

## THE PROBLEM OF THE EXECUTIVE

CHARLES W. MCKENZIE†

### 1. THE PLACE OF THE EXECUTIVE IN GOVERNMENT

Government as an agency for the control and regulation of the varied relationships of human beings is not the result of divine fiat, nor even, in most cases, of conscious human planning. Starting in prehistoric times with savage individuals who maintained and enforced certain taboos, it has developed into the complex organism we know today—regulating nearly every phase of human activity and extending to its people services undreamed of a hundred years ago. Consequently any study of government in general or of a specific governmental problem requires an appreciation of the historical development. Similarly any study of executive organization requires an understanding not only of the present existing organization but of the problems that brought that organization into existence. Too, it is well to keep constantly in mind that governmental development is in part at least the result of social, economic, and political pressures exerted by human beings. Each new development and change comes in an effort to satisfy some new human want or need, itself the result of a changing human society. The answer to many of our present problems will be found in the answer to these questions: does the need once satisfied by this particular political structure still exist, and does there exist a need today which did not exist previously, and for which there may be no adequate political structure?

The present day chief executive officer of the state has, literally, a royal lineage, for he can trace his political ancestry back to the royal colonial governor of pre-Revolutionary days. But however direct in line of descent, our modern governor has little in common with his royal ancestor. The latter was appointed by the Crown, to be the representative in the colony of royal authority and prerogative. He was commander in chief of the colonial forces, he appointed all civil, military, and judicial officers, appointed and could suspend the council, convened and could dissolve the legislature at will; he was a member of the upper

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† Assistant Professor of Political Science, Washington University.

house of the legislature and could introduce and veto measures; he exercised a veto power over the legislature that could be overridden only by the king in council; he had the unrestricted power of reprieve and pardon; and he and his council served as the highest court in the colonies. In some cases he was the recognized head of the established church in the colony as well as the social arbiter. Almost the only local popular check upon his actions was the "power of the purse" that remained in the control of the lower branch of the colonial legislature—a very real but negative check.

The experience of the colonists with the royal governor and his dominant position in the political structure of the colonial government brought home the valuable lessons in hard, practical life which philosophers such as Hobbes, Locke, and Montesquieu had been teaching. These lessons were well learned and (after the Revolution) were burned by means of written constitutions into the political consciousness of the day. These constitutions, emphasizing the doctrines of popular sovereignty, right of revolution, separation of powers, and checks and balances, sought to provide a government of laws and not of men. Perhaps more than anything else the early constitution-makers emphasized that the best way to prevent tyranny was to make certain that no one person, or group of persons, should ever be able to exercise executive, legislative and judicial powers or for that matter, any authority not granted by the people in the written constitution. Looking back we can see now that these constitutions were an entirely natural reaction to the days of the royal governors. The distrust of the man becomes a distrust of the office and therefore the position of the Revolutionary governor is in bold contrast to that of the royal governor. Even in those states that embodied the doctrine of separation of powers in their constitutions, the action of the governor was restricted by the necessity of obtaining the approval of his council, made up of members of the legislature. He was deprived of his appointing power, the formerly appointed officers becoming elective, or remaining appointive but subject to council or senatorial approval. Even the governor's veto became a suspensory one, since the legislature might repass the measure by an unusual majority. Irrespective of theory, in actual practice legislative supremacy and weak executive became

the rule in the new states, and the governor assumed a position of third rate importance.

The deep-rooted principles of the new constitutions gave such a broad and solid foundation to state governments that they were certain to endure and to survive the gradual mutations of time. Only the machinery of government or superstructure needed to be changed to meet the changing economic and political conditions. In no one respect have these changes been clearer than in the position and powers of the chief executive of the states. The governor has evolved in the more than a hundred and fifty years from a position of "innocuous desuetude" to a position in some states of first importance as director of administration and as maker of legislative policy.

Governmental changes occur to meet flesh and blood needs; and, while the Jeffersonian theories as expressed in the Declaration of Independence and in the proposed Virginia Constitution were largely accepted in theory, the more conservative states were slow to adopt them in practice. Only as the new western territory was opened up and new states formed were the democratic theories of Jefferson put into practice and allowed to flower in the whole country with the era of Andrew Jackson. The first effect of the frontier so far as the governorship is concerned is seen in the direct popular election of the governor and the resulting strengthening of the popular control of the office.<sup>1</sup> Popular election of the governor was rapidly followed by the popular election of other state executive and administrative officers, thus creating in fact a plural executive with the governor theoretically the executive, but actually sharing his executive power with a number of administrative officers separately elected and therefore not responsible to him.<sup>2</sup>

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1. Pennsylvania in 1790 and Delaware in 1792 provided for direct election of the governor. The Kentucky constitution of 1792 provided for an indirect method of election through electoral colleges, but in 1799 provided for direct popular election. Tennessee at about the same time provided for direct popular election, and since then every new state admitted to the union has so provided. The older states were hesitant about making the change. Georgia made it in 1824, North Carolina in 1835, Maryland in 1837, New Jersey in 1844, Virginia in 1850, and South Carolina in 1866. Mississippi because of the peculiar racial situation there still provides for an indirect system of popular election. See Miss. Const. (1890) art. V, §§140, 141.

2. Beginning in Mississippi in 1832 the practice spread rapidly through the western states, more slowly in the older ones, but by the middle of the century had become almost universal.

But the change in the structure of the governorship could not be attributed solely to the democratizing influence of the frontier. Of perhaps equal importance was the inability of the legislature to retain the respect of the people through its inability or unwillingness to perform the tasks imposed by the early constitutions. Charged with the duty of determining policies for the whole state and of legislating for the benefit of the general welfare, the individual legislator frequently found the interests of the state in conflict with the interests of his district or of some special group within his district. Confronted by such a conflict, too frequently the legislator found it to his best interests politically to promote the welfare of his own district at the expense of the rest of the state. Moreover, as economic and industrial expansion brought requests for charters for land companies, canals, railroads, banks, turnpikes, manufacturing and trading companies of all kinds, the legislators frequently and shamelessly bartered away the resources of the state for private gain. The result was loss of public confidence in the legislature and the strengthening of other organs of government, particularly the executive. Out of this background came the strengthening of the governor's veto power.<sup>3</sup>

Thus, during the first half of the nineteenth century, the position of the governor was clarified and strengthened. Direct popular election gave him independence of the legislature and made him responsible to the whole state. The abolition of the executive council chosen by the legislature and usually from the legislature gave him added authority and increased his political status.

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3. The original Massachusetts constitution was the first to give the governor a veto power subject to repassage by a  $\frac{2}{3}$  vote of both houses. New York bestowed the authority upon the council of revision. Kentucky in 1799 gave the legislature power to override the governor's veto by a majority vote. Since 1850 most states have adopted the Massachusetts type. Pennsylvania in 1873 and New York strengthened the veto power by requiring a vote of  $\frac{2}{3}$  of all members elected to the legislature. Since that time about  $\frac{1}{2}$  of the states have followed suit.

The item veto as applied to appropriation measures was a refinement suggested by the constitution of the Confederate States of America. This feature has now been adopted by 39 states. Washington in 1889 extended the item veto to all types of bills. Today in Alabama, Virginia, and Massachusetts the governor may suggest amendments to bills; if the legislature fails to amend as suggested, the governor may then exercise his veto power. For a discussion of the item veto as securing greater harmony between executive and legislature and encouraging development of English budgetary practices, see Wells, *The Item Veto and State Budget Reform* (1924) 28 *Am. Pol. Sci. Rev.* 782-791.

The granting to him alone of the veto power and the requirement of a two-thirds vote of the full legislative membership to over-ride the veto, gave to the governor additional authority in law-making.

But at the same time that this policy-forming position was being strengthened in these ways, his control over the execution of policies and the direction of administration was greatly weakened by the tendency during this period to create a plural executive. The governor, lieutenant-governor, secretary of state, treasurer, attorney-general, and other state officers as well became elective officials, and thus became independent and supreme in their own departments. Confronted with the duty of enforcing laws, the governor found his hands tied by his inability to direct the heads of the main divisions of the state's administration. Furthermore, the same democratization of government was present in local positions as well, for sheriffs, county clerks, county treasurers also became elective and independent. Thus was created the decentralized, disintegrated, and plural executive. The governor became the chief executive in name only, with responsibility for administration but with no authority to direct subordinates, and dependent upon voluntary cooperation for the enforcement of laws. Given the authority to enforce the laws and usually taking an oath to perform this function without fear or favor, he was dependent upon his attorney-general, the state militia, and the local sheriffs. With the attorney-general and the local sheriffs and constables popularly elected, there was no way of forcing such officers to act if they refused to cooperate. And frequently the attorney-general, politically ambitious, was willing to listen to the promptings of interested constituents rather than to the governor, and the local officers enforced only those laws their electors wanted. The result was that the governor could depend only upon the militia, a weapon too drastic to use except in extraordinary situations. In actual practice then, the governor became little more than a figure-head in matters of law enforcement and administration.

Administrative disintegration was encouraged by another development during this period; the growing need for new agencies of administration to meet the changing conditions. The development of railroads, banking, insurance, and public utility com-

panies forced the citizen to appeal to the state for protective regulations. The development of the factory and the appearance of a wage earning class brought demands for the establishment of new machinery to provide social and industrial justice. Better care for defectives, dependents, delinquents, for the sick, for the aged and destitute, and for petty offenders and criminals was demanded. The local governments could not provide these services; the state had to; so new administrative agencies were created to discharge the new responsibilities demanded by the people.<sup>4</sup>

As each new function was assumed by the state, a new administrative agency was set up to perform the new duties, and many of them were headed by three or five popularly elected officials. Even where the new committees were made appointive their terms were usually staggered so that no governor in his regular term might control them. The result was of course a highly complicated administrative set-up, technically under the supervision of the governor, but actually beyond his direction and control. Before the reorganization in Massachusetts, there were more than one hundred separate administrative agencies enforcing state laws or supervising local administrative agencies.<sup>5</sup> In Illinois at about the same time, there were more than one hundred statutory administrative agencies in addition to those provided by the constitution; while New York in 1925 boasted of nearly two hundred independent administrative offices.<sup>6</sup>

Such a situation could not go on indefinitely. Not only were there too many uncoordinated agencies, but there was constant friction between them. Many of them carelessly set up by the

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4. Croly, Herbert, *The Promise of American Life* (1909). Also, Weyl, Walter E., *The New Democracy* (1912); White, William Allen, *The Old Order Changeth* (1910).

5. See Report of the Massachusetts Commission on Economy and Efficiency on the Functions, Organization, and Administration of the Departments of the Executive Branch of the State Government (1914). The development between 1837 and 1870 is particularly interesting: 1837, state board of education; 1838, office of bank commissioner; 1853, state board of agriculture; 1855, the office of insurance commissioner; 1863, the state board of charity; 1865, the office of tax commissioner; 1866, the commission on fisheries and game; 1869, the state board of health, the bureau of labor statistics, and the railroad commission; 1870, the office of corporation commissioner.

6. Report of the Illinois Efficiency and Economy Committee (1915); Report of the State Reorganization Commission (Albany, 1926). This commission in New York was under the chairmanship of Charles Evans Hughes.

legislature, in some cases over-organized to create more positions for party spoils, had overlapping duties and functions. Waste and inefficiency were everywhere. The public continued to demand more and more services from the government; yet as taxpayers, the same public complained loudly of mounting tax burdens. In 1906, partially to seek a solution of this dilemma, the New York Bureau of Municipal Research was organized, the first of many such research bureaus to be established in the United States. The success of the New York Bureau in applying the scientific approach to government was so apparent that numerous temporary or permanent research agencies supported at public expense were created.<sup>7</sup>

In Missouri between 1921 and 1935 at least six attempts were made to bring about administrative reorganization, but without any very great success.<sup>8</sup> Consequently, we have today in Missouri the phenomenon of an archaic administrative system imposed upon a modern society. The executive branch of our government

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7. E. g., the Efficiency and Economy Commission of the federal government organized in 1910 with the full support of President Taft. In 1912 New Jersey organized a similar commission and at least 1/3 of the other states followed suit. From their investigations came almost together the movements for administrative reorganization and for budget and accounting reforms.

8. Illinois was the first state to introduce this type of reform, under the guidance of Governor Frank O. Lowden. See Ill. Session Laws of 1917 and 1925. Also Mathews, *Administrative Reorganization in Illinois* (1920) 9 Nat'l Municipal Rev. 736-756; Lowden, *Reorganization in Illinois and Its Results* (1924) 113 *Annals of the American Academy of Pol. Sci.* 155.

Governor Hyde in 1921 pointed out the urgent need for reorganization and consolidation. Seven bills were enacted, creating departments of agriculture, budget, finance, labor, penal institutions, and public welfare, abolishing about 20 independent agencies, and establishing a single board of managers for the six charitable institutions. Referendum petitions were filed against all the proposals except two and after a partisan fight the measures failed at the popular election in 1922. A constitutional amendment proposed by the 1922-23 Constitutional Convention was likewise defeated. Proposals for consolidation were again defeated in the legislature in 1925.

The executive budget system was finally approved by the voters through use of the initiative, and in 1932 the legislature began a process of piecemeal consolidations to increase the power of the governor, but the process has been regrettably slow. See Buck, A. E., *The Reorganization of State Governments in the United States* (1938); Loeb, Report of the State Survey Commission—An Explanatory Analysis. Bulletins Nos. 1 to 7, Associated Industries of Missouri (St. Louis, 1930); Short, *The Missouri State Survey Commission* (1932) 21 Nat'l Municipal Rev. 20; Short, *Missouri Reorganizes Its Administrative Structure* (1934) 23 Nat'l Municipal Rev. 429; Bradshaw, *Recent Changes in Missouri State Government* (1936) 17 *Southwestern Social Sci. Quart.* 63.

was set up to meet the needs of a day long past, while the needs of today have been inadequately provided for by makeshift and patchwork. Unless the governmental machinery can be so geared that it can properly serve its intended function, the collapse of that machinery sooner or later is inevitable.

## 2. MODERN PROBLEMS

Having surveyed the origin and development of the state executive, one may now approach the task of reorganization with a greater appreciation of the general problems to be met. It has been observed that, while the "founding fathers" builded well, in a very general and basic way, they did not foresee and could not possibly have foreseen the development of society into the complex civilization of today. Consequently, we have a system of state government based on good, solid, fundamental principles, but bogged down in a morass of makeshift and opportunism, the inevitable result of partial and makeshift repairs. Designed to meet the needs of the horse and buggy era, it naturally fails to solve the problems of the streamlined society of today. The problem then is to build upon the old, solid, fundamental principles a new governmental superstructure capable of withstanding the stresses and strains of the complex industrialized society of today.

### (a) *Administrative and Executive Centralization.*

The first great problem to be settled is the position of the governor. The present constitution of Missouri provides that "The executive department shall consist of a Governor, Lieutenant-Governor,<sup>9</sup> Secretary of State, State Auditor, State Treas-

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9. Today the position of lieutenant governor exists in 35 states; in most of them the position is one without much influence or authority. The powers of the governorship may devolve upon him if the governor dies or resigns; in some states he serves as acting governor in the absence of the governor. In 33 states he is president of the upper house of the legislature and exercises the powers of a presiding officer. In about  $\frac{1}{3}$  the states he makes appointments to senate committees and in about  $\frac{1}{2}$  he may make rulings on points of order. In 4 states, including Missouri, he has the right to debate and to vote on all questions before the senate in committee of the whole house. Until 1933 the lieutenant governor had been given only a small place in administration in a few states. In that year the reorganization bill in Indiana made him a member of the administrative boards of the departments of state, commerce and industries, education and public works; the governor may use him as an administrative assistant or as his representative before any board or department for any length of time or for any specified purpose. See Ind. Stat. Ann. (Burns 1933) §§60-111, 60-



surer, Attorney-General, and Superintendent of Public Schools, all of whom, except the Lieutenant-Governor, shall reside at the seat of the government during the term of their office \* \* \*."<sup>10</sup> All of these officers are popularly elected for definite terms and, with the exception of the governor and treasurer, are eligible to succeed themselves. Definite duties are conferred upon some of them by the constitution and others may be conferred by law. Thus in spite of the provision that "The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the State of Missouri',"<sup>11</sup> the governor has no legal authority over the other executive officers and must depend upon their voluntary cooperation for the success of his administrative program. Under such a system, which is common in most of our states, the party provides the only binding cement for unified action and responsibility, and then only when a complete party ticket is elected to office. Such a situation encourages party responsibility when an aroused electorate insists upon that responsibility, but it also may encourage or at least permit the evasion of responsibility and the development of "bossism."

The first essential, the *sine qua non*, in fact, of reorganization, is the adoption of the short ballot. The short ballot means merely the elimination from the ballot of all constitutionally independent executive officers except the governor. Since they are the heads of the principal executive departments, the governor should have the power to appoint and remove them, to direct their activities, and to control them. Thus, those officers would become responsible to the governor, act under his direction, and serve during his pleasure.<sup>12</sup> They would no longer be rivals of the governor

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115, 60-116. In Massachusetts the lieutenant governorship is a stepping stone to the governorship.

For a discussion of the position of the lieutenant governor, see Isom, *The Office of Lieutenant-Governor in the States* (1938) 32 *Am. Pol. Sci. Rev.* 921. The Model State Constitution creates the office of Administrative Manager and confers succession to the governorship upon the presiding officer of the legislature, thus removing the need for a lieutenant-governor. See art. V, §§506, 510.

10. Mo. Const. (1875) art. V, §1.

11. Mo. Const. (1875) art. V, §4.

12. The proponents of this idea are of divided opinions as to the position of the auditor. Some suggest that he remain an elective official responsible directly to the electorate; others suggest that he be appointed by the legislature to whom he is accountable for checking all expenditures; still others suggest that he be placed under civil service and given permanent tenure. It seems clear that if the governor is to be given greater authority, adequate checks on abuse of power must be provided, and one valuable check would be an auditor independent of the governor.

for political influence and prestige, but would be clearly subordinate to him. Such a plan provides for a unified executive and emphasizes the principles of good administration, but it does require unusually well-qualified governors and an aroused electorate that will demand both ability and integrity from the chief officer and his subordinates.

Implicit in the short ballot is the systematic reconstruction of the framework of the administrative agencies. With the constitutionally elective independent officers eliminated, the way is clear for a scientific re-grouping and reorganization of administrative agencies. Each agency (and the separate agencies should be as few as possible) should be under one man appointed by the governor and removable at his pleasure. If this were done, the governor would be in a position to exercise his authority, whereas under the present administrative structure "grotesque agglomerations of independent and irresponsible units, bogged by the weight and confusion of the whole crazy structure,"<sup>13</sup> the task of the governor approaches the impossible. Clearly it is time for the governor to begin to govern. But unless we abandon our 19th century mistrust of the executive and our Jacksonian tenet that power should be diffused among the greatest possible number of office-holders, neither the governor nor anyone else will govern properly.

A corollary to administrative centralization, of course, is administrative co-ordination. If the governor is to be made responsible for the whole of the administrative functions of the state, he must be provided with the means for carrying out his responsibility. Therefore, the governor should have several administrative assistants or co-ordinators, each under the direction of the governor supervising and directing co-ordination of functions.

A second corollary to administrative centralization and reorganization is the introduction of an extensive and intensive merit system. Administrative reorganization is valueless even under theoretically perfect blueprints, if the personnel which operates the agencies is to be selected on the basis of partisan politics and spoils. But the personnel system itself must conform to the scientific principles of administrative organization. Probably the

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13. *Report of the President's Committee on Administrative Management* (1937) 41.

most apparent means to this end would be to have a Director of Personnel appointed by the governor, with rigid qualifications, preferably selected on the basis of a comprehensive competitive examination. A professional personnel administrator is certainly one of the key men in the whole problem of reform of the executive. He should, however, have the assistance of an advisory, non-salaried citizens' committee appointed by the governor, with staggered terms. This committee would have no administrative powers, but might exercise quasi-judicial appellate authority.

A single exception to the principle of administrative centralization should be noted. The state auditor should be appointed by the governor, but he should not hold his office at the governor's pleasure. His term should be longer than that of the governor and he should be responsible to the legislature. The responsibility for checking up on financial transactions and expenditures obviously cannot be entrusted to the same branch which is responsible for the making of those expenditures in the first place.<sup>14</sup>

Another essential implicit in the short ballot is that of the executive budget.<sup>15</sup> Without an efficient executive budget system, it is impossible for the governor to exercise the necessary control over the operations of all governmental agencies and to present a coherent program to the legislature. The governor must have the power to revise the estimates of spending agencies and to formulate the final requests. The Model Constitution provides that:

the governor shall submit to the legislature a budget setting forth a complete plan of proposed expenditures and anticipated income of all departments, offices and agencies of the state for the next ensuing fiscal year. For the preparation of the budget the various departments, offices and agencies shall furnish the governor such information in such form, as he may require. At the time of submitting the budget to the legislature, the governor shall introduce therein a general appropriation bill to authorize all the proposed ex-

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14. See Chute and Brannon, *The Financial, Debt, and Taxation Provisions of the Missouri Constitution (1942)* 27 WASHINGTON U. LAW QUARTERLY 370.

15. *Ibid.* The discussion of state finance is here limited, since it is to be discussed elsewhere. Unquestionably the problem of budgeting is to be an increasingly important one for all states in the immediate future, but it is a problem that cuts across all standardized classifications of government powers and can be dealt with best in a section devoted to state finance.

penditures set forth in the budget. At the same time he shall introduce in the legislature a bill or bills covering all recommendations in the budget for new or additional revenues or for borrowing by which the proposed expenditures are to be met.<sup>16</sup>

In addition to these provisions, there should be others giving the governor an item veto and restricting the legislature from passing any special appropriation bill until after the general appropriation bill has been passed, except emergency appropriations as recommended by the governor, and from appropriating sums in excess of income. The budget function should be vested in a director of the budget responsible to the governor. And the legislature should be restricted to reduction or deletion. Such a budget organization would eliminate most of the sore-spots in present state financial administration, and would serve to give the governor authority to act commensurate with his responsibility.

(b) *Relationship with the Legislature*

A second problem in connection with the reorganization of the executive is the problem of determining the relationship between the governor and the legislature. Should the governor participate in the determination of general policy of the state, or should he be restricted to the approval or rejection of policies already determined by the legislature? Should his contact with the legislature be formalized and frozen into the state constitution, or should it be allowed to develop in accordance with the varying personalities and party ties of the governors? The Federal Constitution recognizes the right of the President to send regular and special messages to the Congress and to exercise the veto power. But the extent to which the President determines legislative policy depends pretty much upon the personality of the man in office, upon his position as party leader, upon his willingness to threaten veto of unwise congressional action, and upon his willingness to appeal over the heads of congressmen to their constituents. Presidents Theodore Roosevelt, Wilson, and Franklin D. Roosevelt participated directly in the formation of legislative policy, while President Taft refused to do so. As we have seen, most of our state constitutions allow the governor to participate in policy determination only in a negative or ineffec-

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16. *Model State Constitution* (4th rev. ed. 1941) art. VII, §703.

tual way. They give the governor a qualified veto, allow him to send messages, allow him to call a special session of the legislature for the consideration of some particular subject, and in some cases, permit his appearance before legislative committees. But only in a few exceptional cases is he legally permitted to suggest revisions of measures before the legislature. And yet in some states by custom the governor has become recognized as a potent influence in the determination of policy. The Model Constitution goes beyond any state constitution today by providing that "The governor, the administrative manager, and heads of administrative departments shall be entitled to seats in the legislature, may introduce bills therein, and take part in discussions of measures, but shall have no vote."<sup>17</sup> The adoption of a provision of this sort would bring the legislative and executive branches into closer cooperation and harmony and would give the administrative officers an opportunity to participate directly in policy formation. Whether it might, as some people claim, have a tendency to produce parliamentary government based on the English model cannot be affirmed or denied categorically. Such a development might come in time, but it seems equally plausible that it might result in the domination by the executive of the legislature and a resulting usurpation of legislative functions. A lot would depend upon the character of the persons holding legislative and administrative offices, in their desire to cooperate for the general welfare, and in the party affiliation of all concerned. Unquestionably it would establish a legal means for direct contact between the two branches of government and make it unnecessary to rely upon the governor's doubtful position as leader of his party to influence and direct policy formation.

A scientific and more completely detached analysis of the problem discloses still another possible solution to the relationship between the executive and the legislative branches. It can be realized with very little pondering that the governor is essentially a hybrid creature. He is, in the first place, a political, and therefore a policy forming officer. But he is also the chief executive, the one to supervise the execution of laws. Clearly the two functions require different talents. The one function is satisfied

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17. *Model State Constitution* (4th rev. ed. 1941) art. V, §508.

merely by his representing the will of the people who elected him, but to satisfy the other, he must possess professional executive qualifications. It is a rare man indeed who can perform both functions well. Consequently, an obvious solution would seem to be found in dividing the office into two parts: a chief administrator, to appoint all heads of departments and be responsible for the administrative function generally, and a political officer to act as ceremonial head of the state, send messages to the legislature, call special sessions, and exercise the veto. This plan is directly analogous to the city-manager plan of municipal government, which generally has been found to be quite satisfactory. However, since the plan involves a radical departure from what is customary, it would probably be wiser to look for immediate reform in other directions.

Among the provisions absolutely necessary for the purpose of enabling the governor to discharge his political responsibilities properly, is the creation of an agency to aid the governor in formulating his political, that is, policy forming, program. If the governor's recommendations to the legislature are to be of any value, they must be based on careful research. Obviously, the governor personally is not able to do this research work. Moreover, it is also obvious that the governor cannot be expected to develop all the details of a coherent and complete legislative program. He must have skilled assistance. Such assistance can be provided by setting up a legislative council, with the governor as a member. This council would work out a legislative program before the legislative session commenced, under the influence of the governor, and with all the technical and expert assistance necessary.<sup>18</sup> In this way is insured not only the governor's influence on legislation and the technical assistance necessary, but also a smooth working plan ready for the legislature when it convenes, attained by the co-operation already achieved between executive and legislative officers.

The governor's power to exercise leadership in legislation is enhanced by the type of executive budget already described. Without the executive budget, administrative agencies are free to influence the legislature directly in the matter of the financing, and therefore the scope and function, of the agencies. Certainly,

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18. See Comment (1942) 27 WASHINGTON U. LAW QUARTERLY 452, with regard to a somewhat related problem.

no coherent policy can be prescribed or adopted where such conditions prevail. The governor must be able to decide the scope and program of every agency, or we revert to administrative chaos. Therefore the executive budget is indispensable both from the executive and legislative points of view.

Every state but North Carolina gives the governor some authority to negate the acts of the legislature, but the use of the veto power is variously restricted. In every state but North Carolina all bills and resolutions that have passed both houses are sent to the governor for his approval. He has from 3 to 10 days in which to sign.<sup>19</sup> He is usually given a certain number of days after the legislature adjourns to act upon all bills submitted to him at the close of the session; if he fails to act in the prescribed time, the measure becomes law without his approval. In some states, however, measures not signed in the required time, if the legislature is not in session, are pocket vetoed. In some states the governor, if he vetoes a measure, must return it to the legislature with his objections at the next session, and in other states the governor may not approve bills when the legislature is not in session. Most states now give the governor the item veto over appropriation measures and Washington gives him the same authority over all bills. In all of the states a gubernatorial veto may be over-ridden by the legislature by an unusual majority.<sup>20</sup> Initiative and referendum measures are not subject to gubernatorial veto, nor are resolutions of adjournment in some states. In a few states, by specific constitutional provision, proposed constitutional amendments are not submitted to the governor before being submitted to the people for their approval.

Probably the best provisions concerning the veto are that it should be suspensory in character, overridden by a two-thirds vote of the legislature. But most important of all, there should be an item veto for all bills, eliminating riders of all kinds, and thereby eliminating one of the most vicious and unfortunate of

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19. In 22 states he has 5 days in which to sign or reject the measure; 12 states give him 10 days; 4 states give him 6 days, while 9 states allow only 3 days. In all but 5 states Sundays are excepted in the count of days.

20. 22 states require the approval of  $\frac{2}{3}$  of all the members elected to each house to pass a law over the governor's veto; 11 require a  $\frac{2}{3}$  vote of members present; 4 require  $\frac{3}{5}$  of those elected, while Rhode Island requires  $\frac{3}{5}$  of members present; 7 require a vote of only a majority of those present; Virginia has a peculiar provision requiring a  $\frac{2}{3}$  vote of members present but a majority of the elected members.

all legislative practices. Perhaps it may be desirable to have a bill passed over the veto referred to the people under compulsory referendum.

Another device promoting the legislative leadership of the governor is the power to call special sessions of the legislature, a power exercised by governors in all 48 states. In 21 states the governor in his call may restrict the business of the meeting to the consideration of such matters as he stipulates. The value of this provision depends upon the character and personality of the governor. While the governor may restrict a special session to the consideration of certain matters, and can even threaten to call a second special session if the legislature fails to act, he has no authority to force any definitive action. He can merely suggest and "inform" the legislature of the needs of the state. A "strong" governor, like a strong president, could take the issue directly to the people and urge popular pressure upon individual members; or if he is the recognized leader of his party, he can threaten to discipline recalcitrant legislators if and when they seek reelection. But very few governors have been successful in struggles with an opposition legislature, possibly because the individual legislator is closer to his constituents than is the individual congressman or, for that matter, the governor.

Many states require that the governor submit a message to the legislature at every session; others permit him to send messages from time to time, and some require a message at the end of his term. But here again the message power may strengthen the governor or weaken him, depending upon his personality, his popularity, and his recognition as a party leader. A popular governor can deliver his message not only to the legislature but to the people of his state and appeal to them for support for a clear program of legislation. In order to make the most of this power, the message should be a full report of conditions with suggested reforms, accompanied by "bills" providing the requested reforms, all in accordance with the program worked out by the governor with the legislative council. And the governor should also have the power to present additional messages at any time.

Only when a satisfactory solution for the two problems of administrative reorganization and relationship to legislation has been found, is it possible to speak of executive reorganization.



However, there are other less pressing problems to be considered in any study of the executive. In the first place, there is the problem of qualifications for the office of governor. Most states now have very simple qualifications. Generally the chief executive must be "at least thirty-five years old, a male, and shall have been a citizen of the United States ten years, and a resident of this State seven years before his election."<sup>21</sup> Naturally there is some variation from state to state as to the minimum age, the length of residence, and length of citizenship, but no state has retained the Revolutionary requirement for property holding or for religious belief. The Model Constitution<sup>22</sup> makes any qualified elector eligible for the office of governor, but there seems to be an honest difference of opinion on the desirability of this feature. If the governor is to be a real head of the government, he should present more qualifications than those necessary to exercise the suffrage. Of course the difficulty comes in trying to formulate any set of qualifications that will automatically assure administrative ability. Tax-paying qualifications that have been suggested are of little value since the ability to pay taxes may not show evidence even of ability to earn a living, and every citizen, directly or indirectly, pays taxes to the state. Possibly it would be best not to attempt to set up iron-clad qualifications of ability, at least as long as the office remains political, and especially since an agreement on what qualifications to include might prove an insuperable obstacle.

The term of the office of governor varies from two to four years, with the clear trend apparent to lengthen the term to four years. In most states there is no restriction upon the number of terms a governor may serve, but there do exist in other states restrictions as to number of terms or provisions for re-election only after lapse of a term. In Missouri, the governor is elected for four years and may not succeed himself. While short terms and rotation in office have been a peculiarly American custom for many years, there seems to be an equally sound reason for retaining a capable governor in office as long as he serves the people satisfactorily. All states electing governors for two year terms

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21. Mo. Const. (1875) art. V, §5. Since the advent of equal suffrage a number of states have eliminated the word "male" from their constitutions or the courts have interpreted the word to mean "man" or "woman."

22. *Model State Constitution* (4th rev. ed. 1941) art. V, §501.

have alternate elections in presidential election years, while some states having a four year term provide for gubernatorial elections in non-presidential election years. This latter provision was designed to free the state elections from national issues and to assure concentration by the electors upon state issues and state candidacies. But in spite of this good intention, many of the gubernatorial elections have been fought upon national issues and few state candidacies have been devoted solely to state matters. As long as party affiliation for national and state offices remains the same, national and state campaigns will tend to merge even if they are held in alternate years.

In all of the state constitutions except that of Connecticut, the governor has inherited the colonial governor's right to pardon and reprove persons convicted of violation of state laws, but there are often many restrictions upon this authority. Among these restrictions are review, by a board of pardons, of requests for pardons before submitting such requests to the governor for action, express prohibition from granting a pardon in impeachment cases, and a similar prohibition concerning those convicted of treason. There are provisions in many states to the effect that after a pardon has been granted, the reasons for such action must be submitted to the legislature,<sup>23</sup> while a few states have provisions that this information must be filed with the secretary of state. In addition to the general pardoning power, the governor often has the authority to remit fines and forfeitures as well. Probably no power has caused the governor more grief than this power to grant pardons and reprieves, and consequently most governors would be glad to see its use severely restricted. Possibly the governor should retain the ultimate power to grant pardons and reprieves, but only when recommended by a board of pardons consisting of the attorney general, chief justice, and

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23. The Missouri constitution is similar to most of the other state constitutions: "The Governor shall have the power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall, at each session of the General Assembly, communicate to that body each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the commutation, pardon or reprieve, and the reason for granting the same." Art. V, §8.

the administrative assistant in charge of staff functions. No pardons or reprieves should be recommended by the board except with the approval of the prosecuting officer in the case, the judge who heard the case, and the warden of the prison.

If the governor is to become by natural evolution or by the more rapid method of thorough constitutional revision a strong, single executive, one other problem of serious magnitude immediately presents itself. How is the governor to be made clearly responsible for the exercise of these powers and responsive to the will of the people? How can we prevent the abuse of power and authority in the hands of a weak or corrupt governor? Is it enough to say that the increased importance of the office will attract better qualified men and therefore the people will elect only the best? The asking of such questions may seem to some like setting up straw men to be knocked down again, but the questions are important ones, and they must be answered. For many years our states relied on the impeachment process as the only method for removing a corrupt or inefficient man from office. But this process is an involved and an expensive one, requiring as it does action by the lower house in charging the governor and action by the upper house in convicting and removing him. In some states where the legislature meets for only ninety or one hundred and twenty days once in two years, this weapon becomes an empty one indeed. Also it should be recalled that in most states governors or other executive officers may be impeached only for high crimes and misdemeanors, misfeasance or gross misconduct in office, and such things are difficult to prove to the satisfaction of two-thirds of the members of the senate, a majority of whom may be members of the same political party as the governor. An inefficient, misguided but well meaning governor may injure the state as much as a corrupt one, yet impeachment of such an individual is almost impossible.

During the period of insurgent liberalism that came at the beginning of the present century, several of the states revised their constitutions to provide for the popular recall of executive officers. Under these provisions, by petition of a certain percentage of the registered voters, an election might be called to determine whether or not a governor should be removed from office prior to the normal expiration of his term. Proponents of the change advocated it as a panacea for all the ills of the execu-

tive office, expecting that the threat of recall might be enough to restrain the abuse of power by the governor. But the "big stick behind the door" has not proved very effective, and the process of recall is even more expensive and difficult than the process of impeachment. Here again the recall, like the impeachment, is an extraordinary remedy to be used only in a most unusual situation. Perhaps the best approach to the problem is found in the Model Constitution, which provides for what might be called a "legislative recall" of the governor. "The legislature shall have the power of impeachment by a two-thirds vote of the members elected thereto, and it shall provide by law a procedure for the trial and removal from office of all officers of this state. No officer shall be convicted on impeachment by a vote of less than two-thirds of the members of the court hearing the charges."<sup>24</sup> Of course, this solution proceeds on the premise that there will be a unicameral legislature. If the legislature is bicameral, the function should be allocated to the more representative of the two houses.

The problem of the organization of the executive office of the state is, in its ultimate form, the same problem as the organization of the legislature or of the judiciary or of any other branch of government. Ultimately the success or failure of any plan proposed depends upon the people for whom the plan is intended. Especially is this condition true in a democracy. No government of a democratic nature can hope to be efficient and successful unless it has behind it an intelligent and actively interested citizenry demanding the best of its officers and condemning inefficiency and corruption. In a day of all-out warfare against democracy from without, the battle on the home front is likely to be forgotten. But the survival of democracy is tied up with the one just as certainly as it is with the other, and therefore an intelligent exercise of all of the duties of citizenship is necessary to insure that survival.

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24. *Model State Constitution* (4th rev. ed. 1941) art. V, §509.

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