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# The Veto Power of the Governor of Illinois

NIELS H. DEBEL, Ph.D.





## PREFACE

The veto power of the American state governor has long been neglected by students of political science. There are in existence several summaries of constitutional provisions. In a few cases, also, have there been attempts to discuss the historical growth of the governor's veto power. But these have all concerned themselves with the spread of the veto power among the states, and have not taken up in any satisfactory manner the development and strengthening of that power.

The present study is an attempt to investigate not only the development of the veto power in Illinois but also its actual operation. It is hoped that others may do the same for other states. Only then will it be possible to treat the subject generally and in the manner it deserves.

I wish to express my indebtedness to Professor W. F. Dodd, now of the University of Chicago, in consultation with whom the subject of this study was determined upon, and who has read the manuscript; to Professor C. W. Alvord, director of the Illinois Historical Survey, for the use of material collected by him; to Mrs. Jessie Palmer Weber of Springfield, Illinois, for the use of the collections of the Illinois State Historical Library; to the Hon. Lewis G. Stevenson, secretary of state, for courtesies and aid extended while searching for material in the state archives. I wish especially to express my appreciation and gratitude to Professor John A. Fairlie of the University of Illinois for the many kind and helpful criticisms made by him during the course of this investigation.

N. H. DEBEL.

copy of Dodd's v. 6 case  
28.17 Dodd's v. 6 case



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## CHAPTER I

### GENERAL DEVELOPMENT OF THE VETO POWER IN THE UNITED STATES

#### ORIGIN OF THE VETO POWER

The veto power, like many others of our political methods, is an adaptation of a British practice transplanted to American soil. To study the veto power of the governor of Illinois most profitably, therefore, it seems best to trace it from its source; to note its early translation to the colonies in America; and to study its development in our self-governing states.

The veto power in early England was a royal prerogative. According to the best theory of absolute monarchy the king was, not the state, as Louis XIV would have said, but the people of the state personified. The sovereign power was merged in his person.<sup>1</sup> He made laws on his own motion or in response to petitions from his subjects. As late as the fourteenth century laws were made by the king and the lords upon the petitions of the commons.<sup>2</sup> In the year 1414 the king consented not to alter petitions. In 1445 the commons were definitely recognized as part of the law-making power. Since that day laws have been made by the king, by and with the advice and consent of the lords spiritual and temporal and the commons—"and by the authority of the same."<sup>3</sup> Whatever may be the facts, the law is still theoretically the king's law. Laws are still enacted by the king's most excellent majesty, etc. Assent is still given in the old Norman phrase: *le roy le veult*; and an act of Parliament is not law without this formal consent.<sup>4</sup>

With the growth of Parliament the veto power has fallen into desuetude. While the theory still holds that the laws are

<sup>1</sup>Hobbes, *Leviathan*, pp. 157-158, 173 ff. (Molesworth Ed.)

<sup>2</sup>Ilbert, *Parliament*, p. 23.

<sup>3</sup>Maitland, *Constitutional History of England*, p. 423.

<sup>4</sup>It may be noted that in the American charter colonies and in the states after the establishment of independent governments the executive is dropped from the enacting clause. Veto cannot then be made by simple inaction, but becomes a formal act of dissent.

made by the king's most excellent majesty, we must not forget that he always acts "by and with the consent of the lords temporal and spiritual and the commons." The king always wills what he is petitioned to will. The veto on Parliamentary acts was used the last time in 1707, when Queen Anne rejected the Scotch Militia Bill.<sup>5</sup> It is barely conceivable that circumstances might arise under which the king would now oppose a veto to the clear will of the majority in Parliament.<sup>6</sup>

But though the veto power at home has declined, it has been found convenient to maintain it for colonial purposes. Legislation in British colonies is still subject to the veto of the king. That he always acts "in council" is simply a convenient method to insure that he does not act contrary to the will of the party in power.<sup>7</sup>

#### THE VETO POWER IN THE AMERICAN COLONIES

While vetoes of colonial legislation are sparingly made in the British Empire today, that can hardly be said of the practice of a hundred and fifty years ago. Here the veto power was practically undiminished. That the power was wielded not in vain is abundantly testified by the fact that the first item in the long list of grievances against the King of Great Britain enumerated by the Declaration of Independence is on account of the use of the veto power. "He has refused his assent to Laws, the most wholesome and necessary for the public good," so runs the indictment.

For the purpose of our discussion of the colonial veto power, it is convenient to follow the customary division of the colonies into three classes: charter or republican, proprietary, and royal. In the charter colonies the governor had no veto power. He was assisted by, and could act only in cooperation with, his assistants or councillors, who like himself were chosen annually by the freemen of the colonies.<sup>8</sup>

In the proprietary colonies the proprietor exercised the right of veto. During his absence this power was delegated to his deputy. That he afterwards—after the deputy had assented to legislation—from time to time insisted on revising the latter's

<sup>5</sup>Maitland, *Constitutional History of England*, p. 423.

<sup>6</sup>*Ibid.*

<sup>7</sup>Lowell, *Government of England*, II pp. 404-405; Dicey, *Law of the Constitution*, p. 110 and note. (Ed. 1908).

<sup>8</sup>Thorpe, *Federal and State Constitutions*, Charter of Connecticut, 1662; Charter of Rhode Island, 1663.



decisions, caused considerable friction. It was thought that inasmuch "as the charter gave the right of legislation to the proprietor and freemen, the absence of the proprietor ought not to add a second veto."<sup>9</sup> The proprietor was forced to yield; but he proceeded to limit and restrict the deputy's power of assent to such an extent as to render nugatory the reforms accomplished.<sup>10</sup> In only one of these colonies did the crown reserve the right of veto. In William Penn's charter of 1681, founding the proprietary colony of Pennsylvania, "the crown reserved the right to declare void, within six months after delivery in England, legislative acts of the colony inconsistent with the supreme allegiance due to the crown."<sup>11</sup>

In the royal colonies the veto power of the governor was absolute. Not only was his veto absolute, but his power of assent was limited. Certain acts could not be signed by him at all. They could be approved only by the king in council. Others could be passed and assented to providing they carried a suspending clause deferring their operation until such time as they should have been approved by the king. Finally, all measures assented to by the royal governor were subject to disallowance at any time afterwards by the king. Such acts were allowed to remain in force until disallowed. In the case of Massachusetts, however, disallowance could be made only within three years after presentation to the king. But this provision was evaded by not making formal presentation of colonial acts before the expediency of a veto had become apparent.<sup>12</sup>

#### EXTENSION OF THE VETO POWER

*The Attitude of the Original States toward the Veto Power.*—During the struggle with Great Britain, the governor had been the ally of the king. The popular assembly, on the other hand, had truly represented the people. The result was that the early American state-builders had confidence in legislative assemblies, with a corresponding distrust of the executive.<sup>13</sup> This is clearly reflected in the absence of the executive veto power in our early state constitutions. Of the thirteen original states only three provided for a veto power. The first of these three to be adopted was the temporary constitution of

<sup>9</sup>Greene, *The Provincial Governor*, p. 13.

<sup>10</sup>*Ibid.*, pp. 13-14.

<sup>11</sup>*Ibid.*, p. 6.

<sup>12</sup>*Ibid.*, pp. 162-165.

<sup>13</sup>Beard, *American Government and Politics*, pp. 87-88.

South Carolina of 1776.<sup>14</sup> The fact that this was intended as a makeshift merely until "an accommodation of the unhappy differences between Great Britain and America" could be brought about, perhaps explains why the governor was permitted to continue to exercise an absolute veto.

The constitution of New York of 1777 vested the veto power in a council of revision, composed of the governor, the chancellor, and the judges of the supreme court. Bills could be passed over the veto by a two-thirds vote in each house. The council was given ten days for the consideration of bills. If not vetoed within that time, bills were to become effective without the assent of the governor. Vetoes with the reasons therefor in writing, were to be returned to the house in which the particular bill in question had originated, where they were to be entered at large in the journal and considered in connection with the question of re-passage. If the legislature should adjourn before the expiration of the ten day period given the council for the consideration of bills, the return of the veto was to be made on the first day of the next meeting of the legislature, or the bill was to become a law.<sup>15</sup> It has been thought desirable to call attention to the details of the New York provision on account of the fact that it was adopted with scarcely a change by the Illinois Constitutional Convention of 1818.<sup>16</sup>

The third of the original states to adopt the veto power in its first constitution was Massachusetts in 1780. This provision is remarkable for the fact that most of its essential features were adopted by the national Constitutional Convention of 1787, and thereafter by most of the states of the Union. It provided that a bill or resolve should be submitted to the governor for approval or disapproval; that if he should approve it, he should sign it; but that if he did not, he should return it with his reasons in writing to the house in which it had originated; that his message should be entered in the journal; and that upon reconsideration two-thirds of the members of each house might pass the bill over his veto. The time given the governor for the consideration of bills was five days.<sup>17</sup> If any bill should not be returned by the expiration of that period, it was to become law

<sup>14</sup>*Ibid.*, p. 30.

<sup>15</sup>Thorpe, *Federal and State Constitutions*, etc. Unless otherwise indicated all references to constitutional provisions are to Thorpe.

<sup>16</sup>See below, chapter II. Illinois was the only other state to try the council of revision plan.

<sup>17</sup>The national Constitution gives the President ten days.

without his assent. No provision was made for the contingency of adjournment before the expiration of the five days. Bills could not, therefore, be vetoed after adjournment.<sup>18</sup> To remedy this defect an amendment was adopted in 1820 providing that bills vetoed, the return of which had been prevented by the adjournment of the General Court, should not become law.

It was noted above that the constitution of South Carolina of 1776 was a temporary makeshift. In 1778 a revised constitution was adopted, wherein the veto power was abolished altogether. It was also noted that in New York the veto power was not vested in the governor, but in a council of revision. It may perhaps be said, therefore, that Massachusetts was the first of the states to grant the governor the veto power. The remainder of this chapter will be devoted to a discussion of how this power has spread until it is possessed by every state governor in the Union but one. An attempt will be made to discuss its growth in two directions, so to speak, its spread among the states and its development as an efficient tool in the hands of the executive.

By 1780, then, only two of the original states had the veto power, namely, New York and Massachusetts. Nor were the rest of the original states quick to fall into line. During the following twenty years, 1780-1800, three adopted it, Georgia in 1789, Pennsylvania in 1790, and New Hampshire in 1792. From that time onward till after the Civil War—a period of over 75 years—only two more adopted it, Connecticut in 1818 and New Jersey in 1844.

At the end of the Civil War there were still six of the original states which denied their governors the veto power. Maryland made provision for it in her constitution of 1867. Two others, South Carolina and Virginia, adopted it in their reconstruction constitutions, the former in 1868 and the latter in 1870. That left only three of the original states. Delaware authorized the governor's veto in 1879, and Rhode Island in 1909. It remains for North Carolina to stand out alone, not only as the single one of the thirteen original states, but of all the states in the Union, to deny her chief executive the veto power.

*The Attitude of the New States toward the Veto Power.*—While the original states were slow to grant the veto power, the reverse has been true of the new states. Only three of these, Tennessee, Ohio, and West Virginia, did not adopt it in their first constitutions. Tennessee waited from 1796 to 1870, West

<sup>18</sup>The national Constitution provides that if Congress by its adjournment shall prevent the return of bills, such bills shall not become law.

Virginia from 1862 to 1872, and Ohio, from 1802 to 1903. The fact that new states so generally provided for the veto power, may be at least partially explained by the fact that Congress in establishing territorial governments always provided for a veto power. At first this was absolute. But, beginning with the Florida act of 1822, it gradually became customary to provide that two-thirds of the members of the legislative assembly might overrule the veto.<sup>19</sup>

#### DEVELOPMENT OF THE VETO POWER

The development and strengthening of the veto power in the several states is, perhaps, the best evidence of the growth of confidence in the governor. The mere statement that the veto power is granted to this or that governor does not indicate whether or not it is effective. That will be disclosed only upon closer examination. And here arises such questions as these: what vote is necessary to override the veto? how much time does the governor have to consider bills, first, while the legislature is in session, and, second, after adjournment? and, finally, does he have the power to veto items in appropriation bills? These questions will be considered in the order mentioned.

*The Size of the Vote required to Override the Veto.*—With regard to the vote required to override the veto two lines of development were suggested at the beginning of our independence. Two different precedents were made. It is hardly conceivable, however, that we could have adopted the South Carolina plan of an absolute veto. As we have seen, South Carolina herself abandoned it in 1778, two years after she had established her first state government. The other precedent was set by New York and Massachusetts. Both had adopted a qualified veto. Massachusetts required a two-thirds vote of the total membership of each house of the legislature to override the veto. New York required two-thirds of the total membership in the house in which the bill had originated and two-thirds of those present in the other house.

The New York-Massachusetts plan may seem to have prevailed from the first. During the first seventy-five years of our national existence, twenty-three states having adopted the veto power, nine of these, beginning with Vermont in 1793, required only a majority to override the veto, while fourteen required

<sup>19</sup>Farrand, *Legislation of Congress for the Government of the Organized Territories of the United States*, pp. 37, 41-42, 78-91.

two-thirds. But if we look more closely we shall find that only one state, Connecticut, out of the group of nine requiring only a majority for re-passage, permitted this to be done by a mere majority of those present.<sup>20</sup> On the other hand, six out of the group of fourteen requiring a two-thirds vote to override the veto permitted it to be done by two-thirds of those present.<sup>21</sup> In all of those states it is conceivable that in a number of instances bills were passed over the veto by a vote of less than half of the total membership of both houses.

During the seventy-five year period, then, almost up to the Civil War, the Massachusetts and New York<sup>22</sup> precedents can not be said to have had undisputed supremacy. But after the Civil War the story is quite a different one. Only two states introducing the veto power since then have permitted it to be overruled by a bare majority vote. They were Tennessee, 1870, and West Virginia, 1872.

The general growth of the confidence in the executive is perhaps nowhere more closely demonstrated than in the growth of the veto power. Since 1778 only three states have ever reduced the vote required to override a veto. Kentucky in 1799 reduced the vote required from two-thirds to a majority of the total membership. New York, in 1821, in changing from the council of revision plan to the executive veto, provided that the governor's disapproval might be overruled by two-thirds of the members present. And, Ohio in 1912 reduced it from two-thirds to three-fifths of each house. In Nebraska there has been an apparent reduction. The constitution of 1875 reduced the majority required from two-thirds of those present to three-fifths of the total membership. It is doubtful if that would prove a reduction of the majority necessary under the former constitution in very many cases.

Since 1855, the end of the seventy-five year period, the growth of the veto power has been remarkable. Five of the six remaining original states adopted it. All the new states admitted since then have adopted it. And all, with the exception of

<sup>20</sup>The other eight states in this group were Vermont, Indiana, Illinois, Alabama, Missouri, Florida, Arkansas, and New Jersey.

<sup>21</sup>The states requiring a two-thirds vote of those present were New York, Michigan, Wisconsin, Texas, Iowa, and California. Those requiring two-thirds of the total membership were Massachusetts, Pennsylvania, New Hampshire, Kentucky, Georgia, Mississippi, Maine, and Louisiana.

<sup>22</sup>New York changed to two-thirds of those present in the constitution of 1821.

Tennessee and West Virginia already mentioned, have required something more than a majority to override the governor's disapproval.

Not only have the newer states adopted a stronger form of the veto power. A number of the older states have joined the procession and strengthened the veto provisions of their constitutions by revision or amendment. Virginia in 1902 strengthened the veto power by adding a provision that the two-thirds majority of those present should not be less than a majority of the total membership. Florida in 1868 and Vermont in 1913 raised it from a majority of the total membership to two-thirds of those present. Illinois in 1870 and Missouri in 1875 raised it from a majority of the total membership to two-thirds of the total membership. Michigan in 1860 and California in 1879 raised the majority required from two-thirds of those present to two-thirds of the total membership. In New York the majority required to override a veto has been altered twice. The constitution of 1777 required a two-thirds vote. It required two-thirds of the total membership in the house in which the bill had originated and two-thirds of those present in the other house. In 1821 this was lowered to two-thirds of those present in both houses. Finally, in 1874 it was raised to two-thirds of the total membership.

To summarize the situation as it is found today we may divide the states into three groups: Those requiring a majority, those requiring a three-fifths vote, and those requiring a two-thirds vote to override the veto. Each of these general groups may be subdivided into two sub-groups, those basing their majority on the members present and those basing it on the total membership. In the first group, consisting of eight states, one state permits a veto to be overruled by a majority of those present.<sup>23</sup> Seven require a majority of the total membership.<sup>24</sup> In the second group, consisting of five states, one permits three-fifths of those present to override the veto.<sup>25</sup> The other four require three-fifths of the total membership.<sup>26</sup> The third group is by far the largest. It includes thirty-five states. Twelve of these permit

<sup>23</sup>Connecticut.

<sup>24</sup>Alabama, Arkansas, Indiana, Kentucky, New Jersey, Tennessee, West Virginia.

<sup>25</sup>Rhode Island.

<sup>26</sup>Delaware, Maryland, Nebraska, Ohio.

two-thirds of the members present to overrule the veto.<sup>27</sup> Twenty-two require two-thirds of the total membership.<sup>28</sup>

*The Time allowed the Governor for the Consideration of Bills.*—The time allowed the governor for the consideration of bills may be considered from two points of view, the time allowed during the session of the legislature and the time allowed after it has adjourned. In regard to the time allowed the governor for a consideration of bills during the session of the legislature, a definite line of development appears. There seems to be a tendency to consider five days satisfactory. Only eight states have altered the time set in the first veto provisions. Four have lengthened the time granted the governor: Arkansas and Nebraska have raised it from three to five days, and Alabama and Texas from five to six and ten days, respectively. Four states have lowered the time given—Indiana from five to three days,<sup>29</sup> and Louisiana, Michigan, and Mississippi from ten to five days, respectively. The situation as it exists today may be summarized as follows: In eleven states the governor is given three days; in twenty-two, five days; in three, six days; and in eleven, ten days.<sup>30</sup>

However, when we consider the fact that the great bulk of bills are passed during the last few days of the legislative session, the question of how long the governor has for the consideration of bills during the session sinks into unimportance. Another question arises as to the governor's power of approval or disapproval after adjournment. Two precedents were set by New

<sup>27</sup>Florida, Idaho, Iowa, Montana, New Mexico, Oregon, South Dakota, Texas, Vermont, Virginia, Washington, Wisconsin.

<sup>28</sup>Arizona, California, Colorado, Georgia, Illinois, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, Utah, Wyoming.

<sup>29</sup>Indiana is the only state that has lowered an existing constitutional provision to less than five days.

<sup>30</sup>The states providing three days are: Connecticut, Indiana, Iowa, Kansas, Minnesota, New Mexico, North Dakota, South Carolina, South Dakota, Wisconsin, and Wyoming. The states providing five days are: Arizona, Arkansas, Florida, Georgia, Idaho, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, Oklahoma, Oregon, Tennessee, Vermont, Virginia, Washington, and West Virginia. The states providing six days are: Alabama, Maryland and Rhode Island. The states providing ten days are: California, Colorado, Delaware, Illinois, Kentucky, Missouri, New York, Ohio, Pennsylvania, Texas, and Utah.

York and Massachusetts, respectively. The New York constitution of 1777 provided that during the session of the legislature the council of revision should have ten days exclusive of Sundays for the consideration of bills with the provision that if by adjournment the legislature should prevent the return of bills at the expiration of the ten day limit, return should be made on the first day of the following session. This would seem to indicate that the council would have ten days for the consideration of bills regardless of whether or not the legislature was in session. Six other states adopted similar provisions, Pennsylvania and Kentucky in 1790 and 1792 respectively; Indiana, Illinois, and Maine in 1816, 1818, and 1819 respectively. The last to adopt it was South Carolina in her reconstruction constitution of 1868. But only the two last of the seven states retain it. The other five have made other provisions, granting a definite length of time for the consideration of bills after the adjournment of the legislature, New York in 1821, Illinois in 1848, Indiana in 1851, Pennsylvania in 1873, and Kentucky in 1890.

The Massachusetts constitution of 1780 provided that the governor should have five days for the consideration of bills, and if return was not made within five days the bill should become a law without the consent of the governor. It made no provision for the contingency of adjournment before the expiration of the five day period. Consequently bills could not be vetoed after the adjournment of the General Court. To remedy this defect an amendment was adopted in 1820 providing that bills objected to should not become effective when their return within the five day period had been prevented by the adjournment of the General Court. The defect pointed out in the Massachusetts provision was remedied in the national Constitution. It provides that "If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law." Though twenty-two states adopted this provision only four have done so since the Civil War. They were Nebraska and Maryland in 1866 and 1867 respectively, and Virginia and Tennessee in 1870.

The provision of the national Constitution, which at the end of the session enables the executive to prevent bills from becoming law simply by inaction—the so-called "pocket veto," has lost favor. As stated above, only four states adopted it



after the Civil War. Michigan had set a fourth precedent in 1850 by dropping the national provision and giving the governor five days after the close of the session for the consideration of bills. This plan found immediate favor. From that time onward, most of the new and many of the older states adopted similar provisions.

On the basis of these considerations we may divide constitutional provisions as they exist today into two general classes. In the first class are those carrying no definite provisions as to the time granted the executive for the consideration of bills after the adjournment of the legislature. In the second class are those in which the time is specified. The first class is composed of two sub-classes, those providing no definite time for consideration after adjournment, but providing that vetoes must be returned to the legislature at the beginning of the following session. There are now only two states in this sub-class, namely, Maine and South Carolina, and it is believed that the governor has the same time to consider bills that he would have had, had the legislature remained in session. The second group of provisions in this first class are those similar to that of the national Constitution, granting no definite time after the adjournment for the consideration of bills but not requiring vetoes made after adjournment to be returned to the next session. This group now includes only eleven states.<sup>31</sup> It is constantly being encroached upon, and no new additions have been made since 1870, when Tennessee adopted this provision. It has been contended that since these provisions do not specifically authorize the governor to sign bills after the adjournment of the legislature he has no power to do so. The better opinion seems to be, however, that the governor has as much time as, and should take no more time than, he would have had if the legislature had remained in session.<sup>32</sup>

<sup>31</sup>The states in this group are: Connecticut, Georgia, Kansas, Louisiana, Maryland, Massachusetts, New Hampshire, New Jersey, Tennessee, Vermont, and Wisconsin.

<sup>32</sup>J. D. Barnett, *American Law Review*, XLI, pp. 230-236. The practice of the President of the United States has been to sign all bills before the adjournment of Congress. It has been deviated from only in one instance, 1863. A case involving the constitutionality of this act came up in 1894. The court held that the President could approve bills after the adjournment of Congress but within the time prescribed by the Constitution (29 Ct. Cl. 253). The Constitution of Mississippi specifically provides that the governor can not sign bills when the legislature is not in

The second general class includes those provisions in which a definite time is granted the governor for the consideration of bills after the adjournment of the legislature. It is a large and growing class including thirty-three states. The time granted varies from three to thirty days. One state, Minnesota, grants three days. Five grant five days.<sup>33</sup> One, New Mexico, grants six days. Thirteen grant ten days.<sup>34</sup> Four grant fifteen days.<sup>35</sup> Two grant twenty days.<sup>36</sup> And seven grant thirty days.<sup>37</sup> Reference to the table at the end of this chapter will show that twenty-four states grant longer time for the consideration of bills after adjournment than during the session. It remains to add that while one would naturally expect that bills would become law unless vetoed within the specified time after adjournment, that is not nearly always the case. The constitutional provisions of twenty-three states are so worded or have been construed to mean that a failure to approve a bill, the return of which is prevented by the adjournment of the legislature, shall prevent it from becoming law.<sup>38</sup>

*The Power to Veto Items in Appropriation Bills.*—A third step was necessary, however, to make the governor's veto power complete. Under the old plan bills must be vetoed as a whole. Now, it is true that most constitutions provide that each bill shall include only one subject and that that shall be clearly stated in the title. But general appropriation bills must necessarily contain a number of items. Members of the legislature, session. In states where there is no constitutional prohibition the courts with few exceptions hold that approval or disapproval can be made after adjournment.

<sup>34</sup>Alabama, Arizona, Florida, Idaho, Illinois, Kentucky, Nevada, Ohio, Rhode Island, South Dakota, Utah, Virginia, and Washington. In Nevada the legislature may at its following session repass bills vetoed after adjournment.

<sup>35</sup>Indiana, Michigan, Nebraska, Oregon, and West Virginia. In Oregon the legislature at its following session may repass a bill rejected after adjournment.

<sup>36</sup>Montana, North Dakota, Oklahoma, and Wyoming.

<sup>37</sup>Arkansas and Texas.

<sup>38</sup>California, Colorado, Delaware, Iowa, Missouri, New York, and Pennsylvania.

<sup>39</sup>Newman, J. H., *Digest of Constitutions*, p. 103. The twenty-three states are: California, Connecticut, Delaware, Florida, Georgia, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Tennessee, Vermont, Virginia, and Wisconsin.

therefore, soon found here a chance to evade the veto power. Against the system of log-rolling and the attachment of riders many of the governors found themselves helpless. Few had the courage to reject important appropriation bills and thereby endanger a large part of the state administration.

To remedy this defect the power to veto separate items in appropriation bills has been resorted to. Three states have even gone so far as to authorize the governor to veto distinct and separate items of any bill. At present the governors of Washington and South Carolina possess this latter power. The former state adopted it in 1889 and the latter in 1895. The constitution of Ohio, by an amendment of 1903, carried a similar provision. But this power was confined to appropriation bills by the revision of 1912.

The power of the governor to veto items in appropriation bills finds its first acceptance in the Constitution of the Confederate States. The provisional constitution of February 8, 1861, provided that "The president may veto any appropriation or appropriations in the same bill." This same provision in slightly altered form was adopted in the permanent constitution of March 11 of the same year.<sup>39</sup> Georgia and Texas in 1865 and 1866 respectively, included this power in their proposed constitutions under the presidential plan of reconstruction. These same two states again included it in their constitutions of 1868, adopted under the congressional plan of reconstruction.

Since the Civil War every new state admitted to the Union, and many of the older states—making a total of thirty-six have granted their governors this power.<sup>40</sup> It may be added that Alabama in 1901 and Virginia in 1902 authorized their governors to return bills with suggested amendments. In each case the bill must again be returned to the governor for approval or disapproval regardless of the action of the legislature on the suggested amendment.

<sup>39</sup>Jefferson Davis, *The Rise and Fall of the Confederate Government*, I, pp. 641, 654.

<sup>40</sup>The thirty-six states are: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon (1916), Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wyoming.

*Summary.*—If one were to pick out the model states with reference to the strength of the veto provisions in their constitutions, the list would be headed by California, Colorado, Missouri, New York, and Pennsylvania. In each of these five states a two-thirds vote of the total membership of each house is required to pass a bill over the veto. The governor is given ten days for the consideration of bills during the session of the legislature and thirty days after its adjournment. In all cases he has the power to veto items in appropriation bills. In Pennsylvania he may even reduce items.<sup>41</sup>

Two other states almost come into this group, Delaware and Texas. The former just misses it by requiring a three-fifths vote of the total membership of each house to override the veto instead of a two-thirds vote as in the other five cases. Texas stands slightly lower in the list, requiring only two-thirds of those present to override the veto. Instead of thirty days as in all the six cases above she grants only twenty days for the consideration of bills after the adjournment of the legislature.

Disregarding the great bulk of the states combining strong and weak features of the veto power in varying degrees, and disregarding North Carolina which has no veto power at all, we find at the other end of the list four states combining weak features of the veto power. Lowest on the list stands Connecticut which permits a majority of those present to override the veto, gives the governor only three days to consider bills, makes no specific grant of time after the adjournment of the legislature, and does not permit him to veto items in appropriation bills. Just above Connecticut in the order named stands Indiana and Tennessee. Both permit a majority of the total membership of each house to override the veto. During the session Indiana grants three and Tennessee five days for the consideration of bills. After adjournment Indiana grants five days while Tennessee makes no specific grant. Neither give the right to veto items in appropriation bills. Rhode Island all but comes into this class of extremely weak states. She permits three-fifths of those present in each house to override the veto. She does not permit the governor to veto items in appropriation bills. However, a distinct improvement is noted in regard to the time given for the consideration of bills. In Rhode Island the governor is allowed six days during the legislative session and ten days after adjournment.

<sup>41</sup>By judicial construction. See *Com. v. Barnett*, 199 Pa. 161 (1901).

## THE AMERICAN THEORY OF THE VETO POWER

With the establishment of independence there occurred a shift in the theory of the veto power. Heretofore the king had been sovereign. Now sovereignty was transferred to the people. That the chief executives in our national and state governments still retain the veto power in modified form is variously explained. Alexander Hamilton held that it was necessary to enable the executive to protect himself against the encroachments of the legislative department. That was held to be the primary function of the veto power. But in addition, Hamilton saw in it a wholesome check upon hasty and unwise legislation—an evil which has assumed the first magnitude since the early days of the Republic.<sup>42</sup>

Early presidents and public men seem to have inclined to the view that the only object of the veto power was to protect the constitution. But by the time of the Civil War its importance as relating to legislation in general had become recognized.<sup>43</sup> Thus President Grant in vetoing the Currency Bill of April, 1874, "assigned as his reason that it was 'a departure from true principles of finance, national interest, national obligation to creditors, congressional promises, party pledges, and personal views and promises made by me in every annual message sent to Congress and in each inaugural address'."<sup>44</sup> By President Cleveland the opinion was definitely expressed that the veto power was given with the express purpose of enabling the executive to participate in legislation. It was given, he held, "for the purpose of invoking the exercise of executive judgment and inviting independent executive action."<sup>45</sup> Whether that was the intention or not, it is doubtless in accord with what we expect of a chief executive today, both in the nation and in the states. He more nearly represents all the people than any other officer in the government. He has come nearer than Hobbes' monarch to bear the composite personality of the people of his state. His relation to legislation is becoming as vital as that of the king who enacts laws in response to the petitions of his subjects. And thus we have the strange spectacle of the veto power, once a royal prerogative, having become an indispensable power in the hands of a democratic executive.

<sup>42</sup>Hamilton, *Federalist*, No. 73; Garner, *Introduction to Political Science*, p. 566.

<sup>43</sup>See Chapter II.

<sup>44</sup>Beard, *op. cit.*, p. 203.

<sup>45</sup>*Ibid.*

I. TABLE SHOWING THE PRESENT STATUS OF THE VETO POWER

State	Vote required to override veto		Number of days to consider bills		May veto items in appropriation bills
	present	total	during session	after session	
United States .....		$\frac{2}{3}$	10	*	no
Alabama .....		$\frac{1}{2}$	6	10	yes
Arizona .....		$\frac{2}{3}$	5	10	yes
Arkansas .....		$\frac{1}{2}$	5	20	yes
California .....		$\frac{2}{3}$	10	30	yes
Colorado .....		$\frac{2}{3}$	10	30	yes
Connecticut .....	$\frac{1}{2}$		3	*	no
Delaware .....		$\frac{3}{5}$	10	30	yes
Florida .....	$\frac{2}{3}$		5	10	yes
Georgia .....		$\frac{2}{3}$	5	*	yes
Idaho .....	$\frac{2}{3}$		5	10	yes
Illinois .....		$\frac{2}{3}$	10	10	yes
Indiana .....		$\frac{1}{2}$	3	5	no
Iowa .....	$\frac{2}{3}$		3	30	no
Kansas .....		$\frac{2}{3}$	3	*	yes
Kentucky .....		$\frac{1}{2}$	10	10	yes
Louisiana .....		$\frac{2}{3}$	5	*	yes
Maine .....		$\frac{2}{3}$	5	*	no
Maryland .....		$\frac{3}{5}$	6	*	yes
Massachusetts .....		$\frac{2}{3}$	5	*	no
Michigan .....		$\frac{2}{3}$	5	5	yes
Minnesota .....		$\frac{2}{3}$	3	3	yes
Mississippi .....		$\frac{2}{3}$	5	**	yes
Missouri .....		$\frac{2}{3}$	10	30	yes
Montana .....	$\frac{2}{3}$		5	15	yes
Nebraska .....		$\frac{3}{5}$	5	5	yes
Nevada .....		$\frac{2}{3}$	5	10	no
New Hampshire .....		$\frac{2}{3}$	5	*	no
New Jersey .....		$\frac{1}{2}$	5	*	yes
New Mexico .....	$\frac{2}{3}$		3	6	yes
New York .....		$\frac{2}{3}$	10	30	yes
North Carolina .....					
North Dakota .....		$\frac{2}{3}$	3	15	yes
Ohio .....		$\frac{3}{5}$	10	10	yes
Oklahoma .....		$\frac{2}{3}$	5	15	yes
Oregon .....	$\frac{2}{3}$		5	5	yes
Pennsylvania .....		$\frac{2}{3}$	10	30	yes
Rhode Island .....	$\frac{3}{5}$		6	10	no
South Carolina .....		$\frac{2}{3}$	3	*	yes
South Dakota .....	$\frac{2}{3}$		3	10	yes
Tennessee .....		$\frac{1}{2}$	5	*	no
Texas .....	$\frac{2}{3}$		10	20	yes
Utah .....		$\frac{2}{3}$	10	10	yes
Vermont .....	$\frac{2}{3}$		5	*	no
Virginia .....	$\frac{2}{3}$		5	10	yes
Washington .....	$\frac{2}{3}$		5	10	yes
West Virginia .....		$\frac{1}{2}$	5	5	yes
Wisconsin .....	$\frac{2}{3}$		3	*	no
Wyoming .....		$\frac{2}{3}$	3	15	yes

\*The general opinion is that the governor has the same time regardless of adjournment.

\*\*Mississippi specifically forbids the governor to sign bills when the legislature is not in session.

## CHAPTER II

### THE COUNCIL OF REVISION 1818-1848

#### SURVEY OF THE VETO POWER IN 1818

The situation in regard to the veto power at the time of the admission of Illinois may be briefly summarized as follows: New York alone had provided for a council of revision. Nine states, Massachusetts (1780), Georgia (1789), Pennsylvania (1790), New Hampshire (1792), Kentucky (1792), Vermont (1793), Louisiana (1812), Indiana (1816), and Mississippi (1817) had granted the veto power to the governor.

The time allowed for the consideration of bills varied from five to ten days. Five states, Massachusetts, Georgia, Vermont, New Hampshire, and Indiana, allowed five days. Mississippi allowed six days. And four states, New York, Pennsylvania, Kentucky, and Louisiana, allowed ten days.

The vote required to override the veto varied from a majority to two-thirds of each house of the legislature. In all cases the majorities required were based on the total membership of the houses respectively. Four states, New York, Vermont, Kentucky, and Indiana, permitted a majority in each house to override the veto. On the other hand, six states, Massachusetts, Georgia, Pennsylvania, New Hampshire, Mississippi, and Louisiana, required a two-thirds vote. Ten states, Connecticut, Delaware, Maryland, New Jersey, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, and Virginia, had no veto power. Connecticut, however, adopted it later in the same year.

#### THE VETO PROVISION IN THE CONSTITUTION OF 1818

The Illinois constitutional convention of 1818 thus had two general precedents either of which it might follow. Two different plans were formally advanced and considered by it. One, which was eventually adopted, was the New York council of revision plan. The other was a strong veto power lodged in the hands of the governor. It was similar to the provisions in force in Louisiana and Pennsylvania. Both of these states required a two-thirds vote to override the governor's veto, both

gave him ten days for the consideration of bills, and both required that bills vetoed after the adjournment of the legislature should be returned within the first three days of the following session. The plan proposed in the Illinois convention differed only in that it required bills vetoed after adjournment to be returned on the first day of the following session of the general assembly.

It was noted above that not a single state had followed the New York plan of a council of revision—but that on the other hand since then nine states and the United States had vested the power of veto in their chief executives. That Illinois nevertheless adopted the New York plan must be ascribed mainly to the influence of Elias Kent Kane who was a member of the convention. Mr. Kane was born in New York, educated at Yale, and had studied law in New York. He had removed to Illinois in 1814. In the convention of 1818 he was a member of the committee of fifteen entrusted with the work of drafting the new constitution.<sup>1</sup> Mr. Kane took a prominent part in framing the constitution.<sup>2</sup> Indeed, he has been called the "principal member" of the convention.<sup>3</sup>

The committee of fifteen reported as section 15 of Article III, dealing with the executive department, almost word for word that section of the New York constitution of 1777 dealing with the council of revision.<sup>4</sup> A few days later, while the plan of the committee of fifteen was being considered, the alternative plan already referred to was offered. It gave the veto power to the governor. It allowed him ten days for the consideration of bills. It required a two-thirds vote of each house to override the veto. It provided that if the legislature by adjournment should prevent the return of bills within the ten days allowed, such bills were to be returned on the first day of the following session or become laws.<sup>5</sup> This plan is not heard of any more. Three days later, on August 17, Article III being considered section by section, the council of revision plan as originally pro-

<sup>1</sup>Carpenter, "The Illinois Constitutional Convention of 1818," *Journal of the Illinois State Historical Society*, VI, pp. 327 ff.

<sup>2</sup>Carpenter, *op. cit.*, pp. 349, 352.

<sup>3</sup>Ford, *History of Illinois*, p. 24; Reynolds, *My Own Times*, p. 211. Reynolds says of Mr. Kane that he "was an accomplished scholar, and was the leader in the convention."

<sup>4</sup>Carpenter, *op. cit.*, pp. 376-377.

<sup>5</sup>*Ibid.*, pp. 390-391.



posed by the committee of fifteen was adopted. The vote required to override the veto, however, was placed at a majority of each house and not at two-thirds as in New York.<sup>6</sup> This section, without any further changes was adopted on the final reading.<sup>7</sup>

The veto power in its final form was found in section 19 of Article III of the constitution. It provided:

"The governor for the time being, and the judges of the supreme court or a major part of them, together with the governor, shall be, and are hereby, constituted a council to revise all bills about to be passed into laws by the general assembly; and for that purpose shall assemble themselves from time to time when the general assembly shall be convened, for which nevertheless they shall not receive any salary or consideration under any pretense whatever; and all bills which have passed the senate and house of representatives shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revisal and consideration, it shall appear improper to the said council or a majority of them, that the bill should become a law of this state, they shall return the same, together with their objections thereto in writing, to the senate or house of representatives (in whichever the same shall have originated,) who shall enter the objections set down by the council at large in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same by a majority of the whole number of members elected, it shall, together with the said objections, be sent to the other branch of the general assembly, where it shall also be reconsidered, and if approved by a majority of all the members elected, it shall become a law. If any bill shall not be returned within 10 days after it shall have been presented, the same shall be a law, unless the general assembly shall by their adjournment, render a return of the said bill in 10 days impracticable; in which case the said bill shall be returned on the first day of the meeting of the general assembly, after the expiration of the said 10 days, or be a law."<sup>8</sup>

#### THE USE OF THE VETO POWER, 1818-1848

*Extent of the Use of the Veto Power.*—The Illinois council of revision was in existence thirty years, 1818-1848. During that period 3158 laws were enacted by the general assembly. The number of bills disapproved by the council was small in comparison. It amounted to only 104. No session passed with-

<sup>6</sup>*Ibid.*, p. 398.

<sup>7</sup>*Ibid.*, p. 409.

<sup>8</sup>Thorpe, II, pp. 978 ff.; Hurd, *Revised Statutes of the State of Illinois*, (1913) p. xxxii.

out a veto. In each of two sessions, the sessions of 1831 and 1833 respectively, only two bills were disapproved. The session of 1827 produced the largest crop of vetoes during the council of revision period. Sixteen bills were returned, ten to the house and six to the senate. At the session of 1819 and again in 1839 twelve bills were disapproved. Taking the whole period, the number of bills vetoed average about seven for each general assembly.

Relative to the number of bills passed, the number disapproved was small. Taking the whole period it was something like three and one-third per cent. During the session of 1833, when 228 laws were enacted, only two bills were vetoed. In 1837 335 laws were enacted and only three bills were vetoed. In both of these sessions the bills vetoed were less than one per cent of those enacted into law. The greatest percentage was reached in 1827 when 16 bills were disapproved as compared with 89 laws enacted, or eighteen per cent.

It may be of interest to point out also that the disapproval almost regularly was applied more frequently to house measures than to senate measures. Out of the 104 vetoed bills 66 originated in the house of representatives while only 38 originated in the senate. In only four out of the fifteen regular sessions—1831, 1835, 1841, and 1845—did the senate bills vetoed exceed the house bills vetoed, and then only by very small figures. But while the house bills disapproved outnumbered the senate bills by nearly two to one, the bills passed over the disapproval of the council were very largely house measures. Out of the eleven bills passed over the veto eight had originated in the house of representatives.

*Effectiveness of the Veto Power.*—During the existence of the council of revision only eleven bills were passed over the veto. Compared with the number of vetoes that is something over one in ten. They were scattered through the period at irregular intervals. During the legislative session of 1819 one bill was passed over the veto. During the following session (1821) four were so passed. From then onward bills were very rarely passed over the disapproval of the council. In 1827 three were passed, and in 1835 and 1841 two and one respectively.

The character of the bills passed over the veto can not be said to reflect credit upon the general assembly. The first act to be passed over was an act of 1819 making an appropriation for the payment of census takers. A certain census taker, who had

a valid claim, was left out. The legislature perhaps had a grudge against this person. At any rate, the objections of the council were overruled.<sup>9</sup>

During the following session the council objected to a bill providing for the safe keeping of prisoners held in state jails under the authority of the United States. The bill virtually ordered the United States to pay for the keeping of prisoners. The council believed that the order should be directed against the officers who had charge of the prisoners. The legislature refused to amend the bill, and it was passed over the veto.<sup>10</sup> During that same session the act establishing the State Bank of Illinois was disapproved. It was considered a violation of Article I, section 10 of the Constitution of the United States which forbids states to "emit bills of credit." The council had submitted a long and able argument showing that the notes proposed to be issued by the bank upon the faith and credit of the state were in fact "bills of credit" in the sense of the national constitution. The veto was referred to a select committee which made a lengthy report absolutely denying that the notes in question were "bills of credit." Referring to the *Federalist*, upon which the council had drawn freely for support of its argument, the committee found that:

"They (the writers in the *Federalist*) never supposed that the states were prohibited from issuing bank notes; but that the prohibition only extended to paper money. For it must always be recollected that bank notes are never considered money, nor is any thing so considered but such medium as is made a legal tender in the payment of debts."

The bill was passed over the veto in both houses.<sup>11</sup> Twelve years later a case involving this law came up before the supreme court and the act was held unconstitutional insofar as it had related to the emission of bills of credit.<sup>12</sup>

A third bill passed over the veto during that session was a bill providing for the election of a sheriff and coroner for Jefferson county. The council objected to the bill because it

<sup>9</sup>*Senate Journal*, 1819, p. 198; *House Journal*, 1819, pp. 175-176, 177. Hereafter *Senate Journal* and *House Journal* will be designated *S. J.* and *H. J.* respectively.

<sup>10</sup>*H. J.* 1821, 107; *S. J.* 61, 84, 109, 112.

<sup>11</sup>*S. J.* 1821, pp. 135, 139, 166; *H. J.* pp. 261-271.

<sup>12</sup>*Linn v. President and Directors of the State Bank of Illinois*, 2 *Ill.* 87. This appears to be a narrower interpretation of the prohibition than that adopted by the United States Supreme Court. *Briscoe v. Bank of Kentucky*, 11 *Pet.* 257; *Darrington v. Bank of Alabama*, 13 *How.* 12.

removed the existing officer. It was held to be a bad precedent. The council suggested that there ought to be a general law providing a method of removal.<sup>13</sup>

Six years later, during the session of 1827, a bill providing for the examination of the Bank of Edwardsville was passed over the veto. The council had objected because the bank was a private institution. Investigation into purely private and individual affairs were considered "unwarranted under the spirit and genius of our institutions."<sup>14</sup> It will be recalled that during the session of 1821 a bill creating the State Bank of Illinois had been passed over the veto. The notes of the bank soon began to depreciate. The members of the general assembly of 1827, therefore, proposed to recoup themselves by providing that in the payment of salaries of members of that body, the notes should be rated at seventy cents on the dollar. The council vainly objected that other state officials were obliged to take them at seventy-five cents.<sup>15</sup>

In the year 1835 a bill providing for the election of county recorders and surveyors was passed over the veto. The bill was very defective. It did not guard against the possibility of an *interregnum*. Under it it would have been possible to have two officers elected for the same place. And it provided no method for the settlement of contested elections. Only two days after the bill had been passed over the veto, however, the legislature passed another bill remedying every defect pointed out by the council.<sup>16</sup>

It is not the purpose of the writer to enumerate all the bills passed over the veto. Nor are these the worst examples. On the other hand, not one of the eleven bills under discussion seems to have had any merit in it.

Out of the remaining ninety-three vetoes, one was withdrawn by the council, thirty were dropped from further consideration by the general assembly, and sixty-two, or exactly two-thirds, were amended to meet the objections of the council. The only veto withdrawn by the council was in 1845. A bill to amend the usury law of the state had been disapproved because it was held to be too harsh on an innocent purchaser or holder

<sup>13</sup>*H. J.* 1821, p. 195; *S. J.* pp. 104-106.

<sup>14</sup>*H. J.* 1827, pp. 431, 433, 436.

<sup>15</sup>*H. J.* 1827, pp. 490-491, 493, 495, 497, 502.

<sup>16</sup>*H. J.*, 1835, pp. 408-410, 449; *S. J.*, pp. 385, 458; *Laws*, pp. 61, 62, 165-167.

of an instrument carrying a usurious rate of interest. The council later withdrew its objections, owing to the fact that it was so late in the session that the defect could not be remedied, but it expressed the hope that the defect might be remedied at the following session.<sup>17</sup>

Sixty-two bills were amended to obviate the objections of the council. It is of interest here to note that the council very often suggested that bills be amended to meet the objections raised. Indeed, in many cases the council itself suggested specific amendments. In 1827 an act was passed for the "limitation of actions and for avoiding vexatious law suits." It repealed the existing statute of limitations thus defeating its own purpose in a great number of cases where the existing statute had already run for a considerable time. The council therefore suggested that the existing statute be continued in force alongside the new one in such cases where it had already begun to run. But since they had returned the bill for the reasons stated they "availed themselves of the opportunity to suggest to the legislature, some additions and amendments to the bill, which they believe will tend to make it more perfect."<sup>18</sup>

During the same session a bill was passed "concerning landlords and tenants." The bill made under-tenants and assignees of lessees responsible for the breaches of contract in regard to the leased property. The council pointed out the distinction between an under-tenant and an assignee of a lessee. They suggested that the term assignee be substituted for under-tenant in all cases where it appeared, and that the liability of the assignee be limited to such breaches of contract as had been committed after the assignment of the lease. They suggested other details of minor importance.<sup>19</sup>

In 1841 an act making school commissioners elective was disapproved. The council suggested that it was in conflict with other acts passed. They suggested a substitute for the section to which they had objected. The bill itself was not amended, but the suggestions of the council were incorporated as section 12 of a general act concerning the common schools.<sup>20</sup> A number of other cases might be cited. But it is believed that these examples are fairly representative. It remains to add that

<sup>17</sup>S. J., 1845, pp. 423-425, 428-429, 439-440, 443.

<sup>18</sup>H. J., 1872, pp. 351-352, 354, 360, 366.

<sup>19</sup>H. J., 1827, pp. 388-389, 395, 440.

<sup>20</sup>S. J., 1841, p. 149; *Laws*, 1841.

amendments suggested by the council were very generally accepted by the general assembly.

The constitution required that if the council should object to a bill they were to return it to the house in which it had originated together with their objections in writing. The objections were required to be entered at large in the journal and considered in connection with the question of repassage. This provision was complied with in all cases but two. During the legislative session of 1819 a house bill for the relief of debtors was vetoed. This was in fact the first veto made by the council of revision. The reasons for the veto were not given. The entry in the journal simply states that "the council have had under consideration 'an act for the relief of debtors' and have disapproved the same."<sup>21</sup> It is not clear whether the council failed to give any reasons or whether the clerk of the house failed to enter the message on the record.

The second case occurred during the second session of the fourth general assembly. A bill for "an act relating to the revenue of Calhoun, Pike, Adams, Schuyler, Fulton and Peoria counties" was disapproved. The reasons for the veto were given, but not entered in the journal.<sup>22</sup>

*Bills becoming Law without Approval.*—It will be recalled that the constitution provided that if the council of revision should fail to act on a bill within ten days or the general assembly by adjournment should prevent the return of any bill within ten days after its presentation to the council (in which latter case return was to be made on the first day of the following session) all such bills were to become laws. This provision made it possible for a bill to become a law without approval.

The number of bills thus becoming law has been negligible, except during the three sessions 1835, 1837, and 1839. During these sessions fourteen, twenty-one, and twenty-three bills respectively became laws in this manner. This may be partially explained by the fact that during those sessions an unusually large number of laws were enacted. In 1835 there were 319, almost a hundred more than during the preceding general assembly. In 1839-40 there were 403 laws enacted, the greatest number enacted by any general assembly during the whole period from 1818 to 1848.

<sup>21</sup>*H. J.*, 1819, p. 43.

<sup>22</sup>*S. J.*, 1826, pp. 116, 117, 122, 127.

There are, however, two other facts about the bills of these sessions becoming laws without approval, either of which or both together may furnish a satisfactory explanation. In the first place, thirty-six of them were in the hands of the council after the adjournment of the general assembly. In the second place, forty-seven were local or private bills—especially for the relief of widows and minors.<sup>23</sup> It seems likely, therefore, that the council, having a large number of bills on their hands at the end of the legislative session, first considered general and less objectionable measures and left the others to become effective automatically, either because they were pressed for time or because they were not objectionable enough to be formally disapproved.

The provision that bills vetoed after the adjournment of the general assembly should be returned on the first day of the following session proved unimportant. Only three vetoes were thus made—one in 1825, one in 1835, and one in 1845. The first was amended to meet the objections of the council. The other two were dropped from further consideration.<sup>24</sup>

#### ANALYSIS OF THE VETO MESSAGES

An examination of the reasons presented in the messages of disapproval discloses three general classes of vetoes: First, vetoes on constitutional grounds; second, vetoes on grounds of policy or expediency; and third, vetoes of defective bills. These classes are not exclusive, however. Often bills were objected to on more than one of these grounds. But it is thought best to group them in these general classes on the basis of the most important considerations which led to their disapproval.

The term unconstitutional will be considered broadly so as to include not only bills violating the terms of the constitutions of Illinois and the United States directly but also those conflicting with the laws of Congress. The second class will include vetoes where the council took part in the policy determining power of the government. It is true that this was done negatively through blocking certain measures. But often the messages of disapproval were accompanied by suggestions that have lead to the adoption of positive policies. Under the term defective will be included bills disapproved as being superfluous, carrying conflicting provisions, or containing ambiguous terms.

*Vetoes on Constitutional Grounds.*—During the period 1818-

<sup>23</sup>See *Laws*, 1835, 1837, 1839.

<sup>24</sup>*S. J.*, 1825, pp. 5, 25; *H. J.*, 1835, p. 6; *S. J.*, 1845, pp. 6, 25, 26, 59.

1848 twenty-eight bills were vetoed on constitutional grounds. They were scattered rather evenly throughout the whole period. During the sessions of 1828, 1831, and 1833 there were no vetoes on constitutional grounds. Otherwise they are well distributed,—running as high as four in number only during the sessions of 1839, 1841, and 1847. Only two out of the twenty-nine were passed over the veto. In 1821 the bill creating the State Bank of Illinois was passed over the disapproval of the council. So was also in 1835 an act providing for the election of district attorneys for each of the judicial circuits by joint vote of the general assembly. It had been vetoed as conflicting with the governor's appointing power under Article III section 22 of the constitution.<sup>25</sup>

As has already been suggested, vetoes on constitutional grounds may be divided into three classes: (1) bills conflicting with the Constitution of the United States, (2) bills conflicting with the laws of the United States, and (3) bills conflicting with the constitution of Illinois.

Four bills were disapproved because they conflicted with the Constitution of the United States. All were regarded by the council as violations of Article II, section 10, paragraph 1. The act of 1821 establishing the State Bank of Illinois has already been referred to. It conflicted with the provision that no state shall emit bills of credit.<sup>26</sup> Two bills, passed in 1839 and 1840 respectively, conflicted with the prohibition against a violation of the obligation of contract. The first was an act to authorize the governor to appoint bank directors. But it involved some banks established under a law carrying no such provision. The council objected that the general assembly could not authorize the governor to appoint directors for the banks without their consent.<sup>27</sup> The same provision was violated the following year. A bill authorizing a certain Allan P. Hubbard to build a mill dam across Fox river repealed all acts previously passed authorizing the construction of dams across that river unless the proprietors of such dams should comply with certain requirements of this act.<sup>28</sup> The fourth bill was in violation of a contract between the

<sup>25</sup>*H. J.*, 1835, pp. 444, 448; *S. J.*, pp. 385, 457. It must be borne in mind, however, that in all these cases, it was merely the opinion of the council that the bills in question were unconstitutional. The final settlement of that question could, of course, not be made by the council as such.

<sup>26</sup>*S. J.*, 1821, pp. 135-139, 166; *H. J.*, 261-271.

<sup>27</sup>*H. J.*, 1839, pp. 546, 547-548; *S. J.*, p. 454.

<sup>28</sup>*S. J.*, 1840, pp. 162, 168, 204.



state of Illinois and the United States. It was passed in 1826 and grew out of the bank act of 1821 and the depreciated currency resulting therefrom. The bill proposed to authorize residents of Illinois to pay their taxes in specie at a reduced rate, while it still held non-residents liable for the whole amount. The council held that this was a violation of section six of the enabling act, accepted by the convention of 1818, providing that "all the lands belonging to the citizens of the United States, residing without the said state (Illinois), shall never be taxed higher than lands belonging to persons residing therein."<sup>29</sup>

Three bills presented to the council were in violation of acts of Congress. They were all of minor importance. In 1827 a bill was passed establishing certain state roads. One of these roads, to run from Peoria and Rushville to the mines on Fox River, would have gone through Indian territory for a considerable distance. This was a clear violation of an act of Congress making it a criminal offense to trespass or survey on Indian land.<sup>30</sup> The second bill of this class was an "act to regulate weights and measures," passed in 1843. But this being one of the powers delegated to Congress by the national Constitution and Congress having acted in 1836, this power could not longer be exercised by the states.<sup>31</sup>

Twenty bills were disapproved as conflicting with the constitution of Illinois. One conflicted with Article II, dealing with the legislative department; four with Article III, the executive department; two with Article IV, the judicial department; thirteen with Article VIII, the bill of rights; and one with section 3 of the Schedule.

The bill violating the article of the constitution dealing with the legislative department was passed by the session of 1821. It provided that in case of vacancies occurring in the general assembly the clerk of the county commissioners' court was to order a new election to fill the vacancy. The council pointed out the fact that Article II section 11 of the constitution required the governor to issue writs of election in case of vacancies in the general assembly.<sup>32</sup>

Four bills conflicted with Article III, dealing with the ex-

<sup>29</sup>*H. J.*, 1826, p. 144; *S. J.*, pp. 129-133, 148; Thorpe, *op. cit.*, Vol. II, pp. 970-971.

<sup>30</sup>*S. J.*, 1827, pp. 240, 245.

<sup>31</sup>*H. J.*, 1843, pp. 482, 483, 511; *S. J.*, 511.

<sup>32</sup>*S. J.*, 1821, pp. 126-127, 129; *H. J.*, 132.

ecutive department. The first of these was a violation of section 11 of that article requiring sheriffs to be elected by popular vote under such regulations as the general assembly might prescribe. The assembly in 1827 attempted to fill a vacancy in Bond county by legislative act.<sup>33</sup> Two bills were in conflict with section 22, which provided that the governor should nominate and appoint by and with the advice and consent of the senate all officers established by the constitution or by law, except such as had been otherwise provided for by the constitution, or minor officers whose duties were confined to a county. The latter might be appointed as the general assembly should provide by law. The first bill to conflict with this provision was passed in 1827. It proposed to vest the appointment of state's attorneys in the hands of the two houses of the general assembly. State's attorneys, it was pointed out, were not officers whose jurisdiction covered only one county. They could therefore be appointed only in the way prescribed by the constitution.<sup>34</sup> The second bill conflicting with section 22 was passed in 1835. Curiously enough, it dealt with precisely the same subject, "the election of a state's attorney for each judicial circuit now or hereafter to be created by the joint vote of the general assembly." The council called attention to the veto message of 1827. They restated the former argument and added that they now objected to the appointment of local officers by men not directly responsible to the people affected. The bill, they said, "violates a salutary principle of free government by vesting in the same hands the power to create and to fill the same office." Nevertheless, the bill was passed over the veto by good majorities in both houses.<sup>35</sup>

The fourth bill of this class was the famous internal improvements act of 1837. The majority of the members of the council objected to section four of the bill which provided that vacancies on the board of public works which should occur during the recess of the general assembly should be filled by the other members of the board. This was held to conflict with Article III section 8 of the constitution authorizing the governor to make recess appointments.<sup>36</sup> There were other objections which do not concern us here. It may, however, be said that contrary to a general impression the bill was not vetoed on grounds of policy.

<sup>33</sup>*H. J.*, 1827, pp. 377-378, 385, 389, 395.

<sup>34</sup>*H. J.*, 1827, pp. 484-487, 491, 497.

<sup>35</sup>*H. J.*, 1835, pp. 444, 448; *S. J.*, 385, 457.

<sup>36</sup>*H. J.*, 1837, pp. 720-722, 724, 730.

It seems convenient to discuss here the bill conflicting with section 3 of the Schedule referred to above. Section 3 provided that "no sheriff or collector of public moneys shall be eligible to any office in this state, until they have paid over, according to law, all moneys which they may have collected by virtue of their respective offices." The bill in question made it the duty of the governor to issue commissions to persons as sheriffs and coroners provided it appeared from the returns made to the secretary's office that such persons had received a majority vote. The council suggested the necessity of legislation to make section 3 effective.<sup>37</sup>

Two bills were passed conflicting with the article on the judiciary. In 1823 a bill was passed amending the act establishing courts of probate. The council objected to a section providing that probate judges were to be elected "at each and every session of the general assembly." They pointed out that under Article IV section 5 of the constitution judges of the inferior courts were to hold their offices during good behavior.<sup>38</sup> In 1837 a bill was passed organizing Henry county. One section of this act conflicted with two provisions of the constitution. It provided that the clerk of the county commissioners' court was to issue certificates of election to justices of the peace and constables when they had been elected. This was in conflict with Article IV section 8 of the constitution which provided that justices of the peace were to receive their commissions from the governor. It also conflicted with Article II section 26 which required all officers to take a prescribed oath of office before entering upon their duties.<sup>39</sup>

The Bill of Rights, Article VIII of the constitution of 1818, proved the undoing of about half the bills vetoed on constitutional grounds during the period of the council of revision. This is especially true of section 8 which alone accounted for eleven bills. All of these bills were attempts to dispose of property by legislative act. In seven cases it was attempted to dispose of property belonging to individuals, usually by empowering heirs or administrators to act.<sup>40</sup> In 1839 and 1840 acts were passed creating the towns of Savannah and Livingston respectively.

<sup>37</sup>*H. J.*, 1819, pp. 85, 92-93; *S. J.*, p. 112.

<sup>38</sup>*H. J.*, 1823, pp. 241-243, 250, 259.

<sup>39</sup>*S. J.*, 1837, pp. 459, 463, 537.

<sup>40</sup>*H. J.*, 1826, p. 122; *S. J.*, p. 108; *H. J.*, 1843, pp. 482, 522, 540, 545; *H. J.*, 1843, pp. 532-533; *S. J.*, 1847, pp. 381, 384; *H. J.*, 1847, pp. 460-461, 473; *H. J.*, 1847, p. 462; *S. J.*, p. 329.

As first submitted to the council they proposed to vacate the town plats without the consent of the owners of the land.<sup>41</sup> In 1839 two acts were passed which, as first proposed, attempted to dispose of public property of two towns. The first was in relation to the streets and alleys of Bloomington. The second, in relation to the public square of Golconda. In both cases the council held that this public land had become vested in the owners of real property in the respective towns.<sup>42</sup>

The violation of two other sections of the Bill of Rights was prevented by the council of revision. In 1821, in the act establishing courts of probate, imprisonment of debtors was virtually authorized. The council held this to be in violation of section 15 of the Bill of Rights which provided that "no person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law," etc.<sup>43</sup> The second case was in 1840. It was a violation of section 11 of the Bill of Rights which provided that "no man's property shall be taken or applied to public use, without the consent of his representatives in the general assembly, nor without just compensation being made to him." The bill referred to authorized one Henry A. Cleveland to build a toll bridge across the Winnebago swamp. It granted him permission to use the soil, stone, and timber on the land in building the bridge. The council argued that if the land belonged to Mr. Cleveland it was absurd to think it necessary to grant him permission to use the material. If, on the other hand, the land belonged to a private individual or to the United States the general assembly was clearly exceeding its powers.<sup>44</sup>

*Vetoes on Grounds of Policy.*—The vetoes made on grounds of policy or expediency numbered forty-one. Twenty-nine of these, or nearly three-fourths, came before 1830. They ran as high as eight, nine, and five, in the first, fifth, and sixth general assemblies respectively. From 1830 onward they usually ran from one to two for each general assembly. During the whole period only two assemblies, the ninth and the fifteenth, escaped the veto power on grounds of policy.

The messages in this class have been grouped into sub-

<sup>41</sup>*H. J.*, 1839, pp. 361, 404, 412; *S. J.*, p. 354; *S. J.*, 1841, pp. 93, 102; *H. J.*, p. 149.

<sup>42</sup>*S. J.*, 1839, pp. 168, 179, 262; *H. J.*, 1839, pp. 551, 556, 562.

<sup>43</sup>*S. J.*, 1821, pp. 165, 167, 170.

<sup>44</sup>*S. J.*, 1840, pp. 134, 200.

classes according to the subjects with which the bills have dealt. No attempt will be made to discuss all of these vetoes; but the most important and the resulting policies will be noted.

Two vetoes will be discussed here as lying on the border line between constitutional objections and objections on the grounds of policy. They were disapproved because they were held to encroach upon or burden unnecessarily the judicial department. They have been classed under policy vetoes on account of the fact that while they may be regarded as unconstitutional in a broad sense they would doubtless, nevertheless, have been accepted by the American courts as within the legislative power.

The first of these was a bill of 1819 which proposed to regulate and define the duties of the justices of the supreme court. The bill assigned certain of the justices to hold circuit courts in circuits to which justices had been assigned who had practiced in those courts until the business in which these justices were concerned should have been disposed of. The council suggested that this would unnecessarily burden the justices so assigned and that the objection to having a judge sit in a case in which he had been interested as a practising attorney could be remedied by requiring the justices to change circuits until such business should be disposed of. In the second place the council called attention to the inexpediency of too many terms,—suggesting that two terms of circuit court would be sufficient.<sup>45</sup>

The second bill of this class was in 1841. The general assembly passed over the veto “an act to reorganize the judiciary” of the state. It provided for the repeal of the existing circuit courts. It divided the state into nine circuits. It assigned a justice of the supreme court to each of these,—the act increasing the number of supreme justices from four to nine. The council objected that the act would overburden the supreme court. Under the proposed act it would be required to perform the following functions: it would still be required to act as a council of revision; it would still perform its functions as a supreme court; and in addition the justices would be required to hold all the circuit courts of the state. All of this would be physically impossible. It was pointed out that the duties of the supreme court were sufficiently important to warrant granting it sufficient time to mature its opinions. As a council of revision it would be necessary for the members of the court to be at the capital when the legislature was in session. Suppose an extra session were to be

<sup>45</sup>*S. J.*, 1819, p. 202; *H. J.*, pp. 179, 191-192.

called while the judges were on the circuits. They would be obliged to dismiss court to attend the legislative session.<sup>46</sup>

One of the first lines of public policy owing its inception to the council of revision was in regard to quasi-public franchises. During the very first session of the general assembly three bills were passed authorizing the construction of toll bridges in various parts of the state. The council objected that there was no time limit set for the duration of the franchises. They believed that the public interest required that a definite time limit should be fixed when the privileges granted should expire. The result was in each case a twenty year franchise.<sup>47</sup>

Five bills for the incorporation of towns and cities were disapproved on grounds of policy. The sessions of 1824-1825 passed an act to incorporate the town of Mount Carmel. It was objected to because there was no limitation to the taxing powers of the trustees.<sup>48</sup> Four years later "an act to incorporate the inhabitants of such towns as may wish to be incorporated" was vetoed. The bill was defective in several ways. The main objections were that it encouraged promiscuous incorporation of towns without regard for their needs, and that it did not even provide for ascertaining whether a majority of the people wanted to be incorporated.<sup>49</sup> The act of 1837 incorporating the city of Alton was disapproved because it gave the municipal court too wide jurisdiction.<sup>50</sup> In 1843 an act to incorporate the town of Winchester in Scott county was disapproved. In the first place it gave the trustees too large and indefinite powers. They were authorized "to do and perform all acts which may be done or performed by natural persons." In the second place it proposed to incorporate a good deal of territory that was simply farm land. It was pointed out that great injustice might be done the farmers if forced to live up to town or city regulations.<sup>51</sup> At the same session a bill for an act to incorporate the city of Metropolis in Johnson county was disapproved. The council pointed out that the general law of municipal incorporation of 1831 was sufficient for this purpose. If not sufficient, it could be amended. The desirability of uniformity in this respect was

<sup>46</sup>*S. J.*, 1841, pp. 257-272, 274; *H. J.*, pp. 358-366.

<sup>47</sup>*S. J.*, 1819, pp. 182, 195; *H. J.*, pp. 172-173, 182-183.

<sup>48</sup>*S. J.*, 1824-1825, pp. 159, 164, 165, 179, 196.

<sup>49</sup>*H. J.*, 1829, p. 295. The law of 1831 required a two-thirds vote. See *Laws*, pp. 82-87.

<sup>50</sup>*S. J.*, 1837, pp. 124-125, 128, 137.

<sup>51</sup>*S. J.*, 1843, pp. 456, 460, 468, 525; *H. J.*, p. 511.

pointed out. In addition they pointed out the fact that the bill gave the board of trustees exclusive power to tax real estate. This would exclude both the state and the county from taxing such property.<sup>52</sup>

An examination of these vetoes discloses the fact that the incorporation of municipalities was at that time in an experimental stage. The general assembly was uncertainly feeling its way. The council demonstrated its usefulness by calling attention to the need of definition and limitation of the powers of municipalities, the need of maintaining some control by the state, and the need of reasonable uniformity in incorporation.

Three bills dealing with internal improvements were disapproved by the council. Two were local and one general. The two local acts were passed in 1827 and 1839 respectively. The first was an act making appropriation for building certain bridges in the so-called "bounty lands." It was disapproved by the council because the financial condition of the state would not warrant the expenditure at that time.<sup>53</sup> The second was an act to authorize St. Clair county to establish a ferry across the Mississippi river. It was disapproved because the award of the jury in condemnation proceedings was required to be based on the value of the property taken and not on the ferry privilege. In the second place it failed to provide for an appeal from the award of the jury.<sup>54</sup>

The one general act was passed in 1819. It provided for "opening, improving, repairing and regulating highways," etc. The council returned it with the suggestion that it be amended so as to protect the public against persons who might attempt to prevent roads from being opened up by obstructions and litigation.<sup>55</sup>

Two vetoes dealt with the question of the disposal of school lands. In 1828 an act was passed providing for leasing the seminary lands. The council objected on three main grounds: (1) there was no adequate provision for the valuation of the lands; (2) the public was not protected against spoliation of the land; and (3) the bill provided that the lessee might at his option acquire full title to the land by payment of the capitalized rental value at six per cent. During the same session, however, an act was passed and approved providing for the sale of the seminary lands. It is to be regretted that the council did not attempt to

<sup>52</sup>*H. J.*, 1843, pp. 482, 523; *Ill. Reports*, 1842, II, p. 425. The series here referred to is composed of reports of the executive department and other officials, made to the General Assembly.

<sup>53</sup>*S. J.*, 1827, pp. 125 ff., 128, 167; *Laws*, p. 64.

<sup>54</sup>*H. J.*, 1838-39, pp. 564, 565; *S. J.*, p. 469.

<sup>55</sup>*H. J.*, 1819, pp. 174-175; *S. J.*, p. 182.

prevent that also.<sup>56</sup> The second case occurred in 1841. An act was passed authorizing the sale of a certain school section. The general law on the subject required that a petition to sell school lands should be signed by three-fourths of the qualified voters of the school township and that the population of the township should be at least fifty. The bill as proposed abolished the requirements as to the number of population. The council objected on the ground that there were far less than fifty people in the township in question. They doubted that an impartial board of valuation could be found. To meet the objections of the council the bill was amended so as to secure a board of valuation from outside the township.<sup>57</sup>

Four bills dealing with courts, their jurisdiction and procedure, were disapproved. The first was in 1823, "an act extending the right of peremptory challenge of jurors." The council held that the right of peremptory challenge of twenty jurors in addition to the unlimited right of challenge for cause under the existing law was sufficient. This was especially true in view of the fact that challenge for cause had been liberally construed by the courts. The bill also made it too easy to gain a change of venue by a person accused of a capital crime. Under the existing law there was provision for a change of venue should the judge be interested in the case. It also authorized the supreme court to appoint some proper person to summon the jury, should the sheriff or coroner be interested in the case. Considering all these facts the council felt that sufficient guarantees of a fair trial existed. They also urged that the evils arising out of a right to a change of venue would be great. In all cases the delays and difficulties would work greatly in favor of a guilty person, while innocent persons would be interested in a speedy trial without a change of venue.<sup>58</sup>

An act of 1829 was vetoed because it extended the jurisdiction of justices of the peace without at the same time increasing their power to award damages.<sup>59</sup> In 1833 a bill "concerning practice in courts of law" was disapproved because it would lead to "serious evils in the administration of justice." Among other things, this bill deprived a member of the supreme court

<sup>56</sup>*H. J.*, 1829, p. 39; *Laws*, pp. 158-162.

<sup>57</sup>*H. J.*, 1841, pp. 454, 455, 563.

<sup>58</sup>*S. J.*, 1823, pp. 230-232, 241, 285, 300, 311. For the present day practice see Hurd, *op. cit.*, (1913), pp. 2479 ff.; *People v. Pfanschmidt*, 262 Ill. 411.

<sup>59</sup>*H. J.*, 1829, p. 337; *S. J.*, pp. 285, 287.



of a voice in the decisions in cases over which he had sat in the circuit court. While section 1 of the bill granted a right of appeal in all cases regardless of the amount involved, section 10 abrogated the right of appeal in divorce cases, which before had existed as a matter of right.<sup>60</sup> The last bill of this group to be objected to by the council was a bill "to amend the several laws in relation to practice in courts of law and chancery." One of the sections objected to repealed the provision of an earlier act providing for a method of authenticating evidence taken outside the state, without providing for a substitute. There were other objections. But the most interesting fact of this message is the fact that it winds up with an exhortation. The practice of innovation in procedure, the assembly was told, is objectionable unless indisputably necessary. As no such reasons were perceived in this case the council disapproved the bill.<sup>61</sup>

The veto power was invoked five times in behalf of an acceptable policy in the matter of settlement of estates, especially with reference to the protection of the interests of dependents. In a veto message of 1819 disapproving an act to authorize the executors of a certain Tuissant Dubois, deceased, to dispose of his property, the council suggested that there ought to be some safeguards against the abuse of the trust on the part of the executors.<sup>62</sup> Two years later they objected to an act to provide for the sale of the real estate of minors in certain cases. They held that the notice required was too short and would therefore be prejudicial to the interests of the minors, especially if they happened to reside outside the state.<sup>63</sup> At the end of the session of 1823 a bill was passed authorizing the appointment of public administrators. This bill was returned to the assembly at the beginning of the session of November 15, 1824. The council objected that the bond required of the administrators provided for by the bill was not sufficient. They believed that a bond should be fixed in each case of administration and should vary in amount with the value of the estate. They also believed that the existing laws were sufficient for the purpose sought to be accomplished by the bill.<sup>64</sup>

Two bills were vetoed, each entitled "an act relative to wills and testaments, executors and administrators and the settlement

<sup>60</sup>*H. J.*, 1833, pp. 687, 707, 723, 724.

<sup>61</sup>*S. J.*, 1840, p. 234.

<sup>62</sup>*H. J.*, 1819, pp. 111, 112; *S. J.*, p. 123.

<sup>63</sup>*H. J.*, 1821, p. 195; *S. J.*, pp. 104, 105.

<sup>64</sup>*S. J.*, 1824, pp. 5, 25; *H. J.*, pp. 107, 203.

of estates." The first was in 1827. The council could not approve this bill because it "contains numerous objectionable features, and in some cases has made such a total change in some of our existing laws, as to overturn some of the long settled, and as we believe, highly approved principles of the common law." One section was objected to because it "would be productive of highly injurious consequences to the peace and harmony of the married state, by introducing separate and conflicting interests between husband and wife." Another section should be amended so as to give the wife her share of the personal property of her deceased husband after the payment of the debts.<sup>65</sup> The other bill was passed during the following session. In the veto message the council expressed strong approval of the bill in general. It objected, however, to a section which deprived the widow of her right of dower in her husband's real estate if he should die insolvent. The council held that the right of dower was so ancient and almost sacred that it should not be abolished. They asserted in their message of disapproval that this was the first time in the history of the United States that it had been threatened.<sup>66</sup>

It has been noted above that many bills for the relief of private persons became laws without the approval of the council of revision. The only bill for strictly private relief vetoed was in 1845. A certain Lovell Kimball had received permission of the Illinois Canal Commission to cut timber on the canal lands for the construction of a mill. But Kimball had in addition taken a number of trees and cut them up for sale. The circuit court of La Salle county had fined him \$260. Governor Ford happened to have been the judge who fined Mr. Kimball. Now the general assembly proposed to return \$200 to the latter. The council objected that the remission of the penalty would make it impossible to protect the canal lands against trespassers.<sup>67</sup> Two bills for the relief of a public official were disapproved. In 1823 Wm. A. Baird, a sheriff in St. Clair county, in compliance with a legislative act released a prisoner convicted of forgery. The party injured by the forgery sued Baird but lost in all the courts. The general assembly of 1827 proposed to reimburse Mr. Baird to the extent of \$100 for the expenses he had been obliged to pay in defending himself. The council disapproved. They held that every officer takes his office with the chance of being sued for performing lawful acts. To reimburse him would set a

<sup>65</sup>*S. J.*, 1827, p. 328.

<sup>66</sup>*S. J.*, 1829, pp. 283, 286, 288.

<sup>67</sup>*H. J.*, 1845, pp. 601-602.

dangerous precedent. This same bill was introduced in the following general assembly and again disapproved, the council calling attention to their former veto and seeing no reason why they should change their attitude.<sup>68</sup>

In addition to the bills discussed above a number of others were disapproved on various grounds of expediency and policy. Few of them seem to be of sufficient importance to merit individual consideration. Only three will be given here. Two of them were passed by the general assembly of 1827. The first was an act to regulate inns and taverns and for other purposes. The council took a stand for curtailment of the drinking evil. They held "that granting licenses to dram-shops, tippling houses, and groceries, to sell spirituous liquors by a less quantity than one quart have a direct tendency to encourage drunkenness and immorality." The proper line of policy would be to remove such temptations as far as possible.<sup>69</sup>

The second bill referred to was an act to ascertain and survey the northern boundary of the state. The council objected to the bill on two grounds. In the first place it did not provide for the payment of the commissioners who were to perform the work on behalf of the state. That was intended to be left for a future general assembly to provide. The council did not believe that it was possible to get competent men to do the work under those circumstances. In the second place they objected to the method of choice of the commissioners. The bill provided that they were to be chosen by the general assembly. The council believed that the method best calculated to insure the selection of real experts was to leave the matter of their selection to the executive. They pointed out the fact that that had been the procedure in 1821 when the line between Illinois and Indiana had been run, and that a similar method had invariably been pursued by the national government.<sup>70</sup>

The last bill to be considered in this group was an act to divorce certain persons. The council held it inexpedient to divorce persons by legislative act. All the questions involved are judicial and ought to be decided by a court.<sup>71</sup>

*Vetoës of Defective Bills.*—The third general class of vetoes were made on account of defective bills. There were in all thirty-three such bills disapproved. These vetoes, like the vetoes

<sup>68</sup>S. J., 1827, pp. 260, 261; H. J., 1829, p. 265.

<sup>69</sup>S. J., 1827, pp. 240, 245.

<sup>70</sup>H. J., 1827, pp. 430-431, 433, 456, 462; S. J., pp. 276, 283, 289.

<sup>71</sup>S. J., 1831, pp. 327, 400-401, 411; *Laws*, pp. 71-72.

on constitutional grounds, were scattered well over the whole period of the existence of the council of revision. Only two general assemblies, 1836-1838 and 1846-1848, escaped without any vetoes of this class. The usual number was two or three per session. Once, in 1839, it ran as high as six. Only two such bills were passed over the veto. The first was an act of 1821 ordering the United States to pay certain fees for the keeping of federal prisoners in state jails.<sup>72</sup> The second was in 1835. It was the "act providing for the election of county recorders and surveyors" referred to above. It was defective in several particulars. Two days after passing this bill over the veto the general assembly passed a second act remedying every defect pointed out by the council.<sup>73</sup>

Though the class of defective bills is somewhat large, it is not necessary to discuss these bills in any great detail. They may be roughly divided into half a dozen groups. Ten may be classified as generally ill-considered and hasty. They were often based on misapprehension or lack of information. Often likely to produce unexpected and undesirable results.<sup>74</sup> Two bills may be classed as superfluous—one wholly, and one in part.<sup>75</sup> Four were vetoed because they conflicted either with legislation already passed or were contradictory within their own provisions.<sup>76</sup> Three were vetoed because the council considered that they were unlikely to accomplish the purpose for which they were passed. In one case, in fact, delay in the passage of the bill in question had made the performance of the acts required therein impossible.<sup>77</sup> There were seven vetoes on the grounds of ambiguities, such as vague terms and phrases. For example, a bill in 1825 carried in one of its sections the word "aforesaid." But since there was no antecedent for the word the effect in the opinion of the council would have been to render the whole act void. In 1845 a bill was presented carrying certain provisions concerning corporations. It provided for the forfeiture of the

<sup>72</sup>*H. J.*, 1821, p. 107; *S. J.*, pp. 61, 84, 109, 112.

<sup>73</sup>*H. J.*, 1835, pp. 408-410, 449; *S. J.*, pp. 385, 454; *Laws*, pp. 61-62, 165-167.

<sup>74</sup>*H. J.*, 1819, pp. 176, 182; *H. J.*, 1823, pp. 273-274; *S. J.*, 1829, p. 284; *S. J.*, 1831, p. 323; *H. J.*, 1835, pp. 61, 408-410; *H. J.*, 1839-40, pp. 338-339; *H. J.*, 1838-39, pp. 603-604.

<sup>75</sup>*H. J.*, 1821, p. 107; *S. J.*, 1845, p. 453.

<sup>76</sup>*S. J.*, 1827, p. 219; *S. J.*, 1835, p. 525; *S. J.*, 1840-41, p. 149; *H. J.*, 1838-1839, p. 452.

<sup>77</sup>*H. J.*, 1825, p. 190; *H. J.*, 1843, pp. 546-547; *H. J.*, 1845, p. 597.

charters of "any corporation" which should commit certain acts. The council pointed out that the phrase "any corporation" was broad enough to include cities and towns and perhaps even counties. Attention has already been called to the act of 1821 requiring the "United States" to pay certain fees, and the act of 1827 confounding the terms "under-tenant" and "assignee of a lessee."<sup>78</sup> Seven bills were vetoed on account of omissions either due to legislative inadvertence or errors on the part of the clerical force.<sup>79</sup>

#### GENERAL ESTIMATE OF THE OPERATION OF THE COUNCIL OF REVISION

Looking back on the period from 1818-1848, the council of revision must be said to have filled very creditably an important place in the constitutional system of the State of Illinois. This is true whether we regard it from the standpoint of its control over legislation or whether we look closer into the character of the veto messages themselves. More bills were vetoed relative to the number of laws passed than in New York, the only other state in the Union that has had a council of revision. In the latter state 128 bills were disapproved as compared with 6,590 passed, or somewhat less than two per cent. In Illinois 104 bills were disapproved as compared with 3,158 enacted into law, or somewhat more than three per cent. In New York 17 bills, or fourteen per cent of those disapproved, were passed over the veto. In Illinois only eleven per cent were passed over the veto.<sup>80</sup> Not only were relatively few bills passed over the veto, but as we have seen only two of these were bills of any importance whatever.

An examination into the reasons given by the council for disapproving bills has disclosed the fact that they prevented several important violations of the constitutions of both the United States and the state of Illinois. They prevented the enactment of a number of laws which would have been detrimental to the public good and by their dissent laid the foundation for several beneficial lines of policy. They halted many

<sup>78</sup>*H. J.*, 1821, p. 107; *S. J.*, 1821, p. 152; *H. J.*, 1823, p. 298; *S. J.*, 1825, p. 165; *H. J.*, 1827, pp. 388-389; *H. J.*, 1839, p. 545; *S. J.*, 1845, p. 6.

<sup>79</sup>*H. J.*, 1825, pp. 78, 299; *H. J.*, 1827, pp. 446, 351, 352; *H. J.*, 1833, p. 709; *H. J.*, 1839, p. 215; *H. J.*, 1843, p. 317.

<sup>80</sup>*Proceedings and Debates*, New York Constitutional Convention, 1821, pp. 52-57. See also Charles Z. Lincoln, *Constitutional History of New York*, Vol. I, pp. 743 ff.

defective bills and caused them to be amended, thereby doubtless saving the state great expense and inconvenience.

The messages of the council are characterized by ability and insight. The uniform excellence of its opinions may perhaps be ascribed partially to the fact that it was a continuous body. While there were a number of changes in personnel from time to time due to various reasons, there were several justices who held office for terms long enough to give stability to the council. Those who held the longest were Thomas C. Browne from 1818 to 1848, William Wilson, from 1819 to 1848, and Samuel D. Lockwood, from 1825 to 1848.<sup>81</sup> But it must be remembered that they worked under conditions quite different from those existing today. Fewer bills were passed. There was less rush at the end of the session. Then the number of bills disapproved after adjournment was negligible. Now, as we shall see, ninety-five per cent of the vetoes are made after the adjournment of the general assembly.

As would naturally be expected, the fact that the members of the supreme court constituted together with the governor a council to revise bills resulted in few bills being held unconstitutional by the supreme court as such. During this whole period only four laws were declared unconstitutional by the court. Two of these involved the national constitution and two involved the constitution of Illinois. One of these was held unconstitutional partly because it had not been submitted to the council for approval. Another, the act incorporating the State Bank of Illinois, had been passed over the veto. But two of the acts declared unconstitutional had been approved by the council of revision.<sup>82</sup>

There is no evidence pointing to a lack of harmony and cooperation between the governors and the other members of the council. In very few instances was the governor found with the minority. Very often he seems to have cast the deciding vote. In only one case does he stand out taking materially different ground from the rest of the council, namely, in the veto of the famous internal improvements act of 1837, discussed

<sup>81</sup>Under the constitution of 1818 judges held during good behavior, with the provision that the terms of judges appointed before the end of the first legislative session held after January 1, 1824, should expire at the end of that session. In re-constituting the court in 1825 two of the judges, Browne and Wilson, were re-elected.

<sup>82</sup>A. B. Wright, *Judicial Control over Legislation in Illinois*, (unpublished thesis) pp. 9-15.

above. Governor Duncan concurred with the rest of the council in the opinion that the bill was unconstitutional as indicated. In addition he objected to the policy of committing the state to this huge enterprise. This fact has led to a later impression that if he had had the veto power alone, the state would have been saved from the internal improvement fiasco. It is almost certain, however, that in that case his veto would have been overruled.

The council of revision, however, was not destined to continue a part of our constitutional system. The same situation had arisen here in 1848 that caused New York to abandon it in 1821. The purely judicial work of the members of the council demanded all of their time. This was especially true after 1841 when they were required to hold circuit courts as well. The Democrats were distrustful of the supreme court. It had been Whig up to 1841. In that year the Democrats packed it by increasing its members from four to nine. In addition they loaded them with the task of all the circuit court work. But though they controlled the court for the time being they were not willing to permit it to retain the veto power. They favored a strong veto in the hands of the governor.<sup>83</sup> The result was the abolition of the council of revision by the constitutional convention of 1848.

<sup>83</sup>Davidson and Stuvé, *History of Illinois*, p. 544; *Illinois State Register*, July 23, 1847.

II. TABLE SHOWING THE NUMBER AND DISTRIBUTION OF BILLS VETOED BY THE COUNCIL OF REVISION, THE ACTION TAKEN UPON VETOES, THE REASONS FOR VETOES, AND THE NUMBER OF LAWS ENACTED, 1818-1848.

General Assembly	Laws enacted*	Laws without approval	Bills disapproved			Action on bills disapproved			Reasons for disapproval		
			Disapproved	House bills	Senate bills	Passed over veto	Amended	Dropped	Constitutional	Policy	Defective
1818-1820	159	0	12	8	4	1	11	0	1	8	2
1820-1822	90	4	9	7	2	4	5	0	3	3	3
1822-1824	123	0	5	3	2	0	5	0	1	2	2
1824-1826	101	0	8	4	4	0	7	1	2	2	3
1826-1828	89	0	16	10	6	3	9	4	3	9	4
1828-1830	64	1	6	4	2	0	3	3	0	5	1
1830-1832	137	2	2	0	2	0	2	0	0	1	1
1832-1834	228	1	2	2	0	0	1	1	0	1	1
1834-1836	319	14	4	3	1	2	1	1	1	0	3
1836-1838	335	21	3	1	2	0	3	0	2	1	0
1838-1840	403	22	12	11	1	0	6	6	4	2	6
1840-1842	282	0	8	2	6	1	3	4	3	3	2
1842-1844	341	2	7	6	1	0	3	4	3	2	2
1844-1846	333	4	6	2	4	0	0	5	1	2	3
1846-1848	154	0	4	3	1	0	3	1	4	0	0
Totals....	3,158	71	104	66	38	11	62	30	28	41	33

\*This list includes, of course, only the bills that actually found a place on the statute books, with or without the approval of the council of revision.



CHAPTER III  
THE SUSPENSIVE VETO UNDER THE CONSTITUTION  
OF 1848

Strictly speaking, the governor of Illinois did not have the veto power until 1848. Despite the fact that New York was about to drop it (in 1821), Illinois in 1818 had adopted the council of revision plan under which the governor was obliged to share the veto power with the members of the supreme court. That this worked well we have already seen. But the increasing burden of the duties of the supreme court as such made a change imperative. The present chapter will be devoted to a discussion of the veto power during the period from 1848 to 1870. It may properly be called a transition period, during which a weak veto power was vested in the hands of the governor. It demonstrated the need of, and prepared the way for, a strengthening of that power in 1870 and again in 1884 which has made the veto power of the governor of Illinois one of the most effective in the Union.

THE FORM OF VETO POWER IN THE CONSTITUTION OF 1848

An examination of the constitution of the rest of American states at the time of the adoption of the Illinois constitution of 1848 reveals the fact that eight out of the whole number had no veto power. They were: Delaware, Maryland, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, and Virginia. The rest, twenty in number, all gave their governors a more or less effective veto power. A brief summary of these provisions on the basis of the vote required to override the veto and the time allowed the governor for the consideration of bills may serve as a background for the study of the Illinois provision adopted in that year. One state (Connecticut) required only a majority of those present to override the veto; eight (Alabama, Arkansas, Florida, Indiana, Kentucky, Missouri, New Jersey, and Vermont) required a majority of the total membership; four (Iowa, Michigan, New York, and Texas) required two-thirds of those present; and seven (Georgia, Louisiana, Maine,

Massachusetts, Mississippi, New Hampshire, and Pennsylvania) required two-thirds of the total membership.

The time allowed the governors for the consideration of bills varied from three to ten days. Three states (Arkansas, Connecticut and Iowa) allowed only three days; ten states (Alabama, Florida, Georgia, Indiana, Maine, Massachusetts, New Hampshire, New Jersey, Texas, and Vermont) allowed five; one (Mississippi) allowed six days; and six states (Kentucky, Louisiana, Michigan, Missouri, New York, and Pennsylvania) allowed ten days. Indiana, Kentucky, Louisiana, Maine, and Pennsylvania also provided that vetoes, the return of which had been prevented by the adjournment of the legislature, should be returned within the first three days of the following session, or the bills in question were to become effective without the governor's signature.

At this time the four states with the strongest veto power were Louisiana, Pennsylvania, Michigan, and New York. All four allowed their governors ten days for the consideration of bills. Louisiana and Pennsylvania required a vote of two-thirds of the total membership of each house to override the veto. Michigan and New York permitted it to be done by two-thirds of those present.

In the Illinois constitutional convention of 1848 there was never any doubt that the council of revision would be discontinued. There seems to have been no sentiment at all for its retention. On the other hand, several resolutions proposing alterations in the constitution contained provisions for its abolition.<sup>1</sup> Mr. Kitehell, a member of the convention, objected to the presentation of too many questions at once. He urged that they be presented one at a time. "For example, let it be the abolition of the council of revision. There is probably not a member not prepared to discuss and vote on that proposition."<sup>2</sup>

However, there was considerable diversity of opinion regarding the merits of a veto power in the hands of the governor. On the one hand there were the customary speeches against the power of one man to thwart the will of the people. It was a vestige of royalty and unrepugnant.<sup>3</sup> On the other side it was urged that the tyranny of one is less dangerous than the tyranny of many; that the governor is more nearly the representa-

<sup>1</sup>*Journal of the Constitutional Convention of 1847*, pp. 19, 25, 27, 30, 41.

<sup>2</sup>*State Register*, June 18, 1847.

<sup>3</sup>*State Register*, July 23, 1847.

tive of the people than is the legislature; that he could be held to more definite responsibility; and that as a matter of fact it had worked very satisfactorily in the state.<sup>4</sup>

Perhaps only a small percentage of the convention would have favored the abolition of the veto power altogether. On the question of granting a strong or weak veto power to the governor the members were nearly evenly divided. On the whole, the Democrats seem to have favored the former while the Whigs seem to have favored the latter.<sup>5</sup>

The committee of ten appointed to draft the article on the executive was headed by Samuel D. Lockwood, who had been a member of the supreme court and the council of revision since 1825. On the 18th of June they reported to the convention. Section 20 of the article reported proposed to vest the veto power in the hands of the governor. It required a two-thirds vote of those present to override the veto.<sup>6</sup>

In the convention itself section 20 had a rather checkered experience. It was considered in committee of the whole on the 16th and 17th of July. On the 16th an amendment proposed by Mr. Cross of Winnebago, providing that a majority of the total membership of each house of the legislature should be sufficient to override the veto, was rejected.<sup>7</sup> On the following day an amendment offered by Mr. Minshall was accepted. It required a three-fifths vote of the total membership to override the veto.<sup>8</sup> But on August 11th at the final consideration of the report of the committee of the whole by the convention, it was again amended. This amendment, offered by Mr. J. M. Davis, lowered the vote required for repassage from three-fifths to a majority of the total membership.<sup>9</sup>

The veto section as finally adopted by the convention is found in section 21 of Article IV of the constitution of 1848. It provides:

Every bill which shall have passed the senate and the house of representatives shall, before it becomes a law, be presented to the governor; if he approves, he shall sign it; but if not, he shall return it, with his objections to the house in which it shall have originated; and the said house shall enter the objections at large on their journal, and proceed to

<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid.*; Davidson and Stuvé, *op. cit.*, p. 544.

<sup>6</sup>*Journal*, pp. 63-64.

<sup>7</sup>*Ibid.*, p. 176; *State Register*, July 23, 1847.

<sup>8</sup>*Journal*, pp. 177-178.

<sup>9</sup>*Ibid.*, pp. 322-323; *Illinois State Register*, Aug. 20.

reconsider it. If, after such reconsideration, a majority of the members elected shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by a majority of the members elected, it shall become a law, notwithstanding the objections of the governor; but in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journals of each house respectively. If any bill shall not be returned by the governor within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general assembly shall, by their adjournment, prevent its return, in which case the said bill shall be returned on the first day of the meeting of the general assembly, after the expiration of said 10 days, or be a law.<sup>10</sup>

#### THE USE OF THE VETO POWER, 1848-1870

An examination of the provision just quoted shows that it provided merely a suspensive veto. Article III section 21 provided that no bill shall become without the concurrence of a majority elected to each house of the general assembly. Should the governor object to the passage of any bill the same majority would be able to pass it over his veto. The most that he could do would be to force a reconsideration.

Nevertheless, the governor's hands had been strengthened. The veto power had not been changed essentially from what it was under the council of revision. But it had all been placed in his hands. He was not obliged to share it with the members of the supreme court who might outvote him in the council. It is curious to note that Augustus C. French, the first governor under the constitution of 1848, was under exactly the opposite impression. This is the more remarkable when we recall that he had already served two years, from 1846 to 1848, and therefore was familiar with the veto power under the council of revision. In his inaugural address of January 2nd, 1849, he said, alluding to the veto power:—

I am not unmindful of the fact that by the virtual destruction of the veto power, by a provision of the new constitution, there remains to the executive of the state but the merest shadow of power or influence by which to arrest the passage of any law, however obnoxious it may be in itself, or great the damage it may threaten to the public interest. Yet the limited agency still allowed the executive in the enactment of laws, and his accountability to the people for its faithful discharge, require of him a no less conscientious performance of this duty than what is reasonably expected from the more active and efficient department of the law making

<sup>10</sup>Thorpe, II, pp. 997-998; Hurd, *op. cit.*, p. XLIII.

power. There is also associated with the opinion here expressed the gratifying reflection that if my views fail to harmonize with those of the people and their representatives they can form no serious hindrance to those of the latter in any attempt made to carry them through.<sup>11</sup>

*Extent of the Use of the Veto Power, 1848-1870.*—That the veto power under the constitution of 1848 was not so weak as depicted by Governor French is disclosed by a study of its use during the period from 1848 to 1870. During this period of twenty-two years exactly one hundred bills were returned to the general assembly by the governors. Fifty-one were returned to the house of representatives while forty-nine were returned to the senate.

The distribution of these bills shows a remarkable fact. During the first twenty years they ran very evenly. There was never a session without a veto. They usually ran from one to three for each general assembly. In 1859 and 1865, however, they ran as high as four and seven respectively. When we come to Governor Palmer's administration the story is quite different. During the legislative session of 1869 alone, seventy-two vetoes were made, or nearly three-fourths of the whole number made during the twenty-two year period under consideration.

Compared with the number of laws enacted from 1848 to 1870, but few bills were disapproved. The total number of laws enacted was 7510. On this basis the number disapproved was something like one and one-third per cent. It will be recalled that under the council of revision it was a little over three and a third per cent. In fact it does not run higher than four and a half per cent even in 1869 when seventy-two vetoes were made. In that year alone 1573 laws were enacted by the general assembly.

Two vetoes were withdrawn, both in 1849. Both bills, one a senate bill and the other a house bill, had been returned to the general assembly by Governor French in each case in response to resolutions of the house in which the bill had not originated. It appears that certain promoters had secured the incorporation of the Illinois Coal Company. This company had secured a practical monopoly under the false pretense that certain other companies were great monopolies. The bill had originated in the house and had been passed in the senate. In the meantime a senate bill incorporating the Illinoistown Railroad Company had passed both houses. This latter company would be a competitor of the Illinois Coal Company. The friends of the coal com-

<sup>11</sup>H. J., 1849, pp. 8 ff.

pany now sought to defeat the railroad company's charter. The house of representatives was induced to adopt a resolution calling upon the governor to return the bill to the senate on the ground that the house had "in haste and without consideration" adopted certain amendments to the bill. The senate agreed to the said amendments and had refused to return the bill to the house to enable that body to correct its error. The senate now in turn requested the governor to return the house bill incorporating the Illinois Coal Company. In both cases the governor acceded "to preserve that courtesy and harmony which ought to exist between the several departments of the government." The outcome was a joint resolution requesting the governor to approve both bills, "the several resolutions of the two houses requesting their return to the contrary notwithstanding."<sup>12</sup>

*Effectiveness of the Veto Power, 1848-1870.*—To determine the effectiveness of the governor's veto power it will be necessary to study the fate of the bills disapproved. It will be recalled that Governor French had been under the impression that the veto power had been destroyed. An examination of the facts in the case shows this to have been very much exaggerated. In fact, prior to the legislative session of 1869, out of the twenty-eight bills returned by the governor only two were passed over the veto. The first was in 1851 and the second in 1865. But during the session of 1869 the number passed over was seventeen as compared with seventy-two returned, or about one-fourth. For the whole period from 1848 to 1870 the number passed over the veto was just short of twenty per cent. It will be recalled that during the preceding period it had been something over ten per cent.

A large number of the bills passed over the veto during this period were of great importance. The first was a house bill of 1851 establishing a "general system of banking." Governor French was a Democrat and opposed to paper money. He had warned against wild-cat banking in both his messages of 1849 and 1851, and had sounded a warning that the veto would be used.<sup>13</sup> The bill when it reached the governor was duly disapproved, whereupon it was passed over the veto by the vote of 39 to 30 in the house of representatives and 13 to 11 in the senate.<sup>14</sup> According to Article X section 5 of the constitution, banking acts were to

<sup>12</sup>*H. J.*, 1849, pp. 477-478, 482, 510; *S. J.*, pp. 375, 378.

<sup>13</sup>*H. J.*, 1849, pp. 12 ff; *Ibid.*, 1851, pp. 18 ff.

<sup>14</sup>*H. J.*, 1851, pp. 474-479; *S. J.*, p. 421.

be submitted to the people for approval or rejection before they were to go into effect. This act was submitted in the fall of 1851 and ratified by a substantial majority.<sup>15</sup>

The second bill passed over the governor's disapproval was in 1865. It was the famous act "Concerning Horse Railways in the City of Chicago." Governor Oglesby disapproved it as a violation of the obligation of contract. The corporation was doing business by virtue of an agreement with the city of Chicago, ratified and made binding by legislative acts of 1859 and 1861. Under this agreement the city of Chicago was free to buy the property of the company at an appraised value at the end of twenty-five years. The bill before the governor proposed among other things to extend the corporate life and rights of the company for ninety-nine years. There were several objections. The bill granted a monopoly. It incorporated into the act and made them binding for the whole term of ninety-nine years "all acts or deeds of transfer of rights, privileges or franchises between the incorporators named in this act, or any two of them." The governor objected that these acts and deeds were unknown. They might be both illegal and unconstitutional for all he knew. "When private acts and deeds are to be given by force of law they should be definitely known." The provisions with regard to regulation and rate making consistently favored the company as against the city. The governor objected that it should have been the other way. Under cover of a pretense to reenact a prohibition against the common council of Chicago it did the very opposite by authorizing the council to provide for the construction of railroads on certain streets. The chief objection here was that the council could act only with the consent of the traction company. If the council was to have control of the streets, it should not be made to share that control with a private corporation. The bill was passed over the veto by a vote of 55 to 22 in the house of representatives and 18 to 5 in the senate.<sup>16</sup>

<sup>15</sup>Message of Governor French, Jan. 4, 1853; Dowrie, *Banks in Illinois Before 1863*, p. 139. It may be noted that in spite of the defects pointed out the act worked very well. Up to 1861 only fourteen banks had failed. In only one case had the notes not been redeemed at par, and in that case the loss was only 3 per cent. See message of Governor Wood, 1861, *H. J.*, pp. 20 ff.

<sup>16</sup>*H. J.*, 1865, pp. 562-566, 593, 597; *S. J.*, pp. 411-416. It has taken Chicago practically half a century to regain the ground lost by this one act. See John A. Fairlie, *Quarterly Journal of Economics*, XXI, pp. 371-

During the legislative session of 1869 seventeen bills were passed over Governor Palmer's disapproval. Five were bills authorizing unorganized localities to subscribe for railroad stock.<sup>17</sup> Two were bills authorizing Bloomington and Joliet respectively to aid private corporations in the establishment of manufacturing concerns.<sup>18</sup> Two acts, one local and the other general, made discrimination in the matter of taxation in favor of communities which had subscribed to railroad stock.<sup>19</sup> Four were acts regulating the fees of local officers.<sup>20</sup> Three acts of minor importance, two local and one general, need not be discussed here.<sup>21</sup> Finally, an act granting some 1050 acres of the Chicago Lake Front to the Illinois Central Railroad for a small part of its actual value was passed over the veto. It was passed over the veto by a vote of 52 to 31 in the house of representatives and 14 to 11 in the senate.<sup>22</sup>

It may be of interest to note that if the constitution had required a two-thirds vote instead of a majority, eleven of the nineteen bills would have failed to pass over the veto. This number would have included most of the important acts. The only very important act that would still have been passed over was the Chicago traction act of 1865.

During the period of 1818 to 1848 it was customary to amend bills to meet the objections of the council of revision. Thus about two-thirds were amended while only one-third were abandoned. On the other hand, during the period now under consideration, it was not customary to amend the bill to meet the governor's objections. In fact this was done only once, and that in a case where the house in which the bill had originated re-

403; *Blair v. Chicago*, 201 *U. S.* 400 (1906). The court in *Blair v. Chicago* did not hold the act in violation of contract. It held that it did not clearly extend the term of the franchise to 99 years.

<sup>17</sup>*H. J.*, 1869, III, pp. 537, 639, 640, 647, 648, 692; *S. J.*, II, pp. 845, 849, 882-884, 971, 976.

<sup>18</sup>*S. J.*, 1869, I, p. 949, II, pp. 75, 926-927, 952; *H. J.*, II, p. 589, III, p. 751.

<sup>19</sup>*S. J.*, 1869, II, pp. 871-876, 883-884; *H. J.*, III, pp. 659-693.

<sup>20</sup>*H. J.*, 1869, III, pp. 530, 633, 643, 747-748; *S. J.*, II, pp. 932-933, 961, 966.

<sup>21</sup>*H. J.*, 1869, III, pp. 282, 532, 543, 635, 641; *S. J.*, II, pp. 828, 877, 952, 962.

<sup>22</sup>*H. J.*, 1869, III, pp. 517 ff., 638; *S. J.*, II, p. 922. It has taken Chicago almost half a century to regain control of the Lake Front. See Theodore K. Long, *Lake Shore Reclamation Commission Report*, Chicago (1912).



quested its return.<sup>23</sup> All the other bills which were not passed over the veto were dropped. In case it was desired to do anything further to them the favored method seems to have been to introduce substitutes.<sup>24</sup>

It is certain that a good deal of fraud and irregularity was practiced from time to time in the passage of bills. It is not the purpose here to recite a catalog of such acts, but merely to call attention to a few cases that have come to the writer's notice in this study of the use of the veto power. Attention has already been called to the "unwarrantable means" used by the friends of the Illinois Coal Company to defeat the charter of the Belleville and Illinoistown Railroad Company. In 1859 the general assembly passed an apportionment act "gerrymandering" the state for Democratic party advantage. The bill was vetoed by Governor Bissell. Both parties committed irregularities. The Republicans, knowing that the bill would be passed over the veto if they remained at the session, absented themselves so as to break a quorum. The Democrats on their part refused to accept the veto message of the governor, under the pretext that the assembly could not do business without a quorum, intending that the bill should become law without approval.<sup>25</sup> The governor won. The bill failed to become a law.

A most audacious trick was attempted in 1863. A senator from the southern part of the state introduced a bill in January purporting to grant a charter to the Wabash Railroad company. Accepting his word that it was an ordinary charter, the senate passed the bill without formal reading. In the house of representatives it was likewise passed without reading and discussion early in June. Instead of a bill to incorporate the Wabash Railroad Company, Governor Yates found a bill chartering an immense corporation authorized to build and operate a street railway on the principal streets and bridges in Chicago and its suburbs.<sup>26</sup>

In 1869 Governor Palmer vetoed an act to amend the charter of the city of Joliet. It provided that to be qualified to hold the office of mayor or alderman the candidate should have been a resident taxpayer and freeholder for at least two years preceding the election. It also restricted the right to vote on any meas-

<sup>23</sup>*H. J.*, 1869, III, pp. 609, 624, 650, 679; *S. J.*, II, p. 944.

<sup>24</sup>See *S. J.*, 1861, pp. 11, 18, 117; *H. J.*, 1869, II, pp. 345, 445; III, p. 650; *S. J.*, 1869, II, pp. 736, 904; *Private Laws*, 1869, III, p. 599; IV, pp. 323-324.

<sup>25</sup>*H. J.*, 1859, pp. 884 ff., 880-881.

<sup>26</sup>*S. J.*, 1863, pp. 386 ff.

ure creating indebtedness to taxpayers and freeholders of one year's residence. The veto was sustained by the senate, to which body the bill had been returned, by a vote of 21 to 1, Senator Snapp of Joliet alone voting for repassage. Senator Snapp had introduced the original bill. He now "put one over" on both houses of the general assembly and the governor. The veto had been made on March 8th. Two days later Senator Snapp introduced the identical measure merely changing its number from Senate Bill No. 531 to Senate Bill No. 843. It passed unanimously three readings in each house on the same day, and was duly signed by the unsuspecting governor.<sup>27</sup>

The constitution provided that bills disapproved, the return of which had been prevented by the expiration of the ten days allowed the governor for their consideration, should be returned on the first day of the meeting of the general assembly after the expiration of such ten day period or become effective. Ten bills were thus returned, four by Governor Bissell, one by Governor Yates, and five by Governor Oglesby. None of these bills were passed over the veto. With one or two exceptions they were all dropped from further consideration.<sup>28</sup>

*Bills Becoming Law Without Approval.*—Thirty seven acts became effective without the governor's approval. The first of these was in 1863, seven in 1867, and twenty nine in 1869. Six were in the hands of the governor at the time of the adjournment of the general assembly. Thirty-one became effective during the session. Eleven dealt with private incorporations.<sup>29</sup> Twenty-two dealt with the incorporation of cities or towns.<sup>30</sup>

#### ANALYSIS OF THE VETO MESSAGES, 1848-1870

Classifying the bills returned on the basis of what seems the most serious objections it has been found that thirty-eight were vetoed on constitutional grounds, fifty-three on grounds of policy or expediency, and eight on account of defectiveness. One was

<sup>27</sup>*S. J.*, 1869, I, pp. 431, 608, 634, 683; II, pp. 380, 381, 445, 617; *H. J.*, III, pp. 325, 554; *Private Laws*, 1869, II, pp. 10-12.

<sup>28</sup>*H. J.*, 1859, pp. 58, 60; 1863, pp. 12-13, 349, 434-435; 1867, p. 12; *S. J.*, 1861, pp. 11-12, 18, 117; 1867, pp. 11, 12, 13, 14.

<sup>29</sup>*Private Laws*, 1867, I, p. 938; II, pp. 235, 455, 521, 794; *Private Laws*, 1869, I, pp. 290, 298; II, pp. 342, 828, 851, 871.

<sup>30</sup>*Private Laws*, 1867, I, p. 835; *Private Laws*, 1869, I, pp. 280, 385, 461, 524, 683; II, p. 180; III, pp. 548, 581, 604, 628, 685, 714, 723, 816, 839; IV, pp. 70, 78, 108, 156, 174, 201.

returned as having been signed inadvertently; but no reasons were given.<sup>31</sup>

*Vetoes on Constitutional Grounds.*—Of the thirty-eight bills disapproved on constitutional grounds one was held to violate the ordinance of 1787. This was an act providing for the incorporation of the Okaw River Navigation Company and granting this company exclusive right to navigate the Okaw river for fifty years. But this was in conflict with Article IV of the ordinance of 1787, which provides among other things that “the navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, etc.” In addition Governor Oglesby pointed out that it was very poor policy to grant monopolies of this sort.<sup>32</sup>

The largest number of vetoes on constitutional grounds involved questions of taxation. Six were disapproved as authorizing unequal taxation. Two of these dealt with railroad taxation. An act was passed in 1869 relating to the “Hamilton, Lacon and Eastern Railroad Company, and the local taxes thereon in the counties of Livingston, La Salle, and Marshall.” It provided that all taxes except state taxes, collected from the company on its whole line should be returned to the communities that had subscribed to stock of the road, and in proportion to the amount of their subscription. Governor Palmer objected that this would be taking the property of one county and paying it to another. “That plainly can not be done.”<sup>33</sup>

A more obnoxious measure was passed the same year, however. It was the so-called “tax grab” act or, to quote its title, “an act to fund and provide for paying the railroad debts of counties, townships, cities and towns.” It provided that all taxes whether state or local assessed in these local units upon the railroad property in question, except the two mill tax required by the constitution for the payment of the state debt and the state tax levied for the support of schools, should be devoted to the payment of the bonds issued as subscription to stock. In addition it provided that all state taxes assessed in these local units in excess of the valuation of 1868 were likewise to be devoted to the payment of the bonds. It made the state the custodian of these funds and pledged their application to the object in question. Governor Palmer objected that the constitution pro-

<sup>31</sup>S. J., 1859, p. 582.

<sup>32</sup>H. J., 1867, II, p. 211.

<sup>33</sup>S. J., 1869, II, pp. 883-884; H. J., III, p. 693.

vided that all taxes must be uniform throughout the state and that the general assembly could not relieve any community from paying its share. In addition it was objectionable in that it was a step in the direction of state assumption of local debts.<sup>34</sup>

Four bills passed in 1869, in the opinion of the governor, violated Article IX section 5 of the constitution, which provided that the corporate authorities of counties, towns, etc., might be vested with the power to tax for corporate purposes, but that such taxes were to be uniform in respect to persons or property within their jurisdiction. All these bills exempted farm land within the corporate bounds until it should have been laid out into lots or blocks of five acres or less.<sup>35</sup>

Seven bills were disapproved because they authorized taxation for private purposes. The governor was of the opinion that while it had been held that a locality could subscribe to railroad stock, it was not permissible to make an outright gift. Nor was it permissible to levy a tax to secure the location of railroad shops or for the promotion of manufacturing or business concerns. Governor Palmer believed that it was not possible to construe the constitution so as to make it appear that these undertakings were legitimate public purposes.<sup>36</sup>

A bill to provide for the construction of a levee on the Okaw or Kaskaskia river was vetoed because it authorized a uniform tax for this purpose. The general assembly, Governor Palmer held, could authorize such a tax only in proportion to the benefit derived by the property taxed.<sup>37</sup>

Two bills were disapproved because they undertook to dispose of private property by legislative act. The first was a bill in 1857 for the incorporation of the St. Louis and Cincinnati Railroad Company. The bill proposed to create a new corporation vesting all the corporate powers of the Ohio and Mississippi Railroad Company in one individual, who was alleged to have purchased the property and franchises of that company. In addition the bill proposed to confer upon him "all the rights, powers and franchises usually possessed by such corporations."

<sup>34</sup>*S. J.*, 1869, II, pp. 871-876; *H. J.*, III, p. 659. In *Ramsay v. Hoeger*, 76 *Ill.* 432-445, it was held that under the constitution of 1848 the exemption made was constitutional. But the constitution of 1870, Article IX, section 6, expressly provides what Governor Palmer contended for in 1869.

<sup>35</sup>*S. J.*, 1869, II, pp. 736, 904; III, pp. 599, 658.

<sup>36</sup>*S. J.*, 1869, I, pp. 499, 949; II, pp. 75, 739, 889-890, 926-927, 949, 952; *H. J.*, II, p. 589; III, pp. 540, 541, 641, 751.

<sup>37</sup>*H. J.*, 1869, III, pp. 534, 642.

Governor Bissell called attention to the fact that the ownership of the property in question was then pending in the courts of both Illinois and Missouri. He regarded the question a judicial one and beyond the power of the legislative branch. Governor Bissell also objected to the vague and general grant of powers just quoted. The constitution did not permit special legislation except in rare cases. In the case of special incorporations the powers granted should be carefully specified.<sup>38</sup> The second bill was passed in 1869. It proposed to establish a certain road and to require the owners of the land to remove their fences within ninety days or be liable to punishment for obstructing a public highway. Governor Palmer disapproved this bill because private property could not be taken by legislative act, and punishment for trespass or obstruction could not be authorized until the land had become public property through regular condemnation proceedings.<sup>39</sup>

As if the practice of authorizing incorporated communities to subscribe to railroad stock had not already gone far enough, the general assembly of 1869 proposed to go still further. Six extraordinary bills were passed during that session, each of which in whole or in part authorized parts of communities to subscribe to stock. Two were bills to authorize certain cities, counties, towns, villages, or townships, or parts thereof, to subscribe to railroad stock. Four were bills to authorize trustees of schools in counties not having township organization to make subscription. They were to act upon petition of not less than fifty voters in the district stating the amount and other details of the subscription. An election was to be held. And if the majority should favor the proposal the trustees "in their corporate capacity" were to make the subscription for the township. In all these cases Governor Palmer held that there was no power in the general assembly to authorize unorganized communities to act in the manner proposed. Whether these localities were merely designated parts of organized communities or congressional school townships there was no corporation competent to act. They were merely groups of private individuals, none of whom could be authorized to take any action binding the rest.<sup>40</sup>

A bill which proposed to alter the boundaries of Perry county was passed in 1869. Governor Palmer disapproved it,

<sup>38</sup>*H. J.*, 1859, p. 58.

<sup>39</sup>*H. J.*, 1869, III, p. 535.

<sup>40</sup>*S. J.*, 1869, II, pp. 882-884, 849, 845, 971, 976; *H. J.*, III, pp. 537, 637, 640, 647, 648, 692, 696, 756.

giving as his reasons that it conflicted with sections 2 and 4 of Article IV of the constitution, which provided that no county should be divided or added to without the consent of the majority of the legal voters of the county, nor should any portion of a county be separated from it without the consent of a majority of the voters of such portion.<sup>41</sup>

The act of 1865 "concerning Horse Railways in the city of Chicago" has already been referred to. Governor Oglesby was of the opinion that this act extending the charter and rights of the company to ninety-nine years was a violation of the contract existing between the city of Chicago and the corporation under which the franchise was to last for twenty-five years, leaving the city free to buy the property at an appraised value at the end of that time. In the case of *Blair v. Chicago*,<sup>42</sup> the supreme court of the United States held that the terms of the act purporting to extend the franchise were not clear and that therefore the franchise had not been so extended. Therefore, of course, the agreement between the corporation and the city of Chicago had not been violated. There seems to be little doubt, however, that the intention was to extend the franchise.

In 1869 a bill was passed fixing passenger rates on railroads in Illinois. The maximum rate per mile was to be three cents for persons over ten years of age and one and a half cents for children under ten. Governor Palmer objected to this bill, first, because it was a violation of the obligation of contract, and secondly, because the fixing of a rate was a judicial question. A corporate charter, he held, was a contract, and it could not be violated by the legislature. Impairment might be done by modification or change of the charter as well as by total subversion. He suggested that both parties to the contract, the state and the corporation, had rights under it. The general assembly might by law require the roads to fix a reasonable rate and to make no discriminations. But the question as to what constituted a fair and reasonable rate was, in his opinion, a judicial question and should be left to the courts.<sup>43</sup>

Three bills were passed during this period involving the surrender of governmental powers, one in each of the sessions 1857, 1867, and 1869. The first was a bill to incorporate the "Iroquois Horse Company No. Two." It proposed to incorpor-

<sup>41</sup>*H. J.*, 1869, III, pp. 529, 639.

<sup>42</sup>201 *U. S.* 400 (1906).

<sup>43</sup>*S. J.*, 1869, I, p. 471.

ate certain citizens of Iroquois, for the protection of their property against thieves and robbers. They were to possess the common rights and powers of corporations, such as perpetual existence, the right to sue and be sued, the right to adopt by-laws, levy assessments on their members, etc. The company or any of its members were authorized to arrest without warrant and bring before the proper officer any person suspected to be guilty of robbery or theft—especially horse stealing. In case of the arrest of an innocent person, they were not to be held liable unless it could be shown that they had acted with malice. Apparently they were not limited to acting within Iroquois county. Governor Bissell was unsparing in his criticism of this bill. It was characterized as dangerous and outrageous. "Such an outrage upon what we are accustomed to regard as sacred rights," he said, "has probably no precedent in any free country."<sup>44</sup>

The second bill of this class was "an act to amend the charter of the Chicago Law Institute." It provided that all existing members of the Chicago Law Institute and all future members were to become notaries public and have certificates issued to them by the secretary of state upon the receipt of a statement from the secretary of the institute. Governor Oglesby disapproved this bill stating that there was only two constitutional methods of filling an office—either by election or appointment. He also objected to the provision authorizing the secretary of state to issue commissions. Under the constitution all officers were to receive their commissions from the governor.<sup>45</sup>

The third and last bill of this class was like the one passed in 1857. It proposed to incorporate the "Mercantile Protective Insurance Company of Chicago"—an association of private persons to protect themselves against thieves, robbers, and burglars. The bill authorized the company to organize a uniform force of watchmen with power to make arrest and whom all state and local officers were bound to respect. Governor Palmer in his veto message recommended that people should take more care in the election of police officers. Then it would not be necessary to invest private persons with police power.<sup>46</sup>

Nevada had just become admitted to the Union. Up to the time of her admission she had been protected by Congress. As if to remind her that her position in the sisterhood of states

<sup>44</sup>*H. J.*, 1859, p. 60.

<sup>45</sup>*S. J.*, 1867, pp. 1230-1231.

<sup>46</sup>*H. J.*, 1869, III, pp. 540, 645-646.

involved not only privileges but obligations as well, the general assembly of Illinois in 1869 passed two bills incorporating mining companies to do business in Nevada. They were to be confined exclusively to that state and were granted extensive powers and privileges there. Governor Palmer in returning the bills said that Illinois could not thus legislate for Nevada. The proper place for the persons interested in mining in Nevada to go to get their charter would be to that state. If states could be permitted to legislate for one another in this manner serious consequences would follow.<sup>47</sup>

One of the safeguards in the constitution of 1848 against the evils of private legislation was found in section 23 of Article III, which provided in part that no private or local law passed by the general assembly should contain more than one subject and that that should be clearly expressed in the title. Three bills were found conflicting with the provision. The first was the bill of 1863 already discussed, which under cover of the title "an act to incorporate the Wabash Railway Company" attempted to surrender the principal streets and bridges in Chicago to a public service corporation. The two others were passed in 1869. One was an act abolishing the court of common pleas in the city of Cairo. In addition it proposed to raise the salaries of the marshal and ex-marshal of Cairo. By the insertion of this provision Governor Palmer held that the bill had been made to conflict with two sections of article III of the constitution, section 23 by including more than one subject, and section 33 which provided that "the general assembly shall never grant or authorize extra compensation for any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into."<sup>48</sup> The other was a bill to incorporate a real estate concern. It carried the seductive title "the Southern Illinois Emigrant Aid Society." Governor Palmer upon reading the title of the bill had been led to expect to find a charter for a charitable institution. What he found was a company authorized to loan money and buy and sell land. The misleading name of the corporation was evidently adopted to enable the incorporators to prey on the ignorance and confidence of the settlers.<sup>49</sup>

*Vetoes on Grounds of Policy.*—The fifty-three bills returned on grounds of policy or expediency will be discussed under the following general classification: returned upon request, private

<sup>47</sup>S. J., 1869, II, pp. 739, 885-886.

<sup>48</sup>S. J., 1869, I, pp. 428-429.

<sup>49</sup>S. J., 1869, II, pp. 890-891.



corporations, public corporations, fees of public officers, and miscellaneous. Seven bills were returned in compliance with the requests of one or the other of the houses of the general assembly. The two bills of 1849 incorporating the Illinois Coal Company and the Belleville and Illinoistown Railroad Company respectively have already been noted. The former originated in the house of representatives and the latter in the senate. Owing to a misunderstanding between the two houses the house of representatives requested the governor to disapprove the senate bill. The senate in turn requested the disapproval of the house bill. The outcome, as we have seen, was a joint resolution requesting the governor to approve both bills.

In 1861 the house of representatives requested the return to the senate of a senate bill to regulate practice in the fifth judicial circuit, alleging in their request that they had passed it without thoroughly understanding some of its features.<sup>50</sup> The remaining four bills of this class were house bills passed in 1869. Their return was asked in one resolution. As a result of their return two were amended and one was dropped, and in the case of the fourth a substitute was adopted.<sup>51</sup>

It seems desirable to mention in this connection a bill returned in 1869 in compliance with a request of private citizens. This was a bill for "an act to legalize the transfer of certain franchises and rights of action to the Rockford, Rock Island and St. Louis Railroad Company." A petition signed by 1200 citizens of Cass county requesting its rejection was presented to Governor Palmer. The latter in returning it to the house stated that he was in possession of no information that would justify him in acting one way or the other, but that the size of the petition was such as to warrant him in returning it for reconsideration. It is perhaps significant that the bill was dropped.<sup>52</sup>

One of the most serious evils of the period from 1848 to 1870 was the practice of special legislation and especially that of creating special private corporations. Twenty-three of the bills returned on the grounds of policy during this period dealt with special private corporations. Nine were attempts to create corporations for the purpose of dealing in land. Three were passed in 1865 and six in 1869. Governor Oglesby in vetoing the three bills of 1865 laid the foundation for a policy denying corporate organizations to mere real estate firms. He urged that to justify

<sup>50</sup>*S. J.*, 1861, p. 587.

<sup>51</sup>*H. J.*, 1869, III, pp. 609, 618, 624, 650, 653, 679, 764; *S. J.*, II, p. 944.

<sup>52</sup>*H. J.*, 1869, III, p. 604.

the grant of corporate powers and privileges there should be some commensurate benefit to the public. In the bills before him he could see no such benefits. Indeed, two of these companies, the Illinois Land Company to be located in East St. Louis, and the Brooklyn Land Company to be located in South Chicago, were clearly organized to own and hold large tracts of real estate contrary to the best interests of these communities and without the risks attendant upon individual ownership.<sup>53</sup> Governor Palmer in 1869 followed this policy adopted by Governor Oglesby. He disapproved six bills authorizing the formation of mere land companies. He followed the line of objections raised by the latter, as will be seen from an examination of his veto of the bill to incorporate the Illinois Land Company. This was doubtless another attempt made by the same concern which had been refused a charter of incorporation in 1865. The governor had learned that it was a concern owning 1200 acres of valuable land in East St. Louis. It was, he held, an attempt to escape the embarrassments usually incident to general ownership of land such as division of the property on account of death or individual failure. The bill he considered contrary to the public interest. Here was an attempt to create speculative values and hence make it more difficult for the people to own homes. It was an attempt to take a certain block of land off the market and at some future time reap an unearned reward.<sup>54</sup>

Eight private incorporation bills were disapproved because they granted too great powers in general. Two of these granted privileges and powers not enjoyed by other corporations engaged in the same line of business.<sup>55</sup> Two others made it possible to evade the usury laws and charge a high rate of interest.<sup>56</sup> In the other cases of this group of bills the powers granted were generally objected to as being "too great," "enormous" and the like. One case may be cited, the bill to incorporate the Massac Manufacturing Company. It was to enjoy perpetual existence, and was authorized to issue stock up to \$1,000,000. As far as Governor Palmer was able to see it might go into any sort of business where it might "drive out competition whether corpor-

<sup>53</sup>*S. J.*, 1867, pp. 12, 13, 14.

<sup>54</sup>*H. J.*, 1869, III, pp. 531, 534, 535, 635, 642, 762; *S. J.*, II, pp. 844, 883-884, 887-889.

<sup>55</sup>*S. J.*, 1854, p. 188; 1869, II, p. 738.

<sup>56</sup>*H. J.*, 1855, p. 699; 1869, III, pp. 532, 645.

ations or individuals." He stated that he felt himself called upon to make an earnest protest against such a bill.<sup>57</sup>

Two interesting bills were disapproved in 1865. They are interesting chiefly because they show to what absurd extremes a legislature may go. The most important of them was a bill to incorporate the "Quincy Board of Water Works." It granted a perpetual franchise with a monopoly in furnishing water for the city. The corporation was given unrestricted power to fix rates, and there was no provision for legislative control.<sup>58</sup> The less important of the two was a bill to incorporate the "McLean County Dairy and Cheese Company." It granted the incorporators exclusive right to manufacture cheese in McLean county for ten years. "I am unable to see," said Governor Oglesby, facetiously in his message of disapproval, "why Mr. Lowery, Mr. Matson, and Mr. Hall have any more right to manufacture all the cheese in McLean county for ten years than they have to eat all the cheese in McLean county for the same number of years."<sup>59</sup>

Four years later two bills were passed for the purpose of establishing the Massac County Agricultural and Fair Association and the Logan County Agricultural Society and Driving Park Association. Under cover of an apparent public purpose as the titles would indicate, it was attempted to exempt their property from taxation. In addition they were empowered to appoint their own police officers, who might make arrests without warrant. Governor Palmer found that they were mere private undertakings for profit and he could therefore not approve them.<sup>60</sup>

A bill to incorporate the Union Life Insurance Company passed in 1869 was disapproved because it attempted to make the state the custodian of certain funds of this company. It provided that certain funds should be deposited with the secretary of the treasury who was to give his receipt therefor. It provided further that "such receipt shall be a pledge in good faith upon the state of Illinois for the safe keeping of such deposit." Governor Palmer did not think it proper to make the state carry this risk inasmuch as it had no interest in the undertaking.<sup>61</sup>

During the same session Governor Palmer also disapproved a

<sup>57</sup>*S. J.*, 1869, I, p. 423; II, pp. 883-884; *H. J.*, III, pp. 535, 536, 645, 646.

<sup>58</sup>*H. J.*, 1867, p. 12.

<sup>59</sup>*S. J.*, 1867, p. 11.

<sup>60</sup>*H. J.*, 1869, III, pp. 543, 636, 643.

<sup>61</sup>*H. J.*, 1869, III, pp. 542, 645.

bill to incorporate the Western Commercial Agency. This was an attempt to establish a corporation to collect information useful to business men. Presumably one of its functions would have been to investigate the financial conditions of men and business firms in whom their clients might have an interest. Governor Palmer held that such a firm might do a good deal of harm to the credit of any one whom they might investigate and their liability for damages should be provided for if the bill were to become a law. But he believed that this sort of business might very well be left to private persons.<sup>62</sup>

Four bills affecting cities and towns were disapproved. Three were bills for amending the charters of Joliet, the town of Goleonda, and the village of Lockport respectively. Attention has already been called to the act amending the charter of the city of Joliet. It provided that only persons who had been resident taxpayers and freeholders for two years preceding the election should be qualified to hold the office of mayor or alderman. It moreover provided that only tax payers and freeholders of one year's standing should be qualified to vote on any measure tending to create indebtedness. Governor Palmer believed that it might be wise to create certain residence and property qualifications for the office of mayor. But the franchise, he held, should certainly not be thus narrowed. Freeholders were not superior, neither in wisdom nor patriotism, to the rest of the population.<sup>63</sup> The amendment proposed to the charter of the town of Goleonda would have made it a misdemeanor to fail to work on the streets, without regard to whether or not persons were physically able to do so or prevented by poverty from paying for it.<sup>64</sup> There were several objections to the bill passed to amend the charter of Lockport. It gave the trustees power to suppress hackmen, draymen, carters, porters, omnibus drivers, cabmen, carmen, and all others who should pursue like occupations. It granted very large powers to the police magistrates and justices of the peace, raising their jurisdiction to amounts involving as high as \$500, authorizing them to send their processes to any part of the county, and, finally, denying the right of appeal in cases arising under the town ordinances and not involving more than \$500. In the substitute that was passed all the objections of

<sup>62</sup>*H. J.*, 1869, III, p. 533.

<sup>63</sup>*S. J.*, 1869, II, pp. 380-381.

<sup>64</sup>*S. J.*, 1869, II, pp. 887, 889.

Governor Palmer were obviated.<sup>65</sup> The fourth bill of this class was for an act to incorporate the city of Carlyle. It attached the surrounding farm district to the city for school purposes. But though it provided that the farmers should be taxed for school purposes it did not give them any voice in the control of the schools.<sup>66</sup>

During the period under consideration three apportionment bills were disapproved. Two of these, one in 1857 and 1859 respectively, were to reapportion representation in the general assembly. The third was a bill in 1863 to reapportion representation in Congress. The first of these had been inadvertently signed by Governor Bissell and the report of this fact was transmitted to the house by his clerk, though the bill had not left his possession. As soon as he discovered his error and within thirty minutes after his clerk had reported his approval to the house of representatives the governor corrected his error and reported it to the house. The house refused to accept the correction. During the same year the case came before the supreme court where Judge Caton, delivering the opinion of the court, held that the governor could change his mind and correct his errors as long as the bill was in his possession.<sup>67</sup> The following general assembly also passed an apportionment bill. It was likewise disapproved by Governor Bissell. The reasons given were that the effect of the bill would be to continue political control in the hands of a minority of the people. The bill was also defective in that it placed one county in two senatorial districts, and was unconstitutional in that it violated section 10 of article III in the matter of excess representation.<sup>68</sup>

The congressional reapportionment bill of 1863 was also a "gerrymander." Governor Yates in disapproving it said that it was not better than the existing law as regarded the conveniences of the electors of the state, and that the districts were not so properly formed with regard to territory and population. "In these above respects it shows more regard for party advantage than it does for the rights, privileges, and conveniences of the

<sup>65</sup>*H. J.*, 1869, II, pp. 278, 345, 445; *S. J.*, I, p. 838; *Private Laws*, IV, pp. 323-324.

<sup>66</sup>*H. J.*, 1869, III, pp. 534, 605, 692.

<sup>67</sup>*H. J.*, 1857, pp. 1004, 1018, 1022, 1023; *People ex rel. v. Hatch*, 19 *Ill.*, 282.

<sup>68</sup>*H. J.*, 1859, pp. 884 ff.

people of the state at large." It was passed over the veto in the senate, but failed to carry in the house of representatives.<sup>69</sup>

The practice of regulating the fees of county officers by special act was another source of confusion. Governor Palmer disapproved six such bills in 1869. He called attention to the fact that the general assembly in 1867 had passed eleven such bills causing a great deal of confusion and overlapping. The bills presented to him were local and partial while the subject was general and could well be covered by a general law.<sup>70</sup>

In addition to the above vetoes which it has been found possible to classify more or less, fourteen others were made on various grounds of policy and expediency. It is not thought desirable to discuss them all here. The three most important will be mentioned, however. Two of these have already been noted in connection with the discussion of bills passed over the veto, namely, the Banking Act of 1851 and the Lake Front Act of 1869. The main objection of Governor French to the Bank Act were, that it did not provide definitely for a reserve for the redemption of the notes to be issued, that it did not provide a safe and adequate personal liability on the part of the stockholders for redemption of notes, and that under the law the banks might become distributing agencies for foreign bank paper.<sup>71</sup> The Lake Front Bill, among other things, granted 1050 acres of land to the Illinois Central Railroad for the sum of \$800,000, payable in four installments within a year. Section six of the bill provided that if at the end of four months the city of Chicago should not have released all its claims and interest in the land the company should be relieved from further payment. Governor Palmer objected that the \$600,000 remaining in the hands of the company in such event should not be cancelled. He had found by consulting the board of public works in Chicago that the lands proposed to be vested in the Illinois Central Railroad Company for \$800,000, and possibly for \$200,000, were worth \$2,600,000 market value. The company should be required to pay full value for the land in question. He also objected to the grant of submerged lands capable of affording 70,000 lineal feet of dock front. A relatively small expenditure would raise its value to \$1,000 per front foot. The bill did not require the Illinois Central to improve the land. What was worse, it deprived the state

<sup>69</sup>*H. J.*, 1863, pp. 654, 672-673.

<sup>70</sup>*H. J.*, 1869, III, pp. 530, 633, 643, 645, 661, 747-748; *S. J.*, II, pp. 932-933, 961, 966.

<sup>71</sup>*H. J.*, 1851, pp. 474-479; *S. J.*, p. 421.

of the power to require it later. It failed to reserve to the state the right to limit profits made on this property for the relief of commerce. The bill should be amended in the respects indicated. It should also be amended so as to enable the state to receive seven per cent of the gross receipts from the property granted and from all improvements made thereon. The property should, finally, be made subject to taxation in all respects. As has been stated, the bill was repassed in spite of the governor's objections.<sup>72</sup>

Repeated attention has been called to the practice prevalent during this period of encouraging public subscription to stock of corporations—especially railroads. The result was a serious increase in the debts of local communities leading as a further result to pressure upon the general assembly for relief. The last case of the use of the veto power to influence the policy of the state to be noted in this chapter arose in connection with this situation. A bill was passed in 1869 amending an act of 1865 relating to county and city debts. Governor Palmer disapproved it. He stated in his message that it was one of a class of bills the object of which was to cause the state to assume the local debts. But if the people of the state wished to assume this burden, it would have to be done by the representatives of the people without the governor's consent.<sup>73</sup>

*Vetoes of Defective Bills.*—Under the council of revision a relatively large number of bills were disapproved on account of defectiveness. The exact number was thirty-three out of a total of one hundred and four or nearly one-third. During the period under consideration the number was much smaller both relatively and absolutely. Out of a total of one hundred bills returned by the governor only eight were returned as defective, and six of these were returned during the legislative session of 1869.

It does not seem, however, that the smaller number of bills thus returned warrants the conclusion that legislators were more careful or capable during the period from 1848 to 1870 than they were during the earlier period. Indeed there are many indications that they were much less careful. The fact seems to be that the council of revision—a judicial body—subjected bills to a much more searching test than the governor was able to do.

<sup>72</sup>H. J., 1869, III, pp. 517 ff., 638; S. J., II, p. 922.

<sup>73</sup>S. J., 1869, II, pp. 844, 883-884, 898-899.

The first bill to be returned on account of defectiveness was passed by the general assembly of 1859. It was an act to provide for binding the laws. It conflicted in some of its provisions with laws ordering their distribution.<sup>74</sup> A bill to establish graded schools in Nashville was returned in 1869. A strange error had crept into the bill. While Nashville is in Washington county, the bill required the board of education to furnish an abstract of all children under twenty-one years of age to the school commissioner of Knox county.<sup>75</sup>

The rest of the bills of this class were all superfluous. In 1865 a bill for an act to enable Pike county to aid drafted men to procure substitutes was returned. The governor gave as his reason that "the member from Pike" had informed him that more satisfactory legislation had been passed by the general assembly since the bill in question had been passed.<sup>76</sup> In 1869 one bill had been passed obviating certain defects in the one returned.<sup>77</sup> Another bill to change the time of electing school trustees was returned as superfluous because a general act had been passed on the subject. Three bills were returned because identical bills had already been passed and approved.<sup>78</sup>

#### CONCLUDING REMARKS ON THE VETO POWER FROM 1848-1870

Attention may again be called to the fact that the first governor under the constitution of 1848 felt that he had been deprived of the veto power. We have seen that that was not true—that indeed he had just been given the veto power. We have also seen that it was effective generally up to 1869 and that even during that session of the general assembly only seventeen bills were passed over the veto.

Nevertheless, as the situation developed, a mere suspensive veto proved adequate. Not only was it necessary to strengthen the veto power, but other safeguards were needed to check the legislative department of the government. One look at the legislative riot in Illinois between the end of the civil war and 1870 will prove sufficient. Judge Dillon had said of the general assembly in 1857 that "It is probably true that more corporations were created by the legislature of Illinois at its last session than existed in the whole civilized world at the com-

<sup>74</sup>*S. J.*, 1861, pp. 11, 18, 117.

<sup>75</sup>*H. J.*, 1869, III, pp. 534, 642.

<sup>76</sup>*H. J.*, 1865, pp. 973, 975.

<sup>77</sup>*H. J.*, 1869, III, p. 221.

<sup>78</sup>*S. J.*, 1869, III, pp. 740, 891.



mencement of the present century.”<sup>79</sup> But the movement had merely begun.

The growth of private legislation was one of the most serious evils of the period. In 1857 the general assembly enacted 563 special laws. Not until 1865 was this number equalled or surpassed. In that year it reached 724. From there on it mounted higher and higher, to 1071 in 1867 and 1188 in 1869. Those were years of multifarious and indiscriminate incorporation. Success in 1865 and further success in 1867 had “merely whetted the appetites” of special privilege hunters. In 1869—after the people in November, 1868, had voted in favor of a constitutional revision—they “moved on the capitol.”<sup>80</sup> Bills to incorporate seem to have been passed automatically. No scheme, however fantastic, seems to have been proposed in vain.<sup>81</sup>

Governor Palmer had strongly deprecated the practice of special legislation in his inaugural address of 1869.<sup>82</sup> We have seen that he disapproved a number of such bills. But he was simply helpless against the avalanche of bills that came down upon him. It is also a question whether—if he had returned say three or four hundred—they would not all have been passed over his veto.

The attitude of the general assembly towards its functions was wholly unworthy of that body. Article III section 23 of the constitution provided that “Every bill shall be read on three different days in each house, unless, in case of urgency, three-fourths of the house where such bill is depending shall deem it expedient to dispense with this rule..” This section was treated like a dead letter. Let us take, for example, a few facts from the end of the session of 1869. On March 10th, the day before adjournment, the house of representatives read twice and referred to committees fifty-three bills from eight o’clock to nine-forty in the evening.<sup>83</sup>

Bills were rushed through at the end of the session. Thus, on March 10, 1869, the house of representatives, in addition to the bills on first and second reading referred to above, passed one hundred and two bills on third reading. Moreover, fourteen

<sup>79</sup>Dillon, *Municipal Corporations*, paragraph 37a.

<sup>80</sup>Davidson and Stuvé, *History of Illinois*, pp. 912-913, 933, 937.

<sup>81</sup>*H. J.*, 1867, p. 12; 1869, III, p. 338, 540, 645-646; *S. J.*, 1867, pp. 11, 1230-1231; 1869, I, p. 471.

<sup>82</sup>*Personal Recollections*, pp. 285-287.

<sup>83</sup>*H. J.*, 1869, III, pp. 325-340.

of these were passed unanimously and sixty-seven with only one dissenting vote. In other words, out of the hundred and two bills, eighty-one passed by practically unanimous votes.<sup>84</sup> If we turn to the senate, the situation is still worse. During the forenoon session of March 10, 1869, four hundred and ninety-five bills were passed on third reading and only one was rejected. Out of the whole number passed two hundred and eighty-seven were passed unanimously. In the afternoon session, lasting from two-thirty to seven, ninety-five bills were passed and one rejected. Of the total number passed seventy-nine were passed unanimously. But it must not be understood that the dissenting votes—at least in the senate—meant anything. Maybe Mr. Tinchler would get tired of voting affirmatively and the vote would run 19 to 1 for a series of bills; or Messrs. Adams, Boyd, and Epler would tire and the vote would run 18 to 3; or again, perhaps Messrs. Chittenden, Foot and Ward would vote negatively for a while and the vote would stand 21 to 3; or Mr. Ward alone would oppose and it would run 21 to 1 for a while.<sup>85</sup>

The number of bills sent to the governor for consideration at the end of that session was simply appalling. The general assembly took a recess from March 11 to April 14. On that day Governor Palmer reported that he had approved one thousand and fifty-four bills in the interval.<sup>86</sup> The fact is that the committee on enrollment had remained at the state house and laid before him from time to time between March 11 and April 1 one thousand and seventy-seven bills.<sup>87</sup>

In the discussion of the general development of the veto power in Chapter I it was suggested that the growth of that power was an indication of a marked growth of the confidence of the people in the governor. Without making the statement general, it is safe to say, for Illinois at least, that it was an inevitable result of a growing distrust in the legislature. The tyranny of the many had proved intolerable. On the other hand the governor had done something to counteract that evil. The people were now ready to strengthen his hand very considerably.

<sup>84</sup>*H. J.*, 1869, III, pp. 241 ff.

<sup>85</sup>*S. J.*, 1869, II, pp. 444-660.

<sup>86</sup>*S. J.*, 1869, II, pp. 741-789.

<sup>87</sup>*S. J.*, 1869, II, pp. 795-844.

III. TABLE SHOWING THE NUMBER AND DISTRIBUTION OF BILLS VETOED, THE ACTION TAKEN UPON VETOES, THE REASONS FOR DISAPPROVAL, AND THE NUMBER OF LAWS ENACTED, 1848-1870.

Governor	Year	Laws enacted	Laws without approval	Vetoés			Action on Vetoés			Grounds of Veto		
				Number	House Bills	Senate Bills	Passed over	Amended	Dropped	Constitutional	Policy	Defective
Aug. C.	1848-50	280	0	2	1	1	0	0	0	0	2	0
French .....	1850-52	470	0	1	1	0	1	0	0	0	1	0
J. C.	1852-54	664	0	3	1	2	0	0	3	0	3	0
Matteson ....	1854-56	509	0	2	0	2	0	0	2	0	2	0
Wm. K.	1856-58	784	0	3	3	0	0	0	3	3	0	0
Bissell .....	1858-60	393	0	4	1	3	0	0	4	1	1	1
Richard	1860-62	538	0	2	1	1	0	1	1	0	2	0
Yates .....	1862-64	186	1	2	1	1	0	0	2	2	0	0
Richard J.	1864-66	840	0	7	3	4	1	0	6	1	5	1
Oglesby .....	1866-68	1273	7	2	1	1	0	0	2	2	0	0
J. M. Palmer	1868-70	1573	29	72	38	34	17	1	52	29	37	6
-	Totals	7510	37	100	51	49	19	2	75	38	53	8

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## CHAPTER IV

### THE VETO POWER UNDER THE CONSTITUTION OF 1870

Up to 1870 the governor of Illinois had had merely a suspensive veto. The same majority which was required to pass a bill on final reading could pass a bill over his disapproval. The constitutional convention of 1862 had proposed a strengthening of the veto power. The veto provision of the proposed constitution, found in section 14 of Article V, required a two-thirds vote of the whole membership of each house of the general assembly to override the governor's disapproval. It would have allowed the governor ten days for the consideration of bills after adjournment as well as during the session.<sup>1</sup>

However, this constitution was not ratified by the people. Though the state had been Republican at the election in 1860, nevertheless a majority of the members of the constitutional convention were Democrats.<sup>2</sup> The Republican press found it comparatively easy to discredit their work.<sup>3</sup> The conviction itself played into the hands of its enemies by pretensions to sovereign powers.<sup>4</sup>

#### THE VETO PROVISIONS OF OTHER STATES IN 1870

In 1870 there were thirty-seven states in the Union. Only five of these (Delaware, North Carolina, Ohio, Rhode Island, and West Virginia) did not have the veto power. A brief analysis will be made here of the situation with regard to the veto power in the other thirty-two states, chiefly on the basis of the vote required to override the veto and the time granted the governor for the consideration of bills.

The vote required to override the veto varied from a mere majority of those present to two-thirds of the total membership

<sup>1</sup>*Journal of the Constitutional Convention*, 1862, pp. 861-862, 1072 ff.

<sup>2</sup>*Illinois State Journal*, 1862, Jan. 22, March 26; Dickerson, *The Illinois Constitutional Convention of 1862*, p. 8; Davidson and Stuvé, *op. cit.*, p. 872.

<sup>3</sup>Dickerson, *op. cit.*, pp. 48 ff.

<sup>4</sup>*Illinois State Journal*, 1862, Jan. 15, Feb. 5 and 19; *Debates of the Constitutional Convention*, 1869, I, pp. 10-11; Dickerson, *op. cit.*, pp. 32 ff.

of each house of the legislature. Connecticut alone permitted a bare majority of the members present in either house to override the veto. Nine states (Alabama, Arkansas, Indiana, Kentucky, Missouri, New Jersey, Tennessee, Vermont, and Illinois up to 1870) required a majority of the total membership of each house. One state, Maryland, required a three-fifths vote of the total membership.

Almost two-thirds of the states having the veto power now required a two-thirds vote to pass a bill over the governor's disapproval. Nine of these (California, Florida, Iowa, Nebraska, New York, Oregon, Texas, Virginia, and Wisconsin) based the majority required on the number present. Twelve states (Georgia, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, Pennsylvania and South Carolina) required two-thirds of the total membership.

The time allowed the governor for the consideration of bills during the session of the legislature varied from three to ten days. Eight states (Arkansas, Indiana, Iowa, Kansas, Minnesota, Nebraska, South Carolina, and Wisconsin) granted only three days. The tendency to place the time at five days had already become clear. Fifteen states (Alabama, Florida, Georgia, Louisiana, Maine, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, Oregon, Tennessee, Texas<sup>5</sup> Vermont, and Virginia) allowed five days. Maryland, which was unique in requiring a three-fifths vote of the total membership of the legislature to repass a bill, was also alone in granting the governor six days for the consideration of bills during the session. Eight states (California, Connecticut, Illinois, Kentucky, Michigan, Missouri, New York, and Pennsylvania) granted ten days.

It will be recalled that the early constitutions made no specific provisions as to the time allowed the governors for the consideration of bills after the adjournment of the legislature. This defect was remedied by Michigan in the constitution of 1850. By 1870 nine states had adopted this method—granting the governor a definite time after adjournment to consider bills. Two states, Arkansas and Minnesota, allowed only three days. Three states, Indiana, Michigan and Oregon, granted five. Three, Florida, Missouri and Nevada, granted ten. Iowa had the most satisfactory provision, granting thirty days.

A tendency to give the governor longer time for the considera-

<sup>5</sup>The constitution of Texas provided, however, that any bill passed one day previous to adjournment and not returned by the governor before adjournment should become a law as if signed by him.

tion of bills after adjournment of the legislature than during the session had already begun to appear. It is true that Michigan granted less time after adjournment than during the session. Four states, Arkansas, Minnesota, Missouri and Oregon, granted the same length of time. But four states, namely, Florida, Indiana<sup>6</sup> Iowa, and Nevada, had lengthened the time. In both Florida and Nevada, the time allowed during the session was five days, and after adjournment, ten days. In Indiana and Iowa it was three days during the session, and five and thirty respectively after adjournment.

Ten states (Indiana, Illinois, Kentucky, Louisiana, Maine, Mississippi, Nevada, Oregon, Pennsylvania, and South Carolina<sup>7</sup>) required that the vetoes made after adjournment should be returned to the following session of the legislature for reconsideration, usually within the first three days of such session. We have seen from our study of the council of revision and the transition period from 1848-1870 that similar provisions in the Illinois constitution proved quite useless.

Only two states had provided that the governor might veto separate and distinct items in appropriation bills. They were Georgia and Texas, both of which had adopted such a provision in their reconstruction constitutions of 1868. As was pointed out in Chapter I, this precedent had been set by the constitution of the Confederate States.

#### THE VETO PROVISION IN THE CONSTITUTION OF 1870

The veto provision in the constitution of Illinois of 1848 was weak in several respects. It required only a majority of the members of each house of the general assembly to pass a bill over

<sup>6</sup>Indiana also provided that no bill should be presented to the governor within the last two days of the legislative session.

<sup>7</sup>The constitution of South Carolina of 1868 carried a strange error. It provided that "if a bill or joint resolution shall not be returned by the Governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by their adjournment, prevented its return, in which case it shall *not* have such force and effect unless returned within two days after their next meeting." See Thorpe, *op. cit.*, VI, p. 3229; *Proceedings of the Constitutional Convention of South Carolina, 1868*, p. 854. The error was corrected in the constitution of 1895 by dropping the word "not", thus providing that bills in the hands of the governor after adjournment were to become laws unless returned within the first two days of the next meeting of the legislature.

the governor's disapproval. While it allowed the governor ten days for the consideration of bills during the session, the fact that it granted no definite time after adjournment was unsatisfactory. Finally, it did not authorize him to veto items in appropriation bills. These defects were remedied in the constitution of 1870 and by an amendment adopted in 1884.

The constitutional convention of 1869-1870 was overwhelmingly in favor of strengthening the veto power. The flood of special acts enacted by recent legislatures were fresh in the minds of the members. So were also Governor Palmer's heroic efforts of 1869 to stem the tide. But it was equally well realized that he had been largely helpless against the will of the general assembly.

Before the convention had appointed its committees, a resolution urging that the veto power be strengthened was offered.<sup>8</sup> One of the first things asked for was a reprint of Governor Palmer's veto messages of 1869, together with a report of the action of the general assembly on the vetoes.<sup>9</sup> Many speeches and resolutions referred to the evils of special legislation and expressed the belief that a strong veto power would have checked it.<sup>10</sup> To quote one member, Mr. Allen of Crawford county, supporting the strong veto power proposed by the committee on the executive, he said that an effective veto would have saved the state from "the curse of much of the vicious legislation that has prevailed for the last few years."<sup>11</sup>

The committee of nine, to whom the task of drafting the article on the executive department was entrusted, reported on January 26, 1870. They unanimously reported a veto section providing that a two-thirds vote in each house should be required to override the governor's disapproval, and that the governor should have ten days for the consideration of bills both during the session and after adjournment.<sup>12</sup>

On February 19 the article on the executive department was taken up for consideration. Mr. Elliott Anthony of Chicago, the chairman of the committee of nine, referring to section 20 of the proposed article, said: "Had our present governor been clothed with this veto power, what untold miseries he would have saved us from." Replying to critics of the so-called one-

<sup>8</sup>*Debates*, p. 67.

<sup>9</sup>*Ibid.*, p. 90.

<sup>10</sup>*Ibid.*, pp. 90, 151-153, 213, 1375.

<sup>11</sup>*Ibid.*, p. 1377.

<sup>12</sup>*Ibid.*, pp. 289-290.

man power, he concluded that the argument did not turn upon that point, but upon the facts proved by experience, that the legislature was not infallible, that love of power might cause it to encroach upon the other departments, that factional strife might prevent deliberation, and that it might be led astray by haste or by the impressions of the moment. He believed that it was necessary to give the executive the veto power to enable him to defend himself and to increase the chances of the community against the enactment of bad laws, either through haste, inadvertence, or design. As for the argument that the veto power might be invoked to prevent the passage of good laws, he held that that was a negligible danger.<sup>13</sup>

Unsuccessful efforts were made to reduce the majority required to override the veto, on February 22 and April 20. Both would have reduced it to a majority of the total membership as under the constitution of 1848.<sup>14</sup> The attitude of the convention is shown by the vote on two amendments offered on April 20. The first was an attempt to have inserted the provision of the constitution of 1848, that bills vetoed after adjournment should be submitted to the next meeting of the general assembly for reconsideration. This was rejected by a vote of 47 to 11. The second was a proposal that the general assembly, if it should fail to pass a bill over the veto, might by majority vote submit it to the people for adoption or rejection. This amendment was rejected by the vote of 53 to 12.<sup>15</sup>

The veto provision as adopted by the convention is found in section 16 of Article V of the constitution. It provides that:—

Every bill passed by the General Assembly shall, before it becomes a law, be presented to the Governor. If he approves, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If, then, two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be considered; and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the Governor. But in all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal.<sup>16</sup> Any bill which shall not be returned by the

<sup>13</sup>*Debates*, pp. 745 ff.

<sup>14</sup>*Ibid.*, pp. 791-792, 1375-1376.

<sup>15</sup>*Ibid.*, pp. 1376-1377.

<sup>16</sup>Here was inserted in 1884 two paragraphs authorizing the governor to veto items in appropriation bills.



Governor within ten days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the General Assembly shall, by their adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the Secretary of State, within ten days after such adjournment, or become a law.<sup>17</sup>

#### THE VETO OF APPROPRIATION ITEMS

The constitutional convention of 1870 did not complete the task of perfecting the veto power. Two states, Georgia and Texas, had in 1868 adopted provisions enabling their governors to veto items in appropriation bills. Illinois did not adopt this feature until 1884. In the meantime eleven other states, in addition to Georgia and Texas, had adopted similar provisions. West Virginia adopted it in 1872; Pennsylvania in 1873; Arkansas and New York in 1874; Alabama, Missouri, Nebraska, and New Jersey in 1875; Colorado and Minnesota in 1876; and California in 1879.

Agitation started in Illinois early in the eighties. A resolution offered by Senator Kelly of Adams county during the session of 1881 is of interest as pointing toward an early adoption of the power to veto items in appropriation bills. The resolution proposed read:—

Whereas, appropriation bills have often been delayed to nearly the end of the session before they are put upon their passage, and reductions that have been carefully considered and adopted are frequently reinstated by committees of conference of the two houses without much deliberation, at the closing hours of the session; therefore,

*Resolved*, that all appropriation bills be considered and disposed of at least three days before the day fixed for adjournment.

Though the resolution failed it is of interest to note that it received twenty votes as against twenty-three opposed.<sup>18</sup>

Governor Cullom in his regular message to the general assembly of 1883 recommended that an amendment to the constitution giving the governor the power to veto items in appropriation bills be submitted to the people. He called attention to the fact that many state governors possessed this power; that the mayors of Illinois had been given this power in 1875; and that President Arthur had urged its adoption for the United States.<sup>19</sup> Early in the session, Senator Wm. R. Archer of Pike

<sup>17</sup>*Debates*, II, p. 1874; Hurd, *op. cit.*, p. Ixii.

<sup>18</sup>*S. J.*, 1881, pp. 116, 129.

<sup>19</sup>*S. J.*, 1883, p. 42.

county introduced a resolution for an amendment to the constitution requiring appropriation bills to be itemized and giving the governor the power to veto distinct items of sections.<sup>20</sup> The resolution without change was adopted by both houses of the general assembly by overwhelming majorities—in the senate by the vote of 35 to 7, and in the house of representatives by 107 to 2.<sup>21</sup> It was submitted to the people for ratification at the general election of November 4, 1884, where it was approved by the vote of 428,831 to 60,244, out of a total vote of 673,096 cast at the election.<sup>22</sup> The popular vote may be of less significance than at first appears, however. Parties were required by law to express their preference for or against an amendment by printing the affirmative or the negative of the question on the ballot. All votes were then counted affirmatively or negatively according to such party action unless the ballots were "scratched."<sup>23</sup>

The amendment adopted was inserted in the body of section 16 of Article V of the constitution and reads as follows:—

Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections, and if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the Governor with his objections; and if any item or section of said bill not approved by the Governor shall be passed by two-thirds of the members elected to each of the two houses of the General Assembly, it shall become part of said law, notwithstanding the objections of the Governor.<sup>24</sup>

<sup>20</sup>S. J., 1883, p. 111. Senator Archer had been a member of the constitutional conventions of 1847 and 1869, in both of which he had urged the adoption of a strong veto power. See *Illinois State Register*, July 23, 1847; *Debates of the Constitutional Convention*, 1869, I, p. 152.

<sup>21</sup>S. J., 1883, p. 340; H. J., p. 897.

<sup>22</sup>Thorpe, *op. cit.*, II, p. 1025; *Illinois Blue Book*, 1913-1914, p. 124.

<sup>23</sup>Gardner, "The Working of the state-wide Referendum in Illinois," *American Political Science Review*, V, p. 401.

<sup>24</sup>Thorpe, *op. cit.*, II, pp. 1025-1026; Hurd, *op. cit.*, p. 1xii.

## THE USE OF THE VETO POWER, 1870-1915

*The Extent of Its Use.*—The total number of vetoes made during the period from 1870 to 1915 was 297, almost seven per cent, as compared with the 4,302 laws enacted. Only two regular legislative sessions during this period were without a veto, namely the sessions of 1881 and 1885.

During the first session of the general assembly after the adoption of the new constitution, Governor Palmer disapproved eleven bills. From this time onward to the administration of Governor Altgeld there was a period when the veto power was used very little. In three sessions only, 1873, 1877, and 1889, did the number of vetoes run up to five.

Governor Altgeld disapproved twenty-three bills, twelve in the legislative session of 1893 and eleven in the session of 1895. This was followed by a period of six years when the number of vetoes again fell below ten per session. In fact, during the administration of Governor Tanner only seven bills were vetoed, three and four during the legislative sessions of 1897 and 1899, respectively.

From the second half of the administration of Governor Yates dates the extensive use of the veto power as we know it today. During the legislative session of 1903 thirty bills were disapproved. Since that time the number has only twice fallen below thirty—namely, in 1905 and 1911, when it was twenty-eight and twenty-three respectively. In the regular and special sessions of the general assembly of 1909-1910, during the first half of Governor Deneen's second term, forty-four vetoes were made—the highest number of bills returned to any general assembly in Illinois since Governor Palmer disapproved seventy-two bills during the legislative session of 1869. The growth of the use of the veto power may be seen at a glance from the following:—

Period.	Laws Enacted.	Bills Vetoed.	Percentage.
1870-1916*	4,302	297	7.0
1870-1900	2,394	68	2.8
1900-1916*	1,908	229	12.0
1908-1910	239	44	18.0

\*Includes only the regular session of 1915.

Of the 297 bills disapproved during the period under consideration 173 were house bills while only 124 were senate bills. The governor's disapproval fell almost regularly more heavily on

house bills. In only three cases, the sessions of 1893, 1895, and 1897, were more bills returned to the senate than to the house of representatives.

Taking the whole period 1870 to 1915, 32 bills, or ten per cent of the whole number disapproved, were returned during the session of the general assembly; and 265, or ninety per cent, were returned after adjournment. The proportion of vetoes made after adjournment of the general assembly has increased steadily up to the present time. From 1870 to 1892, a period of twenty-two years, 38 vetoes were made. Of these, fifteen, or forty per cent were made during the session, while twenty-three, or sixty per cent, were made after adjournment. From 1892 to 1916, a period of twenty-four years, 259 bills were disapproved. Of these only seventeen, or six and a half per cent, were disapproved during the session, while 242, or ninety-three and a half per cent, were disapproved after adjournment. If we take the period of 1900 the percentage of bills disapproved during the legislative session falls still lower. Out of the 229 bills disapproved during that time only eleven, or four and a half per cent, were returned during the legislative session.

In the preceding discussion appropriation bills disapproved in part, under the amendment of 1884, have been included. It is of interest to note that that power was not brought into use before 1899. One bill was disapproved in part that year. But even after that there were three sessions in which no such vetoes were made namely, the sessions of 1901, 1909, and 1911. After 1900 the number of bills in which items were disapproved usually ran from four to six, but reached as high as ten during the session of 1915.

*The Effectiveness of the Veto Power, 1870-1915.*—In connection with this phase of the discussion of the veto power under the constitution of 1870 some striking facts appear. One may almost say that the veto power has been absolute. Only two bills have been passed over the governor's disapproval, the first in 1871 and the second in 1895. The first was an act authorizing the city of Quincy to subscribe for \$500,000 of capital stock in the Quincy, Missouri and Pacific Railroad Company. The railroad company was chartered in Missouri and existed wholly within that state. Governor Palmer held the bill to be clearly unconstitutional. It revived an old law by title. It regulated the fees of public officers by special act. It conflicted with the constitutional requirement regarding uniformity of taxes for municipal purposes.

Despite these and other objections the bill was passed over the veto by 35 to 10 in the senate and 133 to 2 in the house of representatives.<sup>25</sup>

The act of 1895 was in regard to the employment of convicts. It forbade the manufacture of cigars in the prisons of the state. Governor Altgeld in his message of disapproval called attention to the fact that the constitution prohibits the sale of prison labor. It was therefore necessary to employ them in some useful occupation directly. The policy of the administration had been to employ them in various lines of work, assigning not more than one hundred to any one trade so as not to burden any one especially. He pointed out that if anything the cigar industry was somewhat favored, in that only fifty-eight prisoners were engaged in that industry at the time. The argument of uncleanness he answered by saying that there was "not a neater and cleaner shop and workers in the country." Nevertheless the bill was repassed by large majorities, receiving 39 to 8 in the senate and 86 to 46 in the house of representatives.<sup>26</sup>

Another interesting fact in connection with the use of the veto power from 1870 to 1915 is the fact that only one bill was amended to meet the objections of the governor. This was a bill to amend section 3 of an act creating the Chicago Drainage District. There were slight defects in the title. In one place the preposition "to" was left out. In another phrase "obstacles" had been used instead of "obstructions," the word used in the original act. These defects and others of a similar nature would have made it necessary to take the act into court to determine its validity. Both houses of the general assembly agreed unanimously to the necessary amendments.<sup>27</sup>

#### ANALYSIS OF THE VETO MESSAGES 1870-1915

The veto messages during this period have been classified on the same principle employed in classifying the vetoes of the two preceding periods. It has been thought best to place the vetoes of items in appropriation bills in a separate group, however. Logically, they come under the class of vetoes on grounds of policy. But by separating them from the general class to

<sup>25</sup>*S. J.*, 1871, I, pp. 377-383, 425; *H. J.*, p. 505. The act was upheld in *Quincy, M. & P. R. Co., v. Morris*, 84 *Ill.*, 410 (1877).

<sup>26</sup>*S. J.*, 1895, pp. 796, 933; *H. J.*, p. 1093.

<sup>27</sup>*S. J.*, 1907-1908, pp. 412, 413, 435; *H. J.*, p. 243.

which they belong a clearer appreciation of the operation of that particular feature of the constitution will be gained.

*Vetoes on Constitutional Grounds.*

During the period under discussion eighty-nine bills were disapproved on constitutional grounds. Two were disapproved as conflicting with the constitution of the United States, eighty-seven with the constitution of Illinois.

*Constitution of the United States.*—The two bills regarded as conflicting with the constitution of the United States were passed in 1877 and 1905 respectively. The first was a bill to make silver coin legal tender for the payment of debts in Illinois. Governor Cullom in disapproving it held that it conflicted with paragraph 5 of section 8, Article I, of the constitution of the United States which gives Congress the power to coin and regulate the value of money. In addition he held it to be a violation of the obligation of contract in that it was intended to apply to past contracts where the form of money to be paid had not been expressly stipulated.<sup>28</sup> The second was a bill passed in 1905 to prevent the practice of "scalping" tickets for theaters and other places of amusement. Governor Deneen considered this to be repugnant to the fourteenth amendment of the national constitution. He referred to the case of the Gulf, Colorado and Santa Fe Railroad Company v. Ellis,<sup>29</sup> where the court had held a similar law in relation to railroad tickets invalid. In addition the bill carried a strange defect. It declared that "every person" who should commit any of the acts sought to be made unlawful "is hereby declared to be a misdemeanor."<sup>30</sup>

*Constitution of Illinois.*—Eighty-seven bills were disapproved on account of conflict with the constitution of Illinois. Fifteen of these fall within the first eight years of the new constitution. They ran from four to six for each general assembly, with the exception of that of 1877, where there was only one veto and that on constitutional grounds. It may also be noted that most of the vetoes during this early period were on constitu-

<sup>28</sup>*Executive Documents*, May 30, 1877; *House Bill* No. 47. The executive documents are filed chronologically in the archives of the secretary of state, Springfield, Illinois. Hereafter they will be cited as *Ex. Doc.* In addition the house or senate bills to which they refer will be cited as *H. B.* or *S. B.* as the case may be.

<sup>29</sup>165 *U. S.*, 150.

<sup>30</sup>*Ex. Doc.*, May 8, 1905; *H. B.* No. 593.

tional grounds, Governor Palmer alone using it extensively on grounds of policy.

After the first eight years of the period under consideration vetoes became less frequent. During a period of twenty-four years there were only ten vetoes on constitutional grounds. At about half of the legislative sessions there were none. At other sessions the number varied from one to two. Beginning with the legislative session of 1903, the number increased for a time very rapidly from five in 1903 to four, eleven, and twenty-seven in 1905, 1907, and 1909 respectively, falling again to nine, seven, and one in 1911, 1913, and 1915, respectively.<sup>31</sup>

Constitutional vetoes will be classified and discussed on the basis of the article of the constitution with which they have been considered to conflict. Here they will be further classified according to the sections or specific provisions involved wherever possible. No attempt will be made to discuss them all. Wherever several conflicts with the same provision have occurred they will simply be enumerated while only the most representative cases will be discussed.

*Bill of Rights.*—Twelve bills were considered to violate article II, the bill of rights. Of these, six were said to conflict with section 2, which provides that no person shall be deprived of life, liberty, or property without due process of law. Two were bills passed in 1909 relating to the disposal of unclaimed property. One of the bills provided that a person absent for seven years followed by public notice for one year should "be presumed to be dead." It provided that administrators might be appointed and that payment of debts owing to the absentee to such administrators should bar his claim against the debtor should he subsequently appear.<sup>32</sup> The other was in relation to unclaimed deposits in banks and trust companies. It provided that after ten years such unclaimed deposits should be paid into the state treasury, to be held there for the benefit of those entitled to them. In his message of disapproval Governor Deeneen pointed out that it conflicted with the theory of the relation of the banker to the depositor. The relation, he said, was not that of bailee or trustee, but of debtor. So far, therefore, as the statute of limitation had run it was held to deprive the banker of a property right. So far as the statute had begun to run it was held to be a violation of contract. In addition it was

<sup>31</sup>See table at the end of this chapter.

<sup>32</sup>*Ex. Doc.*, June 16, 1909; *H. B.* No. 56.

considered that so far as it applied to future contracts it was a special act, relating to a particular class of debtors, and therefore void.<sup>33</sup>

The same year a bill concerning the property of extinct churches, parishes, and religious societies was disapproved. It provided that such organizations should be considered extinct if for two successive years they should fail to hold regular religious services at least once a month for nine months out of the year, or should have less than thirteen resident attendants and supporters. The bill provided, further, that the central governing body of the church of which the congregation in question was a member might take over the property and dispose of it as it should see fit, or the local authorities might convey it to the central church authorities without consideration. It was pointed out that this bill did not provide a method whereby congregations might dissolve themselves, but that in fact it dissolved them, and that regardless of whether they were incorporated or not. It was held to violate the due process of law clause, in that it did not provide for judicial procedure nor compensation. In addition it was pointed out that it would doubtless also be held to interfere with the freedom of religion.<sup>34</sup>

In 1911 a bill was disapproved which provided for state inspection of apiaries. It was thought that the power granted the inspector to destroy bees that in his judgment were infected with dangerous diseases was unconstitutional. It failed to require a notice or provide for a judicial hearing of the case.<sup>35</sup>

Two years later an amendment was proposed to the civil rights act. Its main object was to prohibit discrimination against negroes in the matter of sale of burial places in cemeteries in the state. The terms of the bill were considered to be too sweeping inasmuch as it would have applied to all cemeteries whether publicly or privately owned.<sup>36</sup>

A more important veto made this same year involved a bill for an amendment to an "act to provide for the incorporation of cities and villages." It authorized the city council to establish residential districts, to forbid the construction of other than

<sup>33</sup>*Ex. Doc.*, June 16, 1909; *H. B.* No. 439.

<sup>34</sup>*Ex. Doc.*, June 15, 1909; *S. B.* No. 479.

<sup>35</sup>*S. J.*, 1911, p. 1157; *S. B.* No. 131.

<sup>36</sup>*H. J.*, 1913, p. 2159; *H. B.*, No. 591. See also *People v. Forest Home Cemetery Co.*, 258 *Ill.* 36.



residences in such districts, and to regulate the general character of the buildings erected. Governor Dunne in disapproving this bill maintained that such powers as it was here proposed to vest in city councils could be exercised only under the police power, and that the police power could be invoked only in protection of the public safety, health, and general welfare. Illinois decisions were cited to show that regulation of private rights for mere aesthetic reasons could not be brought under the general welfare clause, and that private property could not be arbitrarily interfered with unless the use of such property could be shown to be injurious to others.<sup>37</sup>

Governor Deneen in 1907 disapproved a bill which proposed to abolish the grand jury in certain cases. It provided that a grand jury should be summoned at least once a year in each county, at the first term of court, and that it might be summoned at other times in cases of emergency or public danger. At other times indictments might be made on information in writing filed in the name of the state's attorney of the proper county. This bill was held to conflict with section 8 of the bill of rights, which requires indictment by grand jury for serious offenses with certain exceptions, "*Provided*, that the grand jury may be abolished by law in all cases." The bill in question did not abolish the grand jury in all cases and was therefore considered void.<sup>38</sup>

Four years later a bill was passed to authorize Cook county to build a system of roads and boulevards. It provided that for the purpose of condemning the land necessary the circuit or probate court should, upon application from the county board, appoint appraisers of the land to be acquired. But the court was not required to accept the valuation of the appraisers. It was authorized to refuse it and appoint new appraisers. This was considered to violate section 13 of the bills of rights, which requires appraisal to be made by the jury.<sup>39</sup>

Three bills were disapproved as impairing the obligation of contract. Two were in the early seventies and the third was in 1911. The first first was a bill in 1871 authorizing the taxation of certain lands belonging to the Illinois Central Railroad Company. These lands had been exempted by the act ceding the land for a certain length of time and upon certain conditions.

<sup>37</sup>*H. J.*, 1913, p. 2162; *H. B.* No. 411. See also *City of Chicago v. Gunning System*, 214 *Ill.* 628; *Sign Works v. Training School*, 249 *Ill.* 436.

<sup>38</sup>*Ex. Doc.* June 4, 1907; *H. B.* No. 841.

<sup>39</sup>*S. J.*, 1913, p. 2293; *S. B.* No. 575.

Governor Palmer in disapproving the bill stated that the question whether the Illinois Central Railroad had performed its contract was a judicial one, and promised that he would proceed to have the lands taxed to bring the matter into court.<sup>40</sup>

The second veto of this group grew out of the so-called "tax grab" acts of 1865 and 1869. These acts had authorized the registration of bonds issued for local subscriptions to railroad stock with the state auditor, making it the duty of the proper state officials to collect the taxes raised therefor and pay the interest to the bondholders. In 1875 a bill was passed which provided that the interest should be paid where the bond was issued and that local authorities might at their own option levy the tax to pay it. This was held unconstitutional by Governor Beveridge who believed that both of these provisions altered the original contract.<sup>41</sup>

In 1911 a third bill was considered to violate the obligation of contract. It authorized the authorities of cities and villages to grant special privileges in the public parks to societies or associations organized for charitable, benevolent, educational, or religious purposes, and not for profit. The bill granted power to authorize the construction of pavilions and other structures necessary to carry out their purposes. Governor Deneen in disapproving the bill called attention to the fact that most of the public parks of the state had been dedicated to public use. He held that every citizen of the state has a right to free use and enjoyment of a public park when desired, and that any disposal of parks which would deprive him of it would be void.<sup>42</sup>

The last bill in conflict with the bill of rights to be considered here was passed in 1873. It was a bill to provide for registration of voters and to prevent election frauds. The reasons for the disapproval given by Governor Beveridge were that it restricted the freedom of election guaranteed by section 18 of the bill of rights. In addition he held that it conflicted with paragraph 15 of section twenty-two, article IV, which prohibits special legislation in regard to elections.<sup>43</sup>

*The Legislative Department.*—Article IV of the constitution, dealing with the legislative department, has accounted for by far the greatest number of bills disapproved on constitu-

<sup>40</sup>*Chicago Tribune*, April 27, 1871; *H. B. No. 3.*

<sup>41</sup>*Ex. Doc.*, April 19, 1875; *H. B. No. 427.*

<sup>42</sup>*Ex. Doc.*, May 29, 1911; *S. B. No. 409.*

<sup>43</sup>*Ex. Doc.*, May 7, 1873; *H. B. No. 370.*

tional grounds during the period 1870 to 1915. Of a total number of eighty-nine constitutional vetoes, fifty-four conflicted with article IV. Sections 13 and 22, dealing with the title and passage of bills and prohibitions on special legislation respectively, caused forty-three bills to be disapproved, the former twenty-two and the latter twenty-one. Eight other sections caused the veto of from one to three bills each.

The twenty-two bills regarded by the governor as conflicting with section 13 of article IV may be further sub-divided into four groups according to the specific provisions involved. One was disapproved because it conflicted with the provision that "every bill shall be read at large on three different days, in each house." The particular bill in question had passed the regular procedure in the senate. In the house of representatives it was advanced to second reading immediately upon being reported from the senate.<sup>44</sup>

Section 13 further provides that "no act hereafter passed shall embrace more than one subject, and that shall be expressed in the title." One bill was disapproved because it included more than one subject. It was passed in 1883 and authorized railroad companies to extend their lines and construct branch lines. In addition it authorized them to buy connecting lines. Governor Hamilton disapproved this bill because he held that the latter provision made it unconstitutional under the provision cited above.<sup>45</sup>

No less than seventeen bills were disapproved because it was held that the subject matter was not expressed in the title. Only a few of the most representative ones will be discussed here. In 1871 Governor Palmer disapproved "an act to repeal the registry law and establish registration in cities, towns, and villages of 5,000 inhabitants or more and in counties having 100,000 inhabitants and upwards." The reason for the disapproval was that the body of the bill added "and in townships and election precincts in which there are any such cities, towns, and villages."<sup>46</sup> In 1893 Governor Altgeld disapproved a bill for "an act to provide for the organization of road districts, etc." He gave as his reason the fact that while in the title it purported to be a new law, in the body it was in fact an amend-

<sup>44</sup>*Ex. Doc.*, April 24, 1899; *S. B. No. 161*.

<sup>45</sup>*H. J.*, 1883, p. 1182; *H. B. No. 504*.

<sup>46</sup>*Chicago Tribune*, April 27, 1871; *H. B. No. 6*.

ment to an existing law.<sup>47</sup> Governor Deneen in 1907 vetoed a bill to repeal "an act in regard to roads and bridges in counties not under township organization," etc. The title of the bill, he said, failed even to attempt to express the subject matter included.<sup>48</sup>

Only one more instance of this class will be noted. This was a bill in 1909 proposing an amendment to "an act to revise the law in relation to sentence and commitment of persons convicted of crime, and providing for a system of parole . . ." The original act directed the manner of imposing sentence. The proposed amendment by permitting the jury to fix a maximum sentence for certain crimes was thought by the governor to introduce new matter not covered by the title as it stood nor covered by the amended title.<sup>49</sup>

Section 13 further provides that "no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act." Three bills were disapproved as conflicting with this provision. The act of 1871 authorizing the city of Quincy to subscribe \$500,000 to the capital stock of the Quincy, Missouri and Pacific Railroad Company has been discussed in connection with bills passed over the veto. It was held to revive an old law by title. Two bills were disapproved by Governor Deneen in 1909 because they amended certain laws by reference merely, not setting forth in full the law as it was to read when amended.<sup>50</sup>

Governor Deneen in 1907 vetoed two bills because they conflicted with section 15 of article IV, which provides that members of the general assembly shall not be eligible for civil appointments during their term of office. Both bills proposed to create temporary commissions for certain purposes composed partly of members of the general assembly.<sup>51</sup>

<sup>47</sup>*Ex. Doc.*, June 22, 1893; *S. B.* No. 109.

<sup>48</sup>*Ex. Doc.*, June 3, 1907; *H. B.* No. 814.

<sup>49</sup>*S. J.*, 1909, pp. 1125, 1175; *S. B.* No. 48. See also *Executive Documents*, April 17, 1899 (*S. B.* No. 32); May 13, 1903 (*S. B.* No. 106); May 13, 1903 (*H. B.* No. 144); May 16, 1905 (*H. B.* No. 594); May 18, 1905 (*H. B.* No. 561); *S. J.*, 1907, p. 1760 (*S. B.* No. 545); *Ex. Doc's.*, June 5, 1909 (*S. B.* No. 731); June 15, 1909 (*S. B.* No. 106); June 15, 1909 (*S. B.* No. 242); June 16, 1909 (*H. B.* No. 470); March 14, 1900 (*H. B.* No. 17); June 8, 1911 (*H. B.* No. 537); *S. J.*, 1915, pp. 1674-1675 (*S. B.* No. 339).

<sup>50</sup>*Ex. Doc.*, June 11 and 15, 1909; *S. B.* No. 377, *H. B.* No. 243.

<sup>51</sup>*S. J.*, 1907, p. 998 (*S. B.* No. 86); *Ex. Doc.*, June 4, 1907; (*H. B.* No. 713).

Sections 17, 18, and 19, dealing with public moneys and appropriations, were involved five times. Three bills were disapproved as conflicting with section 17, which provides among other things that "no money shall be drawn from the treasury except in pursuance of an appropriation made by law." These three bills were all passed in 1909. In each case there was an attempt to make an appropriation without stating the amount definitely. In each case Governor Deneen objected that there was no maximum limit set to the amount sought to be appropriated and that therefore the appropriations were not valid.<sup>52</sup>

Section 18 provides that "each general assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house. . . ." One bill was vetoed as conflicting with the latter part of this provision. The extra session of the general assembly in 1910 passed a bill making appropriation to carry on certain state suits. Aside from the fact that the amount appropriated was entirely too small, Governor Deneen pointed out that the bill had not received the required two-thirds vote of the senate.<sup>53</sup>

In 1887 a bill was passed making an appropriation to pay for furnishing the rooms occupied by the appellate court of the first district of Illinois. The preceding general assembly had by joint resolution appointed a committee to provide for the furnishings, but no appropriation had been made. Governor Oglesby in disapproving it called attention to section 19 of article IV of the constitution which provides that "The general assembly shall never . . . authorize the payment of any claim, or part thereof, hereafter created against the state under any agreement or contract made without the express authority of law."<sup>54</sup>

Under the constitution of 1848 the general assembly had gone to extreme excess in the matter of special legislation. The constitutional convention of 1869, therefore, sought to prevent it for the future. In addition to a general provision in section 22 of article IV, providing that in no case shall a special law be

<sup>52</sup>*Executive Documents*, June 15 and 16, 1909; *House Bills*, Nos. 237, 239, 463. See also section 16 of Art. V, amendment of 1884.

<sup>53</sup>*Ex. Doc.*, March 14, 1910; *S. B. No. 48*.

<sup>54</sup>*S. J.*, 1887, pp. 974, 992; *S. B. No. 230*.

enacted where a general law can be made applicable,<sup>55</sup> they included a list of twenty three specific subjects in regard to which special laws could not be passed under any circumstances. Twenty-one bills, eighteen of which came since 1900, were disapproved on account of conflict with some of these specific prohibitions.

Paragraph 6 of section 22 prohibits regulation of county and township affairs by special law. Three bills were disapproved because they were held to be in conflict with this provision. The first was a bill passed in 1871 which proposed to change the time of electing certain officers in Wayne county.<sup>56</sup> The other two were both passed in 1911. One was an amendment to the Juul law concerning the levy and extension of taxes. The bill classified school districts for the purpose of taxation on the basis of their location in counties of certain population, which was held to be unconstitutional.<sup>57</sup> The other bill of this same year was an amendment to the city election law. It allowed judges and clerks of elections in cities located in counties of the third class a compensation of eight dollars per day, while the election officers in the rest of the state would not be entitled to compensation. Governor Deneen in disapproving this bill called attention to the decision of the supreme court in the primary law case of 1910 where the court held that a law constituting one law for Cook county and another for the rest of the state was invalid.<sup>58</sup>

Paragraph 10 forbids the general assembly to incorporate cities, towns, villages, or to change their charters by special act. Governor Beveridge in 1874 disapproved a bill conflicting with this provision. The bill in question proposed to empower the city council in cities of 200,000 inhabitants or more to regulate the price and quality of gas sold within their limits. The governor held that the constitution did not recognize population as a proper basis for the classification of cities and that therefore this was a special act within the meaning of section 22 of article IV of the constitution.<sup>59</sup>

<sup>55</sup>Held to be merely directory. See *Owners of Land v. People*, 113 Ill. 296.

<sup>56</sup>*H. J.*, 1871, pp. 484-486, 585-586; *H. B. No. 43*.

<sup>57</sup>*Ex. Doc.*, June 10, 1911; *S. B. No. 112*.

<sup>58</sup>*S. J.*, 1911, p. 1637; *S. B. No. 83*. See also *People v. Election Commissioners*, 211 Ill. 9.

<sup>59</sup>*Ex. Doc.* April 2, 1878; *S. B. No. 596*. Many acts classifying cities on the basis of population have since been passed, e.g. *Laws*, 1897, p. 99; 1903, p. 97.

Paragraph 23 forbids the general assembly to grant to "any corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever." Twelve bills were disapproved because they conflicted with this provision. One bill was disapproved in 1913, which favored veterans of the Spanish-American and Phillipine wars in the matter of appointment to the civil service.<sup>60</sup> Four were disapproved because they proposed to grant special privileges to corporations. The first was a bill passed in 1887 ostensibly to authorize the incorporation of building and loan associations, while in fact it was a shrewd device to evade the usury laws of the state. It was easy to become a member of the associations, "any needy borrower" might enter. Money might be loaned by the organizations to their members—the highest bidder being favored. It was specifically provided that "no premium, fines or interest on such premiums that may accrue to said corporation under the act shall be deemed usurious, but the same may be collectable as other debts under the laws of the state."<sup>61</sup> In 1909 a bill was disapproved because it granted fidelity and surety companies doing business in Illinois the power to agree upon and fix uniform rates.<sup>62</sup> Two bills were disapproved, the one in 1883 and the other in 1911, because they sought to extend the privileges of certain corporations established under special acts prior to 1870.<sup>63</sup>

Seven bills were disapproved because they proposed to confer special privileges on certain associations. In all cases certain boards were to be created. The objections arose in connection with the manner in which they were to be constituted. In all cases part of the members of the local boards were to be appointed from nominees presented by private associations. Only three of the most representative ones will be discussed here. In 1903 Governor Yates disapproved a bill to provide for the examination and registration of trained nurses, and the regulation of training schools. The chief objection to the bill lay in the manner of constituting the board of examiners. It was to be composed of the secretary of the state board of health and three graduate nurses, appointed by the governor from nominees of the Illinois Association of Graduate Nurses. The gov-

<sup>60</sup>*S. J.*, 1913, p. 2294; *S. B.* No. 471.

<sup>61</sup>*H. J.*, 1877, pp. 829-831; *H. B.* No. 26.

<sup>62</sup>*Ex. Doc.*, June 15, 1909; *H. B.* No. 616.

<sup>63</sup>*H. J.*, 1883, pp. 918-922; *H. B.*, No. 47; *Ex. Doc.*, June 10, 1911 (*S. B.* No. 207).

ernor in vetoing this bill took occasion to protest against the tendency toward "government by societies."<sup>64</sup>

The other two bills of this class were both vetoed by Governor Deneen, the first in 1909 and the second in 1911. The first was "an act to regulate the practice of chiropody in the state of Illinois." It created a state board of chiropody composed of four members appointed by the governor from the nominees presented by the Chiropodists' Society of Illinois. Governor Deneen held that this bill practically conferred the power of appointment upon a private association. He called attention to the fact that in *Lasher v. People*<sup>65</sup> this had been declared to be a franchise. The act was therefore void.<sup>66</sup> The second was a bill to provide for the purchase and maintenance of Fort Chartres as a state park. The park was to be controlled by a board composed of the governor, the secretary of state, the state regent of the Daughters of the American Revolution, and two other members of that organization.<sup>67</sup>

After the twenty-three specific prohibitions contained in section 22 of article IV, comes a general prohibition that "In all other cases where a general law can be made applicable, no special law shall be enacted." Under this provision much special legislation not specifically forbidden may be prevented. Five bills were vetoed on the general ground that they were special legislation, none of which, nevertheless, could be placed definitely under any one of the twenty-three specific prohibitions. Only two of these bills will be discussed here.

In 1905 "an act to require a stamp or label on every ball of binder twine sold, offered, or exposed for sale within the state of Illinois was disapproved as being special legislation. Governor Deneen held it to be special legislation to single out a special class of dealers for regulation. Two years later he vetoed an act requiring certain employers to provide seats for female employees. It applied to hotels, restaurants, retail, jobbing or wholesale dry goods stores, dealers in notions, etc. The governor objected to the fact that it did not include factories or similar places employing female labor. He expressed appre-

<sup>64</sup>*Ex. Doc.*, May 9, 1903; *S. B. No. 147*.

<sup>65</sup>183 *Ill. 226*.

<sup>66</sup>*H. J.*, 1909, pp. 1007, 1011; *H. B. No. 86*.

<sup>67</sup>*S. J.*, 1911, p. 1636; *S. B. No. 154*. See also *Ritchie v. People*, 155, *Ill. 98*; *Matthews v. People*, 202 *Ill. 389*; *Ex. Doc's.*, May 15, 1903 (*S. B. No. 158*); May 18, 1903 (*S. B. No. 214*); June 14, 1909 (*H. B. No. 654*); June 15, 1909 (*S. B. No. 414*).



ciation of the need of such legislation, but held that it should be done by general law.<sup>68</sup>

A bill providing for a limitation of actions upon official bonds was disapproved in 1907. The bill in question limited the time for bringing actions to five years. No exception was made in cases of fraudulent concealment of violations of bond or absence from the state. Governor Deneen considered this repugnant to section 23 of article IV, which provides that the general assembly shall have no power to release any one from a liability to the state.<sup>69</sup>

Section 28 of article IV provides that "no law shall be passed which shall operated to extend the term of any public officer after his election or appointment." Two bills were disapproved as being repugnant to this section, one in 1873 by Governor Beveridge, the other in 1913 by Governor Dunne. The first was an act to provide for the election of justices of the peace. It was an attempt to displace the old special acts on this subject by a general law. The effect would have been to extend the term of office of justices of the peace in counties under township organization by one year. In the opinion of Governor Beveridge it was better to have an over-supply of justices till the change could be effected than to run the risk of having the act declared void.<sup>70</sup> The second case occurred forty years later. In a bill to amend the school law of the state it was sought to change the time of election of county superintendents. Pending the change it was proposed to extend the terms of those in office from the first Monday in December, 1914, to July 1, 1915.<sup>71</sup>

Section 32 provides that "the general assembly shall pass liberal homestead and exemption laws." An amendment proposed in 1874 to the act concerning roads and bridges in counties not under township organization was deemed oppressive to a large number of settlers. Governor Beveridge disapproved it as violating the "spirit" of section 32.<sup>72</sup>

<sup>68</sup>*Ex. Doc.*, May 18, 1905, (*H. B. No. 578*); June 5, 1907 (*H. B. No. 757*); June 10, 1909 (*H. B. No. 608*); June 16, 1909 (*H. B. No. 528*); *S. J.*, 1913, p. 2296 (*S. B. No. 558*). It must be noted that in *Owners of Lands v. People*, 113 *Ill.* 296, this provision was held to be directory merely. It is for the legislature to determine whether a general act can be applied, and its decision is not subject to judicial review.

<sup>69</sup>*S. J.*, 1907, pp. 1761-1762; *S. B. No. 552*; *People v. Brown*, 67 *Ill.* 435.

<sup>70</sup>*S. J.*, 1873, I, p. 413; *S. B. No. 134*.

<sup>71</sup>*H. J.*, 1913, p. 2165; *H. B. No. 471*.

<sup>72</sup>*H. J.*, 1874, II, p. 645; *H. B. No. 828*.

In 1913 a bill for an act to consolidate the various governmental authorities in Chicago was disapproved because in one of its provisions it authorized the annexation of parks upon the approval of a majority of the votes cast on this question. Governor Dunne pointed out that parts of these parks were outside the city limits and that therefore, according to section 34 of article IV of the constitution, it was necessary to gain the consent of the majority of the electors voting on the question in each of the particular districts affected.<sup>73</sup>

*The Executive Department.*—The veto power was invoked only three times between 1870 and 1915 to protect the executive department against encroachments on the part of the legislative department. The parts of the constitution threatened were sections 8 and 13 of article V. Section 8 provides that the governor may call the general assembly together in extraordinary session, and that they can “enter upon no other business except that for which they were called together.” Two bills were passed by the extra session of 1910 conflicting with this provision. They both concerned matters not included in the call.<sup>74</sup>

Section 13 invests the governor with the power to pardon, subject to such regulations as the general assembly may make by law in regard to the manner of applying for pardons, etc. A bill to authorize courts of record to suspend sentences and grant pardons in certain cases was disapproved in 1907 as conflicting with this provision. It provided that in case a paroled convict should have kept his parole inviolate for a term of five years the court in question should enter an order for his discharge. Governor Deeneen deemed this order of discharge equivalent to a pardon—a power which can be exercised only by the governor.<sup>75</sup>

*The Judicial Department.*—Six bills were disapproved because they conflicted with article VI on the judicial department. One of these was a bill to amend the law in regard to the courts of Cook county. It authorized the judges of the different grades of courts to exchange places with one another. In the opinion of Governor Cullom this was unconstitutional. He believed that it was the intention of the framers of the constitution in establishing various grades of courts to confine the judges of each grade to their own business.<sup>76</sup> Three bills were returned

<sup>73</sup>S. J., 1913, p. 2290; S. B. No. 304.

<sup>74</sup>S. J., 1910, p. 185; S. B. No. 3; *Ex. Doc.*, March 12, 1910; S. B. No. 44.

<sup>75</sup>S. J., 1907, pp. 1758-1759; S. B. No. 421.

<sup>76</sup>*Ex. Doc.*, June 2, 1877; H. B. No. 301.

without approval because they proposed to delegate judicial powers to non-judicial officers. The first was an act of 1872 in regard to arbitration.<sup>77</sup> The second was a bill of 1877 authorizing attorneys at law to act as judges in certain cases and with the consent of the parties involved.<sup>78</sup> The third was a bill to provide a method for the removal of encumbrances or cloud upon the title to real estate. It authorized the recorder of deeds to pass upon the validity of claims for the removal of defects of title. Governor Deneen considered this a delegation of judicial power and therefore void.<sup>79</sup> In 1907 a bill was passed in which it was proposed to amend the law in regard to roads and bridges in counties under township organization. The bill was wholly retroactive and proposed to dissolve certain writs of injunction or orders restraining the opening of certain roads under the act to be amended.<sup>80</sup> One bill was disapproved because it was in conflict with section 29 of article VI of the constitution, which requires, among other things, that the jurisdiction of all courts of the same grade shall be uniform so far as regulated by law. One bill in question conferred original jurisdiction upon county courts in counties where probate courts had not been established to supervise and control the testamentary trusts. The effect would be to increase their jurisdiction by so much over the jurisdiction of courts of the same grade in counties where probate courts had been established.<sup>81</sup>

*Suffrage—The Ballot.*—Section 2 of article VII provides that “all votes shall be by ballot.” In 1897 Governor Tanner disapproved a bill authorizing the adoption of voting machines. In his opinion the use of the voting machine was not voting by ballot. In addition he objected to the fact that inasmuch as its adoption was left to the option of the county boards or county commissioners it would lead to a lack of uniformity and confusion.<sup>82</sup> It may be noted that the use of voting machines has since been authorized by law and upheld by the courts.<sup>83</sup>

*Education—School Lands.*—In 1907 a bill was passed authorizing trustees of schools in any township in counties under

<sup>77</sup>*Ex. Doc.*, April 18, 1872; *H. B.* No. 760.

<sup>78</sup>*S. J.*, 1877, pp. 851-852; *H. B.* No. 389.

<sup>79</sup>*Ex. Doc.*, June 16, 1909; *H. B.* No. 604.

<sup>80</sup>*H. J.* 1907, p. 1820; *H. B.* No. 922.

<sup>81</sup>*Ex. Doc.*, June 9, 1911; *H. B.* No. 660.

<sup>82</sup>*Ex. Doc.*, June 14, 1897; *H. B.* No. 230.

<sup>83</sup>Hurd, *op. cit.*, 1913, pp 1132-1135; Lynch v. Malley, 215 Ill. 574.

township organization to provide for the drainage of school lands and to devote the income from the lands in question to this purpose. Governor Deneen in disapproving this bill called attention to section 2, article VIII, of the constitution, which provides that "all lands . . . received for schools . . . and the proceeds thereof, shall be faithfully applied to the objects for which such gifts or grants were made." He considered it clear from the above provision that the income from school lands could not be diverted for other purposes. Though the above consideration formed the main objection to the bill, he believed it might also be held to be unconstitutional as being special legislation within the meaning of section 22 of article IV. In the first place it did not apply to schools in counties not under township organization. In the second place, since school townships coincide with congressional townships and may cross county lines, the act could apply only to such school townships as lay wholly within counties under township organization.<sup>84</sup>

*Revenue and Taxation.*—Four vetoes were made on account of conflicts with article IX concerning revenue. Three were held to violate section 3, which authorizes the exemption of certain classes of property from taxation. One authorized taxation for what was deemed not a public or corporate purpose. The three conflicting with the exemption provision were passed since 1900. The first was a bill passed in 1907 proposing to exempt the property of fraternal beneficiary societies and associations, not carried on for profit, from taxation. It sought to do this indirectly by authorizing the subtraction of outstanding benefit certificates from the property and cash on hand. Since the outstanding certificates would always exceed the latter amount, there would be nothing left to tax. Governor Deneen disapproved this act on the ground that this class of associations did not come under the exemptions clause of the constitution, and that the general assembly could not do indirectly what it was forbidden to do directly.<sup>85</sup> Two cases arose in 1909. In one an attempt was made to exempt certain property owned by Grand Army posts. It was pointed out in the veto message that this exemption was not authorized by the constitution.<sup>86</sup> The other bill of 1909 was a proposed amendment to the law in regard to cemetery associations. It authorized the setting aside of funds

<sup>84</sup>*S. J.*, 1907, pp. 748; *S. B.* No. 67.

<sup>85</sup>*S. J.*, 1907, p. 1350; *S. B.* No. 428. See also Supreme Lodge v. Board of Review, 223 *Ill.* 54.

<sup>86</sup>*Ex. Doc.*, June 16, 1909; *H. B.* No. 491.

to be administered by trust companies for the purchase and maintenance of burial lots. It authorized the investment of these funds in safe securities, such investments to be exempted from taxation. The governor in disapproving the bill said that while cemeteries came under the exemption clause of the constitution, funds not yet so devoted did not.<sup>87</sup>

Governor Palmer in 1871 disapproved a bill to authorize "cities, villages and incorporated towns to contract for a supply of water for public use, and to levy and collect a tax to pay for water supplied." The governor was of the opinion that the language of the bill would authorize taxation to subsidize a private company. This would conflict with the constitution in that it would not be taxation for public purposes within the meaning of the document.<sup>88</sup>

*Counties—Salaries of Officers.*—Section 10 of article X of the constitution provides that the county boards (except in Cook county) shall fix the salaries of all county officers. A bill passed in 1909 authorized circuit judges to appoint and fix the salaries of assistant state's attorneys. Governor Deneen disapproved it on the ground that since the constitution does not authorize the general assembly to regulate the salaries of officers in question it could not delegate that power to the circuit judges.<sup>89</sup>

*Corporations.*—Two bills, both passed in 1889, were disapproved on the ground that they were deemed to conflict with article XI dealing with corporations. The first was a bill to "authorize horse and dummy railways to change their motive power." Governor Fifer believed this to be in conflict with section 4 of article XI of the constitution, which provides that the general assembly shall not authorize the construction or operation of any street railroad in any city, town, or incorporated village without the consent of the proper local authorities. He called attention to the fact that such authorities had the authority to grant the power sought to be conferred by the bill in question. The fact that the promoters of the bill had thought it necessary to ignore the people and apply to a distant legislature was considered an additional reason why the bill should not become a law.<sup>90</sup> The second was a special act "to organize and regulate a state windstorm, tornado, and cyclone mutual

<sup>87</sup>*Ex. Doc.*, June 16, 1909; *S. B.* No. 512.

<sup>88</sup>*H. J.*, 1871, II, pp. 985-987; *H. B.* No. 703.

<sup>89</sup>*Ex. Doc.*, June 15, 1909; *H. B.* No. 697.

<sup>90</sup>*Ex. Doc.*, June 14, 1889; *H. B.* No. 368.

insurance company." This bill was disapproved as conflicting with section 1 of article XI, which forbids the creation of corporations by special acts except in certain well-defined cases.<sup>91</sup>

*Canals.*—The experience of the state with internal improvements, railroads, and canals led to the adoption of a provision in the constitution of 1870, which, among other things, provided that "The general assembly shall never loan the credit of the state, or make appropriations from the treasury thereof, in aid of railroads or canals: *Provided*, that any surplus earnings of any canal may be appropriated for its enlargement or extension." A bill was passed in 1895 granting aid in promoting the construction of water ways. In addition to unconstitutionality, Governor Altgeld objected that the project contemplated would involve an expenditure which, in his judgment, would exceed fifty million dollars.<sup>92</sup>

#### *Vetoes on Grounds of Policy*

Altogether 170 bills were disapproved either wholly or in part on grounds of policy during the period under consideration. Of these 138 were vetoed in full. But for the reasons stated above appropriation bills will be grouped together and considered separately in connection with those vetoed in part.

The fluctuations in the number of policy vetoes during the period from 1870 to 1916 followed closely the fluctuations in the vetoes on constitutional grounds. Governor Palmer disapproved five bills during the legislative session of 1871. Then followed a period of twenty years when the veto power was but little used. Governor Altgeld disapproved twenty bills on grounds of policy during his four-year term from 1893 to 1897, ten during each of the legislative sessions. Consistent and extensive use of the veto power to enable the governor to participate in the formation of state policy does not begin, however, before the opening of the twentieth century. During the legislative session of 1901 Governor Yates disapproved six bills. Since then the vetoes have never fallen below nine during any regular session, running as high as twenty and eighteen during the sessions of 1903 and 1915, respectively.<sup>93</sup>

In the following discussion of policy vetoes the bills under consideration will be classified under the following nine heads:

<sup>91</sup>*Ex. Doc.*, June 7, 1889; *H. B.* No. 546.

<sup>92</sup>*Ex. Doc.*, June, 1895; *S. B.* No. 457.

<sup>93</sup>For the exact distribution of these vetoes by years see the table at the end of this chapter.

Administration of justice and court procedure, educational and charitable institutions, taxation and revenue, private claims and relief, government boards, cities and incorporated places, parks, Lake Calumet, business and corporations. In addition there were thirty-eight policy vetoes of miscellaneous character which it has been found impracticable to classify.

Fourteen bills affecting the administration of justice and court procedure were disapproved. Only the most important will be discussed here. Both Governors Deneen and Dunne disapproved bills making it unlawful to take pictures for "rogues' galleries" until after conviction. Both governors voiced the opinion that it would greatly hamper the administration of criminal justice.<sup>94</sup>

An amendment to the law relating to change of venue was disapproved in 1911. It required judges to grant change of venue upon application verified by the affidavit of the petitioner only.<sup>95</sup> In 1909 Governor Deneen disapproved a bill giving a privileged character to confidential communications made by patients to physicians and surgeons, barring them as evidence in suits. He pointed out that the bill would work special hardship on insurance companies, corporations, and individuals against whom injury suits were made. In many of these cases the statements of physicians or surgeons would be absolutely necessary.<sup>96</sup>

In 1871 "an act to regulate the manner of applying for reprieves, commutations, and pardons," was disapproved. It required that the person suing for pardon should file a petition in writing with the state's attorney in the locality where the crime was committed at least three weeks before it should be presented to the governor in order to give notice to the parties interested in the case. Governor Palmer in disapproving this bill said that many of these persons were old, feeble, and unable to write. There were many cases, he thought, where it was necessary for the governor to take the initiative, which would be impossible under the proposed act.<sup>97</sup>

The general assembly in 1903 sought to amend the parole law and restore the old system whereunder the jury fixed the sentence. Governor Yates disapproved this bill, stating as his

<sup>94</sup>*Ex. Doc.*, June 15, 1909; *H. B.* No. 633; *H. J.*, 1913, p. 1388; *H. B.* No. 492.

<sup>95</sup>*Ex. Doc.*, June 8, 1911; *H. B.* No. 412.

<sup>96</sup>*Ex. Doc.*, June 16, 1909; *H. B.* No. 478.

<sup>97</sup>*S. J.*, 1871, II, pp. 320-323; *S. B.* No. 17.

reason that the indeterminate sentence law seemed to have operated satisfactorily and that at any rate it should not be repealed till it had had a fair trial.<sup>98</sup>

A bill to amend the juvenile court law was disapproved in 1911. Governor Deneen gave as his reason that the effect of the amendment would be "to destroy the exclusive jurisdiction of the juvenile court in this class of cases and permit the trial of cases of dependent, neglected, and delinquent children in courts having general criminal and civil jurisdiction."<sup>99</sup>

Seven bills have been classified under the general head of educational and charitable institutions. Three of these dealt with the common schools. One in 1901 authorizing consolidation of township schools was disapproved because it did not apply to districts of two thousand or more population. In addition it was held objectionable in that it did not provide for transportation of children living within one mile of the school house.<sup>100</sup>

The other two were both amendments to the general school law and both were passed in 1911. The first was a bill to authorize the trustees of schools to dispose of school lands in such manner as they should see fit. It required the lands to be offered for sale at least once every six months. After having been twice offered they might be sold to the highest bidder. Governor Deneen considered this too great a power to be placed in the hands of the trustees.<sup>101</sup> The second authorized boards of education to appoint one or more school nurses to look after the health of the children. But it failed to make proper requirement for qualifications for such positions.<sup>102</sup>

Four bills affecting the charitable institutions of the state were disapproved on grounds of policy. Two of these, both passed in 1883, will be discussed here. They made appropriation for the three state hospitals for the insane, one of them making large appropriations for the enlargement of the southern and northern hospitals. Governor Altgeld in vetoing these bills objected that the institutions were already too large to provide

<sup>98</sup>*Ex. Doc.*, May 18, 1903; *S. B. No. 481*.

<sup>99</sup>*Ex. Doc.*, June 10, 1911; *H. B. No. 124*. For other examples of this class see Executive Documents, June 17, 1889 (*S. B. No. 114*); May 14, 1901 (*H. B. No. 464*); May 11, 1901 (*S. B. No. 62*); May 12, 1903 (*H. B. No. 170*); June 4, 1907 (*H. B. No. 132*); June 6, 1911 (*H. B. No. 492*); *House Journal*, 1913, p. 2160; *H. B. No. 161*.

<sup>100</sup>*Ex. Doc.*, May 13, 1901; *S. B. No. 165*.

<sup>101</sup>*Ex. Doc.*, June 8, 1911; *H. B. No. 240*.

<sup>102</sup>*Ex. Doc.*, June 8, 1911; *H. B. No. 608*.



the best conditions for curing the afflicted persons confined there. While authorities on the subject had placed the maximum which should be admitted to any one institution to obtain the best results at five hundred, he pointed out that there were already from two to four times that number at some of the Illinois hospitals. He felt that it was high time for the governor to set his face against the tendency to enlargement of these institutions.<sup>103</sup>

Ten bills relating to taxation or revenue were disapproved. A number of the most important will be presented here. The first was an act to legalize defective assessments made during the year 1870. It was disapproved by Governor Palmer. The objectionable feature of this bill was a provision to authorize the courts to fix the valuation in cases of protest. The governor believed that the result would be a tendency to nullify the work of the assessors and throw assessments into the courts.<sup>104</sup> In 1893 Governor Altgeld disapproved a bill authorizing cities of thirty thousand inhabitants or more to levy special assessments to provide for street sprinkling. The chief objection was that no limit had been set. Governor Altgeld declared that experience had shown that city officials would rob the people unless their powers of taxation were limited.<sup>105</sup> Two other bills were disapproved on the ground that they did not set proper limits to the taxing power conferred. This was the case with an amendment proposed in 1895 to the general school law. It was objected to as practically removing all limits to taxation for school purposes.<sup>106</sup> The other was an amendment proposed in 1915 to the law authorizing towns and townships to establish parks and parkways. The bill authorized park commissioners to raise the tax rate from one to three mills, and provided no referendum. Governor Dunne admitted the possibility that it might be desirable to raise the tax rate to three mills in some localities. But he was sure it was not desirable in others. His main objection to the bill was the fact that it did not carry a referendum provision.<sup>107</sup> Governor Dunne also disapproved two bills reducing the fees collected under section 31 of the public utilities act. He considered that

<sup>103</sup>*Ex. Doc.*, June 21, 1893; *Senate Bills* Nos. 197, 405. For other cases of this class see *Ex. Doc's.*, May 18, 1905 (*H. B. No. 330*); June 15, 1909 (*S. B. No. 431*).

<sup>104</sup>*Chicago Tribune*, April 27, 1871; *H. B. No. 543*.

<sup>105</sup>*Ex. Doc.*, June 23, 1893.

<sup>106</sup>*Ex. Doc.*, 1895 (June 15); *H. B. No. 324*.

<sup>107</sup>*S. J.*, 1915, p. 1674; *S. B. No. 274*.

it would "materially" and "unreasonably" reduce the revenue derived from that source.<sup>108</sup>

Private relief was denied in eighteen cases. Seven of these were bills making appropriations for the benefit of members of the Illinois national guard "injured while on duty," as was alleged. Six of these were disapproved by Governor Yates, and one by Governor Dunne. In four cases the bills were disapproved because the claims had been rejected by the court of claims.<sup>109</sup> Two bills making appropriations for one J. J. Block to reimburse him for losses sustained by him and to pay the value of horses killed under the direction of the State board of live stock commissioners, were disapproved. The first of these bills was passed in 1903. Governor Yates called attention to the fact that the board of live stock commissioners had made an award to Mr. Block. If the general assembly were to overrule the award made by the state board it would set a bad precedent and open up for a flood of similar claims. Two years later the same bill was presented to Governor Deneen and rejected for the same reason.<sup>110</sup>

Nine private claims of miscellaneous character were disapproved. Only three of the most important will be considered here. The first was a bill passed in 1901 making an appropriation of \$28,000 to pay a balance alleged to be due to one William J. Partello for labor and material furnished by him in the erection of certain buildings for the state reformatory at Pontiac. This bill was rejected by Governor Yates on account of the fact that it had not been submitted to the court of claims.<sup>111</sup> The second was a bill making appropriation to pay one B. D. Dawson for services performed by him as one of the assistant clerks of the house of representatives of the thirty-fourth general assembly. Governor Dunne in disapproving this bill called attention to the fact that these services were alleged to have been rendered twenty-eight years earlier. He was of the opinion that this claim

<sup>108</sup>*S. J.*, 1915, pp. 1673, 1674; *Senate Bills* Nos. 108, 347. For other instances of a similar nature see *Executive Documents*, June 22, 1893 (*S. B. No. 37*); May 18, 1905 (*H. B. No. 51*); June 5, 1907 (*H. B. No. 714*); July 5, 1915 (*S. B. No. 382*).

<sup>109</sup>*Ex. Doc.*, May 15, 1903 (*Senate Bills* Nos. 128, 136, 145); May 16, 1903 (*Senate Bills* Nos. 135, 161; *House Bill* No. 402); *H. J.*, 1915, pp. 1390-1391 (*H. B. No. 493*).

<sup>110</sup>*Ex. Doc.*, May 15, 1903 (*S. B. No. 160*); May 18, 1905 (*H. B. No. 406*).

<sup>111</sup>*Ex. Doc.*, May 13, 1901; *H. B. No. 376*.

should have been presented long before and said that he had not in his possession sufficient evidence of the validity of the claim to warrant him in approving it.<sup>112</sup> The third was a bill passed in 1915 making an appropriation of \$9,788.66 to the Great Western Serum Company of Chicago for losses of serum sustained by them during the recent foot and mouth epidemic. Governor Dunne in his veto message brought out the fact that this serum had become worthless during a federal investigation into its quality and that the federal authorities had rejected the claim of the serum company for reimbursement.<sup>113</sup>

Governor Altgeld was the first to use the veto power to express disapproval of the tendency to create a multiplicity of governmental boards. In this particular case it was proposed to establish a state board to examine and issue certificates to horse-shoers.<sup>114</sup> In 1903 Governor Yates disapproved a bill to create a state board of embalmers. He expressed the opinion that the duties involved in the supervision and control of embalmers could well be performed by the state board of health.<sup>115</sup> Two years later Governor Deneen frustrated an attempt to deprive the state board of agriculture of control and supervision of the matter of issue and registration of pedigrees of pure bred animals. It was proposed to vest the power to issue pedigrees to certain licensed persons and associations.<sup>116</sup>

Five bills affecting cities and other incorporated places were disapproved. A bill to authorize any incorporated place to dissolve itself was disapproved in 1905 because it did not sufficiently guard the interests of creditors.<sup>117</sup> Two bills proposing amendments to the act authorizing annexation of territory were disapproved, one in 1905 and the other in 1907. Neither of these bills protected sufficiently the interests of the people of the territory sought to be annexed. In 1905 the property owners of the territory in question were not even permitted to vote on the

<sup>112</sup>*S. J.*, 1913, p. 2297; *S. B.* No. 610.

<sup>113</sup>*H. J.*, 1915, pp. 1392-1393; *H. B.* No. 885. For other cases of this general class see *H. J.*, 1887, pp. 1202, 1229, 1234 (*H. B.* No. 658); *Ex. Doc's.*, May 16, 1903 (*H. B.* No. 449); June 16, 1909 (*H. B.* No. 472); June 15, 1909 (*H. B.* No. 307); *H. J.*, 1915, pp. 1389, 1390 (*House Bills* Nos. 103, 116).

<sup>114</sup>*Ex. Doc.*, June 24, 1895; *S. B.* No. 464.

<sup>115</sup>*Ex. Doc.*, May 11, 1903; *H. B.* No. 245.

<sup>116</sup>*Ex. Doc.*, May 18, 1905; *S. B.* No. 21.

<sup>117</sup>*Ex. Doc.*, May 18, 1905; *H. B.* No. 308.

question of annexation.<sup>118</sup> In 1907 it was sought to reduce the number of persons in such territory required to sign the petition for annexation from a majority—which should also include a majority of the property owners—to ten per cent of the legal voters. Governor Deneen stated that under this bill it would be possible to annex territory not only against the wishes of the vast majority of the people affected, but also against the wishes of every property owner in the district.<sup>119</sup>

Five bills affecting the Chicago parks were disapproved. Three were bills to authorize the city council to open streets through parks in certain cases. While thus ostensibly it was a general act, it was in fact a proposal to authorize the opening of a street through Humboldt park in Chicago. The first was passed in 1903. Governor Yates disapproved it at the request of the West Park commissioners of Chicago.<sup>120</sup> Two years later a similar measure was disapproved by Governor Deneen. He called attention to the fact that park commissioners have the power to build boulevards or drives through parks. He feared that the construction of streets might cause permanent injury to the parks.<sup>121</sup> In 1911 this proposal came up a third time, and again Governor Deneen disapproved it, for the same reasons which he gave in 1905.<sup>122</sup>

Two bills concerning the submerged lands on the Chicago lake front were disapproved. The first was a bill passed in 1897. It granted the park commissioners of Chicago the right to acquire the lake front and to fill in submerged lands for the purpose of developing parks. The lands involved were of vast extent. There was no limitation placed upon the power to condemn riparian rights. Governor Tanner feared that the grant of this power might endanger the shipping facilities of Chicago, though the bill provided that the project was "not to interfere with the navigation of public waters." At any rate, the park commissioners were not ready to start on the project. He therefore saw no objection to letting the matter wait till some later session of the general assembly.<sup>123</sup> The second was a bill passed in 1905

<sup>118</sup>*Ex. Doc.*, May 18, 1905; *S. B. No. 232*.

<sup>119</sup>*Ex. Doc.*, June 5, 1907; *H. B. No. 40*. For other cases under this general group see *S. J.*, 1913, p. 2297 (*S. B. No. 283*); *H. J.*, 1913, p. 2162 (*H. B. No. 755*).

<sup>120</sup>*Ex. Doc.*, May 12, 1903; *H. B. No. 126*.

<sup>121</sup>*Ex. Doc.*, May 18, 1905; *H. B. No. 82*.

<sup>122</sup>*Ex. Doc.*, June 6, 1911; *H. B. No. 192*.

<sup>123</sup>*Ex. Doc.*, June 11, 1897; *S. B. No. 364*.

ceding the submerged lands in Cook county to the various cities and villages. The governor did not believe that the municipalities in question were ready to utilize the lands sought to be ceded.<sup>124</sup>

At each of the last three sessions of the general assembly a bill relating to Lake Calumet was disapproved. Two authorized the Chicago Sanitary district to construct a harbor in the lake. The first was passed in 1911. Governor Deneen disapproved it because engineers were divided on the question whether an outer or an inland harbor was most desirable. The bill itself postponed the execution of the project at least five years. The cost would vary from seven to eight million dollars. Under these circumstances he thought it best to return the bill to insure further consideration.<sup>125</sup> His successor, Governor Dunne, was confronted with a similar bill in 1913. It was disapproved because it did not propose a concrete plan. There was no provision showing the approximate cost. In addition he urged that the adjacent lands necessary to complete the project should be condemned before the construction of the harbor had enhanced their value.<sup>126</sup> In 1915 the same subject came up in a different form. A bill was passed to amend the so-called O'Connor law relating to harbors and canals. The amendment would have authorized Chicago to reclaim the lake and to dispose of it for city purposes or by lease to private persons. Governor Dunne disapproved it on the following grounds: (1) It surrendered lands of enormous value to the city of Chicago without compensation; (2) it did not sufficiently restrict the power of the city to dispose of the reclaimed land, authorizing a ninety-nine year lease; and (3) it did not sufficiently protect riparian rights.<sup>127</sup>

In regard to business and corporations the veto power was invoked seventeen times during the period under consideration. Four bills in regard to the business of insurance were disapproved. Only two of these will be discussed here. The first was an act of 1893 to compel fire insurance companies to pay the insured in case of loss the total amount of the insurance as shown by the policy. This bill had been passed as a result of a practice to over-insure property. The agents getting their commission

<sup>124</sup>*Ex. Doc.*, May 18, 1905; *S. B. No. 161*.

<sup>125</sup>*Ex. Doc.*, June 10, 1911; *H. B. No. 506*.

<sup>126</sup>*H. J.*, 1913, p. 1873; *H. B. No. 38*.

<sup>127</sup>*Ex. Doc.*, July 5, 1915; *S. B. No. 295*.

on the amount of the insurance written would insure property for much more than it was worth. In case of fire the insurance companies were accustomed to send an adjustor around to attempt by fair means or foul to secure a settlement much below the amount of the insurance actually carried. Governor Altgeld in disapproving this bill expressed the opinion that it was founded on a wrong principle. Insurance should simply enable the insured to return to the same financial conditions as before the fire. Under the proposed bill he would be tempted to over-insure his property and might be in a position to profit by a fire. Experience in other states where similar laws were in force had shown a tendency for fires to increase in number. This had in turn caused a rise in insurance rates. The effect of such laws would be to burden the honest and to enable the dishonest to profit.<sup>128</sup>

An act to authorize life insurance companies to conduct business on the mutual or co-operative plan was disapproved by Governor Dunne in 1915. The objections to this bill were three-fold: (1) It lowered the reserve requirements to about one-half; (2) it did not provide for control by the policy holders to offset the lowered reserve requirements, failing to give them the right to vote or otherwise influence the management; and (3) it was too broad in scope, for under it the companies in question could go into all lines of insurance, whether life, accident, health, or personal casualty insurance, any of which lines are now required to maintain a reserve twice as large as that required of insurance companies under the bill in question.<sup>129</sup>

Eight bills were disapproved because they authorized or encouraged the creation of monopolies. Three of these—one passed in 1891, a second in 1895, and a third in 1909—authorized holding companies. The first authorized corporations, organized or to be organized for mining and manufacturing purposes and furnishing material used in the construction or operation of railroads, to own and hold shares in the capital stock of railroad companies. Governor Fifer objected that there were no limitation as to the amount of stock that might be held by such a corporation nor to the amount of material required to be furnished to railroads to entitle it to the privilege sought to be granted. The phrase "furnish material in the construction or operation of railroads," he held to be simply a cloak to mislead members of the general assembly while the real intention was to authorize a

<sup>128</sup>*Ex. Doc.*, June 24, 1893; *S. B. No. 94*.

<sup>129</sup>*H. J.*, 1915, pp. 1382-1383; *H. B. No. 718*. For other cases of this class see *H. J.*, 1913, pp. 1392, 2163; *House Bills Nos. 797, 953*.

monopoly. The bills of 1895 and 1909 authorized corporations to buy stock in and absorb other corporations engaged in the same line of business. Both Governor Altgeld and Governor De-  
neen expressed strong disapproval of these attempts to authorize the creation of monopolies.<sup>130</sup>

Governor Altgeld also disapproved four bills passed in 1895 authorizing public service monopolies in Chicago. Two of these dealt with lighting and the other two with transportation. The first of the two light bills provided that before the city council could grant the privilege to lay gas pipes or to string electric wires a petition must be presented signed by the owners of a majority of the land frontage of each block in any street or alley in which it proposed to authorize such privilege. While the bill on its face was designed to prevent the granting of special privileges, Governor Altgeld in his veto message pointed out that the existing Chicago companies possessed charters authorizing them to string wires and lay pipes anywhere. The bill, therefore, was simply an instrument whereby these companies could prevent the establishing of competing concerns. Later in the same session a similar measure, altered so as to require the signature of the owners of the majority of the land frontage for each mile of street instead of each block, as under the first bill, came up again. This was likewise disapproved.<sup>131</sup>

Two complementary bills, the one concerning street railroads and the other concerning elevated railroads, were vetoed by Governor Altgeld in 1895. They authorized the city to grant ninety-nine year franchises. The bill concerning street railroads repealed an existing provision under which the owners of property along a proposed route would be entitled to damages. Both bills provided that a single property owner along a proposed route could enjoin a new company by alleging that the petition necessary was not signed by the required majority of the property owners along the route. They provided that no new company should ever be granted the right to condemn any part or anything pertaining to any existing road. Finally, both bills specifically authorized consolidation of the existing roads. Gov-

<sup>130</sup>*Ex. Doc's.*, June 18, 1891 (*H. B. No. 336*); June 11, 1909 (*S. B. No. 286*); *S. J.*, 1895, p 779; *S. B. No. 362*.

<sup>131</sup>*H. J.*, 1895, pp. 767, 770, 807, 854, 960, 1022, 1107, 1139; *H. B. No. 618*; *Ex. Doc.*, June 24, 1895; *H. B. No. 801*.

ernor Altgeld protested vigorously against these measures designed to create a transportation monopoly in Chicago.<sup>132</sup>

Of the rest of the bills relating to business and corporations only two will be discussed. The first act was passed in 1907 to authorize the incorporation of investment companies—the so-called home cooperative companies. Governor Deneen in his veto message called attention to the fact that these companies had caused a great deal of complaint in other states. They unduly favored the early investors at the expense of those who came in later. The business, he said, depended for its success very largely upon the lapse of payments and consequent forfeiture of rights on the part of late investors. The bill was considered contrary to public policy and an attempt to swindle poor investors.<sup>133</sup>

In 1913 Governor Dunne disapproved a bill to amend the law in relation to corporations. The sole purpose of the amendment was to permit the incorporation of companies organized to do real estate business. The governor in his message of disapproval said, “the policy of the state, for forty years and upward, has been opposed to the granting of such rights to corporations.”<sup>134</sup> It will be recalled that Governor Oglesby laid the foundation for this policy by his vetoes of 1867.<sup>135</sup>

There were, in addition to the several sub-classes of policy vetoes discussed above, thirty-four bills of miscellaneous character, which were vetoed on various grounds of policy. Only four will be discussed here. In 1879 Governor Cullom disapproved an “act to protect laborers, miners, mechanics, and merchants.” It was an act to prevent the so-called truck system in payment of employees. It forbade companies to pay their laborers in commodities. It even prohibited them from advancing supplies on the credit of the employee’s labor, unless a specific contract had been entered into. The governor pointed out the fact that much labor was sold by the month and that the laborer was often in need of advances. If his credit was good he could go anywhere, but if it was not, it would be unjust to prohibit

<sup>132</sup>S. J., 1895, pp. 624, 773, 793, 998-999; *Senate Bills* Nos. 137, 138. See also *Ex. Doc.*, May 18, 1905 (*H. B. No. 630*) for another example under this general class.

<sup>133</sup>S. J., 1907, p. 1756; *S. B. No. 257*.

<sup>134</sup>S. J., 1913, p. 2292; *S. B. No. 498*. For other vetoes see *Ex. Doc's.*, June 22, 1893 (*S. B. No. 336*); May 18, 1905 (*S. B. No. 116*); *S. J.*, 1907, p. 1759 (*S. B. No. 539*).

<sup>135</sup>See Chapter III.



him to obtain credit from his employer, which it was sought to do by the bill in question.<sup>136</sup>

An amendment to the statute of limitations was disapproved by Governor Hamilton in 1883. Among other things the bill extended the statute of limitations to instruments payable on demand, the statute to run from the date on the face of the paper. He called attention to the fact that the most common form of this class of commercial paper was the certificate of deposit. Money on deposit often carried no interest. He considered it unjust that banks which had had the free use of money should be enabled to claim the principal simply because it had not been asked for. He suggested that it would be proper to have the statute run from the date of presentation.<sup>137</sup>

A bill for an employers' liability act was disapproved in 1911. It set aside or modified the old common law defenses of the employer, namely, the defences of (1) contributory negligence, (2) the fellow servant rule, and (3) the assumption of risk. Governor Deneen disapproved of this bill because a workmen's compensation act had been passed by the same session, embodying the results of the work of a commission composed of representatives both of labor and capital. The governor was of the opinion that it ought to be given a fair trial before other laws on the subject were enacted. In addition he pointed out the fact that the employers' liability act was unconstitutional in that it exempted agricultural laborers.<sup>138</sup>

A very interesting case arose in 1913. A bill was passed legalizing certain elections held under the law authorizing the organization of park districts. It provided that such elections held at "indefinite times and places" have been "duly and legally held, and the ballot used thereat is hereby declared to be in due form of law," etc. In addition to being bad policy, Governor Dunne doubted the power of the general assembly to make legal an act or acts that might have violated the constitution as well as existing statutes.<sup>139</sup>

<sup>136</sup>*Ex. Doc.*, June 5, 1879; *H. B. No. 751*.

<sup>137</sup>*Ex. Doc.*, June 25, 1883; *S. B. No. 52*.

<sup>138</sup>*Ex. Doc.*, June 10, 1911; *S. B. No. 401*. See also *People v. Butler Street Foundry*, 201 *Ill. 266*; *Connolly v. Union Sewer Pipe Co.*, 184 *U. S. 540*.

<sup>139</sup>*H. J.*, 1913, p. 2166; *H. B. No. 356*. For thirty other examples of this class of miscellaneous policy vetoes see *Executive Documents*, April 18, 1872 (*H. B. No. 729*); June 7, 1889 (*S. B. No. 114*); June 19, 1891 (*H. B. No. 73*); *Senate Journal*, 1893, pp. 872, 895 (*S. B. No. 205*); *Ex.*

*Vetoes of Appropriation Bills.*

A separate classification of appropriation bills has been thought advisable in order to permit consideration of the veto of such bills in whole or in part. It has been thought desirable to discuss the veto of items in connection with appropriation bills vetoed in full, for the reason that both classes of vetoes have usually been made on grounds of economy. The bills in this general class will be discussed under two general heads: (1) bills vetoed in full and (2) bills vetoed in part.

The following table shows the increase in appropriations made by the general assemblies of Illinois from 1880 to the present time:—

## IV. TABLE OF STATE APPROPRIATIONS, 1881-1915

1881-1883 32nd General Assembly.....	\$ 6,605,391.61
1883-1885 33rd General Assembly.....	7,342,742.03
1885-1887 34th General Assembly.....	7,776,458.54
1887-1889 35th General Assembly.....	7,940,412.69
1889-1891 36th General Assembly.....	7,396,737.30
1891-1893 37th General Assembly.....	8,757,901.15
1893-1895 38th General Assembly.....	9,032,514.49
1895-1897 39th General Assembly.....	10,055,800.41
1897-1899 40th General Assembly.....	11,178,902.00
1899-1901 41st General Assembly.....	12,512,113.89
1901-1903 42nd General Assembly.....	12,773,686.12
1903-1905 43rd General Assembly.....	15,467,316.00
1905-1907 44th General Assembly.....	16,165,648.70
1907-1909 45th General Assembly.....	20,208,146.23
1909-1911 46th General Assembly.....	20,330,042.29
1911-1913 47th General Assembly.....	29,540,195.03
1913-1915 48th General Assembly.....	37,906,593.93
1915-1917 49th General Assembly.....	46,349,326.17*

\*These figures include only the appropriations made by the regular session of 1915.

*Doc.*, June 22, 1893 (*H. B. No. 24, S. Bs. Nos. 173, 364*); *S. J.*, 1895, p. 796 (*S. B. No. 106*) *Ex. Doc.*, June 17, 1895 (*H. B. No. 472*); June 24, 1895 (*S. B. No. 141*); June 10, 1897 (*S. B. No. 297*); May 11, 1901 (*H. B. No. 713*); May 14, 1901 (*H. B. No. 322*); May 15, 1903 (*S. B. No. 156*); May 15, 1903 (*H. B. No. 275*); May 18, 1905 (*S. Bs. Nos. 296, 421*); *S. J.*, 1907, pp. 1756-1757 (*S. B. No. 362*); *Ex. Doc's.*, May 22, 1907 (*H. B. No. 845*); May 25, 1907 (*H. B. No. 65*); May 27, 1907 (*H. B. No. 314*); June 3, 1907 (*H. B. No. 609*); June 15, 1909 (*H. B. No. 320*); June 16, 1909 (*H. B. No. 585*); June 10, 1911 (*H. B.*

*Appropriation Bills Vetoed in Full.*—The rapidly expanding appropriations made by the general assembly since 1900 called forth a series of vetoes on grounds of economy. Seventeen bills were disapproved in full on this ground, all since 1900. Under the forty-third general assembly, when appropriations increased by about \$2,694,000 over the appropriations made by the preceding assembly, Governor Yates vetoed six bills in full on grounds of economy. He undertook to reduce the appropriations by about \$1,000,000. The veto fell on two bills increasing salaries—one to increase the salaries of certain grades of judges, and the other to increase salaries of members of the general assembly.<sup>140</sup> Two bills vetoed were for public buildings—one to make repairs on the capitol and the other to authorize an improvement at the Western Illinois State Normal School.<sup>141</sup> The two remaining were of less importance—one was an appropriation to purchase a park in Ogle county and the other to build a monument to certain persons killed in the Black Hawk war.<sup>142</sup>

In the forty-fourth general assembly appropriations were increased only \$600,000, and Governor Deneen disapproved only two bills in full on grounds of economy. One of these was an act to increase the fees of county officers, the other was a bill to authorize the erection of a monument to the Illinois soldiers fallen on the battlefield of Kenesaw Mountain.<sup>143</sup> During the following general assembly appropriations were increased by over four million dollars. Governor Deneen, anxious to keep down the tax rate, disapproved two bills in full on grounds of economy. One was a bill to appropriate \$60,000 to establish a surgical institution for children. The other appropriated \$386,000 to the University of Illinois to acquire a building for the Medical College.<sup>144</sup>

During the second term of Governor Deneen, covering the period of the forty-sixth and the forty-seventh general assemblies, 1908-1912, no bills were vetoed either in full or in part on

No. 603); *H. J.*, 1913, p. 2165 (*H. B. No. 842*); *H. J.*, 1915, pp. 1388, 1391-1392 (*H. Bs. Nos. 199, 565*); *S. J.*, 1915, pp. 1673-1674 (*S. B. No. 139*); *Ex. Doc.*, July 5, 1915 (*S. B. No. 432*).

<sup>140</sup>*Ex. Doc.*, May 11, 1903 (*H. B. No. 195*) May 14, 1905 (*H. B. No. 59*).

<sup>141</sup>*Ex. Doc.*, May 16, 1903 (*H. B. No. 848, S. B. No. 436*).

<sup>142</sup>*Ex. Doc.*, May 16, 1903 (*House Bills Nos. 426, 751*).

<sup>143</sup>*Ex. Doc.*, May 18, 1905 (*House Bills Nos. 154, 188*).

<sup>144</sup>*S. J.*, 1907, p. 1755 (*S. B. No. 120*); *Ex. Doc.*, June 4, 1907 (*H. B. No. 4*).

grounds of economy. This is not strange during the period of the forty-sixth general assembly, as that body appropriated only about a hundred thousand dollars more than the preceding assembly. But the forty-seventh general assembly more than offset this tendency to economy, for it appropriated \$29,540,195.03—or over nine million dollars more than its predecessor. Since then appropriations have increased by similar amounts, rising to \$37,906,593.93 in 1913 and to \$46,349,326.17 in 1915.

Governor Dunne also attempted to keep appropriations down by means of the veto. Most of this was done by disapproving items in appropriation bills, which will be discussed later in this chapter. During 1913 he disapproved five bills in full on grounds of economy. None of these were of any great importance, however, from the standpoint of the amount of money saved. One was a bill to authorize the purchase of the Logan home.<sup>145</sup> Two were bills making small appropriations for the support of the Illinois farmers' institutes.<sup>146</sup> Two were bills making appropriations for legislative commissions of investigation, both of which the governor thought were not essential.<sup>147</sup> In 1915 a bill authorizing the centralization in the state historical library of the returns of elections held prior to 1870 was disapproved on account of the expense involved.<sup>148</sup> A second bill was disapproved in 1915. It provided for the payment of \$1200 to incorporated soil and crop improvement associations in each of the 102 counties in the state. This might have involved a heavy drain on the treasury. Governor Dunne in disapproving it called attention to the heavy appropriation already incurred for agricultural purposes on account of the foot and mouth disease.<sup>149</sup>

*Appropriation Bills Vetoed in Part.*—It is a remarkable fact that although the power to disapprove items in appropriation bills had been granted the governor in 1884 only one instance of its use occurred before 1903, namely, in 1899. In that year

<sup>145</sup>*H. J.*, 1913, p. 2163; *H. B.* No. 401.

<sup>146</sup>*H. J.*, 1913, pp. 2161, 2166; *House Bills* Nos. 339, 437.

<sup>147</sup>*H. J.*, 1913, p. 2164; *H. B.* No. 838; *S. J.*, 1913, p. 2296; *S. B.* No. 677.

<sup>148</sup>*H. J.*, 1915, p. 1389; *H. B.* No. 494.

<sup>149</sup>*H. J.*, 1915, p. 1397; *H. B.* No. 26.

Governor Tanner disapproved eight items in the university appropriation bill. The appropriations vetoed amounted to \$99,166.61, and were to have been devoted mainly to the acquisition of land, the construction of buildings, and the purchase of equipment.<sup>150</sup>

Since 1903 the number of bills disapproved in part has had a tendency to increase, running from four to six for each general assembly. However, during Governor Deneen's second term, 1908-1912, no financial vetoes of any sort were made. In 1915 Governor Dunne disapproved ten bills in part.

The number of items disapproved is of more significance than the number of bills affected. They show a great deal of variation, running as low as eight and nine in 1899 and 1907, respectively, and as high as seventy-six and eighty-six in 1913 and 1915, respectively.

There is a close relation between the growth of this phase of the veto power and the growing expenditures of the state. A glance at the table above will show that while appropriations almost doubled between 1880 and 1900, they increased almost four-fold between 1898 and 1915. Under the forty-first general assembly, where expenditures ran up by something over \$1,250,000, Governor Tanner reduced the appropriations by a little over \$99,000. Under the following general assembly there was little increase and no vetoes. Under the forty-third there was a marked increase again, and during that session Governor Yates vetoed items amounting to a little over \$192,000.<sup>151</sup>

Governor Deneen during his first term made vigorous efforts to reduce expenditures by means of the veto power. Appropriations of over \$17,000,000 were reduced very materially by vetoing items carrying appropriations of something over \$845,000.<sup>152</sup> During the following biennium appropriations of over \$21,500,000 were reduced to something over \$20,200,000. Items amounting to \$632,500 were disapproved.<sup>153</sup> But while Governor

<sup>150</sup>*Laws*, 1899.

<sup>151</sup>Governor Yates also reduced the appropriations of that year by vetoing bills in full carrying about \$805,000. It will be recalled that he set out to reduce appropriations by about \$1,000,000.

<sup>152</sup>See *Laws*, 1905 for appropriation bills vetoed in part. Besides the \$845,930 indicated above, Governor Deneen slightly reduced the appropriations by vetoing two minor bills in full.

<sup>153</sup>See *Laws*, 1907; *S. J.*, 1907, pp. 1754, 1755, 1757, 1759. In addition, appropriations were reduced by something over \$751,000 on account of bills vetoed in full on grounds of economy.

Deneen had cut appropriation bills heavily during his first term, he did not reduce them by a single dollar during his second. Under the forty-sixth general assembly there was less need for this, for it had increased appropriations but slightly over \$120,000. In the next biennium, however, an increase of over \$9,000,000 took place.

During the following four years, under Governor Dunne's administration, appropriations continued to mount at an unprecedented rate. Items amounting to \$1,040,000 and \$1,925,000 were vetoed in 1913 and 1915, respectively.<sup>154</sup>

The appropriations vetoed, with the exception of two small items aggregating less than \$12,000, may all be classified under six great heads:

(1) Appropriations to higher educational institutions. This includes appropriations to the university and to the state normal schools. It will be recalled that the first use of the veto power to disapprove items in appropriation bills was made by Governor Tanner against the university. A total of \$772,000 has thus been disapproved, about \$320,000 of which have been university appropriations.<sup>155</sup>

(2) Appropriations to charitable and reformatory institutions. The total disapproved was something over \$1,243,000. From 1903 to 1915, except during Deneen's second term, when there were no such vetoes, the amounts thus disapproved varied considerably, running as high as \$482,150 in 1905, and as low as \$79,707.76 in 1915.<sup>156</sup>

(3) Appropriations to the Illinois national guard were reduced by \$286,280 during the four regular sessions of the general assembly held in 1905, 1907, 1913 and 1915. During the last four years the items vetoed have been appropriations made for armories and sites.<sup>157</sup>

(4) State aid to agriculture. This class of appropriations was reduced by \$283,750 in the years 1905, 1907 and 1915. Most

<sup>154</sup>*Laws*, 1913, p. 29; *H. J.*, 1913, pp. 2156, 2160, 2161, 2166; *S. J.*, 1913, p. 2297; *H. J.*, 1915, pp. 1383-1394; *S. J.*, 1915, p. 1675.

<sup>155</sup>*Laws*, 1899; *Laws*, 1903, pp. 59, 60, 63; *Laws*, 1905; *Laws*, 1907; *S. J.*, 1913, p. 2297; *H. J.*, 1915, pp. 1386-1387.

<sup>156</sup>*Laws*, 1903, pp. 30 ff.; *Laws*, 1905; *Laws*, 1907; *S. J.*, 1907, p. 1754; *H. J.*, 1913, p. 2161; *H. J.*, 1915, p. 1391.

<sup>157</sup>*Laws*, 1905; *Laws*, 1907; *H. J.*, 1913, p. 2166; *H. J.*, 1915, pp. 1389, 1675.

of these items were for improvements on the state fair grounds.<sup>158</sup>

(5) State aid to public roads. The total amount disapproved has been \$1,050,000. In 1913 an appropriation of \$300,000 for each of the years 1913 and 1914 was cut in half. In 1915 Governor Dunne vetoed the whole appropriation made for this purpose on the ground that there was \$600,000 unexpended money for this purpose in the treasury which had been re-appropriated.<sup>159</sup>

(6) General appropriations for the state government. Vetoes of items of these bills are of recent occurrence. The total amount vetoed has been \$1,087,800. Of this only \$35,000 was before 1913. The appropriations for the various departments, boards, and commissions, evidently made on the basis of liberal estimates by the officials themselves as to their own needs, were materially reduced by Governor Dunne. The total amount vetoed in 1913 was \$244,650.<sup>160</sup> In 1915 items of this class amounting to \$808,150 were disapproved. Of the latter amount the veto of \$384,000—an appropriation for increased salaries of the judges of the supreme and superior courts—was explained by the fact that the bill authorizing the increase in salary had failed to pass.<sup>161</sup>

The amendment of 1884 authorizes the governor to veto "distinct items" in appropriation bills. This power was gradually interpreted so liberally by the governor as to include the power to reduce distinct items. This was done in two ways: (1) by disapproving the phrase "per annum" in appropriations running for more than one year, and (2) by the outright reduction of items. The first instance of the reduction of an item by the governor of Illinois took place in 1907. A bill making appropriations for certain charitable institutions was disapproved in part. In an item "for improvements of grounds and farm, \$10,000 per annum; \$20,000," Governor Deneen disapproved "Item: \$10,000 for the second year of the biennial period."<sup>162</sup> There were no other instances of this use of the veto power in 1907.

It will be recalled that Governor Deneen did not veto any appropriation bills during his second term, 1908-1912. Not

<sup>158</sup>*Laws*, 1905; *S. J.*, 1907, p. 1757; *H. J.*, 1915, pp. 1389, 1393.

<sup>159</sup>*H. J.*, 1913, p. 2160; *H. J.*, 1915, pp. 1393-1394.

<sup>160</sup>*H. J.*, 1913, p. 2156.

<sup>161</sup>*H. J.*, 1915, pp. 1383-1388.

<sup>162</sup>*S. J.*, 1907, p. 1754.

till 1913, therefore, did the practice of reducing items in appropriation bills recur. Governor Dunne, during the legislative session of 1913, cut several appropriations in half by disapproving the phrase "per annum."<sup>163</sup> This practice was continued to still greater extent in 1915.<sup>164</sup> In addition, in the latter year, he reduced outright a large number of important appropriations. The method employed will be illustrated by the following example: In "an act making appropriation of additional sums for the completion of armories now under construction" a reduction was made by the governor. In his message of disapproval he said, "In section 1, item: 'Eighth Infantry Chicago, \$75,000.00,' I approve this item in the sum of \$60,000 and veto and withhold my approval of all the sum in said item in excess of \$60,000."<sup>165</sup> Many similar reductions were made during the same session.<sup>166</sup>

In the case of *Fergus v. Russel* decided by the supreme court of Illinois in December, 1915, both of these practices were held unconstitutional. The court held that the legislature has the right to determine the amount of money to be appropriated. The governor can only approve or disapprove. This power carries no right to reduce an item by disapproving the words "per annum" or approving a portion of an item and disapproving the remainder. The court did not define the words "item" and "section," evidently not regarding it necessary in order to reach a decision in the case before them. Justice Cooke, who delivered the opinion said: "We think it clear that the power given the governor by the constitution to disapprove of and veto any distinct item or section in an appropriation bill does not give him the power to disapprove of a part of a distinct item and approve the remainder. To permit such a practice would be a clear encroachment by the executive upon the rights of the legislative department of the state."<sup>167</sup> On the other hand, the contention

<sup>163</sup>*H. J.*, 1913, pp. 2156 ff.

<sup>164</sup>*H. J.*, 1915, pp. 1383-1386, 1389 ff.

<sup>165</sup>*H. J.*, 1915, p. 1389; *Laws*, 1915, p. 91.

<sup>166</sup>*H. J.*, 1915, pp. 1383-1386, 1391; *S. J.*, 1915, p. 1675; *Laws*, 1915, pp. 200 ff.

<sup>167</sup>*Fergus v. Russell*, 270 *Ill.* 304, 348. In the Pennsylvania case where the court upheld the power of the governor to reduce items, the facts in the case, as distinguished from abstract principles of constitutional law, may have had a good deal of influence on the decision. It appears that the appropriation bill in question was not sufficiently itemized. *Com. v. Barnett*, 199 *Pa.* 161.



of the counsel for Mr. Fergus that the effect of an attempt to reduce items would operate to veto the whole item was not upheld. The court held that since the attempted veto was unconstitutional the whole amount should be permitted to stand.

#### *Vetoes of Defective Bills*

The term defective has been considered broadly as in the preceding chapters. It includes, in addition to the bills defective in drafting, bills carrying conflicting provisions as well as ineffective and superfluous legislation. During the period under consideration, thirty-eight bills were disapproved on account of defectiveness. Of these only six were disapproved before 1900, not more than one such bill having been returned to any one general assembly. Since 1900 vetoes of this kind have increased in number, especially after 1904. Each general assembly has had one or more vetoes on this ground. The highest number reached was in 1909 when eight were returned on account of defectiveness.

Seven bills were disapproved because serious errors had been made in drafting them. Only three examples will be discussed here. In 1905 an amendment to the law regarding assessment of property was disapproved because the title of the bill referred to certain sections not found in the law.<sup>168</sup> Two years later an amendment to the act creating the Chicago sanitary district was disapproved. The title of the bill was "An act to amend . . . 'an act to create sanitary districts and remove obstacles in the Des Plaines and Illinois rivers,' " etc. The bill was disapproved because it did not accurately describe the original act, the title of which had the word "to" before the word "remove" and carried the word "obstructions" instead of "obstacles" as in the proposed bill.<sup>169</sup> In 1911 a bill to amend the law relating to drainage districts was disapproved because about three lines of the bill as it had passed the house of representatives had not been acted upon by the senate. It was considered, therefore, that the houses had not acted on the same bill.<sup>170</sup>

Seven bills have been classed as conflicting legislation, either

<sup>168</sup>*Ex. Doc.*, May 18, 1905; *H. B. No. 489*.

<sup>169</sup>*S. J.*, 1907, p. 412; *S. B. No. 83*.

<sup>170</sup>*H. J.*, 1911, p. 1499; *H. B. No. 575*. For five other bills of this class see *Ex. Doc.*, May 11, 1901 (*S. B. No. 219*); May 18, 1905 (*S. B. No. 179*); May 27, 1907 (*H. B. No. 60*); *H. J.*, 1913, p. 2164 (*H. B. No. 709*).

because they carried mutually conflicting provisions or conflicted with existing laws or bills passed by the same general assembly. Three representative cases will be discussed. In 1907 an amendment to the law relating to assessments was disapproved. The existing law required the board of review to meet on the third Monday in June and adjourn on or before September 7th. The bill in question proposed to grant the county judges until July 1st to make the appointments of two members from each county to serve on the board.<sup>171</sup> In 1915 Governor Dunne disapproved an amendment to the assessment law and the law concerning fees and salaries, respectively. The two bills carried conflicting provisions. Since the governor was not sure what the general assembly intended he disapproved them both.<sup>172</sup>

Under the head of ineffective legislation have been placed five bills which for one reason or another would have proved inadequate for the purposes for which they were enacted. Only two, passed in 1909, will be discussed here. The first was an act to protect gravel and macadam roads, in which it was sought to regulate the weight of load—including wagon—that might be hauled on such roads at certain seasons of the year. For this purpose wagons were roughly classified according to width of the tire, and arbitrary maximum loads were authorized for each class. The bill would have tended to defeat its own purpose. The governor pointed out that while the ratio of the weight of the load to the width of the tire is the true criterion, this bill would actually have authorized a heavier load per inch width on narrow tired wagons than on those with wider tires.<sup>173</sup> The second bill was an attempt to provide a pension fund for employees in houses of correction in cities of fifty thousand or more inhabitants. It authorized such employees to pay into the fund two per cent of their annual salaries, and entitled them after twenty years' service to a pension of \$480 per year. It provided for no other income for the fund. Governor Deneen pointed out that on the basis of the highest salaries paid such employees a two per cent payment to the fund would not yield more than twenty-four dollars annually. That would amount to a total maximum payment in twenty years of \$480 besides the accumulated inter-

<sup>171</sup>*Ex. Doc.*, May 20, 1907; *H. B.* No. 699.

<sup>172</sup>*S. J.*, 1915, p. 1672; *Senate Bills* Nos. 7, 39. For other examples of this class see *H. J.*, 1889, p. 459 (*H. B.* No. 232); *Ex. Doc's.*, June 3, 1879 (*S. B.* No. 106); May 18, 1905 (*S. B.* No. 225); June 7, 1911 (*H. B.* No. 297).

<sup>173</sup>*Ex. Doc.*, June 15, 1909; *H. B.* No. 45.

est. The payment of a \$480 annual pension would, therefore, be impossible.<sup>174</sup>

Nineteen bills have been classed as superfluous legislation. Five of these were disapproved because they were exact duplicates of other bills passed by the same general assembly and approved by the governor.<sup>175</sup> Eleven others were considered superfluous because the subject matter had been dealt with more satisfactorily by other bills passed at the same session of the general assembly.<sup>176</sup> Three were disapproved because they were regarded as unnecessary, existing laws being regarded sufficient for the purposes sought to be accomplished.<sup>177</sup>

<sup>174</sup>*Ex. Doc.*, June 15, 1909; *S. B. No. 226*. For other examples of this class see *Executive Documents*, April 24, 1899 (*H. B. No. 775*); June 16, 1909 (*H. B. No. 186*); June 6, 1911 (*H. B. No. 33*).

<sup>175</sup>*Executive Documents*, May 26, 1877 (*H. B. No. 25*); June 19, 1893 (*S. B. No. 199*); May 11, 1901 (*H. B. No. 413*); May 15, 1903 (*H. B. No. 220*); *S. J.*, 1913, p. 687 (*S. B. No. 197*).

<sup>176</sup>*H. J.*, 1874, p. 301 (*H. B. No. 336*); *H. J.*, 1879, p. 852 (*H. B. 272*); *Ex. Doc.*, June 3, 1907 (*H. B. No. 317*); June 12, 1909 (*H. B. No. 474*); June 15, 1909 (*H. B. No. 74*); June 15, 1909 (*H. B. No. 701*); June 16, 1909 (*S. B. No. 244*); June 16, 1909 (*H. B. No. 381*); *S. J.*, 1911, p. 1637 (*S. B. No. 417*); *Ex. Doc.*, June 14, 1912 (*S. B. No. 8*); *H. J.*, 1915, p. 1389 (*H. B. No. 561*).

<sup>177</sup>*Ex. Doc.*, June 2, 1879 (*S. B. No. 243*); May 18, 1905 (*H. B. No. 550*); *S. J.*, 1913, p. 2291 (*S. B. No. 330*).

V. TABLE SHOWING THE NUMBER AND DISTRIBUTION OF BILLS VETOED, THE ACTION TAKEN UPON VETOES, THE REASONS FOR DISAPPROVAL, AND THE NUMBER OF LAWS ENACTED, 1870-1915.

Governor	Assembly	Laws enacted	Vetoed			Time of Veto		Action on veto			Reasons for veto			
			Number	H. Bills	S. Bills	During session	After adj'm't.	Passed over	Amended	Dropped	Const.	Policy	Appr'ns.	Defective
Palmer ....	1870-72	241	11	8	3	4	7	1	0	10	6	5		0
Beveridge.	1872-74	149	5	3	2	3	2	0	0	5	4	0		1
	1874-76	89	1	1	0	0	1	0	0	1	1	0		0
Cullom ....	1876-78	163	5	5	0	2	3	0	0	5	4	0		1
	1878-80	203	4	2	2	1	3	0	0	4	0	3		1
	1880-82	130	0	0	0	0	0	0	0	0	0	0		0
Hamilton	1882-84	115	3	2	1	2	1	0	0	3	2	1		0
Oglesby ..	1884-86	114	0	0	0	0	0	0	0	0	0	0		0
	1886-88	199	2	1	1	2	0	0	0	2	1	1		0
Fifer .....	1888-90	166	5	3	2	1	4	0	0	5	2	2		1
	1890-92	164	2	2	0	0	2	0	0	2	0	2		0
Altgeld ....	1892-94	111	12	2	10	1	11	0	0	12	1	10		1
	1894-96	182	11	4	7	5	6	1	0	10	1	10		0
Tanner ....	1896-98	192	3	1	2	0	3	0	0	3	1	2		0
	1898-00	176	4	2	2	0	4	0	0	4	2	0		1
Yates .....	1900-02	179	8	4	4	0	8	0	0	8	0	6		2
	1902-04	209	30	15	15	0	30	0	0	30	5	20		4
Deneen ....	1904-06	217	28	18	10	0	28	0	0	28	4	14		5
	1906-08	279	33	18	15	5	28	0	1	32	11	12		6
	1908-10	239	44	29	15	3	41	0	0	44	27	9		0
	1910-12	274	23	13	10	1	22	0	0	23	9	9		0
Dunne ....	1912-14	218	30	19	11	2	28	0	0	30	7	14		6
	1914-16	293	33	21	12	0	33	0	0	33	1	18		10
Totals .....		4302	297	173	124	32	265	2	1	294	89	138		32

<sup>1</sup>Of these five were vetoed during the recess from May 19 to May 31, 1911. *S. J.*, pp. 1635 ff.; *H. J.*, pp. 1495 ff.

<sup>2</sup>Of these twenty-seven were made during the recess from June 20 to June 30, 1913. *S. J.*, pp. 2290-2298; *H. J.*, pp. 2156-2167.

<sup>3</sup>Of these thirty were made during the recess from June 19 to June 30, 1915. *S. J.*, pp. 1671 ff.; *H. J.*, pp. 1381 ff.

## CHAPTER V

### SUMMARIES AND CONCLUSIONS

*The Veto Power Under the Three Constitutions.*—The veto power in Illinois has passed through three stages. Under the constitution of 1818 the governor and the judges of the supreme court were constituted a council of revision. A bill passed by the general assembly was required to be laid before the council for revisal and consideration where a majority could approve or disapprove it. If disapproved the reasons were to be stated in writing and returned together with the bill to the house in which it had originated. The houses of the general assembly were then to reconsider the bill and might repass it by a majority vote of the total membership elected to each house. The council was allowed ten days for the consideration of bills. If they were not returned within the ten-day period, they were to become effective without approval. If the general assembly by adjournment should prevent their return within the ten-day period, the bills disapproved after adjournment were to be returned to the general assembly at its first meeting after such adjournment or become law.

The council of revision lasted for thirty years. During that time the veto power was used extensively and on the whole effectively. The council disapproved of 104 bills, while 3158 were enacted into law. For the whole period the bills disapproved averaged about three and a third per cent as compared with the number of laws enacted. The percentage fell as low as one in 1833 and ran as high as eighteen in 1827.

While one hundred and four bills were disapproved only eleven, or about ten per cent, were passed over the veto. Nor were any of these bills of any importance. They were rather petty measures, the repassage of which tended to the discredit of the general assembly.

The veto messages were constructive. Often the council would suggest amendments. The result was that in the case of two-thirds of the bills disapproved amendments were adopted which proved acceptable to the council of revision.

In the constitution of 1848 the council of revision was abolished. The veto power, otherwise unchanged, was given to the

governor alone. It was used sparingly until 1869. Up to that time, also, only two bills were passed over the veto. The legislative session of 1869 was marked by a crisis in special legislation. During that session Governor Palmer disapproved seventy-two bills, seventeen of the most important of which were passed over the veto.

During this whole period 7510 laws were enacted, by far the larger number of which were special acts. Exactly one hundred, or one and a third per cent, were disapproved. Of the hundred bills disapproved nineteen, or almost twenty per cent, were passed over the veto. On the other hand, only two were amended. Moreover, the bills passed over the veto were, on the whole, the most important, and many were extremely objectionable. Among the most important were the following: The banking act of 1851, the Chicago street railway act of 1865, the Chicago lake front act of 1869, five acts authorizing unorganized communities to subscribe to railroad stock—the so-called “tax grab” acts—discriminating in regard to taxation in favor of communities that had subscribed to railroad stock. When the real test came the suspensive veto had been found inadequate. In the face of the general assembly of 1869 the governor was unable in many cases to force even a consideration of his veto messages.

The constitutions of both 1818 and 1848 provided that if any bill should be disapproved after adjournment the governor should return the veto to the next session of the general assembly or the bill was to become law. This provision proved of no importance. Under the constitution of 1818 three bills were vetoed in this manner. None were passed over the veto. Only one of the three was amended. Under the constitution of 1848 ten were returned, none of which were amended or passed over the veto. This provision had proved of so little importance that it was not included in the constitution of 1870.

Under the constitution of 1870 the veto power has been really effective. The vote required to override the governor's disapproval was raised to two-thirds of the total membership of each house of the general assembly. Instead of requiring that the vetoes made after adjournment should be returned to the next meeting, they were to be filed in the office of the secretary of state. A definite time of ten days is allowed for the consideration of bills after adjournment as well as during the session.

Up to 1900 the extent of the use of the veto power was about the same as under the constitution of 1848. The number of bills

disapproved during any session of the general assembly rarely numbered half a dozen—in only one case did they reach a dozen. But beginning with Governor Yates a new era of the veto power was entered upon. Since 1900 the number of bills disapproved at each general assembly has, more than half of the time, run as high as thirty or above. At one session it ran as high as forty-four.

In comparison with the number of laws enacted the present veto power is equally conspicuous. While three and one-third per cent of the bills enacted were disapproved under the council of revision, and one and one-third under the suspensive veto of 1848, seven per cent of the bills enacted between 1870 and 1916 have been disapproved. But if we take the period from 1900 to 1916 the percentage runs as high as twelve out of every hundred.

From the point of view of the effectiveness of the veto power still more striking facts appear. Under the first constitution one-tenth of the bills disapproved were passed over the veto. Under the second constitution this number rose to one-fifth. But under the constitution of 1870 only two laws have been enacted in spite of the governor's disapproval. It may almost be said, therefore, that the veto power under the constitution of 1870 is absolute.

Although it has proved practically impossible to pass a bill over the disapproval of the governor, no serious abuse of the veto power has ever occurred. There have doubtless been a number of cases where one might justly question the wisdom of a particular veto. But there is no doubt that the governors of Illinois have, on the whole, exercised the veto power conscientiously, that they have merited the confidence of the people, and that the people expect them to exercise independent judgment on measures presented for their approval. On the other hand, there are literally scores of instances where the general assembly has betrayed the interests of the people.

Under the constitutions of 1818 and 1848 the vetoes made after adjournment had proven few and unimportant. Instead of requiring vetoes made after adjournment to be returned to the following session of the general assembly as before, the constitution of 1870 gave the governor ten days to consider bills left in his hands after adjournment, and provided that the vetoes made during that time should be filed with the secretary of state. The ten-day period thus granted has proved wholly inadequate. The greater number of bills are now passed within the

last ten days of the session.<sup>1</sup> Many of the bills passed late in the legislative session are of great importance. In spite of the fact that he makes use of the various state officers and every other trustworthy source of aid in the consideration of these bills, the governor is really overloaded. He should have not less than twenty days after adjournment to consider bills—preferably thirty, as in New York, Pennsylvania, Delaware, Iowa, Missouri, Colorado and California.

In connection with this point it may be noted that whereas there were very few vetoes made after adjournment under the two earlier constitutions, the reverse has been true under the present. The proportion of bills disapproved during the session of the general assembly has steadily decreased. During the first twenty-two years, of the period under discussion forty per cent were disapproved during the session. During the last twenty-four years, from 1892 to 1916, the proportion fell to six and one-half per cent. If we take the period since 1900 it is still lower, namely, four and one-half per cent. In other words, as the situation is today, for every five vetoes the governor makes during the session of the general assembly he will make ninety-five after its adjournment. In each case he has ten days. The time granted is adequate during the legislative session. But it is inadequate for the consideration of bills left in the hands of the governor after adjournment. The task of considering bills preparatory to approval or disapproval is of sufficient importance to warrant the adoption of a constitutional provision giving the governor thirty days after the adjournment of the general assembly.

*Reasons for Disapproval.*—Turning from the veto provisions of the three different constitutions, the extent of their use, and their general effectiveness, we may now attempt to summarize the use of the veto power from 1818 to 1916 on the basis of the reasons assigned for the vetoes. For this purpose the general classification of the vetoes heretofore used, namely, vetoes on constitutional grounds, vetoes on grounds of policy, and vetoes of defective bills, will be continued.

Contrary to the older conception of the function of the veto power, it has rarely been used to protect the executive and judicial departments against encroachments on the part of the legislature. During the whole period from 1818 to 1916, 155 bills were disapproved on constitutional grounds. Of these only fifteen can be classified as attempted encroachments by the general

<sup>1</sup>Governors' Conference, 1913, *Proceedings*, p. 271.



assembly upon the other two departments.. Eight were encroachments upon the executive department. Most of the cases arising before 1848 were attempts to interfere with the governor's power of appointment. In nearly all cases they were attempts to fill appointive positions by legislative act. Under the constitution of 1848 there were no vetoes of this class. Since 1870 only three cases have arisen, all since 1900. Two were attempts to pass legislation at the special session of 1910 on subjects not included in the call. The third was an attempt to interfere with the pardoning power by authorizing judges to pardon in certain cases.

Of seven bills regarded as encroaching upon the judiciary, only one was passed prior to 1870. It was an attempt to elect probate judges annually by the general assembly, though the constitution provided that judges should hold during good behavior. Six were passed under the constitution of 1870. Three were attempts to delegate judicial power to non-judicial officers or bodies. In one case it was attempted to dissolve certain writs of injunction by legislative act.

On the other hand, the veto power has been frequently used to prevent what in the opinion of the governor would have been unconstitutional use of the legislative power in other respects. Only a few of the more conspicuous groups of vetoes of this class will be summarized. Ten cases of conflict with the national constitution and laws were prevented, seven during the period 1818 to 1848, one from 1848 to 1870, and two since 1870. There were thirteen cases of conflict with the bill of rights under the constitution of 1818, and twelve with the bill of rights under the constitution of 1870. The cases arising under the constitution of 1818 were mainly attempts to dispose of property by legislative acts, usually private property, by authorizing heirs or administrators to act. The twelve cases arising since 1870 were mostly cases in relation to private property, generally involving the "due process of law" clause.

Under the constitution of 1848 over thirty vetoes grew out of the practice of granting public aid to private undertakings. Some of the bills disapproved favored certain property or communities in regard to taxation. Especially noteworthy are the so-called "tax grab" acts, which favored communities that had subscribed to railroad stock at the expense of other communities which had not done so. Others authorized taxation for other than public purposes. A large number were disapproved because they authorized unorganized communities to subscribe to railroad stock.

Of the large number of vetoes on constitutional grounds since 1870, besides the twelve cases affecting the bill of rights already referred to, it is desired to call attention to two large groups of vetoes both falling under article IV, dealing with the legislative department of the government. The first class is composed of twenty-two cases affecting section 13, dealing with legislative procedure and forms. In one case the requirement that bills shall be read three times on three separate days in each house had not been complied with. In another case the bill dealt with more than one subject. In three cases there were attempts to revive or amend laws by reference to title only. In seventeen cases it was thought that the subject matter of the bills was not adequately expressed in the title.

Section 22 of article IV of the constitution of 1870 prohibits twenty-three classes of special legislation. Twenty-one bills have been disapproved because they conflicted with this section. Three cases were attempts to regulate county and township affairs by special acts. In one case an attempt was made to amend a city charter. Twelve bills would have conferred special privileges upon certain corporations, associations, or individuals. In half a dozen cases bills were vetoed on the ground that a general act could deal with the subject.

While a large number of bills were disapproved between 1870 and 1916, nevertheless a great deal of unconstitutional legislation was passed. Between 1870 and 1913, 257 acts of the general assembly were declared unconstitutional by the supreme court of Illinois.<sup>2</sup> Conceding that a large number of the earlier ones were probably passed before 1870, there would still be a great number left. It may be expected, however, that a smaller amount of unconstitutional legislation will be passed in the future. It is not uncommon now for members interested in the passage of certain bills to consult the attorney general as to their constitutionality before they are introduced or while still in passage. The recently organized legislative reference bureau may also be expected to reduce unconstitutional legislation. Finally, the scrutiny of bills after they have been passed by the general assembly and before they are approved by the governor is becoming more and more rigid. Since 1900—especially since Governor Deneen's second term—it has become customary for the governor to consult the attorney general as to the constitutionality of bills submitted to him for his approval. At the

<sup>2</sup>Wright, *op. cit.*, pp. 48-49.

present time bills regularly go to the attorney general before the governor himself takes them up for consideration.

A great deal of defective legislation has been prevented by the exercise of the veto power, thereby saving the people of the state considerable inconvenience and expense. During the whole period under consideration seventy-nine such bills were returned. Their general characteristics were practically the same throughout the whole period. Some of the most important classes will be mentioned. Twenty-seven bills have been classified as superfluous. Of these a small number were disapproved because they were considered unnecessary. A large number were duplicates of other bills passed at the same session of the general assembly. The largest number, sixteen, were considered superfluous because more satisfactory legislation covering the same subjects had been passed. In twelve cases bills were disapproved because they conflicted with existing laws not intended to be repealed, with other bills passed at the same session of the general assembly, or carried mutually conflicting provisions. Over two dozen others carried defects in drafting, such as serious omissions or ambiguities. It may be expected that the number of this class of vetoes will be considerably less in the future with the establishment and development of the legislative reference bureau.

The use of the veto power to enable the governor to participate in the formation of the state policy has been of greater importance than both of the other two classes combined. Two hundred and sixty-three, or considerably more than half of the vetoes since 1818 were of this class. Under the constitution of 1818 there were forty-one policy vetoes. It will suffice to mention the most important classes. In regard to certain quasi-public franchises the use of the veto power resulted in the adoption of a policy limiting them to a term of twenty years. Five bills concerning the incorporation of cities and towns were disapproved. The council of revision urged that the powers of cities and towns should be more clearly defined and limited, that the state should retain general control, and that uniformity of incorporation should be sought for. In regard to the settlement of estates the council stood for protection of the interests of heirs and wards against abuse by administrators and executors. In a veto of a divorce bill they called attention to the inexpediency of granting divorces by special legislative acts.

Under the constitution of 1848 fifty-three policy vetoes were made. A number of the most important classes of bills will

be summarized here. The largest single class concerned twenty-three special incorporation acts. Nine bills proposed to incorporate real estate companies. Governors Oglesby and Palmer in disapproving these bills laid the foundation for a policy that has persisted to the present day. They urged that the privilege of incorporation should not be granted unless there were corresponding benefits to the public to be derived from that form of organization. In regard to real estate business they did not believe that incorporation was necessary. A number of bills were objected to because they created monopolies or granted too extensive powers. Three apportionment bills were disapproved because they proposed to "gerrymander" the state for party advantage. It had been the custom to regulate fees of local officers by special acts. In 1865 eleven such acts had been passed. In 1869 Governor Palmer disapproved six bills of this sort because they tended to create conflict and confusion. He expressed the opinion that these matters should be regulated by general law.

Many of the lines of policy suggested by early vetoes found adoption in the constitution of 1870. This is especially true of the prohibitions placed upon the general assembly. A few which were clearly foreshadowed by the vetoes may be enumerated here:

The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual. Art. IV, sec. 20.

The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: granting divorces; . . . vacating roads, town plats, streets, alleys, and public grounds; . . . incorporating cities, towns or villages, or changing or amending the charter of any town, city or village; . . . the sale or mortgage of real estate belonging to minors or others under disability; . . . chartering or licensing ferries or toll bridges; remitting fines, penalties or forfeitures; creating, increasing, or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed; . . . granting to any corporation, association, or individual, the right to lay down railroad tracks, or amending existing charters for such purposes; granting to any corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever; . . . Art. IV, sec. 22.

The general assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share

of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatsoever. Art. IX, sec. 6.

No corporation shall be created by special laws, or its charter extended, changed or amended, except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the State, but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created. Art. XI, sec. 1.

All existing charters or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within ten days from the time this constitution takes effect, shall thereafter have no validity or effect whatever. Art. XI, sec. 2.

No law shall be passed by the general assembly granting the right to construct and operate street railways within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad. Art. XI, sec. 4.

No county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation. . . .

It may be added that a large percentage of the constitutional vetoes made since 1870 have been made to enforce these prohibitions.

Since 1870, 170 bills have been disapproved on grounds of policy. Four of the most important classes will be included in this summary. Three were bills concerning cities and municipal problems. In one case an act authorizing the dissolution of cities and towns was disapproved because it did not sufficiently protect the interests of creditors of the municipality. In two cases bills concerning the annexation of territory were disapproved because they did not give residents and property owners in the territory proposed to be annexed sufficient voice in the matter.

Five bills concerning Chicago parks were disapproved. Three were proposals under the guise of general laws to authorize the city authorities to run a street through Humboldt Park. The governors who vetoed these bills feared that material and lasting damage might be done to the park. Two bills to grant the Chicago lake front to the public for park purposes were disapproved in order to gain further time for consideration of this project.

Lake Calumet has also figured prominently in connection with the veto power. Within the last six years three bills deal-

ing with the lake have been disapproved. Two were passed to authorize the city of Chicago to build harbors in the lake. The last bill, which was passed in 1915, authorized Chicago to reclaim and dispose of the land. All three vetoes indicate that the best method of utilizing the lake has not yet been determined upon. In each case the governor has stood out for a well-matured project and against any heedless disposal of that valuable property.

A large number of bills affecting the administration of justice have been disapproved. Two bills forbidding the practice of photographing suspects were disapproved because they would have seriously hampered the prosecution of criminals. In 1911 a bill concerning change of venue was disapproved because it unduly extended the right of the accused to demand it. The parole law and the juvenile court law were protected in 1903 and 1911, respectively, against attempts to destroy them.

The veto of appropriation bills has been closely related to the growing expenditures of the state. This class of vetoes, placed on the general grounds of economy, with one exception, came after 1900. It is composed of two sub-classes, namely, seventeen appropriation bills disapproved in full, and thirty-two appropriation bills disapproved in part as authorized by the constitutional amendment of 1884.

During the early years after 1900 the bills disapproved in full were relatively more important. Later the veto of items became of great importance. The total amounts vetoed varied, of course, widely from year to year. The amounts involved were often very considerable. Thus, for example, in 1903 Governor Yates vetoed about a million dollars. In 1915 Governor Dunne's vetoes totalled something like two million dollars.

With few exceptions, the appropriations disapproved may be classified under the following heads: Appropriations for higher educational institutions, the Illinois national guard, agriculture (especially for the state fair grounds), public roads, and the general appropriations for the state government. That the first two classes of institutions were the first to feel the effect of the veto power may have no connection with the fact that they have little political pressure to bring to bear though the question easily suggests itself. Of late years the state appropriations for public roads and for the general and contingent expenses of the state government have come in for heavy reductions.

Although the veto power has been used to a greater and greater extent to limit the growing increase in expenditures, it

has not been sufficient to prevent enormous increases from session to session. Thus, since 1900, when this class of vetoes began to occur, expenditures have grown from \$12,773,686.12 in 1901 to \$46,349,326.17 in 1915.

The practice of reducing items for a time showed promise of giving the governor still larger control over appropriations; but this was held unconstitutional by the supreme court in December, 1915. It has been suggested that the constitution ought to be amended so as to enable him to do so. It would seem, however, that a much better and safer method would be to give the governor more influence over the budget in its earlier stages, especially by some means of control over the estimates submitted to the general assembly.

It may be permitted in conclusion to raise a question which is pertinent to the whole discussion of the veto power. The veto power may be characterized as an eleventh-hour remedy. The growing frequency of its use points to a lack of harmony and cooperation between the governor and the legislature. Would it not be expedient to provide some constitutional means for introducing the governor's influence earlier in the process of legislation? Something might be accomplished by following the line of development suggested in Alabama and Virginia—authorizing the governor to introduce amendments. Or perhaps the solution lies in the adoption of some form of cabinet system for the state.

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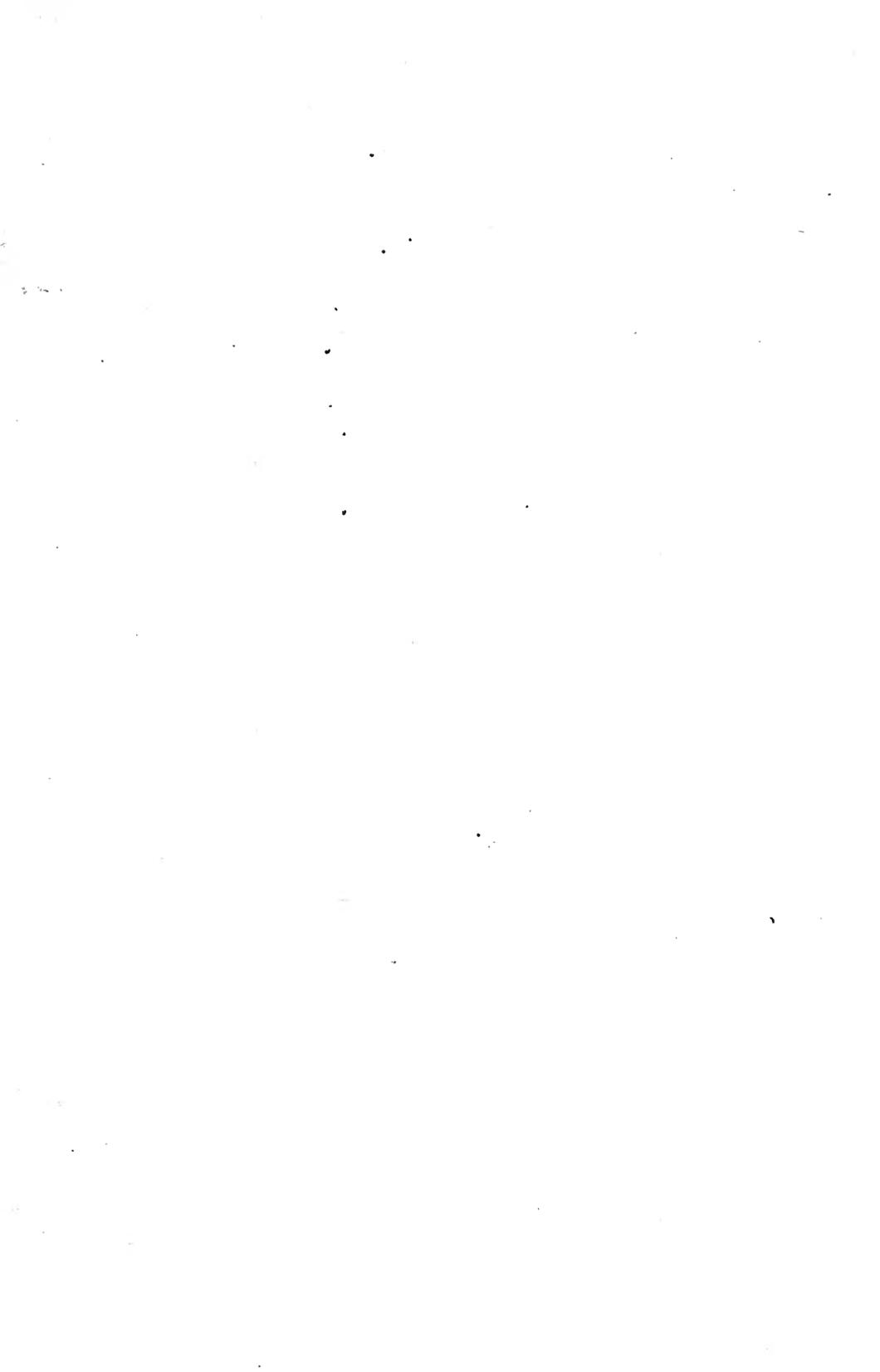
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