

No. 2. "CORRESPONDENCE OF GEORGE BANCROFT AND JARED SPARKS, 1823-1832" ..... *Edited by John Spencer Bassett*

THE SEEMAN PRINTERY, DURHAM, N. C.

VOL. II, No. 3 APRIL, 1917

Smith College Studies in History

JOHN SPENCER BASSETT
SIDNEY BRADSHAW FAY
Editors

THE DEVELOPMENT OF THE POWER OF THE STATE EXECUTIVE

WITH SPECIAL REFERENCE TO THE STATE OF NEW YORK

By MARGARET C. ALEXANDER, M. A.

Thesis presented to the Faculty of Smith College in partial fulfilment of the requirement for the degree of Master of Arts

NORTHAMPTON, MASS.

Published Quarterly by the
Department of History of Smith College

CONTENTS

THE DEVELOPMENT OF THE POWER OF THE STATE EXECUTIVE

CHAPTER I

Introduction

"There is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government."[1] These words, taken from an essay in support of the federal constitution and written without regard to the political system of the states, are still applicable to our state governments. In their constitutions nine states vest in the governor the executive power; seven, the chief executive power; twenty-nine, the supreme executive power.[2] In no case, however, are means provided by which the power may be realized. Aside from the influence which the governor exerts on legislation, his prominence is due chiefly to his ceremonial position in the state. The real administration is in the hands of a chaotic mass of boards, commissions and officials, over whom he has practically no control.

The organization of the state executive department naturally falls into three divisions: the chief executive or governor; the elected executive officers, such as the secretary of state and treasurer; and the executive boards and commissions. To the older elective officers the governor bears the relation of a coördinate state official, with whatever added dignity his control over legislation through the veto and his more representative position in the state confer.[3] He has no power to call them together, as the president assembles his cabinet, to formulate a common policy for the administration of the state. Popularly elected, they may

[1] "The Federalist," No. LXX., 436

[2] "Index Digest of State Constitutions," 680.

[3] L. A. Blue, "The Relation of the Governor to the Organization of the Executive Power in the States," 16.

be affiliated with a different party from his own and so be out of sympathy with his political convictions. Finally, he cannot remove them, as is shown in a decision of the supreme court of Illinois dealing with the governor's power to remove the secretary of state. "The injunction," said Chief Justice Wilson, of that court, "that the governor shall see that the laws are faithfully executed, it is also urged, gives him the control, and consequently the power of removal of the officers of the executive department. This interference is not justified by the premises. It has neither the sanction of authority nor the practice of other state executives, both of which are opposed to it. . . . The manifest intention of the constitution, and the authority cited, in the absence of all precedent and principle militating against it, would seem to be conclusive against the executive claim of power, under this provision, to direct the secretary how he shall execute the duties assigned him by law; and if he has no power to direct him how he shall execute his duties, he certainly has no power to dismiss him for not conforming to his directions."[4]

Over the actions of the third branch of the executive department, the boards and commissions, the control of the governor is also slight. Although the appointment of the members of most of these boards rests with the governor, he has not the power to remove them nor the right to direct their policies. After their appointment they become practically independent.[5] Such an analysis of the state executive department proves the truth of President Goodnow's words: "The governor is not the head of the administration in the commonwealths of the American Union. American administrative law has added to the famous trinity of Montesquieu a fourth department, viz., the administrative department, which is almost entirely independent of the chief executive and which, as far as the central administration is concerned, is

[4] Field v. The People, 3 "Illinois Reports," 79; quoted in Beard, "Readings," 435.

[5] F. H. White, "State Boards and Commissions." *Political Science Quarterly*, XVIII, 645.

assigned to a number of officers not only independent of the governor but also independent of each other."[6]

The legal interpretation of the state executive power by the courts has tended to subordinate further the governor's office. The American executive power has been always conferred and limited, either by charter or commission, as in colonial days, or by written constitution,[7] and towards this power the courts have adopted the principle of narrow construction. The state legislature enjoys every power not denied to it by the federal constitution or the constitution of the state. The state executive, on the other hand, possesses only the powers expressly defined in the fundamental law of the state. Moreover, the enumeration of the powers of the governor, found in every state constitution, is a limitation on the words of the general grant, "The executive power of the state shall be vested in a governor." The denial by the courts of the power to remove an elective state officer has been mentioned. In South Carolina the court held that the power of removal was not incident to the office of governor, nor incident to the power of appointment, if the term was fixed.[8] In New Jersey the governor attempted to remove the police commissioners of Jersey City, who are state officers, after conviction for conspiracy to defraud the city of public funds. The supreme court of that state held that the right to remove a state officer, even for proved malfeasance in office, did not belong to the executive.[9]

Such emphasis upon the limitations of the chief executive of the state would seem to support the view some times advanced that the governor is sinking into a position of a mere figure head. To see how much the opinion is erroneous only a brief survey of the powers of that officer is necessary. All executive power consists of two distinct functions; political, or "governmental," and

[6] Goodnow, "Comparative Administrative Law," 137.

[7] Finley and Sanderson, "The American Executive and Executive Methods," 3.

[8] State v. Rhame, "News and Notes," ed. by W. F. Dodd, *American Political Science Review*, VII, 137.

[9] State v. Pritchard, 7 Vroom (N. J. L.), 101. Mathews, "The New Role of Governor," *American Political Science Review*, VI, 217.

administrative. The political functions of the governor include the military command, power to grant pardons; and control over the actions of the legislature through the power to call extraordinary sessions, to adjourn the legislature in case of disagreement as to time, to send messages to the legislature, and, above all, the power to veto. His administrative functions include the power of appointment and removal, and the direction and control of administrative officers and services. The first set of functions far outweighs the second in importance. The governor's political powers, as will be seen later, have tended to increase; but the governor's office has been deprived of all means of administrative development, and it is only recently that a gradual tendency to develop that branch of his power has become apparent. Lord Bryce has recognized this change; for, writing in 1888 of the position of the governor, he said: "His powers are, however, in ordinary times more specious than solid, and only one of them is of great practical value." In 1912, on the other hand, he wrote: "In the present century his powers have begun to revive. . . . The decline in the respect and confidence felt for and in the legislatures has latterly, in some states, tended to attach more influence to the office of governor, and has opened to a strong and upright man the opportunity of making it a post of effective leadership. The people are coming to look upon the head of their commonwealth as the person responsible for giving them a firm and honest administration."[10]

In the following discussion it is proposed to trace the change in the governor's position from the colonial period to the present. The subject is considered under two heads, constitutional and the extra-constitutional. The constitutions and the revisions of the fundamental laws of the thirteen original states have been examined, and an analysis has been made of the constitutions of some other states. The major part of the discussion is devoted to the development of the governor's office in the state of New

[10] Bryce, "The American Commonwealth," (1888), I, 474; (1912), I, 498, 501.

York. The normal, unconscious development of the governor's powers is first treated. Then an analysis is made of the abnormal extension of the governor's functions which was attempted in the proposed constitution of 1915. A brief summary of the present status of the governor in New York concludes the discussion.

CHAPTER II

Development of the Office of Governor

1. *The Colonial Governor*[1]

The earliest commissions and instructions to the colonial governors granted powers so vaguely as to leave them practically limitless. An illustration of this point is the commission to Lord Delaware issued in 1610. It conferred upon him power to enforce martial law, "and upon all other cases as well Capitall as Criminall and upon all other accidents and occasions there happening, to rule, punish, pardone and governe." The explanation may be found in the unsettled condition of the colonies. The governor was the head of a commercial enterprise rather than of a fixed political community, a position demanding greater emphasis on executive efficiency than on constitutional limitations. As the colony developed a change became apparent in the governor's office, its vague powers assuming a definite form, determined, no doubt, by the governor's vice-regal position. Since the colonial governor represented the dignity and power of the king, his authority took the form of the royal prerogative. His position as military chief, his right to appoint all officers, to prorogue and dissolve assemblies, to make laws with the consent of the council and assembly, and his other minor powers—all corresponded to similar prerogative rights of the king.[2]

More striking, even, than this vice-regal position was the absence of any separation of the executive, legislative, judicial, ecclesiastical and military powers.[3] At first the governor was the sole law-making authority, restricted only to the extent that

[1] The term, as here used, refers to the office as it existed in the royal and proprietary colonies, where it approached a common type. An abnormal aspect of the office is presented in Connecticut and Rhode Island, where the governor was chosen directly by the people and acted primarily as the agent of the Assistants, possessing, as he did, no veto power and no power of appointment, the latter being vested in the legislature. The material in this connection has been derived almost solely from Evarts B. Greene, "The Provincial Governor."

[2] Greene, "The Provincial Governor," 93.

[3] E. L. Whitney, "Government of the Colony of South Carolina," *Johns Hopkins University Studies*, XIII, 39.

his enactments must not be contrary to laws already in force. Later the assent of the council was required. At length, legislative power was placed in the hands of an assembly, consisting of the governor, the upper house or council,[4] and a representative chamber. For some time after the creation of this body the governor sat and voted in the assembly and, in addition, possessed the veto. Later on his legislative power was still further limited but, to the end, he maintained a strong position through his unqualified veto and the influence he exerted over the council. Furthermore, he retained the power of issuing ordinances in regard to salaries and fees and concerning the erection of courts. Late in the colonial period his ordinance power was reduced to a mere formality.

In judicial matters the governor also had extended functions. At first, in many colonies, with the council, he constituted the only court. This was the case in North Carolina until the arrival of the temporary constitution of 1670, which gave the governor and council the power to establish courts, although none were erected until near the end of the century. In 1685 justices were appointed to constitute a general court and the governor and council were to act as a court to hear complaints against these new justices. There is no evidence that this new system was used until 1702.[5] The slow development of the judicial system in North Carolina is fairly typical of all the colonies. Even after the organization of regular courts the governor and his council continued to act as the highest court of appeal in important civil cases. In addition the governor exercised, with the consent of the council, the more truly executive function of appointing the judges.

The opening of the eighteenth century found the colonies with clearly defined organs of government, and a natural consequence was restriction of the activities of the governor, the first step being the creation of an executive council. A conflict immediately arose as to its relation with the governor. In Virginia

[4] Except in Pennsylvania, where the council exercised purely executive functions.

[5] J. S. Bassett, "Constitutional Beginnings of North Carolina," *Johns Hopkins University Studies,* XII, 161-162.

it contended that it constituted a collegiate executive, with the governor simply a presiding officer. On the other hand the governor held that he was the sole executive and that the councillors were merely his advisors and assistants. The latter conception prevailed. The typical executive council consisted of twelve councillors appointed by the Crown, usually on the nomination of the governor. The governor had full power to suspend the councillors. Through his power of nomination and suspension he maintained a strong influence over them. As a rule, therefore, the council supported the governor in his contests with the assembly. The council exercised three distinct functions: with the governor it served as a court of trial; it was the upper branch of the legislature; finally, it acted as an executive body to assist and restrain the governor. Its consent was necessary to all the governor's appointments, and, indeed, to every important act of the governor.

Vastly more important than the council as a check upon the governor was the representative assembly, which came into existence early in the colonial period. As early as 1619 the liberal element in the Virginia company demanded and obtained a representative body. In New York permanent provision for a popular assembly was not made until after the revolution of 1688. The consent of the assembly was necessary for the enactment of all legislation. Controversies soon arose between the governor, as agent of the Crown, and the popular branch of the legislature as to the voting of appropriations and supplies. These differences led to restrictive measures on the part of the assembly, even to positive encroachments upon the executive. Before considering these restrictions, however, it would be well to analyze the powers of the governor at the beginning of the eighteenth century, because it is to the extent of these powers and to the frequently corrupt and despotic use of them that the encroachments were largely due.

The first powers to assume prominence were the military. As indicated in the commission these were very extended. In practical operation they were not so large, owing to the fact that,

without financial support from the assembly, the governor was powerless. As a general rule the governor exercised the pardoning power, except in cases of treason and wilful murder, where he had power to reprieve. His action in this respect was independent, the concurrence of the council not being necessary.

The foremost of the governor's powers was his power of appointment. At first this was unlimited. Soon a restriction appeared in the form of counciliar confirmation of all civil and judicial appointments. The governor's patronage was large, including in New York all the officers necessary for the administration of justice and the execution of the laws. The appointing power was often corruptly used. Some governors provided for their families out of the colonial patronage, while others used it to extend their influence in the assembly. As a result efforts were made to restrict the exercise of this power. The tenure of offices in the gift of the governor was regulated, as by the Maryland act of 1662, which provided for the annual appointment of sheriffs and forbade two successive terms. Certain qualifications for appointment were imposed. The statutes of New Jersey and Maryland made residence a requirement for office. Three colonies, Maryland, Virginia, and Pennsylvania, required that the governor appoint sheriffs from a list of names presented by the county courts. In all the colonies the assembly exercised a control over appointments by withholding the salaries of those officers whose appointment it disapproved.

In the earliest part of the colonial era the financial powers of the governor were very extensive but the introduction of representative assemblies gradually deprived him of the greater part of them. Two remained, however: the regulation of salaries and fees; and the issue of warrants for the expenditure of money. The former gradually passed from the governor's hands to those of the assembly. The latter afforded the governor and council considerable discretion in the disposition of money until the practice of making minutely detailed appropriations became general. After that the governor and council were placed in the position

of a mere accounting board to check expenditures made in accordance with the appropriations of the legislature.

The governor's power over the assembly consisted, first, in his right to call that body together. The necessity of assembling it to get supplies rendered this prerogative useless as a means of control. Far more effective was his power to adjourn, prorogue, and dissolve the assembly. Dissolution was often used as a means of getting rid of an obstinate assembly. So effective did it prove that four of the early state constitutions explicitly denied that right to the governor.[6] A third power of the governor over the assembly consisted in his absolute veto. Aside from these legitimate means of control, the governor possessed other ways of bringing pressure to bear on the assembly. The fact that the upper house of the legislature was composed of the governor's nominees provided a very obvious method of controlling legislation and of thus hampering the lower house. Finally, through a judicious dispensation of the patronage, the governor often sought to win over the members of the assembly.

The assembly, through its control of the purse, exercised a very real control over the governor. Instances are not wanting of salaries withheld until assent to certain measures was secured. At first this power was used merely to check the abuse of executive functions. Not content, however, with mere restrictions upon the powers of the governor, the assembly began to encroach upon his authority and to assume some of the functions belonging normally to that office. A partial explanation may be found in a loss of confidence in the governor's integrity, due to the corrupt practices of men like Governor Cornbury, of New York. The natural tendency of the legislature, when once firmly established, to encroach upon the executive, may be in part responsible. The chief reason lies in the fact that the interests which the two organs of government represented were so diametrically opposed.

It was mainly through its control of the purse that the assembly had gained its power over the governor. Its first assump-

[6] Maryland, Delaware, Virginia, South Carolina.

tion of executive powers was, therefore, in the department of finance. Appropriations were made for very short periods of time and so in detail as to deprive the executive of all discretion in the disposition of the money appropriated. The power of issuing warrants was reduced to a complete formality by requiring that money, even when duly appropriated, should not be drawn from the treasury without a special vote of the assembly. Next, the assembly claimed the right of appointing the officers charged with the collection, custody and disbursement of the public money, so that in a majority of the colonies the treasurer came to be appointed by the assembly. The final step in this process of encroachment was taken when the assembly practically assumed the general power of appointment by granting salaries to officers by name.

Bereft of his financial power and with his control of the patronage sadly threatened, the governor at the end of the colonial era presents a different aspect from the almost omnipotent governor of the earliest commissions. Yet he still possessed two very powerful functions, the veto and the power of dissolution. Both of these he used without hesitation in upholding the crown in the latter days of colonial history. The representatives of the people had opposed inefficiency and corruption with restriction and encroachment. The assertion of the rights of the mother country as against those of the colonists must be met by more drastic methods.

2. *The Governor Under the First State Constitutions*

The first state constitutions bear many marks of crudeness and hasty construction, not only in formal diction but also in the organization of the government. Not the least of these is the lack of balance in the distribution of functions. Experience with a powerful executive, responsible not to the people but to some external authority, taught the colonists the undesirability of concentrating important functions in one man. Reaction seldom follows a middle course, and in this case the pendulum swung to the other extreme. Forgetting that the substitution of an elective

system for the old practice of appointment afforded a means of holding the governor accountable, the people transferred practically all power, executive and administrative, to the legislature. In the convention of 1787 Madison described the distribution of powers in the constitutions of the revolutionary period in the following terms: "Experience proves a tendency in our government to throw all power into the legislative vortex. The executives of the state are little more than ciphers; the legislatures are omnipotent."[7]

Remembering the effective check which the colonial governor had interposed upon popular measures by means of the veto, the constituent bodies of this period, in all but three states,[8] removed the veto altogether. In Massachusetts the governor was allowed a qualified veto. The first New York constitution provided for a council of revision, consisting of the governor, chancellor and judges of the supreme court, any two of whom, with the governor, could exercise the veto. In the constitution of South Carolina, 1776, is found the clause: "Bills having passed the general assembly and legislative council may be assented to or rejected by the president and commander-in-chief. Having received his assent, they shall have all the force and validity of an act of general assembly of this colony. And where a bill has been rejected, it may, on a meeting after adjournment of not less than 3 days of the general assembly and legislative council, be brought in again."[9] In the constitution of 1778 this provision was dropped and, until 1789, the legislature had the sole law-making authority in eleven states.

In all but four states,[10] it was provided that the governor should be elected by the legislature. Associated with him in all except New York, New Jersey and New Hampshire was an executive council. The creature of the legislature in seven

[7] "Elliot's Debates," V, 327.

[8] Dealey mentions only two states granting the veto in any form. See "Growth of American State Constitutions," 37.

[9] Constitution of South Carolina, 1776, Arts. VII and VIII.

[10] New York, Massachusetts, Connecticut, Rhode Island.

states,[11] it afforded that body an effective check upon the few executive powers attached to the governor's office. New Hampshire framed the first state constitution. Perhaps in this fact lies the explanation of its failure to provide for any executive. The constitution of 1776 provided for a council which was purely the upper house of the legislature and possessed no executive functions, while its president was simply a presiding officer. In the council and assembly was vested the power of appointing all officers, civil, military and judicial, except the clerks of courts, county treasurers and recorders of deeds.[12] Short terms and careful restrictions on reëlection provided further assurance against executive usurpation. Nowhere was the term of the governor over three years. In South Carolina it was two years,[13] in New York and Pennsylvania three, and the remaining states had annual elections. Several states set a period of three or four years after the expiration of a governor's term, during which he would be ineligible for reëlection.[14]

The reduction of the governor's appointing power was one of the severest blows at his prerogative. None of the original states gave him any patronage which he could distribute independently. Delaware, Pennsylvania, Maryland, and Massachusetts provided for the largest amount of patronage.[15] In these states the governor, with the concurrence of the council, could appoint the attorney-general and certain judicial officers. In New York all appointments were in the hands of a council, in which the governor had simply a casting vote. In Georgia all officers, except the councillors, were elected by the people. In the remaining states the officers were appointed, mainly by the

[11] Popularly elected in Pennsylvania, Connecticut and Rhode Island.

[12] Thorpe, "American Charters and Constitutions," IV, 2451, 2452, 2453.

[13] Constitution of South Carolina, 1776, Art. XIII.

[14] Delaware, three years; Maryland, Virginia, and South Carolina, four years; North Carolina, ineligible more than three years in six successive years; Georgia, ineligible more than one year out of three. The Pennsylvania Constitution of 1790 made the Governor ineligible for reëlection more than nine out of twelve years.

[15] See Constitution of Delaware, 1776, Art. XII; Constitution of Pennsylvania, 1776, Sec. XX; Constitution of Maryland, 1776, Art. XLVIII; Constitution of Massachusetts, 1780, Ch. II, Sec. 1, Art. IX.

legislature. Limitations were also placed upon the pardoning power of the governor. In New Jersey, Pennsylvania, Massachusetts, and New Hampshire, the concurrence of the council was necessary for granting pardons. In Georgia this power was vested in the legislature alone.

The fear of the executive which characterized these early constitutions is illustrated by two clauses found in the constitutions of Maryland and South Carolina. The first prohibits the governor from "exercising, under any pretence, any power or prerogative by virtue of any law of Great Britain."[16] The second forbids the governor "to make war or peace, or to enter into any final treaty, without the consent of both houses."[17] Such phrases are very obviously the products of colonial experience and, as might be expected, soon disappeared. A further evidence of the dislike felt for the colonial executive is found in the careful avoidance of the term "governor." In the earliest constitutions of Delaware, Pennsylvania, South Carolina, and New Hampshire the executive is designated as president or president and commander-in-chief.

Such extreme expressions of antagonism to executive authority were the first fruits of a severe reaction and were short-lived. By the end of the century a counter-reaction had set in, as a result of which the governor began to assume a more normal position in the commonwealth. Two important steps in this direction were the popular election of the governor and the abolition of the executive council. Three states[18] substituted popular election for election by the legislature which their cautious first constitutions had provided. The executive council was abolished in four states.[19] The governor's term was lengthened in two states: in Georgia from one to two years; in Pennsylvania from one to three. The greatest move toward reinstating the governor was the adoption of the veto by four states, Georgia,

[16] Constitution of Maryland, 1776, Art. XXXIII.
[17] Constitution of South Carolina, 1778, Art. XXXIII.
[18] New Hampshire, 1784; Pennsylvania, 1790; Delaware, 1792.
[19] Georgia, 1789; South Carolina and Pennsylvania, 1790; Delaware, 1792.

in 1789, Pennsylvania, 1790, New Hampshire, 1792, and Kentucky, 1799.[20] In every case the veto was qualified, not absolute as in the case of the provincial governor.

Here, however, the work of reädjustment ended. The evidence shows that the movement was not yet universal nor persistent, although the next two or three decades witnessed spasmodic attempts in this direction. With the exception of Maine, none of the new states incorporated the council in their scheme of government. Popular election of the governor prevailed in the newly admitted states and was adopted in Georgia in 1824. The governor was given the veto in New York[21] and Connecticut,[22] and in all the new states except Ohio.

So far the discussion has been confined practically to the thirteen original states, in which experience with the colonial governor had developed a distaste for executive authority. To complete the analysis of the position of the governor at the beginning of the nineteenth century an examination of the constitutions of the newly admitted states is necessary. From 1777 to 1830 eleven states were admitted to the Union. They fall into three divisions: the New England group, the group whose consitutions were framed under the influence of the Northwest Ordinance, and Ohio.

The first group consists of Vermont and Maine. Vermont did not enter the Union until 1791, but in 1777 she declared herself independent and framed a constitution modelled after the constitution of Pennsylvania. It provided for the popular election of the governor but, in its other features, reflected the spirit of the times by limiting the executive. Independently of the council the governor could not exercise any functions. Even personal command of the military forces was denied to him, except on the advice and approval of the council.[23] The constitutions of 1786 and 1793 did not grant him additional powers, save the appointment of a secretary for himself and the council.

[20] Constitution of Georgia, 1789, Art. II, Sec. 10.
[21] Constitution of 1821, Art. I, Sec. 12.
[22] Constitution of 1818, Art. 4, Sec. 12.
[23] Constitution of Vermont, 1777, Ch. II, Sec. 18.

There was no provision for the veto. Evidently Vermont held, so far as the governor was concerned, the same position as the original states. Maine, too, whose first constitution was framed as late as 1819, reflected colonial experience in its provision for an executive council, which was to share with the governor the powers of appointment and pardon. On the other hand, the governor was given the veto power.[24]

In the second group are found eight states.[25] Two of these were carved out of the original Northwest Territory and the remainder based their constitutions on the governing ordinance of that territory. The Northwest Ordinance of 1787 provided for a strong executive, with power to convene, prorogue and dissolve the general assembly; to appoint the magistrates and other civil officers; and to reject absolutely the measures of the legislative body.[26] These powers were maintained to a varying degree in the states of this group. The right to convene the legislature on extraordinary occasions was universally provided but the right to prorogue and dissolve the assembly was in every case withheld. There was great variation in the extent of the governor's patronage. Three states[27] deprived him of control over appointments, and two gave him a very limited control. Illinois vested in him the appointment of the secretary of state and specified, as did Kentucky, that he should have power to appoint all officers not otherwise provided for.[28] The three remaining states allowed him to dispense a large number of offices but made the concurrence of the senate necessary. The chief offices at his disposal were judicial. Missouri, however, included in his patronage the secretary of state, attorney-general, and auditor of public ac-

---

[24] Constitution of Maine, 1819, Art. V, Pt. II; Pt. I, Secs. 3, 8, 11; and Art. IV, Pt. III, Sec. 12.

[25] Kentucky, Tennessee, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri.

[26] For Northwest Ordinance, see Poore, Charters and Constitutions, Part I, pp. 429-432.

[27] Mississippi, Tennessee, Alabama. In the last state he could appoint the adjutant-general and the aides-de-camp.

[28] Constitution of Illinois, 1818, Art. III, Secs. 20 and 22; Constitution of Kentucky, 1799, Art. III, Sec. 9.

counts.[29] All the states, except Tennessee, provided for a qualified veto, not absolute as under the Northwest Ordinance. In Illinois, as in the first constitution of New York, the governor and judges of the supreme court constituted a council of revision with power to reject bills.[30]

Peculiar circumstances in the history of Ohio caused that territory to frame a constitution which is so unique as to require a separate consideration. When a territory Ohio had some governors who used their power arbitrarily.[31] Moreover, these governors advocated Federalist principles, whereas the legislature stood by the doctrines of Jefferson. The legislature objected to the limitation which the autocratic powers of the governor placed upon popular rights; for by his absolute veto the governor controlled the will of the representatives of the people. Consequently, the convention of 1802 concentrated all power in the legislature. The veto power was removed, all civil officers and judges were to be appointed by the legislature, and nothing was left the governor but a few stock powers. So stripped of authority was he that one governor, after holding that office for a week, said, "The reprieving of criminals and appointing notaries are the sole powers of the prerogative."[32]

Although the governor's authority tended to increase, throughout the period under discussion, it failed to broaden and include more activities and powers within its scope. The power of appointment remained in practically the same state,[33] no provision being made for the governor to control the administration. In fact, the American conception of the state executive assigned him only that part of the executive power known as political. He commonly had the military power; and with the exceptions noted above he could grant pardons, performing, also, certain "routine

[29] Constitution of Missouri, 1820, Art. IV, Sec. 21; Art. V, Sec. 18; Art. IV, Sec. 12.

[30] Constitution of Illinois, 1818, Art. III, Sec. 19.

[31] Randall and Ryan, "History of Ohio," III, Ch. 2.

[32] R. E. Chaddock, "Ohio Before 1850," *Columbia University Studies,* XXXI, 251.

[33] Except for the control of judicial offices provided in New York and Pennsylvania.

duties," as commissioning officers and keeping the great seal. The only function of real importance which he exercised was the veto, a political power. The governor was not the central figure in an administrative system, like the earliest president of the United States. The states had no conception of the need of such a figure, and, if they had foreseen such a necessity, it is probable that their fear of executive authority would have kept them from making it the governor.

3. *The State Executive from* 1830 *to* 1915

So far as the governor's office is concerned, the constitutional history of the states for the next eighty-five years affords little interest. From 1830 to the outbreak of the Civil War we encounter a consistent development of democratic principles and a nascent distrust of the legislature. From 1861 to 1886 the states were almost solely concerned with problems of war and reconstruction. Then came the social and economic changes which resulted, so far as state administration is concerned, in the present loosely organized system. Administrative agencies were created without regard for their proper relation to the governor, and the period presents no evidence of an attempt to centralize administrative functions in the chief executive.

The constitutions framed between 1830 and 1861 embodied in concrete form the democratic principles of the nineteenth century. Six of the original states drew up new constitutions, three of which adopted popular elections of governor,[34] as did all of the new states admitted. A greater change, however, lay in the election of administrative and judicial officers by the voters. In the majority of cases the governor's power was not affected directly, as the appointment of these officers had been with the legislature. By constitutional amendments in 1850 Pennsylvania and Missouri provided for the popular election of the judges of courts of record hitherto appointed by the governor. In Missouri the same amendment substituted popular election for the gov-

[34] Virginia, New Jersey, Maryland. The others were Delaware, Pennsylvania, and Rhode Island.

ernor's power to appoint the secretary of state, auditor and attorney-general.[35] In Maryland, where, it was claimed, the executive had abused his patronage, he was deprived of the power to appoint the attorney-general and judicial officers.[36] With these exceptions the tendency to increase the number of elective officers in the state did not alter the extent of the governor's patronage. Nevertheless a matter of vital importance to the organization of the executive department was involved. The accompanying table will show how strong was the movement for the popular election of administrative officers in the states examined. It

EXTENT OF MOVEMENT FOR
POPULAR ELECTION OF ADMINISTRATIVE OFFICERS

OFFICE	Connecticut, 1836	Rhode Island, 1842	Virginia, 1850	Maryland, 1851	Ohio, 1851	Wisconsin, 1848	Oregon, 1857	Kansas, 1859
Secretary	X*	X			X	X	X	X
Treasurer	X*	X		X	X	X	X	X
Comptroller	X			X				
Auditor			X	X	X			X
Attorney-General		X		X	X	X		X
Commissioner of Public Works			X	X				
Commissioner of the Land Office				X				
Superintendent of Public Instruct'n								X

* Constitution of 1818.

extended from 1818, when it first appeared in Connecticut, to 1859, and prevailed from ocean to ocean. This tendency was the beginning of that decentralization which characterizes the present administrative system.

That more importance was attached to the governor's legislative than to his administrative authority is proved by the fact that the chief additional power given him at this time was the item

[35] Thorpe, IV, 2171, 2173; V, 3117.

[36] Constitution of Maryland, 1851, Arts. IV and V. See also J. W. Harry, "Maryland Constitution of 1851," *Johns Hopkins University Studies,* XX, 426.

veto on appropriation bills, which appears first in the Kansas constitution of 1859.[37] In Connecticut in 1818 and in New Jersey in 1844 the governor was given the ordinary veto.[38] Five of the six new states examined also provided for it. In Ohio the feeling against a strong executive was still so high that the proposal to include the veto in the constitution of 1851 was defeated. An editorial from one of the state newspapers expressed the prevailing sentiment: "We are glad to see the republican character of the present Constitution of Ohio on the subject of the veto is to be preserved in the new magna charta. The veto clause has been voted down in the convention by a decided majority."[39]

Between 1830 and 1860 several minor changes were made in the position of the governor. Three states[40] dropped the executive council, increasing the importance of the governor's office; and slight additions to the governor's appointing power were made in four states.[41] New Jersey provided for an increase by allowing the governor to appoint the attorney-general, secretary of state, keeper of the state prison and the principal judicial and military officers.[42]

During the Civil War no changes were made in the power of the governor but with the reconstruction constitutions came a tendency to increase his term and his power over legislation. Between 1861 and 1886 the constitutions of Florida, California, Maryland, Pennsylvania, and North Carolina, provided for a four-year term for the governor. The Georgia constitution of 1868 adopted the four-year term but returned to biennial elections in 1877.[43] South Carolina tried a four-year term but restored the

---

[37] Art. II, Sec. 14.

[38] Connecticut Constitution of 1818, Art. IV, Sec. 12, and New Jersey Constitution of 1844, Art. V, Sec. 7.

[39] Cleveland *Evening Herald,* Jan. 14, 1851, (quoted in Patterson, "Constitutions of Ohio and Allied Documents," 340).

[40] Maryland, Vermont, Virginia. Dealey mentions only two. Dealey, "Growth of American State Constitutions," 53, footnote.

[41] Pennsylvania, secretary of the commonwealth; California, secretary of state (changed to popular vote by amendment, 1862); Ohio and Kansas, trustees of certain institutions.

[42] Constitution of New Jersey, 1844, Art. VII.

[43] Art. IV, Sec. 1, Constitution of 1877, Art. V, Sec. 1, Pt. II.

two-year term in 1868[44] and still retains it. Three states gave the governor the ordinary veto.[45] The third constitutional convention of Ohio, in 1873, included the executive veto in its work but the constitution was defeated at the polls, due largely to that provision. Five states provided for the item veto on appropriation bills. By the end of the period, the item veto had been adopted in sixteen states.[46] Emphasis upon the governor's legislative authority grew stronger as the need of a check upon the legislative authority became more evident.

During this period the work of administrative decentralization continued. Connecticut, it is true, in an amendment adopted in 1880, allowed the governor to nominate the judges of the higher courts but reserved final appointment to the general assembly. Three of the states under consideration, Maryland, Georgia, and Pennsylvania, provided for the appointment by the governor of certain administrative officers, principally, the secretary of state, attorney-general and superintendent of public instruction. But, on the whole, changes in the methods of appointment resulted in an increased number of elective officers. Some of the states examined made a clean sweep of the old method, providing for popular election of all administrative officials. Others, like Maryland in its constitution of 1867, added only one or two to the electoral ballot. Most of these changes were made during the reconstruction period, and their durability might reasonably be doubted. Two of the states, Maryland and Pennsylvania, are still operating under the same constitutions, however, and all states framing new constitutions before the close of the period adopted these provisions. In Florida alone effect of the reconstruction period was transitory. During this period that state framed three distinct constitutions and twice adopted amend-

[44] Constitution of 1865, Art. II, Sec. 2; Constitution of 1868, Art. III, Sec. 2.

[45] South Carolina, 1865; Maryland, 1867; Virginia, 1870.

[46] The five States were Georgia, 1865; Pennsylvania, 1873; Florida, amend., 1875; New Jersey, amend., 1875; California, 1879. See also Dealey, "Growth of American State Constitutions," Ch. VII.

ments affecting the executive office.[47] In 1865 she adopted popular election for administrative officers. Under stress of reconstruction a convention held in 1868 adopted a peculiarly advanced system of administration. Provision was made whereby the governor, subject to senatorial confirmation, should appoint a cabinet consisting of eight officers: the secretary of state, attorney-general, comptroller, treasurer, surveyor-general, superintendent of public instruction, adjutant-general and commissioner of immigration.[48] He was also to control the appointment of central and local state judicial officers, militia officers and the assessor of taxes and collectors of revenue. In all, he had the naming of more than five hundred officers and could remove them without the consent of the senate. This system was criticized because it could be effectively controlled by a few men; but, owing to the peculiar condition of the suffrage and of party alignment at the time it worked fairly well.[49] It was simply a device, however, for preventing negro control of the state. When the negro vote was eliminated the elective system was restored.[50]

The constitutions framed after 1886 had few changes in the position of the governor, the item veto continuing the most important addition of power. Maryland granted it in 1891; South Carolina in 1895; Delaware in 1897; and Virginia in 1902. Ohio, in 1903, gave to the governor both the ordinary veto and the item veto. Rhode Island granted the ordinary veto by amendment in 1909. New Hampshire first provided for the usual suspensive veto in 1902.[51] In 1912 an amendment granting the item veto

---

[47] Constitutions of 1865, 1885, and amendments in 1870 and 1875.

[48] Constitution of Florida, 1868, Art. VI, Secs. 17, 18, 19; Art. VII. Secs. 18 and 19.

[49] W. W. Davis, "The Civil War and Reconstruction in Florida," 543, 648.

[50] Fairlie, "Local Government in Counties, Towns and Villages," 50.

[51] Thorpe, III, 1788. See also the South Carolina Constitution of 1895, Art. IV, Sec. 23; the Delaware Constitution of 1897, Art. III, Sec. 18; the Virginia Constitution of 1902, Art. V, Sec. 76; the Ohio Constitution in Thorpe, V, 2916-2917; the Rhode Island Article of Amendment, XV; and the New Hampshire Constitution of 1902, Art. XLIII.

was rejected.[52] At present in thirty-five states the governor may veto some items of an appropriation bill while approving the rest. Three states allow him to veto portions of any bill.[53] The only state withholding the veto on ordinary legislation is North Carolina. The vote required to override the governor's veto varies from a simple majority in eight states to a three-fifths vote in five states. The fraction two-thirds is preferred by the thirty-four states remaining.[54]

An examination of the constitutional changes in the states analyzed shows a slight tendency to increase the governor's appointing power. Delaware and Virginia both provided for a large number of administrative officers elected by popular vote[55] and in the ten new states admitted during this period provision is made for the election, and not the appointment, of the chief administrative officers. Virginia, however, shows indications of the beginning of an administrative system by creating a department of agriculture and immigration under the control of boards appointed by the governor and senate, although the election of the commissioner rests with the voters. The same constitution provides that the governor shall appoint the board of prison directors and the directors and commissioner for the state hospitals for the insane. A similar provision is found in the South Carolina constitution of 1895.[56] In 1912 Ohio amended its constitution to vest in the governor alone the appointment of the superintendents of

[52] F. A. Updyke, "New Hampshire Constitutional Convention," in *American Political Science Review*, VII, 136.

[53] "Index Digest of State Constitutions," 36 and 852. These states are Washington, Virginia and South Carolina.

[54] The eight are Alabama, Arkansas, Connecticut, Indiana, Kentucky, Tennessee, New Jersey, West Virginia, and the five are Rhode Island, Delaware, Maryland, Nebraska, Ohio. See also "Index Digest of State Constitutions," 851-852.

[55] Delaware, 1897, treasurer, auditor, attorney-general, insurance commissioner; Virginia, 1902, secretary, treasurer, superintendent of public instruction, commissioner of agriculture. See also Dealey, "Growth of American State Constitutions," 111.

[56] Constitution of 1902, Art. X, Secs. 143 and 145; Art. XI, Secs. 148 and 149; Art. XII, Sec. 2.

public instruction and of public works.[57] The absence of provision for senatorial confirmation marks the first real step in the organization of an administrative system upon an efficient basis.

4. *Extra-Constitutional Development of the Governor's Power*

The constitutional evidence for the development of the power of the governor is slight. The reaction from colonial experience with a strong executive caused the chief power to be vested in the legislature. When that body proved unworthy a shift was made in the disposition of authority. Tradition being against the governor, power in general was transferred to the electorate with an occasional increase in the executive patronage. A few states gave the governor extensive powers to investigate the affairs of the departments, especially the financial department. The tendency to provide a four-year term is apparent.[58] The only persistent and universal extension of the governor's authority has been in the line of control over legislation through the veto. But, as in every constitutional government there are changes in the actual form of government not registered in the written document, so our states have developed unwritten constitutions. The average duration of a state constitution is thirty years; ten have lasted more than sixty;[59] and Massachusetts is still operating under her original constitution, with only forty-four amendments. In a generation new conditions will inevitably develop demanding a changed scheme of government to meet them, and this is especially true of the executive department.

The modification of the governor's position is apparent in both the political and administrative branches of the executive power. The social and economic development of the latter part of the nineteenth century produced a tremendous increase in

[57] Constitution of Ohio (as in force Jan. 1, 1915), Art. VI, Sec. 4; and Art. VIII, Sec. 12.

[58] Constitution of Maryland, Art. II, Sec. 18; Constitution of Georgia, Art. V, Sec. 1, Par. XVIII. Four-year term in twenty-two states. "Index Digest of State Constitutions," 744.

[59] J. Franklin Jameson, "Introduction to the Constitutional History of the States," *Johns Hopkins University Studies,* IV, 193.

state activities, and thus administrative agencies became necessary. At first the legislature appointed committees of its own members to perform these functions. Later, boards and commissions were organized to take them over, bodies created by the legislatures, which prescribed also the methods by which they should be chosen. Largely through want of foresight, no definite administrative scheme was followed in organizing them. Some were only temporary; others became permanent. As the paternalism of the state increased the boards multiplied. In 1913 the legislatures of 35 states established 236 boards or commissions and abolished only 79. The government of the state of New York includes 169 distinct agencies, among which are included the various departments, boards, commissions and offices.[60] The result of this development has been two-fold. The governor's patronage has been increased, since he appoints the majority of the boards. But there his control usually ends. The law organizing a commission is frequently so expressed as to deny him power of removal, or it so restricts him as to make removal impossible except for flagrant misconduct.[61] Furthermore, the term of the commission is seldom co-terminous with that of the governor and as it is often a continuous body, he generally has power to appoint only a part of it. Thus restrained, he can exercise no effective control over the policy of the board or commission. Nevertheless, functions logically belonging to the executive have been transferred to these agencies. Consequently the governor has been deprived of much power which should rest in his hands.

Attention has been called to the decentralizing tendency in the popular election of administrative officers. The development of these agencies completed the process and broke down all semblance of centralized authority. The result was inevitable. Extravagance and inefficiency became so flagrant that there was a demand for reform. Strangely enough, the first pleas for cen-

[60] "Government of the State of New York, Department of Efficiency and Economy and the Bureau of Municipal Research," 1915.

[61] F. H. White, "State Boards and Commissions," *Political Science Quarterly*, XVIII, 645.

tralization resulted in the creation of a new type of commission, the department of efficiency and economy. Thirteen states[62] created agencies of this kind to investigate conditions and to recommend reforms in state administration. Political parties began to incorporate in their platforms suggestions for the centralization of authority in a responsible executive. Thus, the Massachusetts platform of 1901 recommended that all state officials should be appointed by the governor and should be subject to removal by him alone.[63] In New York the republican platform of 1914 contained the following: "We recommend a substantial reduction in the number of elective officials by the application of the principle of the short ballot to the executive officers of the state. To prevent the multiplication of officers we recommend that the various administrative functions of the state so far as practicable be vested in a limited number of departments. The present duplication of effort and expense in the public institutions of the state should be remedied by the establishment of a simpler and better organized system." In the democratic platform of the same year are the words: "To center responsibility for executive and administrative action, we favor an amendment to the constitution providing for the election only of the governor, lieutenant-governor, comptroller and attorney-general."[64] An examination of the political writings of the day reveals the same desire for concentration of responsibility in the governor. The schemes vary in detail but they agree in regard to the necessity of increasing the governor's appointing power.[65] An administra-

---

[5] L. A. Blue, "Relation of the Governor to the Organization of Executive Power in the States," 6. Also, "State Governmental Organization," *American Political Science Review,* IV, 243; "American Year Book," 1913, pp. 81-82.

[62] Illinois, Iowa, Louisiana, Massachusetts, Minnesota, Mississippi, Nebraska, New Jersey, New York, Pennsylvania, South Dakota, Wisconsin. See Dealey, "Growth of American State Constitutions," 165. Also, *American Political Science Review,* VIII, 63-64.

[63] G. Bradford, "Powers of the Executive," *The Nation,* LXXXVI, 257.

[64] "Record of the Constitutional Convention of the State of New York," 1915, III, 3220.

tive system like that of the national government is advocated,[66] whereby the governor would appoint the heads of departments, who would be directly responsible to him and constitute his cabinet. These heads would appoint the chiefs of bureaus, who would name their subordinates. A hierarchy would thus be created which would eliminate the indpendent board or commission and bring the administrative system under a single responsible head.

In the field of legislation we find a less conscious attempt to strengthen the governor's position. Gradually, through force of circumstance, however, his importance has increased until he has become the controlling force in legislation. In this respect the theory of government is against the governor, as the typical state constitution distinctly prescribes a separation of departments. Experience has proved the difficulty of applying this theory in actual government. The usurpation of executive power by the legislature and the tendency to restore to the executive his normal functions have been demonstrated. But the executive has also usurped legislative powers through the extension of the veto, a change in his legislative authority outside the range of any constitutional provisions. The reason for this change lies in the increasing popular demand for leadership. Our legislatures are tremendously active in turning out legislation. Every two years congress and the state legislatures together make about 25,000 laws, a large proportion of which, however, are special or local. The perspective of the average legislator is limited to his particular district, which makes him an excellent local representative. The state, however, has adopted so many paternal functions that a well constructed, comprehensive scheme of legislation is essential, and the legislators are generally incapable of furnishing such a scheme. The people, as such, cannot do so. Some one must be found to interpret their will and present it concretely to the legislature. Granting there are legislators with broad range of vision, the quality of the average member makes differentiation

[66] F. A. Magruder, "Recent Administration in Virginia," *Johns Hopkins University Studies*, XXX, 198.

hard. Consequently the task of acting as the chief medium of progressive law-making has fallen to the governor. In his annual messages he outlines a legislative program for the year and supplements it with special messages. Every year bills known as "administration bills" are introduced, which really emanate from the governor. Furthermore, he appears before informal meetings of legislative committees and discusses with them questions of public policy, advocating measures which he thinks public opinion demands. Finally, he sends for members of the legislature to urge them to vote for particular measures. It has been said that the primary qualification now required of an assemblyman is intelligence enough to vote for what the governor wants. There are many examples of governors who have stood out as successful champions of advanced legislation, as for example, Governor Wilson in New Jersey, Governor Johnson in Minnesota, Governor Hoch in Kansas, Governor Harmon in Ohio, and Governor Hughes in New York.[67] The necessity for the encroachment of the executive upon the ordinary functions of the legislative department has been so far recognized that one of our most conservative periodicals defended ex-Governor Hughes from the charge of executive usurpation on the ground that he first tried to ascertain what was best for the state and then publicly uttered his convicions. Such action, it contended, was not "government by executive usurpation but government by public opinion after discussion."[68] The problem resolves itself into a choice between government by the direction of the governor, a legally recognized agent, or by the political boss. The new rôle of the governor is to act as the virtual boss of the state and shape the course of legislation for the general benefit instead of for private and special interests. This has been so far recognized that plans have been suggested whereby the governor would be

[67] Mathews, "The New Rôle of the Governor," *American Political Science Review*, VI, 225; G. W. Alger, "Executive Aggression," *Atlantic Monthly*, CII, 583; *The Nation*, LXXXVI, 208; XCII, 416.

[68] *The Nation*, LXXXIV, 558.

given the legal initiative in legislation and the right to take part in the debates of the legislature.[69]

A similar tendency of the times is the agitation for an executive budget. The rigid separation of departments resulted in an absence of executive influence in the preparation of the budget. The state constitutions make practically no provision for such control. It is true that the power to veto items in appropriation bills makes the governor's influence felt in the adjustment of the appropriation side of the budget. Thirty-five states allow the governor to require information from the executive officers respecting the condition of their offices. Only nine give him power to suggest to the legislature what must be raised by taxation for state purposes. Beginnings of executive control over finance may be found, however, in state legislation affecting budgetary methods. The laws of New York dealing with this question will be considered later. Ohio, in 1913, made the following provisions for an executive budget.[70] Biennially, the various departments, commissioners, and officers of the state are required to submit to the governor itemized estimates of what is needed for the next biennial period. The governors can appoint examiners to ascertain the condition of any spending department and to make recommendations relative to the expenditures of that department, the examiners to be paid out of the appropriation for the executive department. Finally, the auditor is required to furnish the governor a statement showing the unexpended balance to the credit of each department and office at the end of the last fiscal year, the monthly average of expenditures, and the revenue for the last fiscal year and for the last four years. With these estimates, reports, and statements as a basis the governor must frame and submit to the general assembly the state budget for the next biennial period. This

[69] Mathews, "The New Stateism," *North American Review,* CXCIII, 808-815. G. Bradford, "President or Governor as Lobbyist," *The Nation,* LXXXVI, 422; "State Governmental Organization," *American Political Science Review,* VI, 243.

[70] E. E. Agger, "The Budget in the American Commonwealths," *Columbia University Studies,* XXV, 160; "Index Digest of State Constitutions," 1183-1184, 1338; *American Political Science Review,* VIII, 57-58.

practice meets most of the requirements of efficient budget-making but contains a fundamental weakness in not allowing the governor control over the budget after it has passed into the hands of the legislature. Oregon, North Dakota, and Washington provide for a centralized budgetary system but none of the states make the governor the budget-making authority.

Before passing to a discussion of the governor's position in New York it may be well to sum up whatever conclusions may be drawn in regard to the development of the chief executive office in the states. The beginning of our national period presents evidence of a weak executive department, with a governor whose position is almost nominal. With the exception of the veto the constitutional changes of the nineteenth century do not make a radical, or even fundamental, increase in the powers of the governor. On the contrary, the rise of popular sovereignty causes a diffusion rather than a concentration of authority and produces a disintegration of the administrative system tending to weaken the executive. It is not until the twentieth century that the inefficiency of our state government becomes so marked that the necessity of a redistribution of powers becomes apparent. The state has failed in two of its three basic functions of government: legislation and administration. The form of government prescribed by the fundamental law of the state has proved itself incapable of coping with the complexities of modern governmental business. A constitutional reorganization seems difficult to obtain, and consequently extra-legal means are conceived whereby the governor becomes the guiding force in legislation. The constitutional veto has made him the controlling factor. Less has been accomplished in the field of administration, but more and more the governor is being held responsible for the efficient conduct of the administrative departments and the tendency to confer upon him power commensurate with that responsibility is becoming gradually perceptible. As yet, however, he does not hold that central position in administration which he must obtain before his constitutional injunction to see that the laws are faithfully executed can be obeyed.

CHAPTER III

Development of the Executive in New York

1. *Constitutional Revision in New York*

In the constitutional history of the state of New York we find the same general development of the governor's office that exists in the other states. The colonial period falls into three divisions. Under the Dutch regime the governor chose his own council and exercised both executive and legislative powers. In 1664 the colony passed into the hands of the Duke of York and became a proprietary province.[1] All the powers conferred upon the proprietor by this charter were at first vested in the governor, but soon he was forced to share his authority with a council of his own appointment.[2] Finally, in 1688, royal government was established in New York. The commission to Andros[3] endowed him with the maximum rights and prerogatives of the provincial governor. The universal struggle for representative government, however, resulted in the recognition of the assembly,[4] strife between the governor and the assembly ensued, and restrictions were imposed upon the governor and an encroachment of the legislative body upon the executive became perceptible. Feeling against the governor was intensified by the unworthy conduct of such governors as Cornbury and Cosby.[5] The first state constitution, 1777, deprived the governor of independent action in the important functions of making appointments and veto bills. Provision was made for a council of revision consisting of the governor, chancellor and judges of the supreme court, any two of whom, with the governor, were to have power to veto bills passed by the legislature.[6] A second council, consisting of the governor and one senator appointed by the assembly from each great dis-

[1] Poore, "Charters and Constitutions," I, 783.
[2] Greene, "The Provincial Governor," 28.
[3] Thorpe, "Charters and Constitutions," III, 1863.
[4] Governor Sloughter's Commission, "New York Colonial Documents," III, 623.
[5] Channing, "History of the United States," II, 308, 484.
[6] Thorpe, "Charters and Constitutions," V, 2628.

trict, was to control the appointment of officers whose appointment was not otherwise provided for by the constitution. Limited as the governor's power was under the constitution of 1777, it exceeded that conferred by the average constitution of this period by providing for a three-year term, independence of the legislature through popular election, and the exclusive right to grant pardons except in capital cases.

In 1821 a constitution which made a very radical change in the position of the governor was framed and adopted. The former method of mingling administrative and legislative functions had proved so odious that, in the convention of 1821, there was a unanimous vote of 102 to abolish the council of appointment.[7] In its place was substituted a complex system of appointments. In the governor and senate was vested the appointment of certain military officers; and masters and examiners in chancery; and all judicial officers except justices of the peace. The other offices, administrative and judicial, were distributed between the legislature and the electorate. The governor was given a limited power of removal, extending to sheriffs and county clerks. The council of revision was omitted from the new scheme of government and the governor was given the ordinary suspensive veto. The pardoning power was extended to include all offences except treason. To counterbalance the increase in the governor's powers and to provide for a closer responsibility to the electors the governor's term was reduced to two years. The power to prorogue the legislature, which the constitution of 1777 had provided, was also omitted. The most interesting feature of the constitution of 1846 in regard to the executive department is the extreme decentralization of the administrative system. Provision was made for the popular election of the secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor, canal commissioners and inspectors of state prisons. The judges also became popularly elected. Military offices alone were left at the disposal of the governor. The right to suspend the treasurer

[7] J. M. Gitterman, "The Council of Appointment in New York," *Political Science Quarterly*, VII, 111.

during the recess of the legislature and to remove the coroners and district attorneys was the sole increase in the governor's administrative power.

The period of reconstruction was not without its effect upon the constitutional history of New York. In 1867 a convention met which, in its proceedings, exhibited a marked reaction from the decentralizing spirit of 1846.[8] Three committees brought in reports on the executive department. The committee on the governor suggested several changes in the appointing power. Proposals were adopted for the abolition of the offices of canal commissioner and inspector of prisons, and for the creation of new officers to replace them, who should be appointed by the governor and senate.[9] It was also agreed that the question of having the judges of the higher courts appointed by the governor should be submitted to the people in 1873. The report of the committee on legislature powers contained two subjects affecting the governor's power. The first dealt with the length of time after adjournment in which the governor might act upon a bill. The practice of indefinite time had been established by the governors and had been sanctioned by the court of appeals. Governor Fenton had suggested a thirty-day limit but no stand on the question was taken by the convention. The second proposal was for a radical change in the veto power whereby the governor would be given the item veto on any bill. If the whole bill was repassed by the legislature by a two-thirds vote it should become law. If not, the part not vetoed should be engrossed as a separate bill and returned to the governor. The main objection to such an amendment was that it would make the governor an affirmative lawmaker and the vote stood 52 to 30 to retain the existing veto. A proposal was adopted, however, to strengthen the veto by requiring a larger legislative vote to override it. The plan suggested by the committee on the pardoning power was also rejected. The

[8] J. H. Dougherty, "The Constitution of New York," *Political Science Quarterly*, IV, 232.

[9] H. A. Stebbins, "A Political History of New York," 1865-1869, *Columbia University Studies*, LV., 241, 250, 252.

constitution was defeated at the polls by a vote of 290,456 to 223,935.

The next constitutional revision affecting the position of the governor was the work of a legislative commission which, in 1872 submitted a list of amendments to the legislature. The most important addition to the governor's power the commission recommended which received popular ratification was the item veto on appropriation bills. Other amendments affecting his legislative authority were the provisions that at extra sessions no subject should be acted upon other than those recommended by the governor for consideration; the requirement of the consent of two-thirds of the members elected to each house to override the governor's veto, instead of two thirds of the members present, as formerly; and the adoption of the thirty-day limit for executive action upon bills after the adjournment of the legislature. The three-year term, which the constitution of 1821 had reduced, was restored. The governor's patronage was increased by allowing that officer to appoint, subject to senatorial confirmation, the superintendent of state prisons and the superintendent of public works.[10] He was furthermore given absolute power to remove them. An amendment was introduced providing that the secretary of state, attorney-general and state engineer and surveyor be appointed by the governor and senate.[11] This was not adopted by the legislature.

The last change in the fundamental law of the state to meet with popular approval was the constitution of 1894. With the exception of a slight increase in the governor's power of appointment and removal[12] the governor's position was not affected. A review of these constitutional revisions and comparison with other constitutions shows that the governor in New York holds a place in the state government similar to that of the governor of any of the American commonwealths.

---

[10] Thorpe, "Charters and Constitutions," V, 2679-2681.

[11] J. H. Dougherty, "The Constitutions of New York," *Political Science Quarterly*, IV, 244.

[12] State board of charities, state commission in lunacy, state commission of prisons.

2. *The Governor in Administration*

The executive power, as has been stated, consists of two main branches: the political and the administrative. As in the other states, the administrative system in New York has developed, if such a hit-or-miss growth may be called development, without any regard for the governor's constitutional post as chief executive. The normal growth of the governor's power has been along political lines.

The primary function of every administrative chief should be the appointment of his subordinates. If the development of the governor's constitutional power of appointment from the earliest constitution to date were presented graphically a very irregular line would result. From a medium point of departure the line of growth would drop a number of degrees to indicate the amendment of 1801 which granted the councillors concurrent power of nomination with the governor. In 1821 it would make a sharp rise and would follow along an elevated plateau until 1846 when it would drop almost to zero. In 1876 it would start to climb very gradually but the provisions of the constitution of 1894 would cause it to end at a point below the starting point of 1777.

In studying the office of provincial governor it has been noticed that, toward the end of the colonial period, the legislature had encroached upon several executive functions, among them the power of appointment. This it had accomplished by granting salaries to specific officers whose names were inserted in the appropriation bills. By 1743,[13] in New York, the assembly was practically in control of the patronage. Governor Clinton tried to reëstablish the influence of his office in the matter of appointments by demanding grants of supplies for a long term of years. This failing, he refused to sign any annual appropriation bills, until the government of New York was actually dissolved and the crown had to concede to the assembly the right to make annual appropriations by name and office. The outcome of the conflict was legislative control of appointments. In 1777, therefore,

[13] J. M. Gitterman, "The Council of Appointment in New York," *Political Science Quarterly*, VII, 84.

when the convention prepared to draw up a plan of government, the precedent for legislative influence in the matter of appointments was established. To this was added the prevailing distrust of the governor. Consequently Jay's plan for a council of appointment was adopted.[14] The new council was to consist of representatives from the senate and the governor, in this way combining legislative and executive control. The governor had the advantage of a longer term, as the constitution provided that the council must be renewed annually. On the other hand, the governor had only a casting vote. Probably Jay intended that the council should act largely as a check to prevent the misuse of the power of the governor.[15] The constitution remained silent on this point.

For the first ten years the new method of making appointments worked very smoothly. The senatorial councillors made no attempt to exercise the right to nominate but confined their action to passing judgment upon the governor's nominees. As Governor Clinton easily dominated the council most of his nominations were ratified. Thus the governor's power was little weakened by the participation of the council in the distribution of the patronage. To realize the extent of the governor's patronage at this time, moreover, it must be remembered that, with the exception of the state treasurer, practically all the administrative and judicial officers of the state were appointed by the council. In 1800 the minutes of the council record upwards of 800 appointments.[16]

In framing this article two important possibilities had been overlooked: that the governor and his council might be at loggerheads; and that political parties would develop. The cleavage into parties in New York appeared with the question of the adoption of the federal constitution. Hamilton, in his articles in defence of

[14] Constitution of 1777, Art. XXIII.

[15] J. M. Gitterman, "The Council of Appointment in New York," *Political Science Quarterly,* VII, 90.

[16] H. L. McBain, "De Witt Clinton and the Origin of the Spoils System in New York," *Columbia University Studies,* XXVIII, 79. The monograph contains a full account of the development of parties in New York.

that scheme of government, attacked the council of appointment, charging it with scandalous appointments and criticizing the secrecy and irresponsibility of its actions.[17] But, in spite of the party alignment which began to appear, Governor Clinton paid little attention to the political tenets of his nominees. In 1793, however, when the federalists secured a majority in the legislature, the other weakness of the new system became apparent. Trouble arose immediately which led to the appointment of a new council although the term of the old had not yet expired. The new body adopted Hamilton's construction of the constitution in regard to the power of nomination and elected a supreme court judge over the protest of Governor Clinton. The governor was now reduced to the level of an ordinary councillor except that his term was longer and that he was not dependent upon the assembly. Precedent was established for a new method of making appointments and from this time the disposition of the patronage passed largely from the governor's control. The council ceased to be merely a restraining influence upon the governor's power but became an active force in state politics. Governor Clinton struggled, however, against this loss of power. He contended that since he was responsible for the administration of the laws he should have the right to nominate the public officers and to decide the number necessary for effectual administration when not definitely prescribed by law. When Jay became governor in 1796 he appealed to the legislature to decide the question of the governor's share in making appointments, but that body refused to act. For the next five years the governor and the council were of the same political creed and worked in harmony, filling up vacancies with their supporters, until almost every post of consequence was occupied by a federalist. A few actual removals were made but no general system was adopted.

By the election of 1800, however, the republicans secured a majority in the legislature. De Witt Clinton was the leader of the republican party and was in control of the council of appointment of which he was a member. The term of the federalist

[17] The Federalist, Nos. LXX, and LXXVII.

governor did not expire until July, 1801. The situation of 1794 was repeated, only this time the parties were reversed. The famous Clinton-Jay controversy had begun. The attempt to appoint a sheriff for Dutchess County resulted in a complete deadlock. When Clinton claimed the power of nomination Jay asked time to consider the matter. The council adjourned and Jay never reconvened it. Before the end of his administration he asked first the legislature and then the judiciary to settle the disputed question but they refused.

The next governor was George Clinton. De Witt Clinton was the real leader of the party, however, and in his hands rested the entire control of the patronage. When the council of 1801 followed out De Witt Clinton's policy of filling the larger offices immediately with republicans and of removing federalists from those offices which were held at the pleasure of the council the governor protested by refusing to sign the minutes of the council meetings. That was the extent of his action in regard to appointments. The council exercised freely the right of nomination and, in 1801, when the convention decided that the senatorial members should enjoy concurrent power of nomination with the governor, it was merely giving constitutional sanction to the practice which had been established in 1794. The vacuity of the governor's position in the matter of appointments is shown by De Witt Clinton's own words: "In many cases the governor is a mere cypher in the exercise of the appointing power."[18]

The history of the council of appointment from 1801 until its abolition in 1821 is one of constant struggle between the council and the governor whenever they were of opposing parties. The system of removals which De Witt Clinton had instituted continued to be applied with increased vigor. Until 1817, except for a brief period when he was in the United States senate, he dictated the actions of the council whenever his party was in power. In that year he became governor and as long as his party controlled the

[18] De Witt Clinton Papers, IV, 143, (quoted in H. L. McBain, "De Witt Clinton and the Origin of the Spoils System in New York," *Columbia University Studies,* XXVIII, 125.

legislature he was all-powerful in the administration. In 1820, however, the rival faction, led by Van Buren, obtained a majority in the assembly and secured an anti-Clinton council. This, the famous "Skinner Council," turned the partisan system upon its author. At its first sitting it removed eleven sheriffs, the comptroller, the attorney-general, several military officers, a class of officials which had been heretofore exempt, and the mayor and recorder of New York City.[19] Perhaps Clinton's helplessness against the machine which he himself had built called forth the criticism of the council found in his message of 1820: "The offices in the gift of this council are remunerated by salaries or fees to the amount of a million dollars annually. Combinations will be formed to obtain the control of this enormous patronage. . . . . With this principle of irritation in our constitution, the hydra of faction will be in constant operation, endeavoring to work its way to power, sometimes by open denunciation, at other times by secret intrigue, and always by artful approaches. The responsibility of public officers is essential to the due performance of their trust, and is demanded by the properties of delegated power, and the best interests of the community. This council, as constituted, is almost entirely destitute of this essential requisite. The political tranquillity of the state demands a different arrangement of the appointing power."[20] In these words the author of the spoils system struck at the root of the entire evil. The diffusion of power which the constitution had provided removed all possibility of fixing the responsibility for a bad appointment. Consequently a great central machine had developed, the influence of which was felt throughout the state. Hamilton understood the weakness of the system when he wrote: "The censure of a bad appointment, on account of the uncertainty of its author, and for want of a determinate object, has neither poignancy nor duration. And while an unbounded field for cabal and intrigue lies open, all idea of responsibility is lost."[21] The peo-

[19] J. M. Gitterman, "The Council of Appointment in New York," *Political Science Quarterly,* VII, 111.

[20] "Messages from the Governors," II, 1020.

[21] *The Federalist,* No. LXXVII, 479.

ple of New York had witnessed the truth of this criticism only too clearly, and when the convention of 1821 met to frame a new plan of government for the state the council of appointment was unanimously abolished.[22]

In the constitution of 1821 the exclusive right of nomination was vested in the governor, and the present method of senatorial confirmation was instituted. As opposition is never so effective when scattered through a large body as when concentrated in three or four individuals, the governor under the new constitution apparently possessed greater independence in the exercise of the appointing power. A new combination arose, however, which gained control of the patronage and dictated the nominations practically without intermission until the election of Governor Seward in 1839. As early as 1818 Van Buren had set on foot a new organization within the democratic party of New York, the "Bucktail faction." When the "Skinner Council" made its "clean sweep" of Clintonian officers in 1821 it put in office three "Bucktail" men, Talcott, Butler and Marcy, who were destined to become the first Albany Regency, acting under the inspiration of Van Buren. Although he was frequently away from New York, serving as United States senator, minister to England, and later as president, he dictated the policy of the state for many years. The first governor under the constitution of 1821 was Joseph C. Yates, a republican, and completely under the power of the Regency. If Yates failed to obey its edicts the senate failed to confirm his appointees.[23] In 1824 De Witt Clinton returned to the governorship for two terms. In 1826 a union between Clinton and Van Buren was effected and from that date until Seward's inauguration the dictates of the Regency were obeyed without question. An idea of the absolute power of this inner ring may be obtained from the words of William H. Seward at the republican convention of Cayuga County in 1824: "It (the

[22] The abolition of the council of appointment was not due entirely to popular dislike of that institution but to a large extent to Van Buren's control of the convention, in which his own faction, the Bucktails, far out numbered the Clintonians.

[23] Alexander, "Political History of the State of New York," I, 293, 322.

Albany Regency) is an institution which makes the governor the subservient tool of the faction which designates him."[24]

With the administration of Seward the patronage passed from the control of the Albany Regency into the hands of one man, Thurlow Weed. The term "Dictator," with which the democrats dubbed him, is perhaps too strong since, as it has been expressed: "Weed was no more the directing mind of the administration of Seward than was Hamilton of Washington, or Van Buren of Jackson's, or Seward of Lincoln's."[25] Seward exhibited rare faculties of independence and statesmanship in the great measures of his administration, such as internal improvements, the school question, and reform in legal procedure. But in political matters, especially in the distribution of the patronage, Weed took original, and usually final, jurisdiction. Shrewd office-seekers learned to seek the favor of Weed and of him alone.[26]

The offices formally at the disposal of the governor during these years were numerous, although it has been demonstrated that, with a very few exceptions, the governor had little actual control over their disposition. Many statutory offices had been created,[27] but the great bulk of the patronage consisted of the judicial offices, which were constitutional. This concentration of the appointing power was not consistent with the democratic principles of that period. Furthermore, the strength of the Albany Regency was dependent upon a centralized system of appointments. The force of these two arguments was felt in the convention of 1846. The constitution of that year provided for a general system of elective offices. The only constitutional offices left within the governor's patronage were military.

After this it was not until 1876 that there were any amendments to the constitution affecting the governor's appointing

[24] Quoted in Bancroft, "Life of William H. Seward," I, 18.
[25] Alexander, "Political History of the State of New York," II, 33.
[26] Bancroft, "Life of William H. Seward," I, 78.
[27] E. g., superintendents and commissions of various sorts; port wardens; harbor-masters; examiners of prisons; inspectors of flour, lumber, etc. For extent of patronage in 1839 see Alexander, "Political History of New York," II, 36.

power, when provision was made for the appointment by the governor and senate of the superintendent of public works and the superintendent of state prison. In 1894 a few minor additions were made but, constitutionally, the governor's power of appointment was still greatly limited. The rise of the administrative board or commission, however, added considerably to his list of appointees. With the exception of the state board of charities, the commission in lunacy and the commission of prisons, which are constitutional agencies, the boards and commissions found in the administrative department of New York are statutory. In 1914 the members of seventeen of these were appointed by the governor alone.[28] Fourteen were appointed by the governor and senate. In addition there were nine departments the members of which received their appointment from the governor, subject to senatorial confirmation. The governor's patronage also included the boards of managers and trustees of forty-one institutions, hospitals and schools, and fourteen other officers.[29] In all the governor appointed five hundred and fifty-eight officers. The chief administrative officers of the state are still elected by popular vote.

3. *The Governor in Legislation*

In legislation the governor exercises a dual function. His constitutional veto gives him a negative on the actions of the legislature. The ill-training of the average legislator and the mass of legislation to be put through at every session, however, make a guiding force necessary. The governor's position as representative of the entire state has brought upon him this task of formulating a legislative program. The constitution of New York provides that the governor "shall communicate by message to the legislature at every session the condition of the state, and recom-

[28] Seven contained members ex officio or appointed by a different authority.

[29] Health officer of the port of New York; fiscal supervisor of state charities; three superintendents of elections; three harbor masters; superintendent of weights and measures; state architect; commissioner of the highway department; special examiner and appraiser of canal lands; miscellaneous reporter; and commissioner to index the session laws.

mend such matters to it as he shall judge expedient." Although the governors have not used this power to the extent of making their recommendations in the form of bills, an interpretation warranted by the language of the provision,[30] nevertheless they have used it as justification for outlining schemes of legislation which the law-makers should consider.

The messages of George Clinton reveal no clear legislative policy but consist rather of a number of isolated recommendations, dealing largely with special cases such as the settlement of accounts with the Indians or of claims resulting from the war. In his last administration, when the government of the state had become fairly well established, his opening speeches[31] pertained more to questions of state-wide interest, but they offer us no evidence of a carefully conceived plan. Again, in the messages of De Witt Clinton, it is hard to detect any definite policy, although he recommended measures concerning matters of such universal concern as prison reform, currency, agriculture, schools, and internal improvements. Van Buren held the governorship for two months only but his single message reveals a very clear understanding of conditions and good judgment in the measures recommended, of which all but one were adopted.[32] The first message of Governor Seward outlined a legislative policy to which he adhered throughout his entire career as governor. The principal suggestions were enlargement of the school system, support of internal improvements, a more humane policy toward the immigrant, and reform of the judiciary. Some of them were too advanced for the time but within little more than a decade the major part became law.[33] Of the twenty-three measures recom-

[30] Alexander, "Political History of New York," II, 35.

[30] Address of Governor Woodrow Wilson before the House of Governors, 1910; quoted in Mathews, "The New Rôle of the Governor," *American Political Science Review,* VI, 224.

[31] Under the constitution of 1777 the governor delivered the opening speech in the presence of the two houses. The constitution of 1821 provided that communications from the governor to the legislature be made by written message. C. Z. Lincoln, "Messages from the Governors," III, 1.

[32] See "Messages from the Governors" for recommendations incorporated in the statutes.

mended in this message eleven were adopted before the end of the session and one at the next session of the legislature.[34]

It has been indicated that the necessity for a guiding hand in law making is the result of two causes: the quality of the legislators and the mass of legislation. The large increase from year to year in the output of legislation will be evident upon examination of the following table:[35]

Governor	*Year*	*Number of Laws Enacted*
George Clinton	1778	47
	1784	65
	1802	122
DeWitt Clinton	1818	240
Van Buren	1829	377
Marcy	1833	323
Seward	1839	390
Cleveland	1883	523
Roosevelt	1899	741
Hughes	1907	764

Moreover, these numbers do not adequately represent the amount of business which must be considered by the legislature in an average session of six months duration. In 1907, at the regular session, 1,198 bills were introduced in the senate and 1,987 in the assembly. It is not surprising that the ordinary legislator loses his perspective in such a maze of legislation, and, machine-like, simply registers approbation or disapprobation. The legislative situation is further complicated by the fact that much of this legislation is special or local. Of the 737 laws passed in 1901 only 249 were general.[36] These special interests consume a large part of the legislature's time and crowd out measures of interest to the whole state. Grover Cleveland recognized this weakness in our state system of law-making when governor in 1884 and said in his annual message: "Another evil which has a most pernicious influence on legislation, is the introduction and consideration of bills purely local in character, affecting only special interests, and which ought not upon any pretext to be permitted to

[34] "Messages from the Governors," III, 706-747, 722.

[35] "Third Annual Report of the Secretary of State," 1913, 70-7.

[36] J. B. Phillips, "Recent State Constitution Making," *Yale Review*, XII, 404.

incumber the statutes of the state. Every consideration of expediency, as well as the language and evident intent of the Constitution, dictate the exclusion of such matters from legislative consideration."[37]

These two conditions then, the mass of business before the legislature, and the preponderance of special legislation, render indispensable the guidance of a single leader. The governor fills this need through his position as representative of the entire state if not from superior personal ability. The messages of the more recent governors have been divided into topics of general concern to the state, such as canals, taxation, public utilities, trusts, labor, public instruction, civil service, and so on. Under each topic a review of the condition of the state in that particular matter is made and measures to improve those conditions are suggested. Of the twenty-four measures recommended by Governor Cleveland in 1883 fifteen became law. In 1900 Governor Roosevelt recommended forty-four distinct measures, of which twenty-eight were adopted.[38] At the regular session in 1908 Governor Hughes made forty-five suggestions for bills. Twenty-three of these were enacted before the close of the session.[39]

The special message has been used by recent governors to a great extent in guiding the course of legislation. Both the Clintons issued a great many special messages but, in almost every case, the subject of the message was confined to an isolated case, affecting a particular individual or group of individuals. In 1899, however, Roosevelt made twenty-three recommendations by special message, all of which became law. In 1900 he made twenty-one, eighteen of which were adopted.[40] In 1908 the special messages of Governor Hughes contained thirty-three

[37] "Messages from the Governors," VII, 939.

[38] See Roosevelt, "Annual Message," 1900. *Ibid.*, X. See also *Ibid.*, VII, 815-840, and X, 74-126.

[39] "Public Papers of Governor Hughes," 1908, 13-38. "New York Legislative Index," 1908.

[40] Fifteen at the regular session; eight at the extra session. "Messages from the Governors," X, *passim*, and 141-150.

measures, of which twenty were passed.[41] These messages were, in every case, supplementary to the annual message and, almost without exception, contained recommendations of interest to the whole state.

The suggestions found in these special messages fall into several classes; measures which have not been touched upon in the annual message, measures advocated in the annual messages but which the legislature has disregarded, and emergency measures. The use of the special message to secure the immediate passage of second class is well illustrated by Governor Hughes's efforts to secure the passage of his race-track law. In his annual message of 1908 he recommended the removal of discrimination in favor of race-track gambling. No action was taken by the legislature, so, on April 9, he sent a special message relating primarily to this subject. Again, on June 8, he issued a similar recommendation. Partly as a result of these messages and partly through popular agitation a bill embodying his suggestion was passed June 11. The use of the special message to secure the immediate passage of emergency measures is demonstrated by an examination of the special messages of Theodore Roosevelt. Of the sixteen measures recommended by special message in his first administration thirteen were emergency measures.[42] Five of the eight special messages delivered to the extra session of 1899 were emergency measures. At the regular session of 1900 twenty-two of the twenty-four recommendations made by special message were for the immediate passage of certain bills.[43] The efficacy of the emergency measures is apparent when it is observed that, of the thirty-six emergency measures found in the special messages of 1899 and 1900, twenty-nine became law. In 1907 Governor Hughes sent to the legislature forty-two emergency messages; in 1908 thirty.[44] One criticism of this power of the governor is that

[41] "Public Papers of Governor Hughes," 41-57. "New York Legislative Index," 1908.

[42] "Messages from the Governors," X, 33 and 42-47.

[43] *Ibid.*, X, 72-73, 144-150.

[44] "Public Papers of Governor Hughes," 1907, 189-194; 1908, 133-137.

the use of the emergency message constitutes executive legislation.[45] The bill frequently comes from the executive and is rushed through the legislature, which has not had time to become acquainted with its contents. The executive, however, has no legal initiative in legislation and if the governor must exercise leadership in law-making, a means must be found whereby he can assume the initiative in a more regular manner.

The governor's position as a controlling factor in legislation is grounded on an entirely constitutional basis, the executive veto. The growth of the veto power in New York, from a mere concurrent action under the first constitution to the acquisition of the item veto on appropriation bills in 1874 has been already traced. The importance of this power can hardly be over-estimated. "The use of his veto is, in ordinary times, a governor's most serious duty," says Lord Bryce, "and chiefly by his discharge of it is he judged."[46] The potency of the veto is, moreover, enhanced by the fact that a bill is rarely passed over the governor's veto.

The practice of the governors of New York in exercising the veto varies. Governor Yates, the first governor under the constitution of 1821, exercised the veto power four times,[47] only once with success. In two administrations De Witt Clinton vetoed only three bills. Marcy showed the same disinclination to use the new power, for, throughout his three terms, only five bills were vetoed. Seward expressed the pervailing sentiment in regard to this function: "The general responsibilities of making laws rest with the legislature, while on the executive are devolved only the duties of recommending measures and of rejecting, for sufficient causes, bills originated and perfected by the representatives of the people." After enumerating the nature of bills which he considered justifiably vetoed, he said: "The person administering the government could not interpose objections to less important bills upon the mere ground of a difference of opinion concerning their

[45] "Record of the Constitutional Convention of New York," 1915, I, 762.
[46] Bryce, "The American Commonwealth," Ed. 1912, I, 500.
[47] For veto messages and record of measures passed over the governor's veto see "Messages from the Governors" (Lincoln edition).

expediency without assuming an undue share of legislative responsibility."[48] In 1842, after delivering this message, he exercised the veto power three times. The governors who followed Seward adopted the same attitude for, in the next twenty-six years only 114 bills in all were vetoed and eight sessions of the legislature[49] passed without any veto by a governor. The first extensive use of the veto came in the administration of Governor Hoffman. During his two terms he vetoed 496 bills, 379 of them after the adjournment of the legislature. Governor John A. Dix, who succeeded Hoffman, vetoed 198 bills in one term.

In 1874 important changes were made in the veto power. The difficulty of overriding the governor's veto was increased by requiring a vote of two-thirds of the members elected to each house rather than of those present. The period after adjournment in which the governor might act upon bills submitted to him by the legislature was limited to thirty days. Finally, the power to veto items in appropriation bills was added. From this point the veto must be considered under three heads: the veto on ordinary legislation during the session of the legislature; the governor's action on bills after adjournment; and the item veto on appropriation bills.

The adminisration of Governor Tilden showed a reaction against the extremities to which Hoffman and Dix had gone. Only seventeen ordinary bills[50] were returned without the governor's signature. With Governor Robinson, however, a counter-reaction set in. In his single term[51] he vetoed 121 bills. Cornell vetoed the same number, Cleveland vetoed 64 bills,[52] Hill, in seven years as governor vetoed 256, and Flower vetoed 103. After 1894 the number of vetoes on ordinary bills decreased, ranging from one during Governor Black's administration[53] to

[48] "Messages from the Governors," III, 973, 974.

[49] Sessions 1866, 1867, 1869-72, 1879, 1887.

[50] The item veto and action upon thirty-day bills during the administrations of Tilden and his successors will be discussed later.

[51] The governor's term had been increased to three years in 1874.

[52] Cleveland served only two years, as in 1885 he resigned to become president.

[53] The constitution of 1894 restored the two year term.

77 under Governor Odell.[54] Governor Hughes, in his two terms, vetoed 61 ordinary bills during the session of the legislature. The value of the veto power arises from the fact that a bill is rarely passed over the veto. Of the 1,097 bills vetoed before the end of the legislative session between the years 1823 and 1911 only sixteen were passed over the veto.[55] An examination of the reasons set forth by the governors in their veto messages shows that many of these bills were either poorly drafted or were clear cases of special legislation. These are two of the principal legislative evils which justify executive leadership in legislation.

The need of a single, controlling head in state legislation is perhaps best illustrated by the development of the thirty-day bill and of the omnibus veto. Before 1874 no limit had been placed upon the time, after the adjournment of the legislature, in which the governor might act upon the bills left in his hands. Up to 1868 it had been the general practice for the governors to take action before the legislature adjourned. Before that date only nine bills had been vetoed after the close of the session.[56] In 1869 John T. Hoffman became governor of New York. Realizing, perhaps, that a veto interposed after adjournment was free from subsequent action on the part of the legislature, he adopted the policy of withholding his disapproval until that body had adjourned. In 1869 he vetoed thirty-five bills after the adjournment of the legislature, in 1870 he vetoed 132, the next year 144, and in the following year 68. Governor Dix pursued the same practice and, in each year of his administration, vetoed 91 measures after the session closed. These numbers were unprecedented. Furthermore, the governor took an unwarranted amount of time in which to act upon the bills in his hands. In 1869 the last veto was filed within eleven days from the end of the session. In 1870 seven weeks elapsed before action was taken upon the last bills submitted to the governor at the adjournment of the legislature. The legislature of 1871 adjourned on April 21 but

[54] During the first three years of his governorship.
[55] See Appendixes A and B.
[56] See Appendix A.

the last veto memorandum was not filed until December 29. The same practice continued throughout the three following years, although it was never again quite so flagrant. The result was apparent in the constitutional revision of 1874, when an amendment was adopted and ratified whereby a thirty-day limit was placed upon the time in which the governor might act upon legislation after the legislature adjourned.[57]

From that date the thirty-day bill became a very important factor in New York state legislation. The frequent recesses of the legislature and the preponderance of special and local legislation resulted in the postponement of the great mass of business until the latter part of the session. Consequently at the time of final adjournment a large number of bills were left in the hands of the governor. For example, in 1883, at the adjournment of the 106th session, 357 bills had been signed by the governor, and 249 remained subject to his action. In 1889 the legislature left in the hands of Governor Hill 451 bills.[58] To become laws these bills must receive executive approval before the close of the thirty-day period. The governor's disapproval may be voiced in two ways: he may consider each bill separately and file a veto memorandum with each one; or he may withhold his approval from a large number collectively. In the latter case he either gives no reason for his action or he files a general memorandum to the effect that the bills are objectionable on the grounds of defective drafting, unconstitutionality, duplication of bills already passed, or unnecessary special legislation.[59] This general disposition of bills remaining unapproved at the end of the thirty-day period is known as the "omnibus veto." The importance of the thirty-day bill and the omnibus veto lies in the fact that they afford the governor an opportunity of passing judgment upon the work of the legislature. Since that body has adjourned, it cannot review the governor's disapproval. The governor thus ceases to be a mere

[57] Amendment of Art. IV, Sec. 9. Thorpe, "Charters and Constitutions," V, 2680.

[58] "Messages from the Governors," VII, 940; VIII, 871.

[59] "Messages from the Governors," X, 943.

restraining hand in legislation and becomes a positive force in dictating which of the hastily enacted measures shall be enrolled on the statute books. Governor Cleveland realized the arbitrary control which this practice placed in the executive, and, in his annual message of 1884, recommended that, so far as it was possible, bills be submitted to him in time to permit the legislature to review his action.[60] The omnibus veto of that year, however, included 133 bills as against twenty-seven vetoes interposed during the annual session. The thirty-day period assumed a position of prominence in the legislative activities of New York and has maintained it to the present.

Another phase of the subject of thirty-day legislation is the item veto of appropriation bills. With but one exception,[61] from 1895 to 1911 this power has been exercised only during the thirty-day period. The governor received the item veto on appropriation bills in 1874 by an amendment to the constitution.[62] In 1894 this provision was incorporated in the new constitution. Samuel J. Tilden was the first governor to exercise the new function. During the regular session he did not strike out any items but during the thirty-day period he vetoed forty-two, thereby reducing the total appropriations $317,730.94. In his annual message of the following year he expressed his attitude toward the item veto in these words: "The amendment to the Constitution imposing on the governor the obligation to revise every item of appropriation, works a change in official practice, amounting to a revolution. Hitherto, as the appropriations were embraced in bills that had to be accepted or rejected as a whole, the items have been, in effect, withdrawn from the action of the governor. The responsibility now devolved on him is very laborious and difficult. It tends, perhaps, to work some change in the customary relations of the departments. . . . There seems to be a disposition to hold the executive to the extreme of accountability in respect to appro-

[60] *Ibid.*, VII, 940.

[61] In 1910 Governor Hughes vetoed three items during the regular session. See below, Appendix B.

[62] Amendment to Art. IV, Sec. 9, 1974. Thorpe, "Charters and Constitutions," V, 2680.

priations. This tendency may be carried so far as to disturb the constitutional equilibrium of the executive and legislative forces."[63] The truth of these last words is proved by an examination of the exercise of the item veto by Governor Odell and Governor Hughes, who used it more extensively than any of the other governors. In 1903, after the adjournment of the legislature, Governor Odell objected to 131 items, thereby reducing the appropriations for the year $1,757,674.62. Governor Hughes, in 1910, deducted over $3,000,000 from the appropriation bills by striking out 239 items. Such a practice constitutes a severe inroad upon the constitutional theory of the separation of departments. Governor Hill felt that in freely exercising the item veto he would be overstepping the bounds of his departments,[64] and throughout his seven years in office he made very conservative reductions in appropriation bills. The right to initiate money bills is denied the governor and the legislature may still hamper the administration by too rigid economy or by unscientific distribution of the public money. But the power to veto items in appropriation bills, especially when it is exercised during the thirty-day period, has given the state executive an absolute authority in fiscal legislation which is surely subversive of the Anglo-Saxon principle that in the legislature should rest the control of the purse.

4. *Movement to Reform the Administrative System*

Chiefly through his increased participation in legislation the governor has become the responsible political leader of the state. His position in administration, however, is still comparatively weak. During the early years of our state government the public functions of the state were few and the need of a strongly centralized administrative system was more theoretical than practical. From the close of the Civil War to the opening of the twentieth century the state's functions multiplied rapidly. As a consequence corruption set in and the attainment of honest government was of greater concern than the development of an effi-

[63] "Messages from the Governors," VI, 925.
[64] "Messages from the Governors," VIII, 990.

cient system.[65] The anomaly of an executive whose principal functions were legislative and of a legislature exercising control over administration did not concern the electorate. The inefficiency resulting from such a system had, as yet, failed to strike home through the tax-bill.

Nevertheless, as early as 1872, Governor Hoffman recognized the evils of the existing administrative system. "Under the existing constitution," he said, "the executive department of the state is not so organized as to insure the most efficient administration of affairs, and the most complete and direct responsibility. . . . The governor ought to be held responsible for every branch of the actual administration of the state's affairs. Under our present constitution, all the important departments are separated from his control."[66] As a remedy for this condition he recommended: (1) that the secretary of state and the attorney-general should be appointed by the governor without the intervention of the senate, and should hold office during his pleasure; and (2) that a superintendent of prisons should be appointed by the governor, with or without the consent of the senate, and should be removable by him at any time for cause.[67] These officers, he thought, would form a valuable council to the governor. The constitutional commission of that year adopted these views in part and reported amendments providing for the appointment by the governor of the secretary of state, attorney-general and state engineer and surveyor. The legislature did not adopt this plan.[68]

Again, in 1894, it was observed that the real trouble with our state governments lay not in the composition of the legislature but in its usurpation of executive power. To remedy this defect it was suggested a clear delineation of the executive and legislative power and a readjustment of the functions of these two branches in accordance. To this end the following amendments

[65] R. E. George, "Increased Efficiency as a Result of Increased Governmental Functions," *Annals of the American Academy*, LXIV, 78.

[66] "Messages from the Governors," VI, 395-396.

[67] *Ibid.*, 396.

[68] *Ibid.*, 397, note.

to the constitution of New York were suggested: (1) the secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor, and the superintendents of public works and of state prisons should be appointed by the governor alone, and should hold office during his term unless sooner removed by him; (2) the governor and certain subordinates should have the right of attending the sessions of both houses and of taking part in the debates relating to their respective departments; (3) there should be an annual budget prepared by the state treasurer, as agent of the executive administration, the items of which the assembly might decrease but not increase.[69] These amendments, it was thought, would produce unity, strength, and responsibility in the administration. The proposals were too advanced for that time and were not adopted by the convention which met in that year. Nevertheless, a beginning had been made. The primary principle of efficient administration, namely: that the executive head should control the appointment of subordinates responsible to him, had been recognized as an indispensable factor in good government.

Governor Hughes pointed out the defects in the administrative system of New York in his inaugural address of 1909. He described the position of the chief executive in these words: "While the governor represents the highest executive power in the state, there is frequently observed a popular misapprehension as to its scope. There is a wide domain of executive or administrative action over which he has no control, or slight control. There are several elected state officers, not accountable to the governor, who exercise within their prescribed spheres most important executive powers. . . . The multiplication of executive duties incident to the vast and necessary increase in state activities has resulted in the creation of a large number of departments exercising administrative powers of first consequence to the people. The governor has the power of appointment but in most cases the concurrence of the senate is necessary. The terms of these officers are gen-

[69] G. Bradford, "Reform of Our State Governments," *Annals of the American Academy,* IV, 890-902.

erally longer than the governor's term. And in their creation the legislature with few exceptions has reserved final administrative control to the senate in making the heads of departments, to whose appointment the senate's consent is necessary, removable only by it." After contrasting the state system with that of the federal government he explains the necessity of concentrating executive power in the governor. "A division of accountability which practically results in no real accountability to any one lessens the proper stimulus to efficiency. Responsibility to the people is the essential safeguard of free institutions. This does not mean the election of all or even of a greater number of administrative officers, for undue burdens upon the electoral machinery would defeat its purpose. But it would seem to imply that distribution of administrative powers should have as its correlative the proper centralization of responsibility. It may fairly be said to require that the executive authority, exercising the appointing power under whatever check, should be responsible for administration and should have the control upon which such responsibility must rest."[70]

In his annual message of the succeeding year he revoiced this sentiment: "It would be an improvement, I believe, in state administration if the executive responsibility were centered in the governor who should appoint a cabinet of administrative heads accountable to him and charged with the duties now imposed upon elected state officers."[71]

It may, perhaps, be thought natural that the governor, feeling himself handicapped by the limitations on his administrative authority, should express such ideas as these. By this time, however, the necessity of concentrating administrative functions in his hands had suggested itself to publicist, politician and legislator alike. In 1909 Professor Beard attributed the failure of our democratic system to produce efficient government to the "ballot's burden" and recommended the shortening of the ballot by allow-

[70] "Public Papers of Governor Hughes," 1909, 8, 29.
[71] "Public Papers of Governor Hughes," 1910, 29.

ing the governor to appoint all the executive officials.[72] In April, 1910, the New York Short Ballot Organization was formed. Its purpose was to study local conditions in regard to the ballot and to procure the adoption of statutory and constitutional amendments embodying the short ballot principles.[73] During the legislative session of 1910 two resolutions were introduced, one in the assembly, the other in the senate, providing for a short ballot. The former provided for the appointment by the governor with the consent of the senate of the secretary of state, attorney-general, state treasurer, and state engineer and surveyor.[74] The latter proposed that all the present elective state officers, except the lieutenant-governor, should be appointed by the governor alone.[75] The senate resolution was smothered in committee; the assembly resolution was defeated by an adverse vote.

The dominant political parties in the state, furthermore, incorporated the short ballot in their programs.[76] In 1912 the republican and progressive conventions both accepted the principle. In 1913 a republican mass meeting was held in New York City, which unanimously approved the plan of leaving only the governor and lieutenant-governor elective officers. The reason given for this stand was that the long ballot was in violation of the best principles of organization, which require that the governor should have power to select his official agents. In consequence of this action a resolution favoring the short ballot was adopted by the assembly of 1914, but it was lost in the senate. The mass meeting had also directed the appointment of a committee of thirty to prepare a statement of the views of the republican party concerning the provisions of the new constitution. Its report, which was adopted by the committee on resolutions and submitted to the convention, favored the short ballot. Finally,

[72] C. A. Beard, "The Ballot's Burden," *Political Science Quarterly*, XXIV, 589-614.

[73] *American Political Science Review*, V, 83.

[74] "Assembly Introductory, No. 395." *New York Legislative Index*, 1910, 141.

[75] "Senate Introductory, No. 1092." *Ibid.*, 96.

[76] "Record of the New York Convention," 1915, III, 3382-3385.

in 1914, the democratic convention declared in favor of the appointment of all officers except the governor, lieutenant-governor, attorney-general, and comptroller.

The movement to secure greater efficiency in state administration resulted, in several states, in the formation of commissions of economy and efficiency. In 1913 Governor Sulzer of New York appointed a committee to investigate the expenditures of the state.[77] This committee recommended the establishment of a department of efficiency and economy, and the legislature created such a department. The statute prescribed that the commissioner in charge should inspect, supervise, investigate, and examine the operations of all other departments and make such recommendations as he deemed necessary to increase their efficiency.[78] Because of political differences the department existed less than two years,[79] but in that time it partially investigated almost every state department. Finding that a great many overlapped each other it reported that a simplification of the state government was of the greatest importance.[80]

The changes advocated by both the political and lay elements in the state were fundamental and could not be effected without constitutional amendment. The constitution of 1894 provides for the amendment of the constitution at the initiative of the legislature or for revision by a popularly elected convention. The loss of legislative influence which the suggested reforms would entail destroyed the probability of securing the desired amendments by the former method. The question of revision by a convention was to be decided by the electors of the state at the general election in 1916.[81] For purely political reasons the democrats, who were in control of the state in 1914, advanced the date of submitting the question.[82] The absence of any great

[77] *American Political Science Review*, VIII, 64.
[78] "Laws of 1913," Chap. 280.
[79] Abolished by the legislature, 1915. *American Political Science Review*, X, 96.
[80] "Municipal Research," No. 63, 542.
[81] Art. XIV, Secs. 1, 2.
[82] C. A. Beard, "The New York Constitutional Convention," *National Municipal Review*, IV, 637.

public demand for constitutional revision is shown by the very small margin by which the proposition was carried.[83]

The work of compiling data for the delegates to the convention began, in 1914, with the creation of a constitutional convention commission, consisting of the president of the senate, the speaker of the assembly and three citizens appointed by the governor.[84] This commission was to collect, compile and print data to be supplied to the delegates before the opening of the convention. It turned over the greater part of its work to the Bureau of Municipal Research.

That organization, in conjunction with the state department of efficiency and economy, investigated the condition of the state government and published the results officially in the annual report of the department of efficiency and economy. This report comprises a minute analysis of the governmental organization of the state, based upon an exhaustive survey of the state administration as it existed in November, 1914. The survey was intended to serve as a working basis for revision and, consequently, was purely descriptive. Recommendations as to reorganization were deliberately avoided. At the request of the constitutional convention commission, however, the Bureau of Municipal Research prepared an appraisal of the constitution and government of New York. This contained a comprehensive criticism of the defects of the existing system and made fundamental suggestions as to reörganization. Detailed recommendations were reserved for direct submission to committees. Both of these publications were submitted to the convention.

[83] Out of 1,718,712 registered electors only a little over 310,000 voted on the proposition, which was carried by a majority of 1353 votes. Therefore practically only 153,000 votes were cast for revision. W. T. Arndt, "The Defeated New York Constitution," *National Municipal Review,* V, 94.

[84] "Laws of 1914," Chap. 261.

CHAPTER IV

The New York Constitutional Convention of 1915

1. *Reörganization of the Administrative System*

The constitutional convention opened on April 6, 1915. The republicans claimed 116 and the democrats 52 members, but party alignment was not strict. The cleavage was rather between standpat machine men of both parties on the one hand and the conservatively progressive element on the other.[1] The *modus operandi* of the convention resembled that of every large legislative or constituent body in that the major part of the work was carried on by committees. The committees in charge of the reörganization of the administrative system, however, instead of relying upon their own knowledge and ability to draft amendments, allowed the Bureau of Municipal Research to prepare a series of bills embodying the principles laid down in the appraisal of the state government. The former commissioner of efficiency and economy, Mr. John H. Delaney, and the Hon. John G. Saxe, a member of the convention, coöperated with the Bureau in this work. After formal introduction into the convention, these bills were referred to the proper committees. Practically the entire first two or three months were devoted to committee hearings, at which experts on the question in hand were allowed to speak.[2] Conferences were also held with every state officer performing functions of an executive or administrative nature. With this expert advice as a working basis the committees finally drafted amendments, which were reported to the convention, debated and put to vote.

The defects in the administrative system, which the survey and appraisal of the state government had revealed, compelled consideration of the problem of concentrating administrative authority in the chief executive. Investigation had proved that there

[1] G. Mason, "Rebuilding a Constitution," *Outlook*, CX, 902-904.

[2] See "Municipal Research," Nos. 62 and 63, for discussions before the Committee on the Governor and other State Officers and the Committee on Finance, Revenues and Expenditures.

were 152 separate administrative or executive agencies in the state.[3] These were not grouped into departments, according to functions, under the control of a single responsible head. Neither had any consistent principle been followed in deciding which officers should be elected and which appointed; or in defining the official duties of each; or in determining which officers should be constitutional and which statutory. In the appraisal the executive and departmental organization of the state was classified as of a nondescript type, in which some of the department executives might be held responsible through the governor; other department executives might be independent; and still others might hold such an ill-defined position as to be uncertain to whom they were responsible. Article V of the constitution, which creates certain administrative offices, was described as "a historical accumulation, not a reasoned product of administrative science."[4] The keynote to the problem which lay before the convention was expressed in these words: "Inasmuch as the whole course of political evolution in other advanced democracies has been in the direction of responsible and efficient executive leadership, and inasmuch as substantial gains in American government have come from halting steps in that direction, the constitutional convention is called upon to answer this fundamental question: Is it desirable to retain a system of government that secures only irresponsible and invisible leadership or should cognizance be taken of the expedients which have been developed during the last hundred years for making leadreship effective and responsible? The discontent with and organized opposition to the present system are obvious. From the point of view of democracy it is unsuccessful and from the point of view of business management it stands universally condemned."[5]

The remedy proposed to meet these conditions was threefold: (1) the grouping of administrative agencies into logical departments under the control of a responsible executive; (2) the ap-

[3] "Municipal Research," No. 63, 556.
[4] *Ibid.*, No. 61, 90, 95, 96.
[5] *Ibid.*, 58.

pointment of the heads of these departments by the governor, incidentally resulting in a shortened ballot; (3) the institution of an executive budget. As the reörganization of administrative departments under a responsible executive necessarily involves the appointment of many officers which are now elective, the first two points may be considered under one head.

The coördination of similar functions in one department was not a new idea. The federal government affords an excellent example of the grouping of activities into administrative divisions. In 1903, in predicting the future of the commission system, one writer suggested a scheme for the grouping of the state commissions into eight departments.[6] Professor Beard, in his "American Government and Politics," recommends ten executive departments, each under the head of a responsible officer, preferably appointed by the governor. The bills framed by the Bureau of Municipal Research, commonly known as the Saxe amendments,[7] provided for the following organization of the executive branch of the government: a governor; an executive department; a central bureau of administration; and eleven administrative divisions. The executive department should correspond to the department of state. The central bureau of administration should have no responsibility for the execution of the public business but should exercise purely staff functions in conducting independent investigations and in making reports to the governor. The executive heads of the eleven administrative divisions were to constitute the executive council. This body could not exercise any independent powers but should act for the governor in the direction and control of the administrative departments and should meet as a cabinet to advise the governor. The governor should have power to appoint, and remove at will, the members of the executive

[6] F. H. White, "The Growth and Future of State Boards and Commissions," *Political Science Quarterly*, XVIII, 655.

[7] "New York State Constitutional Convention, 1915. Proposed Amendments," II. Amendments No. 510 and No. 555. The former defined the functions of the administrative divisions; the latter outlined the actual organization of each division. In every other respect they were identical. A third amendment, No. 727, was introduced by Mr. Saxe, providing for fifteen departments with heads appointed by the governor.

council, except the commission of education, the director of the central bureau of administration, and the secretary of state. He was also empowered to appoint all executive and administrative boards and commissions; which were to serve during pleasure. Over the rules and decisions of these bodies he was to exercise the power of modification or veto. The comptroller and attorney-general were to remain elective officers. The term of the governor was to be four years, unless he should dissolve the legislature, in accordance with the provisions of the amendment, in which case he, as well as the legislature, must stand for reëlection. The bill also contained provision for an executive budget.

These amendments were introduced in the convention on June 9 and 10. After a second reading they were referred to the committee on the governor and other state officers and to the committee on state finances, revenues, and expenditures. On June 24 the former committee held a hearing on them, at which their sponsor, the Hon. John G. Saxe, and Dr. Frederick A. Cleveland, director of the Bureau of Municipal Research, explained these amendments. Dr. Cleveland described the working of a division under the proposed plan, outlining the subdivision into departments and the overhead machinery, and showing the possibility of correlating the work of each department to that of the whole division and of the division to the entire administrative system. He emphasized the necessity of giving the divisions ordinance power, subject to the governor's veto, and of providing for staff advice for each administrative group from the governor to the lowest unit.[8] The purpose of the amendment, namely, to make the governor a responsible agent for getting the public business of the state done, and to provide the machinery which would enable him to become such an agent, is probably best expressed in Dr. Cleveland's own words: "Instead of being isolated from heads of departments, as he is at the present time, and instead of being permitted only to read the legislature a speech once a year, when the members get together, and instead of his having no power to initiate measures of administrative importance and of

[8] "Municipal Research," No. 63, 489, 496, 498.

being limited in his powers of control to taking an axe and violently slicing up the bills initiated by persons having no administrative responsibility after they are passed; instead of being set apart from everyone and everything—isolated to such an extent that the governor has no physical or institutional means of keeping in touch with the current business of the state, it is proposed that he should be given the power to appoint persons who shall represent him; power to require these persons to prepare and submit plans for approval; power to lay plans and proposals before the legislature, and in case of lack of support in the legislature, power to carry the issue before the electorate. These are the general provisions; we also think it desirable as a part of the organization for getting things done to group the work in such a way that similar things may be handled together, and then as a means of central control over work policy that the governor, as the chief executive, should be given the power to appoint as many vice-governors or division executives as there are grand divisions of administration. . . . . In addition to this, the governor would have a central staff organization, which, together with these heads meeting as an executive council, would be the means of having presented to him questions of policy after each had been well considered by a sectional group. The governor would thus be made the head of an administrative court with a first appeal to the legislature and a final appeal to the electorate.[9]

Other experts made a similar criticism of the state administrative system. The former commissioner of efficiency and economy attributed every evil in the state government to the failure to supervise the absolutely unchecked discretion of individual boards or commissioners. He suggested grouping the administrative agencies into ten divisions and recommended an independent board of control, which should have supervision over the administrative finances. Dr. Frank J. Goodnow, an authority on administrative law, pointed out two salient disadvantages of the existing system: the tendency toward extravagance due to the recognition of so many independent bodies, each with an ex-

[9] *Ibid.*, No. 63, 517-518.

aggerated idea of its own importance; and the difficulty of developing a permanent service, an indispensable factor in efficient government. He did not make any constructive suggestions as to reörganization. Ex-President Taft compared the federal system with the existing state government, pointing out the advantages of the former over the latter.[10]

To offset the more or less theoretical discussions of these experts, the committee held conferences with officers and commissions acquainted with the practical operation of the government. These agreed with the experts on the evils resulting from the present administrative system and their suggestions for improvement contained the same general principles.[11] As a result of twenty public hearings and of the examination of about seventy witnesses, a bill for the reörganization of the administrative departments was finally drafted and reported to the convention on August 11.[12] This bill provided for the grouping of the administrative functions of the state into fifteen departments.[13] Two of these, the department of justice and the department of audit and control, were to be under the direction of popularly elected officers, the attorney-general and comptroller respectively.[14] Three were to be placed under the control of commissions appointed by the governor, with the advice and consent of the senate. One, the department of education, was to retain its present system of administration.[15] The heads of the remaining nine departments[16] were to be appointed by the governor, with the consent of the senate, and might be removed by him in his discretion. The functions of these departments were clearly de-

[10] *Ibid.*, No. 63, 564, 577, 580-589, 592-594.

[11] *Ibid.*, No. 63, 614.

[12] "Record of the New York State Constitutional Convention," 1915, III, 1735, 3204.

[13] See "Municipal Research," No. 63, 603-607.

[14] The departments of public utilities, conservation, and civil service.

[15] By the University of the State of New York, with a chief administrative officer appointed by the Regents of the University.

[16] Departments of State, taxation, finance, public works, health, agriculture, charities and corrections, banking, insurance, and labor and industry.

fined and the amendment specified that no new departments should be created.

The chairman of the committee on the governor and other state officers, Mr. Frederick C. Tanner, made the majority report to the convention. After reviewing the present condition of the administrative system, describing it as "a growth by accretion, not a creation by design,"[17] he explained the plan proposed by the committee. There should be three classes of executive officers: (1) the two elective officers, the attorney-general and the comptroller, who bear a peculiar relation to the people of the state as a whole and, therefore, should remain elective; (2) the semi-judicial or legislative boards or commissions, whose relations to the governor are exceptional; and (3) the strictly executive departments, for whose acts the governor is held accountable. The heads of these departments should constitute a cabinet for the governor, on which he must depend for carrying out the policies of his administration. He should, therefore, be given discretionary power of removal over them. A large part of the committee was in favor of the independent appointment of these officers, but senatorial confirmation was agreed to by way of compromise.

Two minority reports were submitted by individual members. One delegate objected to the popular election of the attorney-general and comptroller, on the ground that they were particularly charged with the execution of the laws. He would favor the short ballot without compromise and an undivided executive department.[18] The other minority report expressed the extreme of conservatism in terms humorous but unerring in their appeal to the traditional fear of executive power. "This plan," he said, "would enthrone one man for four years. It would give him direct control of an army of more than 25,000 officers and employees. During his term he would direct state expenditures of more than $250,000,000. It would give such power as would

[17] "Municipal Research," No. 63, 609.

[18] Report of Mr. Courtlandt Nicoll, "Municipal Research," No. 63, 614-616.

have gladdened the heart of Alexander, the tyrant of Pherae, or satiated the cupidity of that modern dictator, Castro Venezuela. . . . Pure democracy, with its direct ballot, is impossible with 10,000,000 of people. Its opposite, an aristocracy or monarchy, is contrary to all our traditions. Our fathers gave us a middle course, representative government. To this let us cling. The constitution is the embodiment of the experience of the past. It needs repose, not change."[19] The first of these reports is significant in revealing a criticism which was later directed against the work of the entire convention and which contributed to its defeat at the polls. Too conservative to meet the demands of the radicals, too progressive to suit the reactionaries, this committee, like many others, resorted to compromise, which satisfied neither element in the state.

On August 27 the amendment came up for debate in the committee of the whole. Mr. Tanner opened the discussion with an explanation of the proposal, which very similar to that set forth in the majority report. Mr. A. E. Smith, a Tammany delegate, criticised several details of the bill. He pointed out one serious defect, senatorial confirmation of the appointment of the executive department heads. He explained that this provision would tend to defeat the plan of fixing responsibility upon the governor. An amendment was immediately offered providing that the governor should have absolute power of appointment. This amendment received the support of Mr. Seth Low, ex-mayor of New York.[20] The opposition centered around the increase in the governor's appointing power rather than on the reörganization of departments. The prevailing arguments were the lack of precedent; popular ignorance of the real meaning of the short ballot; the autocratic power of the governor under such a system; and the attack on representative government involved in the implication that the people do not know enough to elect their own officers. The general feeling of the opponents of the amendment

[19] Report of Mr. Baldwin, "Municipal Research," No. 63, 616-617.

[20] "Record of the New York State Constitutional Convention," 1915, III, 3204-3222, 3222-3238, 3236-3237, 3238, 3323.

was that it would produce efficiency at the cost of self-government and democracy.

On August 30 Elihu Root, president of the convention, addressed the delegates from the floor in support of the proposal.[21] He divided the activities of the state government into two groups: the legal and the extra-legal. The former are carried on by constitutional or statutory officers; the latter by the party leaders and their workers. These latter rule the state by a system of "invisible government," a system which "finds its opportunity in the division of powers, in a six-headed executive, in which, by the natural workings of human nature, there shall be opposition and discord and playing of one force against the other, and so, when we refuse to make one governor elected by the people the real chief executive, we make inevitable the setting up of a chief executive not selected by the people, not acting for the people's interest, but for the selfish interest of the few who control the party."[22]

This speech practically closed the discussion of the proposed amendment. On September 2 the convention adopted it by a vote of one hundred and twenty-four to thirty.[23] As incorporated in the revised constitution, it differed in many respects from the bill proposed by the Bureau of Municipal Research and from the amendment reported by the committee on the governor and other state officers. It retained, however, the fundamental provisions in regard to the grouping of departments and the appointment by the governor of the department heads. Article VI of the proposed constitution provided for seventeen civil departments.[24] The heads of the departments of law and of finance should be popularly elected and for a term co-terminous with that of the governor. The departments of labor and industry, of public

[21] *Ibid.*, 3381-3390.
[22] *Ibid.*, 3389.
[23] *Ibid.*, IV, 3959.
[24] The departments of law, finance, accounts, treasury, taxation, state, public works, health, agriculture, charities and corrections, banking, insurance, labor and industry, education, public utilities, conservation, civil service.

utilities, of conservation, and of civil service, were placed under the administration of commissions appointed by the governor, with the advice and consent of the senate. The department of education was to retain its present system of administration. The remaining ten departments were placed under the control of officers appointed by the governor independently, and removable by him in his discretion. The legislature was required to assign all the civil, administrative and executive functions of the state government to these departments and was prohibited from creating any new departments.

The amendment bore traces of compromise. For the technical "short ballot" had been substituted a shorter ballot.[25] The financial functions of the state had been distributed among three departments instead of being concentrated in one. The right of the governor to dissolve the legislature and to appeal to the electorate, one of the important provisions of the Saxe amendment, had been ignored. But the foundation was laid for government by a responsible executive, who might find in the appointed department heads "fingers with which to carry on the administration," as Taft did in administering the national government.[26] In an editorial on the amendment as it came from committee, the New York *Times* said: "Here is the promise of coöperation, of a steady, intelligent, understood, and carefully matched general executive policy and action. The blind, haphazard, scatter-brained present want of system looks pitiful enough compared with this well-ordered plan." Its judgment upon the final amendment was very similar: "The Tanner plan is by no means perfect, but it is good so far as it goes. . . . The reörganization of the state departments and a state budget initiated by the governor would be long steps toward accountable, visible government."[27]

[25] That is, shorter than the existing long or blanket ballot.

[26] Address of ex-president Taft before the committees on finances, revenues and expenditures and on the governor and other state officers, in joint session. "Municipal Research," No. 63, 585.

[27] New York *Times,* August 13, and September 4, 1915.

2. *Institution of an Executive Budget*

The institution of an executive budget is as essential to the establishment of responsible government as the reörganization of the state departments. Constitutionally the governor is enjoined faithfully to execute the laws of the state. If he is to be held responsible for their execution he must be given power to estimate the amount of money required for that purpose and to frame a financial program accordingly. If he is to formulate such a program he must concern himself with the community's ability to finance that program. In the words of Henry Bruere, the ex-chamberlain and efficiency expert of New York City: "The budget is the basis upon which administrative planning and control must be predicated."

The inconsistency of both the federal and state financial systems, whereby no attempt is made to correlate revenue and expenditure, caused little disturbance in the last century, when the taxable resources of the country seemed almost infinite. Within the last thirty years, however, owing to the extended activities of the state, the cost of government has risen out of all proportion to the increase in the assessed valuation of property. In the national government and in the state the maximum of indirect taxation has been nearly reached.[28] If the extension of governmental functions is to continue, as seems necessary, either new means of raising revenue must be devised or the revenue already collected must be more carefully administered. To prevent the hardships of the former alternative we must resort to a systematic budgetary procedure. President Taft first attempted to establish a budget system in the national government and induced congress to create an economy and efficiency commission. After making a survey of the organization of the government this body prepared a budget, which the president submitted to congress, but nothing came of the report. In 1913, several states

[28] For figures see "Municipal Research," No. 62, 426-428. Also *Annals of the American Academy*, LXII, 85; LXIV, 80.

enacted legislation affecting budgetary methods[29] but not one of these statutes contained the *sine qua non* of an effective executive budget, the prohibition upon the legislature of increasing items in the appropriation bills.

The state of New York was confronting the same financial problems arising from the increased cost of government. In the period from 1860 to 1915 there had been an increase of approximately $45,000,000 in the total expenditure of the state, whereas the population had only tripled.[30] Deficits, instead of surpluses, began to face the legislature. Either new means of raising money must be devised or the slip-shod methods of state finance must be remedied. Governor Hughes called attention to the urgent necessity for reform and, in 1907, secured the passage of the Moreland Act, whereby either the governor, or persons appointed by him, might examine the management and affairs of any department, board, bureau, or commission of the state. This measure provided, by implication, a means of obtaining information as to the financial condition of the executive branch of the government. Throughout both his terms Governor Hughes was insistent upon the need of fiscal reform and was relentless in his attack upon "pork-barrel legislation," as his use of the item veto proves. In 1910 he secured the passage of a law providing that the comptroller should tabulate the estimates submitted to him in such a way as to contain: (1) an itemized statement of the actual expenditures made during the preceding year; (2) a statement of appropriations for the preceding year; and (3) a statement of the appropriation desired for the coming year.[31] This law was designed to establish a more business-like procedure in obtaining information for the legislature.

Upon the recommendation of a committee of inquiry, appointed in 1913, the legislature of New York created a board of

[29] See *ante*, 00-00. Also *American Political Science Review*, IX, 254, 260, 273.

[30] "Municipal Research," No. 70, 26. In 1860 total state expenditures, $2,622,866.20. In 1915 they were $47,314,642.19. These figures represent an increase of from $0.676 per capita to $8.627 per capita.

[31] "Municipal Research," No. 70, 30-31.

estimate, of nine members; the governor, lieutenant-governor, president of the senate, chairman of the finance committee of the senate, the speaker, chairman of the ways and means committee; comptroller; attorney-general; and commissioner of efficiency and economy. This board was to receive estimates from the various departments and offices and, with these as a basis, prepare and submit the annual budget, but solely as a recommendation, since the legislature might deal with it as it pleased. By this law New York was put in the lead in budgetary reform[32] but, as experience proved, it provided an unworkable method of framing a budget. A board composed of legislative and executive members violated the principle that the function of proposing a budget should be separated from the function of disposing of it.[33] The board soon came to a deadlock and never succeeded in proposing a budget to the legislature.

The first work of the constitutional convention committee on finances, revenues, and expenditures was to investigate the existing methods of fiscal legislation in the state. It was found that there is no legal means of supervising the estimates submitted by the independent administration units. Consequently a comprehensive financial plan, formulated by a central officer, is impossible. The law requires that the estimates be submitted to the legislature through the comptroller, but he has no power of revision. No curb is placed upon the enthusiasm of each officer for his particular department or bureau. As a result the estimates are so high that the legislature disregards them, looking upon them as requests rather than estimates; and thus it formulates its own program of expenditures. No restriction is placed upon additions for private bills, so that, as one member of the convention expressed it, in the last days of the session "there is a general scramble up the back stairs to secure divers and sundry 'plums' from the members of the finance committee of the senate or the

[32] *American Political Science Review,* VIII, 59. "Notes on Current Legislation," edited by Horace E. Flack.
[33] "Municipal Research," No. 62, 440.

ways and means committee of the assembly."[34] Rushed through the legislature at the close of the session, almost without exception under an emergency message,[35] the appropriation bill receives no adequate discussion or publicity. Finally, after adjournment, the bill goes to the governor who, even if he uses the item veto conscientiously, is hampered by lack of information in regard to the various items, and by his inability to reduce an item. According to this system the real relation of executive and legislature is reversed and, in the words of the chairman of the committee on finances: "Instead of the man who is to spend the money presenting to the body which is to grant the money his request for their final decision, the latter body, in substance, draw their check in blank and present it to the executive for him to determine how much of it he cares to use."[36]

In the convention the first bill dealing with the establishment of this system[37] provided for an executive budget, initiated by the governor, any item of which the legislature was forbidden to increase. Budgetary procedure and content were not worked out in detail. In suggesting a reform in the state system of finances the Bureau of Municipal Research, which had accomplished so much in establishing a sound budgetary system in the city of New York and elsewhere, was particularly active. On June 8 a bill, which the bureau had helped to prepare, was introduced. It provided that the governor should prepare and submit to the legislature administration appropriation bills, supported by estimates from the departments. The governor and heads of executive departments should have the privilege of the floor to defend these bills and to answer questions with respect to them. The bills might be reduced by the legislature but not increased.

---

[34] "Municipal Research," No. 62, 256.

[35] In the past twenty-one years every appropriation bill except one, has been passed under an emergency message. "Municipal Research," No. 62, 434.

[36] *Ibid.*, No. 62, 436.

[37] No. 444. Introduced by Mr. Meigs, June 4, 1915. "Proposed Amendments of the Constitutional Convention of the State of New York," 1915, Vol. I.

After a preliminary vote in committee of the whole, to obtain the sense of the legislature and to permit public discussion, the budget must be submitted, accompanied by a message explaining the appropriation and revenue proposals. Discussion of these was then to follow in the committee of the whole until final drafts were adopted. The proposal specified that the budget must contain a statement of actual and estimated revenues and expenditures for a period not less than two years prior to the period to be financed; a balance sheet showing the financial condition of the state; a statement of the condition of the state funds; and revenue bills to meet the needs of the state. This bill made a careful distinction between the budget and an appropriation bill.

Before reporting an amendment to the convention the committee on state finances, revenues, and expenditures held conferences with municipal budget experts, such as Comptroller Prendergast of the city of New York; with ex-President Taft and the Hon. John J. Fitzgerald, chairman of the committee on appropriations of the house of representatives, both of whom had seen practical experience in the federal system; and with such authorities on government as President Goodnow and President Lowell. All agreed that an executive budget was essential to economical administration.[38]

Finally, on August 4, an amendment was introduced by the committee. The essential features of this amendment were: (1) the submission to the governor, on or before the fifteenth of November, of itemized estimates of the appropriations required by the heads of all departments, except the legislature and judiciary; (2) the revision of such estimates by the governor, after public hearing upon them, at which the governor might require the attendance of heads of departments and their subordinates; (3) the submission to the legislature by the governor of a budget based upon these estimates; (4) provisions for the appearance of the governor and department heads on the floor of the legislature

[38] See "Municipal Research," No. 62.

to defend the budget and to answer inquiries relevant thereto; (5) restriction of legislative action upon an appropriation bill submitted by the governor to the cancellation or reduction of items; (6) the enactment of such bills immediately upon passage by both houses, without further action by the governor.[39]

The amendment specified that the budget should contain a plan of estimated expenditures and revenues and that it should be accompanied by itemized appropriation bills. A distinction was made between the administration appropriation bills and those for the legislature and judiciary. The latter should be included in the budget without revision by the governor, should be subject to increase by the legislature, and should require the governor's approval before becoming law. The consideration of further appropriations was prohibited until those proposed by the governor were acted upon. Such further appropriations must be be made by separate bills, each for a single object, and over these the governor retained his veto power. The amendment provided, furthermore, that the fiscal year should end on June 30.

The chairman of the committee on finances, revenues and expenditures, Henry L. Stimson, brought in the majority report,[40] outlining the defects of the present system of financial legislation and explained the recommendation of the committee. That body had unanimously recommended that the estimate should first be revised and classified within the respective departments and further revised and coördinated by a central executive authority. This the committee regarded as "the hub of a real budget system,"[41] since it provided for executive responsibility. There was a division of opinion as to who should have this central authority, but a great majority decided upon the governor, since the departments, whose estimates comprise the greater portion of the budget, were the instruments through which he saw that the laws were enforced. The committee emphasized the necessity of submitting the budget before February 1, in order to allow time

[39] *Ibid.*
[40] "Municipal Research," No. 62, 426-447.
[41] *Ibid.*, No. 62, 439.

for full discussion. It also considered the appearance of the governor and heads of departments before the legislature a necessary corollary of the budget system, since it allowed interrogation and insured publicity. The restriction of legislative action in regard to the budget was regarded as essential because the power to raise items would imperil the entire system and destroy the governor's incentive to prepare the budget with a sense of responsibility.

August 10 the amendment was debated in the committee of the whole. The opposition consisted of two main arguments: the danger of placing great power in the hands of one man; and the breaking down of the traditional separation of powers through the appearance of the governor in the legislature. A. E. Smith, former Tammany speaker of the assembly, made the most plausible argument against the plan, namely, that it failed to deal with the special and local appropriation bills, which constituted practically half of the annual appropriation,[42] and he suggested that a two-thirds vote be required to pass bills appropriating money for state purposes, when less than the whole state would be benefited.[43] A few other changes were proposed, some providing for the substitution of a board or other officer as the budget-making authority; others restoring the governor's veto after the budget passed the legislature. The chairman of the committee opposed them so conclusively that the amendment passed, substantially as it came from committee, by a vote of 137 to 4.[44]

These two amendments, the one grouping the administrative functions of the state, the other providing for an executive budget, would make it possible to transact public business along the lines of modern efficiency. Either would go far toward establishing effective leadership in administration. Together they would make the governor's constitutional position as chief execu-

[42] "Record of the Constitutional Convention," 1915, II, 1859-1612; 1621, 1627-1632, 1646-1649, 1675.

[43] No. 342. "Proposed Amendments of the Constitutional Convention of the State of New York," 1915, Vol. I.

[44] "Record of the Constitutional Convention," 1915, II, 1632, 1650-1652, 1717-1723, III, 2321.

tive a reality. The governor would cease to be a superfluous, though honorary, figure in the organization of the state. He would become, instead, the axis upon which the administrative system would turn. So far as the executive department is concerned, the constitution would cease to be a document of limitations, and would become a charter of positive functions and duties. Professor Beard expressed the importance of these amendments in the following words: "It would be a work of superogation to discuss the merits of this constitution. Its provisions speak for themselves. The advocates of the short ballot and of the administrative reörganization have received a large measure of consolation—more in fact than they had reason to expect. The champions of scientific budget-making have achieved a substantial gain in the governor's initiation of the administrative budget. Whether it becomes a matter of form will depend on the character of the new governors. In breaking down the rigid separation of the governor and his cabinet from the legislature and admitting them to the floor of the house a system of interpellation may be established which will contribute powerfully to efficient and responsible government and will open up undreamt possibilities in politics."[45]

All but two of the states[46] make the governor constitutionally responsible for the faithful execution of the laws. The New York constitutional convention sought to give to the governor power commensurate with that responsibility. In doing so, however, it failed to provide for the responsibility of the governor to the electorate. Many reasons contributed to the defeat of the proposed constitution.[47] Important factors in its rejection were the opposition of the labor classes and progressives, for whom it was too conservative; of Tammany Hall, which disliked the home-rule provisions for New York City; and of certain groups,

[45] Quoted in G. G. Benjamin, "The Attempted Revision of the Constitution of New York," *American Political Science Review,* X, 43.

[46] "Index Digest of State Constitutions," 680-681.

[47] See G. G. Benjamin, "The Attempted Revision of the State Constitution of New York," *American Political Science Review,* X, 35-42. Also "Legislative Notes and Reviews," *Ibid.,* X, 104-105.

such as the United Real Estate Owners, the Civil Service Forum, and the school teachers of New York City, who felt that their interests were endangered by certain provisions. But the dominant factor was the failure to provide a means of adequate control over the governor. The electorate had no way of calling him to account, until the end of his term, for the use of his increased powers. Neither the recall as it is found in this country nor as it exists in England[48] was included in the constitution. It could not be expected that a public which had jealously confined the executive power would suddenly enlarge the scope of that power without imposing a prompt and effective check upon the exercise of it. The loss of popular control was too heavy a price for efficiency and a responsible executive. Of this fact the ballot returns present overwhelming evidence, the vote being 400,423 for adoption and 910,462 against adoption.

3. *Present Status of the Governor in New York*

The defeat of the constitution of 1915 apparently leaves the governor of New York in the position which he occupied before the convention assembled. The constitution of 1894 is still operative, and the executive authority remains scattered among some 150 odd agencies. The long ballot will still be used at elections. The financial system of the state will continue to be conducted by irresponsible committees, subject to executive review at the close of the session. So far as the fundamental law of the state is concerned, the governor is still "but a temporary visitor," the party leader, a permanent, masterful force with whom rests the actual control of the state.

The movement for efficiency in state government rests on too sound a basis, however, for the convention's labors to have been in vain. The tax-payer demands that the increased cost of government be met by some other means than by higher taxes. When

[48] It will be remembered that the bill proposed by the Bureau of Municipal Research provided that, if the governor should dissolve the legislature and appeal to the electorate in case he lost the confidence of the former, he must stand for re-election. *Ante*, 000.

the legislature levies a direct tax of $20,000,000, as in 1915, the demand for reform becomes insistent. Governor Whitman felt its pressure and devoted his annual message of 1916 to the subject of expenditures. With this message he transmitted a tentative budget proposal, containing, in the form of a single appropriation bill, a consolidated estimate of the money needed by the departments for the next fiscal year. It was not accompanied by a revenue proposal, and thus lacked one of the essentials of an effective budget. The necessary bill was introduced by a member of the legislature and referred to a standing committee. This so-called "tentative budget proposal" was as far as the governor was willing to go in the matter. In reply to a letter from the Bureau of Municipal Research concerning his views on fiscal reform,[49] he disclaimed an attempt to establish the principle that the executive should originate appropriations and expressed opposition to an extension of the budget procedure beyond the limitations in the existing constitution. He favored an amendment granting the executive the right to reduce, as well as to veto, an item in an appropriation bill, but further change he would regard a disturbance of the balance between the executive and the legislature.

The legislature then took up the question of establishing a budget system. Senator Bennett introduced a resolution proposing that the governor be invited to address a joint meeting of the senate and assembly upon his tentative budget proposal and upon the means of raising revenue to meet it. Although the resolution was lost in committee, it was significant as revealing a break in the legislative opinion concerning the traditional doctrine of the separation of powers.[50]

Two bills were then introduced: one, the Mills' Bill, providing for an executive budget; the other, the Sage Bill,[51] for a legislative budget. The former, a minority measure, was referred to the committee on finance and pigeon-holed. The latter passed

[49] "Municipal Research," No. 69, 68, 79-85; No. 70, 79.
[50] *Ibid.*, No. 69, 53-54, 75.
[51] "Senate Introductory," Nos. 261 and 817.

both houses and was signed by the governor on April 5.[52] The Mills' Bill had one serious defect, the retention of the standing committee system, but in other respects it met the requirements of an effective executive budget. The Sage Bill ignored the governor entirely in framing the budget, except in providing that he, as well as the comptroller and the staffs of the finance committees of the two houses, shall submit estimates to the legislature. The governor may accompany his estimates with suggestions for revision and with a statement of probable revenues but he is not required to assume responsibility for them. So far as the mandatory provisions go, his functions in budget-making will be purely ministerial.

The Bureau of Municipal Research tried to persuade Governor Whitman to veto the bill, on the ground that it would strengthen "invisible government" by irresponsible committees by legalizing the standing committee system.[53] The governor's explanation on signing the bill was as follows: "I realize that this bill does not provide an ideal procedure for the preparation of the state budget. It does, however, give a statutory form to one of the fundamental principles suggested in my message, namely, that the appropriations of the state should be in one appropriation act. It also provides, in part at least, for two other features which I have urged in my public addresses upon the state finance plan, namely: that the appropriation act should be a matter of early and public consideration by the legislature, and not an act passed in the confusion and turmoil of the closing days of the session, accelerated as it always has been, by emergency messages of the executive. . . . Because also the measure provides for a single appropriation act and for its early and public consideration in the legislative session and puts an end to the passage of ill-considered and hastily made appropriations at the end of the legislative session, I believe its approval is in the public interest."[54]

[52] "Municipal Research," No. 70, 37.

[53] *Ibid.*, 43.

[54] The Albany *Evening Journal*, April 6, 1916. Quoted in "Municipal Records," No. 70, 101.

The attempt to establish government by a responsible executive in New York seems, for the present at least, to have been thwarted. The governor's position as political leader in the state remains unchanged by the defeat of the proposed constitution. As the functions of the state become more complex, his leadership will probably become stronger. What change time will make in his administrative functions is only a matter of conjecture. Reasons have been suggested for believing that the movement toward strong executive government has a firm basis and will survive even the overwhelming defeat it received at the polls in 1915. For the present, however, it must be admitted, in the words of a recent writer, that: "the governor of New York is chief executive only in the imagination of those who are not familiar with the tangled mass of civic relations which has its centre at Albany."[55] Surrounded by 150 distinct agencies, each performing its functions independent of central executive supervision, the governor has little more control over the state administration than the king of England over the activities of his cabinet officers in the administration of their several departments. Until a new generation of voters can be made to realize the inefficiency arising from the reversal of functions in our state government, the chief executive must be content with the large legislative powers which he possesses and must leave the execution of the laws to that loosely constructed organism, the executive department.

[55] E. Dawson, "The Invisible Government and Administrative Efficiency," *Annals of the American Academy,* LXIV, 11.

BIBLIOGRAPHY

Documentary Sources

Thorpe, F. N.—The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the States, Territories and Colonies. Washington, 1909.

Poore, Ben. Perley.—The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the United States. Washington, 1878.

New York Colonial Documents, Vol. III, Governor Sloughter's Commission.

Messages from the Governors (C. Z. Lincoln). Albany.

Public Papers of Governor Hughes, 1907, 1908, 1909, 1910. Albany.

Third Annual Report of the Secretary of State, 1913.

Record (Unrevised) of the Constitutional Convention of the State of New York, 1915, 4 vols. Albany, 1915.

Proposed Amendments of the Constitutional Convention of the State of New York, 1915, 2 vols. Albany, 1915.

Other Primary Sources

Government of the State of New York. A Description of its Organization and Functions. Department of Efficiency and Economy and the Bureau of Municipal Research. 1915.

Index Digest of State Constitutions. Prepared for the New York State Constitutional Convention Commission, 1915, by the Legislative Drafting Research Fund of Columbia University. 1915.

New York Legislative Index, 1907, 1908, 1909, 1910. Albany.

Patterson, Isaac F.—The Constitutions of Ohio and Allied Documents. Cleveland, 1912.

The Federalist (Lodge edition). New York and London, 1908.

Secondary Sources

Alexander, DeAlva S.—A Political History of the State of New York. New York, 1906.

Bancroft, Frederic.—The Life of William H. Seward.

Beard, Charles A.—American Government and Politics. New York, 1915. Readings in American Government and Politics. New York, 1913.

Blue, Leonard A.—Relation of the Governor to the Organization of Executive Power in the States. 1902.

Bryce, James.—The American Commonwealth, 2 vols. New York, 1888 and 1912.

Channing, Edward.—History of the United States, 3 vols. New York, 1912.

Dealey, James Q.—The Growth of American State Constitutions. Boston, 1915.

Fairlie, John A.—The State Governor. 1912. (Reprinted from the Michigan Law Review, Vol. X, No. 5, 6). Local Government in Counties, Towns and Villages. New York, 1906.

Finley and Sanderson.—The American Executive and Executive Methods. New York, 1908.

Goodnow, Frank J.—Comparative Administrative Law. 1893.

Greene, Evarts B.—The Provincial Governor. New York, 1898.

Randall, E. O., and Ryan, D. J.—History of Ohio. New York, 1912.

Wilson, Woodrow.—The State. 1895.

Works of William H. Seward (George E. Baker edition). 1853.

PERIODICALS

American Political Science Review—

Benjamin, G. G.—The Attempted Revision of the State Constitution of New York, Vol. 10, 1916.

Mathews, John M.—The New Rôle of Governor, Vol. 6, 1912.

Updyke, F. A.—The New Hampshire Constitutional Convention, Vol. 7, 1913.

————. State Governmental Organization, Vol. 4, 1910.

News and Notes, edited by W. F. Dodd, Vol. 7, 1913.

Notes on Current Legislation, edited by Horace E. Flack, Vol. 8, 1914.

Legislative Notes, Vols. 5, 9, 10.

Annals of the American Academy of Social and Political Science—

Blue, L. A.—Tendencies in State Administration, Vol. 18, 1901.

Bradford—Reform of Our State Governments, Vol. 4, 1894.

Bruere, Henry.—The Budget as an Administrative Program, Vol. 62.

Dawson, Edgar.—The Invisible Government and Administrative Efficiency, Vol. 64, 1916.

George, Ralph E.—Increased Efficiency as a Result of Increased Governmental Functions, Vol. 64, 1916.

Atlantic Monthly—

Alger, George W.—Executive Aggression, Vol. 102, 1908.

Columbia University Studies in History, Economics and Public Law—

Agger, Eugene E.—The Budget in the American Commonwealth, Vol. 25, 1907.

Chaddock, Robert E.—Ohio before 1850, Vol. 31.

Davis, William Watson.—The Civil War and Reconstruction in Florida, Vol. 43, 1913.

McBain, Howard L.—DeWitt Clinton and the Origin of the Spoils System in New York, Vol. 28, 1907.

Stebbins, Homer A.—Political History of the State of New York, Vol. 55, 1913.

Harper's Monthly—

DeWitt Clinton as a Politician, Vol. L.

Johns Hopkins University Studies in Historical and Political Science—

Bassett, J. S.—Constitutional Beginnings of North Carolina, 12th Series, 1894.

Davis, Horace.—American Constitutions, 3rd Series, 1885.

Harry, J. W.—Maryland Constitution of 1851, 20th Series, 1902.

Jameson, J. Franklin.—Introduction to the Constitutional and Political History of the Individual States, 4th Series, 1886.

Magruder, F. A.—Recent Administration in Virginia, 30th Series, 1912.

Whitney, Edson L.—The Government of the Colony of South Carolina, 13th Series, 1895.

Municipal Research—

No. 61, 62, 63, 69, 70.

Nation—

Bradford, G.—Powers of the Executive, Vol. 86, March 19, 1908.

Bradford, G.—President or Governor as Lobbyist, Vol. 86, May 7, 1908.

Editorial—A Real Governmental Change, Vol. 86, March 5, 1908.

Editorial—Executive Usurpation, Vol. 84, June 20, 1907.

National Municipal Review—

Arndt, W. T.—The Defeated New York Constitution, Vol. 5, 1916.

Beard, Charles A.—The New York Constitutioanl Convention, Vol. 4, 1915.

North American Review—

Mathews, John M.—The New Stateism, Vol. 193.

Outlook—

Mason, Gregory.—Rebuilding a Constitution, Vol. 110.

Political Science Quarterly—

Beard, Charles A.—The Ballot's Burden, Vol. 24, 1909.

Dougherty, J. Hampden.—Constitutions of the State of New York, Vol. 3, 1888.

Gitterman, J. M.—The Council of Appointment in New York, Vol. 7, 1892.

White, F. H.—The Growth and Future of State Boards and Commissions, Vol. 18, 1903.

Whitridge, Frederick W.—Rotation in Office, Vol. 4, 1889.

Yale Review—

Phillips, John B.—Recent State Constitution-Making, Vol. 12, 1904.

American Year Book, 1911, 1913, 1915.

New York Times, August 13, 1915; September 4, 1915.

Appendixes

Appendix A

TABLE SHOWING THE EXERCISE OF THE VETO BEFORE 1875

GOVERNOR	Year	Number of Vetoes	Bills Passed Over Veto	Vetoed After Adjournment of Legislature
Yates	1823	1	0	
	1824	3	3	
Clinton	1825	0	0	
	1826	1	0	
	1827	2	0	
	1828	0	0	
Van Buren.....	1829	1	0	
Throop	1830	0	0	
	1831	0	0	
	1832	0	0	
Marcy	1833	1	0	
	1834	0	0	
	1835	2	1	
	1836	2	0	
	1837	0	0	
	1838	0	0	
Seward	1839	1	0	
	1840	1	0	
	1841	0	0	
	1842	3	0	
Bouck	1843	0	0	
	1844	0	0	
Wright	1845	1	0	
	1846	0	0	
Young	1847	0	0	
	1848	0	0	

APPENDIX A—Continued

GOVERNOR	Year	Number of Ordinary Vetoes	Bills Passed Over Veto	Vetoed After Adjournment of Legislature
Fish	1849	0	0	
	1850	10	0	
Hunt	1851	3	0	
	1852	6	0	
Seymour	1853	6	0	
	1854	7	1	
Clark	1855	3	0	
	1856	0	0	
King	1857	3	2	
	1858	1	0	
Morgan	1859	14	0	
	1860	15	6	
	1861	5	1	
	1862	1	0	
Seymour	1863	3	0	1
	1864	0	0	
Fenton	1865	12	0	8
	1866	7	0	
	1867	3	0	1
	1868	4	0	
Hoffman	1869	24	0	35
	1870	31	0	132
	1871	33	0	144
	1872	29	2	68
Dix	1873	10	0	91
	1874	6	0	91

APPENDIX B.

TABLE SHOWING EXERCISE OF THE VETO AFTER 1875

GOVERNOR	Year	Number of Ordinary Vetoes	Bills Passed Over Veto	Thirty-Day Bills	Omnibus Veto	Number of Separate Items Vetoed		Amount of Reduction in Appropriations
						During Session	During 30-Day Period	
Tilden	1875	16	0	17	20	0	42	$317,730.94
	1876	1	0	14	22	4	22	388,133.75
Robinson	1877	45	0	4	66	55	0	$1,684,950.29
	1878	25	0	10	91	32	1	98,364.14
	1879	51	0	8	127	36	0	324,375.12
Cornell	1880	13	0	4	95	0	195	$1,023,367.51
	1881	81	0	0	32	38	0	152,372.94
	1882	27	0	9	120	0	65	353,937.84
Cleveland	1883	37	0	4	87	1	109	$254,294.44
	1884	27	0	0	133	0	40	127,025.00
Hill	1885	19	0	8	56	7	30	$207,293.27
	1886	16	0	2	64	23	0	135,347.24
	1887	64	0	4	97	15	1	122,580.00
	1888	25	0	5	110	11	0	78,272.00
	1889	51	0	59	114	0	84	582,892.24
	1890	27	0	4	111	1	0	5,000.00
	1891	54	0	15	0	17	0	188,437.90

APPENDIX B—Continued

Flower	1892	38	0	43	52	38	2	$566,725.00
	1893	10	0	121	0	0	28	541,884.00
	1894	55	0	125	9	3	2	11,827.00
Morton	1895	4	0	4	99	0	4	$ 31,300.00
	1896	0	0	57	143	0	5	38,566.13
Black	1897	1	0	2	359	0	34	$155,655.92
	1898	0	0	1	154	0	3	13,700.00
Roosevelt	1899	4	0	26	92	0	1	$ 5,000.00
	1900	1	0	53	111	0	0	0,000.00
Odell	1901	44	0	5	163	0	45	$242,419.40
	1902	22	0	29	164	0	43	321,762.50
	1903	11	0	1	174	0	131	1,757,674.62
	1904	0	0	44	172	0	68	1,488,454.99
Higgins	1905	5	0	13	153	0	65	$388,385.94
	1906	7	0	15	134	0	19	83,913.52
Hughes	1907	41	0	126	123	0	95	$1,084,461.45
	1908	7	0	85	55	0	22	504,041.65
	1909	7	0	89	155	0	111	1,674,936.06
	1910	6	0	104	118	3	239	3,041,286.11